

SECOND REGULAR SESSION

[PERFECTED]

HOUSE BILL NO. 1380

97TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES PETERS (Sponsor) AND ELLINGTON (Co-sponsor).

5243L.01P

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 178.656, 197.315, 205.968, 208.215, 226.805, 475.120, 552.040, 563.033, 565.030, 630.003, 630.340, 633.020, 633.105, 633.401, and 660.075, RSMo, and to enact in lieu thereof fifteen new sections relating to intellectual and developmental disabilities.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 178.656, 197.315, 205.968, 208.215, 226.805, 475.120, 552.040, 563.033, 565.030, 630.003, 630.340, 633.020, 633.105, 633.401, and 660.075, RSMo, are repealed and fifteen new sections enacted in lieu thereof, to be known as sections 178.656, 197.315, 205.968, 208.215, 226.805, 475.120, 552.040, 563.033, 565.030, 630.003, 630.340, 633.020, 633.105, 633.401, and 660.075, to read as follows:

- 178.656. 1. Centers for independent living shall be community-based nonresidential programs designed to promote independent living for persons with disabilities. Such centers shall be organized as nonprofit corporations with persons with disabilities comprising at least fifty-one percent of the governing board of directors.
2. At least fifty-one percent of the staff of such centers shall be persons with disabilities.
3. The center shall provide to persons with disabilities within the center's target population and their families the following independent living services:
- (1) Advocacy;
 - (2) Independent living skills training, which shall include but shall not be limited to health care and financial management;

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

- 11 (3) Peer counseling;
- 12 (4) Information and referral to all inquirers including those from outside the center's
13 target population.
- 14 4. The center may provide or make available, but is not limited to, the following:
- 15 (1) Legal services;
- 16 (2) Other counseling services, which may include nonpeer, group, and family counseling;
- 17 (3) Housing services;
- 18 (4) Equipment services;
- 19 (5) Transportation services;
- 20 (6) Social and recreational services;
- 21 (7) Educational services;
- 22 (8) Vocational services, including supported employment;
- 23 (9) Reader, interpreter, and other communication services;
- 24 (10) Attendant and homemaker services; and
- 25 (11) Electronic services.
- 26 5. To qualify as a center for independent living under the provisions of sections 178.651
27 to 178.658, centers shall serve at least four of the following types of disabilities:
- 28 (1) Mobility;
- 29 (2) Orthopedic;
- 30 (3) Hearing impaired or deaf;
- 31 (4) Vision impaired or blind;
- 32 (5) Neurological;
- 33 (6) [Mental retardation] **Intellectual**;
- 34 (7) Developmental;
- 35 (8) Psychiatric or mental; or
- 36 (9) Learning.
- 37 6. Centers shall make maximum use of existing resources available to persons with
38 disabilities and shall not duplicate any existing services or programs in the geographic areas to
39 the extent that such services or programs are available through other state resources. Such
40 centers shall, however, provide information and referral to assist persons with disabilities in
41 obtaining available services and shall coordinate, where feasible, the delivery of such services.
- 42 7. Centers shall operate in compliance with all applicable local laws and ordinances.
- 197.315. 1. Any person who proposes to develop or offer a new institutional health
2 service within the state must obtain a certificate of need from the committee prior to the time
3 such services are offered.

4 2. Only those new institutional health services which are found by the committee to be
5 needed shall be granted a certificate of need. Only those new institutional health services which
6 are granted certificates of need shall be offered or developed within the state. No expenditures
7 for new institutional health services in excess of the applicable expenditure minimum shall be
8 made by any person unless a certificate of need has been granted.

9 3. After October 1, 1980, no state agency charged by statute to license or certify health
10 care facilities shall issue a license to or certify any such facility, or distinct part of such facility,
11 that is developed without obtaining a certificate of need.

12 4. If any person proposes to develop any new institutional health care service without
13 a certificate of need as required by sections 197.300 to 197.366, the committee shall notify the
14 attorney general, and he shall apply for an injunction or other appropriate legal action in any
15 court of this state against that person.

16 5. After October 1, 1980, no agency of state government may appropriate or grant funds
17 to or make payment of any funds to any person or health care facility which has not first obtained
18 every certificate of need required pursuant to sections 197.300 to 197.366.

19 6. A certificate of need shall be issued only for the premises and persons named in the
20 application and is not transferable except by consent of the committee.

21 7. Project cost increases, due to changes in the project application as approved or due
22 to project change orders, exceeding the initial estimate by more than ten percent shall not be
23 incurred without consent of the committee.

24 8. Periodic reports to the committee shall be required of any applicant who has been
25 granted a certificate of need until the project has been completed. The committee may order the
26 forfeiture of the certificate of need upon failure of the applicant to file any such report.

27 9. A certificate of need shall be subject to forfeiture for failure to incur a capital
28 expenditure on any approved project within six months after the date of the order. The applicant
29 may request an extension from the committee of not more than six additional months based upon
30 substantial expenditure made.

31 10. Each application for a certificate of need must be accompanied by an application fee.
32 The time of filing commences with the receipt of the application and the application fee. The
33 application fee is one thousand dollars, or one-tenth of one percent of the total cost of the
34 proposed project, whichever is greater. All application fees shall be deposited in the state
35 treasury. Because of the loss of federal funds, the general assembly will appropriate funds to the
36 Missouri health facilities review committee.

37 11. In determining whether a certificate of need should be granted, no consideration shall
38 be given to the facilities or equipment of any other health care facility located more than a
39 fifteen-mile radius from the applying facility.

40 12. When a nursing facility shifts from a skilled to an intermediate level of nursing care,
41 it may return to the higher level of care if it meets the licensure requirements, without obtaining
42 a certificate of need.

43 13. In no event shall a certificate of need be denied because the applicant refuses to
44 provide abortion services or information.

45 14. A certificate of need shall not be required for the transfer of ownership of an existing
46 and operational health facility in its entirety.

47 15. A certificate of need may be granted to a facility for an expansion, an addition of
48 services, a new institutional service, or for a new hospital facility which provides for something
49 less than that which was sought in the application.

50 16. The provisions of this section shall not apply to facilities operated by the state, and
51 appropriation of funds to such facilities by the general assembly shall be deemed in compliance
52 with this section, and such facilities shall be deemed to have received an appropriate certificate
53 of need without payment of any fee or charge.

54 17. Notwithstanding other provisions of this section, a certificate of need may be issued
55 after July 1, 1983, for an intermediate care facility operated exclusively for the [mentally
56 retarded] **intellectual and developmentally disabled**.

57 18. To assure the safe, appropriate, and cost-effective transfer of new medical technology
58 throughout the state, a certificate of need shall not be required for the purchase and operation of
59 research equipment that is to be used in a clinical trial that has received written approval from
60 a duly constituted institutional review board of an accredited school of medicine or osteopathy
61 located in Missouri to establish its safety and efficacy and does not increase the bed complement
62 of the institution in which the equipment is to be located. After the clinical trial has been
63 completed, a certificate of need must be obtained for continued use in such facility.

205.968. 1. As set forth in section 205.971, when a levy is approved by the voters, the
2 governing body of any county or city not within a county of this state shall establish a board of
3 directors. The board of directors shall be a legal entity empowered to establish and/or operate
4 a sheltered workshop as defined in section 178.900, residence facilities, or related services, for
5 the care or employment, or both, of persons with a disability. The facility may operate at one or
6 more locations in the county or city not within a county. Once established, the board may, in its
7 own name engage in and contract for any and all types of services, actions or endeavors, not
8 contrary to the law, necessary to the successful and efficient prosecution and continuation of the
9 business and purposes for which it is created, and may purchase, receive, lease or otherwise
10 acquire, own, hold, improve, use, sell, convey, exchange, transfer, and otherwise dispose of real
11 and personal property, or any interest therein, or other assets wherever situated and may incur
12 liability and may borrow money at rates of interest up to the market rate published by the

13 Missouri division of finance. The board shall be taken and considered as a "political
14 subdivision" as the term is defined in section 70.600 for the purposes of sections 70.600 to
15 70.755.

16 2. Services may only be provided for those persons defined as persons with a disability
17 in section 178.900 and those persons defined as persons with a disability in this section whether
18 or not employed at the facility or in the community, and for persons who are disabled due to
19 developmental disability. Persons having substantial functional limitations due to a mental
20 illness as defined in section 630.005 shall not be eligible for services under the provisions of
21 sections 205.968 to 205.972 except that those persons may participate in services under the
22 provisions of sections 205.968 to 205.972. All persons otherwise eligible for facilities or
23 services under this section shall be eligible regardless of their age; except that, individuals
24 employed in sheltered workshops must be at least sixteen years of age. The board may, in its
25 discretion, impose limitations with respect to individuals to be served and services to be
26 provided. Such limitations shall be reasonable in the light of available funds, needs of the
27 persons and community to be served as assessed by the board, and the appropriateness and
28 efficiency of combining services to persons with various types of disabilities.

29 3. For the purposes of sections 205.968 to 205.972, the term

30 (1) "Developmental disability" shall mean either or both paragraph (a) or (b) of this
31 subsection:

32 (a) A disability which is attributable to [mental retardation] **intellectual or**
33 **developmental disability**, cerebral palsy, autism, epilepsy, a learning disability related to a brain
34 dysfunction or a similar condition found by comprehensive evaluation to be closely related to
35 such conditions, or to require habilitation similar to that required for [mentally retarded] persons
36 **with an intellectual or developmental disability**; and

37 a. Which originated before age eighteen; and

38 b. Which can be expected to continue indefinitely;

39 (b) A developmental disability as defined in section 630.005;

40 (2) "Person with a disability" shall mean a person who is lower range educable or upper
41 range trainable [mentally retarded] **developmentally disabled** or a person who has a
42 developmental disability.

208.215. 1. MO HealthNet is payer of last resort unless otherwise specified by law.

2 When any person, corporation, institution, public agency or private agency is liable, either
3 pursuant to contract or otherwise, to a participant receiving public assistance on account of
4 personal injury to or disability or disease or benefits arising from a health insurance plan to
5 which the participant may be entitled, payments made by the department of social services or
6 MO HealthNet division shall be a debt due the state and recoverable from the liable party or

7 participant for all payments made on behalf of the participant and the debt due the state shall not
8 exceed the payments made from MO HealthNet benefits provided under sections 208.151 to
9 208.158 and section 208.162 and section 208.204 on behalf of the participant, minor or estate
10 for payments on account of the injury, disease, or disability or benefits arising from a health
11 insurance program to which the participant may be entitled. Any health benefit plan as defined
12 in section 376.1350, third-party administrator, administrative service organization, and pharmacy
13 benefits manager shall process and pay all properly submitted medical assistance subrogation
14 claims or MO HealthNet subrogation claims using standard electronic transactions or paper
15 claim forms:

16 (1) For a period of three years from the date services were provided or rendered;
17 however, an entity:

18 (a) Shall not be required to reimburse for items or services which are not covered under
19 MO HealthNet;

20 (b) Shall not deny a claim submitted by the state solely on the basis of the date of
21 submission of the claim, the type or format of the claim form, failure to present proper
22 documentation of coverage at the point of sale, or failure to provide prior authorization;

23 (c) Shall not be required to reimburse for items or services for which a claim was
24 previously submitted to the health benefit plan, third-party administrator, administrative service
25 organization, or pharmacy benefits manager by the health care provider or the participant and the
26 claim was properly denied by the health benefit plan, third-party administrator, administrative
27 service organization, or pharmacy benefits manager for procedural reasons, except for timely
28 filing, type or format of the claim form, failure to present proper documentation of coverage at
29 the point of sale, or failure to obtain prior authorization;

30 (d) Shall not be required to reimburse for items or services which are not covered under
31 or were not covered under the plan offered by the entity against which a claim for subrogation
32 has been filed; and

33 (e) Shall reimburse for items or services to the same extent that the entity would have
34 been liable as if it had been properly billed at the point of sale, and the amount due is limited to
35 what the entity would have paid as if it had been properly billed at the point of sale; and

36 (2) If any action by the state to enforce its rights with respect to such claim is
37 commenced within six years of the state's submission of such claim.

38 2. The department of social services, MO HealthNet division, or its contractor may
39 maintain an appropriate action to recover funds paid by the department of social services or MO
40 HealthNet division or its contractor that are due under this section in the name of the state of
41 Missouri against the person, corporation, institution, public agency, or private agency liable to
42 the participant, minor or estate.

43 3. Any participant, minor, guardian, conservator, personal representative, estate,
44 including persons entitled under section 537.080 to bring an action for wrongful death who
45 pursues legal rights against a person, corporation, institution, public agency, or private agency
46 liable to that participant or minor for injuries, disease or disability or benefits arising from a
47 health insurance plan to which the participant may be entitled as outlined in subsection 1 of this
48 section shall upon actual knowledge that the department of social services or MO HealthNet
49 division has paid MO HealthNet benefits as defined by this chapter promptly notify the MO
50 HealthNet division as to the pursuit of such legal rights.

51 4. Every applicant or participant by application assigns his right to the department of
52 social services or MO HealthNet division of any funds recovered or expected to be recovered to
53 the extent provided for in this section. All applicants and participants, including a person
54 authorized by the probate code, shall cooperate with the department of social services, MO
55 HealthNet division in identifying and providing information to assist the state in pursuing any
56 third party who may be liable to pay for care and services available under the state's plan for MO
57 HealthNet benefits as provided in sections 208.151 to 208.159 and sections 208.162 and
58 208.204. All applicants and participants shall cooperate with the agency in obtaining third-party
59 resources due to the applicant, participant, or child for whom assistance is claimed. Failure to
60 cooperate without good cause as determined by the department of social services, MO HealthNet
61 division in accordance with federally prescribed standards shall render the applicant or
62 participant ineligible for MO HealthNet benefits under sections 208.151 to 208.159 and sections
63 208.162 and 208.204. A participant who has notice or who has actual knowledge of the
64 department's rights to third-party benefits who receives any third-party benefit or proceeds for
65 a covered illness or injury is either required to pay the division within sixty days after receipt of
66 settlement proceeds the full amount of the third-party benefits up to the total MO HealthNet
67 benefits provided or to place the full amount of the third-party benefits in a trust account for the
68 benefit of the division pending judicial or administrative determination of the division's right to
69 third-party benefits.

70 5. Every person, corporation or partnership who acts for or on behalf of a person who
71 is or was eligible for MO HealthNet benefits under sections 208.151 to 208.159 and sections
72 208.162 and 208.204 for purposes of pursuing the applicant's or participant's claim which
73 accrued as a result of a nonoccupational or nonwork-related incident or occurrence resulting in
74 the payment of MO HealthNet benefits shall notify the MO HealthNet division upon agreeing
75 to assist such person and further shall notify the MO HealthNet division of any institution of a
76 proceeding, settlement or the results of the pursuit of the claim and give thirty days' notice before
77 any judgment, award, or settlement may be satisfied in any action or any claim by the applicant

78 or participant to recover damages for such injuries, disease, or disability, or benefits arising from
79 a health insurance program to which the participant may be entitled.

80 6. Every participant, minor, guardian, conservator, personal representative, estate,
81 including persons entitled under section 537.080 to bring an action for wrongful death, or his
82 attorney or legal representative shall promptly notify the MO HealthNet division of any recovery
83 from a third party and shall immediately reimburse the department of social services, MO
84 HealthNet division, or its contractor from the proceeds of any settlement, judgment, or other
85 recovery in any action or claim initiated against any such third party. A judgment, award, or
86 settlement in an action by a participant to recover damages for injuries or other third-party
87 benefits in which the division has an interest may not be satisfied without first giving the division
88 notice and a reasonable opportunity to file and satisfy the claim or proceed with any action as
89 otherwise permitted by law.

90 7. The department of social services, MO HealthNet division or its contractor shall have
91 a right to recover the amount of payments made to a provider under this chapter because of an
92 injury, disease, or disability, or benefits arising from a health insurance plan to which the
93 participant may be entitled for which a third party is or may be liable in contract, tort or
94 otherwise under law or equity. Upon request by the MO HealthNet division, all third-party
95 payers shall provide the MO HealthNet division with information contained in a 270/271 Health
96 Care Eligibility Benefits Inquiry and Response standard transaction mandated under the federal
97 Health Insurance Portability and Accountability Act, except that third-party payers shall not
98 include accident-only, specified disease, disability income, hospital indemnity, or other fixed
99 indemnity insurance policies.

100 8. The department of social services or MO HealthNet division shall have a lien upon
101 any moneys to be paid by any insurance company or similar business enterprise, person,
102 corporation, institution, public agency or private agency in settlement or satisfaction of a
103 judgment on any claim for injuries or disability or disease benefits arising from a health
104 insurance program to which the participant may be entitled which resulted in medical expenses
105 for which the department or MO HealthNet division made payment. This lien shall also be
106 applicable to any moneys which may come into the possession of any attorney who is handling
107 the claim for injuries, or disability or disease or benefits arising from a health insurance plan to
108 which the participant may be entitled which resulted in payments made by the department or MO
109 HealthNet division. In each case, a lien notice shall be served by certified mail or registered
110 mail, upon the party or parties against whom the applicant or participant has a claim, demand or
111 cause of action. The lien shall claim the charge and describe the interest the department or MO
112 HealthNet division has in the claim, demand or cause of action. The lien shall attach to any
113 verdict or judgment entered and to any money or property which may be recovered on account

114 of such claim, demand, cause of action or suit from and after the time of the service of the notice.

115 9. On petition filed by the department, or by the participant, or by the defendant, the
116 court, on written notice of all interested parties, may adjudicate the rights of the parties and
117 enforce the charge. The court may approve the settlement of any claim, demand or cause of
118 action either before or after a verdict, and nothing in this section shall be construed as requiring
119 the actual trial or final adjudication of any claim, demand or cause of action upon which the
120 department has charge. The court may determine what portion of the recovery shall be paid to
121 the department against the recovery. In making this determination the court shall conduct an
122 evidentiary hearing and shall consider competent evidence pertaining to the following matters:

123 (1) The amount of the charge sought to be enforced against the recovery when expressed
124 as a percentage of the gross amount of the recovery; the amount of the charge sought to be
125 enforced against the recovery when expressed as a percentage of the amount obtained by
126 subtracting from the gross amount of the recovery the total attorney's fees and other costs
127 incurred by the participant incident to the recovery; and whether the department should, as a
128 matter of fairness and equity, bear its proportionate share of the fees and costs incurred to
129 generate the recovery from which the charge is sought to be satisfied;

130 (2) The amount, if any, of the attorney's fees and other costs incurred by the participant
131 incident to the recovery and paid by the participant up to the time of recovery, and the amount
132 of such fees and costs remaining unpaid at the time of recovery;

133 (3) The total hospital, doctor and other medical expenses incurred for care and treatment
134 of the injury to the date of recovery therefor, the portion of such expenses theretofore paid by the
135 participant, by insurance provided by the participant, and by the department, and the amount of
136 such previously incurred expenses which remain unpaid at the time of recovery and by whom
137 such incurred, unpaid expenses are to be paid;

138 (4) Whether the recovery represents less than substantially full recompense for the injury
139 and the hospital, doctor and other medical expenses incurred to the date of recovery for the care
140 and treatment of the injury, so that reduction of the charge sought to be enforced against the
141 recovery would not likely result in a double recovery or unjust enrichment to the participant;

142 (5) The age of the participant and of persons dependent for support upon the participant,
143 the nature and permanency of the participant's injuries as they affect not only the future
144 employability and education of the participant but also the reasonably necessary and foreseeable
145 future material, maintenance, medical rehabilitative and training needs of the participant, the cost
146 of such reasonably necessary and foreseeable future needs, and the resources available to meet
147 such needs and pay such costs;

148 (6) The realistic ability of the participant to repay in whole or in part the charge sought
149 to be enforced against the recovery when judged in light of the factors enumerated above.

150 10. The burden of producing evidence sufficient to support the exercise by the court of
151 its discretion to reduce the amount of a proven charge sought to be enforced against the recovery
152 shall rest with the party seeking such reduction. The computerized records of the MO HealthNet
153 division, certified by the director or his or her designee, shall be prima facie evidence of proof
154 of moneys expended and the amount of the debt due the state.

155 11. The court may reduce and apportion the department's or MO HealthNet division's
156 lien proportionate to the recovery of the claimant. The court may consider the nature and extent
157 of the injury, economic and noneconomic loss, settlement offers, comparative negligence as it
158 applies to the case at hand, hospital costs, physician costs, and all other appropriate costs. The
159 department or MO HealthNet division shall pay its pro rata share of the attorney's fees based on
160 the department's or MO HealthNet division's lien as it compares to the total settlement agreed
161 upon. This section shall not affect the priority of an attorney's lien under section 484.140. The
162 charges of the department or MO HealthNet division or contractor described in this section,
163 however, shall take priority over all other liens and charges existing under the laws of the state
164 of Missouri with the exception of the attorney's lien under such statute.

165 12. Whenever the department of social services or MO HealthNet division has a statutory
166 charge under this section against a recovery for damages incurred by a participant because of its
167 advancement of any assistance, such charge shall not be satisfied out of any recovery until the
168 attorney's claim for fees is satisfied, regardless of whether an action based on participant's claim
169 has been filed in court. Nothing herein shall prohibit the director from entering into a
170 compromise agreement with any participant, after consideration of the factors in subsections 9
171 to 13 of this section.

172 13. This section shall be inapplicable to any claim, demand or cause of action arising
173 under the workers' compensation act, chapter 287. From funds recovered pursuant to this section
174 the federal government shall be paid a portion thereof equal to the proportionate part originally
175 provided by the federal government to pay for MO HealthNet benefits to the participant or minor
176 involved. The department or MO HealthNet division shall enforce TEFRA liens, 42 U.S.C.
177 1396p, as authorized by federal law and regulation on permanently institutionalized individuals.
178 The department or MO HealthNet division shall have the right to enforce TEFRA liens, 42
179 U.S.C. 1396p, as authorized by federal law and regulation on all other institutionalized
180 individuals. For the purposes of this subsection, "permanently institutionalized individuals"
181 includes those people who the department or MO HealthNet division determines cannot
182 reasonably be expected to be discharged and return home, and "property" includes the homestead
183 and all other personal and real property in which the participant has sole legal interest or a legal
184 interest based upon co-ownership of the property which is the result of a transfer of property for

185 less than the fair market value within thirty months prior to the [participant's] **participants**
186 entering the nursing facility. The following provisions shall apply to such liens:

187 (1) The lien shall be for the debt due the state for MO HealthNet benefits paid or to be
188 paid on behalf of a participant. The amount of the lien shall be for the full amount due the state
189 at the time the lien is enforced;

190 (2) The MO HealthNet division shall file for record, with the recorder of deeds of the
191 county in which any real property of the participant is situated, a written notice of the lien. The
192 notice of lien shall contain the name of the participant and a description of the real estate. The
193 recorder shall note the time of receiving such notice, and shall record and index the notice of lien
194 in the same manner as deeds of real estate are required to be recorded and indexed. The director
195 or the director's designee may release or discharge all or part of the lien and notice of the release
196 shall also be filed with the recorder. The department of social services, MO HealthNet division,
197 shall provide payment to the recorder of deeds the fees set for similar filings in connection with
198 the filing of a lien and any other necessary documents;

199 (3) No such lien may be imposed against the property of any individual prior to the
200 individual's death on account of MO HealthNet benefits paid except:

201 (a) In the case of the real property of an individual:

202 a. Who is an inpatient in a nursing facility, intermediate care facility for the [mentally
203 retarded] **developmentally disabled**, or other medical institution, if such individual is required,
204 as a condition of receiving services in such institution, to spend for costs of medical care all but
205 a minimal amount of his or her income required for personal needs; and

206 b. With respect to whom the director of the MO HealthNet division or the director's
207 designee determines, after notice and opportunity for hearing, that he cannot reasonably be
208 expected to be discharged from the medical institution and to return home. The hearing, if
209 requested, shall proceed under the provisions of chapter 536 before a hearing officer designated
210 by the director of the MO HealthNet division; or

211 (b) Pursuant to the judgment of a court on account of benefits incorrectly paid on behalf
212 of such individual;

213 (4) No lien may be imposed under paragraph (b) of subdivision (3) of this subsection on
214 such individual's home if one or more of the following persons is lawfully residing in such home:

215 (a) The spouse of such individual;

216 (b) Such individual's child who is under twenty-one years of age, or is blind or
217 permanently and totally disabled; or

218 (c) A sibling of such individual who has an equity interest in such home and who was
219 residing in such individual's home for a period of at least one year immediately before the date
220 of the individual's admission to the medical institution;

221 (5) Any lien imposed with respect to an individual pursuant to subparagraph b. of
222 paragraph (a) of subdivision (3) of this subsection shall dissolve upon that individual's discharge
223 from the medical institution and return home.

224 14. The debt due the state provided by this section is subordinate to the lien provided by
225 section 484.130 or section 484.140, relating to an attorney's lien and to the participant's expenses
226 of the claim against the third party.

227 15. Application for and acceptance of MO HealthNet benefits under this chapter shall
228 constitute an assignment to the department of social services or MO HealthNet division of any
229 rights to support for the purpose of medical care as determined by a court or administrative order
230 and of any other rights to payment for medical care.

231 16. All participants receiving benefits as defined in this chapter shall cooperate with the
232 state by reporting to the family support division or the MO HealthNet division, within thirty
233 days, any occurrences where an injury to their persons or to a member of a household who
234 receives MO HealthNet benefits is sustained, on such form or forms as provided by the family
235 support division or MO HealthNet division.

236 17. If a person fails to comply with the provision of any judicial or administrative decree
237 or temporary order requiring that person to maintain medical insurance on or be responsible for
238 medical expenses for a dependent child, spouse, or ex-spouse, in addition to other remedies
239 available, that person shall be liable to the state for the entire cost of the medical care provided
240 pursuant to eligibility under any public assistance program on behalf of that dependent child,
241 spouse, or ex-spouse during the period for which the required medical care was provided. Where
242 a duty of support exists and no judicial or administrative decree or temporary order for support
243 has been entered, the person owing the duty of support shall be liable to the state for the entire
244 cost of the medical care provided on behalf of the dependent child or spouse to whom the duty
245 of support is owed.

246 18. The department director or the director's designee may compromise, settle or waive
247 any such claim in whole or in part in the interest of the MO HealthNet program.
248 Notwithstanding any provision in this section to the contrary, the department of social services,
249 MO HealthNet division is not required to seek reimbursement from a liable third party on claims
250 for which the amount it reasonably expects to recover will be less than the cost of recovery or
251 for which recovery efforts will not be cost-effective. Cost-effectiveness is determined based on
252 the following:

- 253 (1) Actual and legal issues of liability as may exist between the participant and the liable
254 party;
- 255 (2) Total funds available for settlement; and
- 256 (3) An estimate of the cost to the division of pursuing its claim.

226.805. 1. There is hereby created the "Interagency Committee on Special Transportation" within the Missouri department of transportation. The members of the committee shall be: The assistant for transportation of the Missouri department of transportation, or his designee; the assistant commissioner of the department of elementary and secondary education, responsible for special transportation, or his designee; the director of the division of aging of the department of social services, or his designee; the director of the division of family services of the department of social services, or his designee; the deputy director for [mental retardation/developmental disabilities] **developmental disabilities** and the deputy director for administration of the department of mental health, or their designees; the executive secretary of the governor's committee on the employment of the handicapped; and other state agency representatives as the governor deems appropriate for temporary or permanent membership by executive order.

2. The interagency committee on special transportation shall:

(1) Jointly designate substate special transportation planning and service areas within the state;

(2) Jointly designate a special transportation planning council for each special transportation planning and service area. The special transportation planning council shall be composed of the area agency on aging, the regional center for developmental disabilities, the regional planning commission and other local organizations responsible for funding and organizing special transportation designated by the interagency committee. The special transportation planning councils will oversee and approve the preparation of special transportation plans. Staff support for the special transportation planning councils will be provided by the regional planning commissions serving the area with funds provided by the department of transportation for this purpose;

(3) Jointly establish a uniform planning format and content;

(4) Individually and jointly establish uniform budgeting and reporting standards for all transportation funds administered by the member agencies. These standards shall be adopted into the administrative rules of each member agency;

(5) Individually establish annual allocations of funds to support special transportation services in each of the designated planning and service areas;

(6) Individually and jointly adopt a five-year planning budget for the capital and operating needs of special transportation in Missouri;

(7) Individually develop administrative and adopt rules for the substate division of special transportation funds;

(8) Jointly review and accept annual capital and operating plans for the designated special transportation planning and service areas;

37 (9) Individually submit proposed expenditures to the interagency committee for review
38 as to conformity with the areas special transportation plans. All expenditures are to be made in
39 accordance with the plans or by special action of the interagency committee.

40 3. The assistant for transportation of the Missouri department of transportation shall
41 serve as chairman of the committee.

42 4. Staff for the committee shall be provided by the Missouri department of
43 transportation.

44 5. The committee shall meet on such a schedule and carry out its duties in such a way
45 as to discharge its responsibilities over special transportation expenditures made for the state
46 fiscal year beginning July 1, 1989, and all subsequent years.

475.120. 1. The guardian of the person of a minor shall be entitled to the custody and
2 control of the ward and shall provide for the ward's education, support and maintenance.

3 2. A guardian or limited guardian of an incapacitated person shall act in the best interest
4 of the ward. A limited guardian of an incapacitated person shall have the powers and duties
5 enumerated by the court in the adjudication order or any later modifying order.

6 3. The general powers and duties of a guardian of an incapacitated person shall be to take
7 charge of the person of the ward and to provide for the ward's care, treatment, habilitation,
8 education, support and maintenance; and the powers and duties shall include, but not be limited
9 to, the following:

10 (1) Assure that the ward resides in the best and least restrictive setting reasonably
11 available;

12 (2) Assure that the ward receives medical care and other services that are needed;

13 (3) Promote and protect the care, comfort, safety, health, and welfare of the ward;

14 (4) Provide required consents on behalf of the ward;

15 (5) To exercise all powers and discharge all duties necessary or proper to implement the
16 provisions of this section.

17 4. A guardian of an adult or minor ward is not obligated by virtue of such guardian's
18 appointment to use the guardian's own financial resources for the support of the ward. If the
19 ward's estate and available public benefits are inadequate for the proper care of the ward, the
20 guardian or conservator may apply to the county commission pursuant to section 475.370.

21 5. No guardian of the person shall have authority to seek admission of the guardian's
22 ward to a mental health or [mental retardation] **developmental disability** facility for more than
23 thirty days for any purpose without court order except as otherwise provided by law.

24 6. Only the director or chief administrative officer of a social service agency serving as
25 guardian of an incapacitated person, or such person's designee, is legally authorized to act on
26 behalf of the ward.

27 7. A social service agency serving as guardian of an incapacitated person shall notify the
28 court within fifteen days after any change in the identity of the professional individual who has
29 primary responsibility for providing guardianship services to the incapacitated person.

30 8. Any social service agency serving as guardian may not provide other services to the
31 ward.

552.040. 1. For the purposes of this section, the following words mean:

2 (1) "Prosecutor of the jurisdiction", the prosecuting attorney in a county or the circuit
3 attorney of a city not within a county;

4 (2) "Secure facility", a state mental health facility, state developmental disability facility,
5 private facility under contract with the department of mental health, or a section within any of
6 these facilities, in which persons committed to the department of mental health pursuant to this
7 chapter, shall not be permitted to move about the facility or section of the facility, nor to leave
8 the facility or section of the facility, without approval by the head of the facility or such head's
9 designee and adequate supervision consistent with the safety of the public and the person's
10 treatment, habilitation or rehabilitation plan;

11 (3) "Tried and acquitted" includes both pleas of mental disease or defect excluding
12 responsibility that are accepted by the court and acquittals on the ground of mental disease or
13 defect excluding responsibility following the proceedings set forth in section 552.030.

14 2. When an accused is tried and acquitted on the ground of mental disease or defect
15 excluding responsibility, the court shall order such person committed to the director of the
16 department of mental health for custody. The court shall also order custody and care in a state
17 mental health or [retardation] **developmental disability** facility unless an immediate conditional
18 release is granted pursuant to this section. If the accused has not been charged with a dangerous
19 felony as defined in section 556.061, or with murder in the first degree pursuant to section
20 565.020, or sexual assault pursuant to section 566.040, or the attempts thereof, and the
21 examination contains an opinion that the accused should be immediately conditionally released
22 to the community by the court, the court shall hold a hearing to determine if an immediate
23 conditional release is appropriate pursuant to the procedures for conditional release set out in
24 subsections 10 to 14 of this section. Prior to the hearing, the court shall direct the director of the
25 department of mental health, or the director's designee, to have the accused examined to
26 determine conditions of confinement in accordance with subsection 4 of section 552.020. The
27 provisions of subsection 16 of this section shall be applicable to defendants granted an
28 immediate conditional release and the director shall honor the immediate conditional release as
29 granted by the court. If the court determines that an immediate conditional release is warranted,
30 the court shall order the person committed to the director of the department of mental health
31 before ordering such a release. The court granting the immediate conditional release shall retain

32 jurisdiction over the case for the duration of the conditional release. This shall not limit the
33 authority of the director of the department of mental health or the director's designee to revoke
34 the conditional release or the trial release of any committed person pursuant to subsection 17 of
35 this section. If the accused is committed to a mental health or developmental disability facility,
36 the director of the department of mental health, or the director's designee, shall determine the
37 time, place and conditions of confinement.

38 3. The provisions of sections 630.110, 630.115, 630.130, 630.133, 630.135, 630.140,
39 630.145, 630.150, 630.180, 630.183, 630.192, 630.194, 630.196, 630.198, 630.805, 632.370,
40 632.395, and 632.435 shall apply to persons committed pursuant to subsection 2 of this section.
41 If the department does not have a treatment or rehabilitation program for a mental disease or
42 defect of an individual, that fact may not be the basis for a release from commitment.
43 Notwithstanding any other provision of law to the contrary, no person committed to the
44 department of mental health who has been tried and acquitted by reason of mental disease or
45 defect as provided in section 552.030 shall be conditionally or unconditionally released unless
46 the procedures set out in this section are followed. Upon request by an indigent committed
47 person, the appropriate court may appoint the office of the public defender to represent such
48 person in any conditional or unconditional release proceeding under this section.

49 4. Notwithstanding section 630.115, any person committed pursuant to subsection 2 of
50 this section shall be kept in a secure facility until such time as a court of competent jurisdiction
51 enters an order granting a conditional or unconditional release to a nonsecure facility.

52 5. The committed person or the head of the facility where the person is committed may
53 file an application in the court that committed the person seeking an order releasing the
54 committed person unconditionally; except that any person who has been denied an application
55 for a conditional release pursuant to subsection 13 of this section shall not be eligible to file for
56 an unconditional release until the expiration of one year from such denial. In the case of a person
57 who was immediately conditionally released after being committed to the department of mental
58 health, the released person or the director of the department of mental health, or the director's
59 designee, may file an application in the same court that released the committed person seeking
60 an order releasing the committed person unconditionally. Copies of the application shall be
61 served personally or by certified mail upon the head of the facility unless the head of the facility
62 files the application, the committed person unless the committed person files the application, or
63 unless the committed person was immediately conditionally released, the director of the
64 department of mental health, and the prosecutor of the jurisdiction where the committed person
65 was tried and acquitted. Any party objecting to the proposed release must do so in writing within
66 thirty days after service. Within a reasonable period of time after any written objection is filed,
67 which period shall not exceed sixty days unless otherwise agreed upon by the parties, the court

68 shall hold a hearing upon notice to the committed person, the head of the facility, if necessary,
69 the director of the department of mental health, and the prosecutor of the jurisdiction where the
70 person was tried. Prior to the hearing any of the parties, upon written application, shall be
71 entitled to an examination of the committed person, by a psychiatrist or psychologist, as defined
72 in section 632.005, or a physician with a minimum of one year training or experience in
73 providing treatment or services to [mentally retarded] **individuals with an intellectual or**
74 **developmental disability** or mentally ill individuals of its own choosing and at its expense. The
75 report of the mental condition of the committed person shall accompany the application. By
76 agreement of all parties to the proceeding any report of the mental condition of the committed
77 person which may accompany the application for release or which is filed in objection thereto
78 may be received by evidence, but the party contesting any opinion therein shall have the right to
79 summon and to cross-examine the examiner who rendered such opinion and to offer evidence
80 upon the issue.

81 6. By agreement of all the parties and leave of court, the hearing may be waived, in
82 which case an order granting an unconditional release shall be entered in accordance with
83 subsection 8 of this section.

84 7. At a hearing to determine if the committed person should be unconditionally released,
85 the court shall consider the following factors in addition to any other relevant evidence:

86 (1) Whether or not the committed person presently has a mental disease or defect;
87 (2) The nature of the offense for which the committed person was committed;
88 (3) The committed person's behavior while confined in a mental health facility;
89 (4) The elapsed time between the hearing and the last reported unlawful or dangerous
90 act;

91 (5) Whether the person has had conditional releases without incident; and

92 (6) Whether the determination that the committed person is not dangerous to himself or
93 others is dependent on the person's taking drugs, medicine or narcotics. The burden of
94 persuasion for any person committed to a mental health facility under the provisions of this
95 section upon acquittal on the grounds of mental disease or defect excluding responsibility shall
96 be on the party seeking unconditional release to prove by clear and convincing evidence that the
97 person for whom unconditional release is sought does not have, and in the reasonable future is
98 not likely to have, a mental disease or defect rendering the person dangerous to the safety of
99 himself or others.

100 8. The court shall enter an order either denying the application for unconditional release
101 or granting an unconditional release. An order denying the application shall be without prejudice
102 to the filing of another application after the expiration of one year from the denial of the last
103 application.

104 9. No committed person shall be unconditionally released unless it is determined through
105 the procedures in this section that the person does not have, and in the reasonable future is not
106 likely to have, a mental disease or defect rendering the person dangerous to the safety of himself
107 or others.

108 10. The committed person or the head of the facility where the person is committed may
109 file an application in the court having probate jurisdiction over the facility where the person is
110 detained for a hearing to determine whether the committed person shall be released conditionally.
111 In the case of a person committed to a mental health facility upon acquittal on the grounds of
112 mental disease or defect excluding responsibility for a dangerous felony as defined in section
113 556.061, murder in the first degree pursuant to section 565.020, or sexual assault pursuant to
114 section 566.040, any such application shall be filed in the court that committed the person. In
115 such cases, jurisdiction over the application for conditional release shall be in the committing
116 court. In the case of a person who was immediately conditionally released after being committed
117 to the department of mental health, the released person or the director of the department of
118 mental health, or the director's designee, may file an application in the same court that released
119 the person seeking to amend or modify the existing release. The procedures for application for
120 unconditional releases set out in subsection 5 of this section shall apply, with the following
121 additional requirements:

122 (1) A copy of the application shall also be served upon the prosecutor of the jurisdiction
123 where the person is being detained, unless the released person was immediately conditionally
124 released after being committed to the department of mental health, or unless the application was
125 required to be filed in the court that committed the person in which case a copy of the application
126 shall be served upon the prosecutor of the jurisdiction where the person was tried and acquitted
127 and the prosecutor of the jurisdiction into which the committed person is to be released;

128 (2) The prosecutor of the jurisdiction where the person was tried and acquitted shall use
129 their best efforts to notify the victims of dangerous felonies. Notification by the appropriate
130 person or agency by certified mail to the most current address provided by the victim shall
131 constitute compliance with the victim notification requirement of this section;

132 (3) The application shall specify the conditions and duration of the proposed release;

133 (4) The prosecutor of the jurisdiction where the person is being detained shall represent
134 the public safety interest at the hearing unless the prosecutor of the jurisdiction where the person
135 was tried and acquitted decides to appear to represent the public safety interest. If the application
136 for release was required to be filed in the committing court, the prosecutor of the jurisdiction
137 where the person was tried and acquitted shall represent the public safety interest. In the case
138 of a person who was immediately conditionally released after being committed to the department

139 of mental health, the prosecutor of the jurisdiction where the person was tried and acquitted shall
140 appear and represent the public safety interest.

141 11. By agreement of all the parties, the hearing may be waived, in which case an order
142 granting a conditional release, stating the conditions and duration agreed upon by all the parties
143 and the court, shall be entered in accordance with subsection 13 of this section.

144 12. At a hearing to determine if the committed person should be conditionally released,
145 the court shall consider the following factors in addition to any other relevant evidence:

146 (1) The nature of the offense for which the committed person was committed;

147 (2) The person's behavior while confined in a mental health facility;

148 (3) The elapsed time between the hearing and the last reported unlawful or dangerous
149 act;

150 (4) The nature of the person's proposed release plan;

151 (5) The presence or absence in the community of family or others willing to take
152 responsibility to help the defendant adhere to the conditions of the release; and

153 (6) Whether the person has had previous conditional releases without incident. The
154 burden of persuasion for any person committed to a mental health facility under the provisions
155 of this section upon acquittal on the grounds of mental disease or defect excluding responsibility
156 shall be on the party seeking release to prove by clear and convincing evidence that the person
157 for whom release is sought is not likely to be dangerous to others while on conditional release.

158 13. The court shall enter an order either denying the application for a conditional release
159 or granting conditional release. An order denying the application shall be without prejudice to
160 the filing of another application after the expiration of one year from the denial of the last
161 application.

162 14. No committed person shall be conditionally released until it is determined that the
163 committed person is not likely to be dangerous to others while on conditional release.

164 15. If, in the opinion of the head of a facility where a committed person is being
165 detained, that person can be released without danger to others, that person may be released from
166 the facility for a trial release of up to ninety-six hours under the following procedure:

167 (1) The head of the facility where the person is committed shall notify the prosecutor of
168 the jurisdiction where the committed person was tried and acquitted and the prosecutor of the
169 jurisdiction into which the committed person is to be released at least thirty days before the date
170 of the proposed trial release;

171 (2) The notice shall specify the conditions and duration of the release;

172 (3) If no prosecutor to whom notice is required objects to the trial release, the committed
173 person shall be released according to conditions and duration specified in the notice;

174 (4) If any prosecutor objects to the trial release, the head of the facility may file an
175 application with the court having probate jurisdiction over the facility where the person is
176 detained for a hearing under the procedures set out in subsections 5 and 10 of this section with
177 the following additional requirements:

178 (a) A copy of the application shall also be served upon the prosecutor of the jurisdiction
179 into which the committed person is to be released; and

180 (b) The prosecutor or prosecutors who objected to the trial release shall represent the
181 public safety interest at the hearing; and

182 (5) The release criteria of subsections 12 to 14 of this section shall apply at such a
183 hearing.

184 16. The department shall provide or shall arrange for follow-up care and monitoring for
185 all persons conditionally released under this section and shall make or arrange for reviews and
186 visits with the client at least monthly, or more frequently as set out in the release plan, and
187 whether the client is receiving care, treatment, habilitation or rehabilitation consistent with his
188 needs, condition and public safety. The department shall identify the facilities, programs or
189 specialized services operated or funded by the department which shall provide necessary levels
190 of follow-up care, aftercare, rehabilitation or treatment to the persons in geographical areas
191 where they are released.

192 17. The director of the department of mental health, or the director's designee, may
193 revoke the conditional release or the trial release and request the return of the committed person
194 if such director or coordinator has reasonable cause to believe that the person has violated the
195 conditions of such release. If requested to do so by the director or coordinator, a peace officer
196 of a jurisdiction in which a patient on conditional release is found shall apprehend and return
197 such patient to the facility. No peace officer responsible for apprehending and returning the
198 committed person to the facility upon the request of the director or coordinator shall be civilly
199 liable for apprehending or transporting such patient to the facility so long as such duties were
200 performed in good faith and without negligence. If a person on conditional release is returned
201 to a facility under the provisions of this subsection, a hearing shall be held within ninety-six
202 hours, excluding Saturdays, Sundays and state holidays, to determine whether the person violated
203 the conditions of the release or whether resumption of full-time hospitalization is the least
204 restrictive alternative consistent with the person's needs and public safety. The director of the
205 department of mental health, or the director's designee, shall conduct the hearing. The person
206 shall be given notice at least twenty-four hours in advance of the hearing and shall have the right
207 to have an advocate present.

208 18. At any time during the period of a conditional release or trial release, the court which
209 ordered the release may issue a notice to the released person to appear to answer a charge of a

210 violation of the terms of the release and the court may issue a warrant of arrest for the violation.
211 Such notice shall be personally served upon the released person. The warrant shall authorize the
212 return of the released person to the custody of the court or to the custody of the director of mental
213 health or the director's designee.

214 19. The head of a mental health facility, upon any notice that a committed person has
215 escaped confinement, or left the facility or its grounds without authorization, shall immediately
216 notify the prosecutor and sheriff of the county wherein the committed person is detained of the
217 escape or unauthorized leaving of grounds and the prosecutor and sheriff of the county where the
218 person was tried and acquitted.

219 20. Any person committed to a mental health facility under the provisions of this section
220 upon acquittal on the grounds of mental disease or defect excluding responsibility for a
221 dangerous felony as defined in section 556.061, murder in the first degree pursuant to section
222 565.020, or sexual assault pursuant to section 566.040 shall not be eligible for conditional or
223 unconditional release under the provisions of this section unless, in addition to the requirements
224 of this section, the court finds that the following criteria are met:

225 (1) Such person is not now and is not likely in the reasonable future to commit another
226 violent crime against another person because of such person's mental illness; and

227 (2) Such person is aware of the nature of the violent crime committed against another
228 person and presently possesses the capacity to appreciate the criminality of the violent crime
229 against another person and the capacity to conform such person's conduct to the requirements of
230 law in the future.

563.033. 1. Evidence that the actor was suffering from the battered spouse syndrome
2 shall be admissible upon the issue of whether the actor lawfully acted in self-defense or defense
3 of another.

4 2. If the defendant proposes to offer evidence of the battered spouse syndrome, he shall
5 file written notice thereof with the court in advance of trial. Thereafter, the court, upon motion
6 of the state, shall appoint one or more private psychiatrists or psychologists, as defined in section
7 632.005, or physicians with a minimum of one year training or experience in providing treatment
8 or services to [mentally retarded] **individuals with an intellectual or developmental disability**
9 or mentally ill individuals, who are neither employees nor contractors of the department of
10 mental health for the purposes of performing the examination in question, to examine the
11 accused, or shall direct the director of the department of mental health, or his designee, to have
12 the accused so examined by one or more psychiatrists or psychologists, as defined in section
13 632.005, or physicians with a minimum of one year training or experience in providing treatment
14 or services to [mentally retarded] **individuals with an intellectual or developmental disability**
15 or mentally ill individuals designated by the director, or his designee, for the purpose of

16 examining the defendant. No private psychiatrist, psychologist, or physician shall be appointed
17 by the court unless he has consented to act. The examinations ordered shall be made at such time
18 and place and under such conditions as the court deems proper; except that if the order directs
19 the director of the department of mental health to have the accused examined, the director, or his
20 designee, shall determine the reasonable time, place and conditions under which the examination
21 shall be conducted. The order may include provisions for the interview of witnesses.

22 3. No statement made by the accused in the course of any such examination and no
23 information received by any physician or other person in the course thereof, whether such
24 examination was made with or without the consent of the accused or upon his motion or upon
25 that of others, shall be admitted in evidence against the accused on the issue of whether he
26 committed the act charged against him in any criminal proceeding then or thereafter pending in
27 any court, state or federal.

565.030. 1. Where murder in the first degree is charged but not submitted or where the
2 state waives the death penalty, the submission to the trier and all subsequent proceedings in the
3 case shall proceed as in all other criminal cases with a single stage trial in which guilt and
4 punishment are submitted together.

5 2. Where murder in the first degree is submitted to the trier without a waiver of the death
6 penalty, the trial shall proceed in two stages before the same trier. At the first stage the trier shall
7 decide only whether the defendant is guilty or not guilty of any submitted offense. The issue of
8 punishment shall not be submitted to the trier at the first stage. If an offense is charged other
9 than murder in the first degree in a count together with a count of murder in the first degree, the
10 trial judge shall assess punishment on any such offense according to law, after the defendant is
11 found guilty of such offense and after he finds the defendant to be a prior offender pursuant to
12 chapter 558.

13 3. If murder in the first degree is submitted and the death penalty was not waived but the
14 trier finds the defendant guilty of a lesser homicide, a second stage of the trial shall proceed at
15 which the only issue shall be the punishment to be assessed and declared. No further evidence
16 shall be received. If the trier is a jury it shall be instructed on the law. The attorneys may then
17 argue as in other criminal cases the issue of punishment, after which the trier shall assess and
18 declare the punishment as in all other criminal cases.

19 4. If the trier at the first stage of a trial where the death penalty was not waived finds the
20 defendant guilty of murder in the first degree, a second stage of the trial shall proceed at which
21 the only issue shall be the punishment to be assessed and declared. Evidence in aggravation and
22 mitigation of punishment, including but not limited to evidence supporting any of the
23 aggravating or mitigating circumstances listed in subsection 2 or 3 of section 565.032, may be
24 presented subject to the rules of evidence at criminal trials. Such evidence may include, within

25 the discretion of the court, evidence concerning the murder victim and the impact of the crime
26 upon the family of the victim and others. Rebuttal and surrebuttal evidence may be presented.
27 The state shall be the first to proceed. If the trier is a jury it shall be instructed on the law. The
28 attorneys may then argue the issue of punishment to the jury, and the state shall have the right
29 to open and close the argument. The trier shall assess and declare the punishment at life
30 imprisonment without eligibility for probation, parole, or release except by act of the governor:

31 (1) If the trier finds by a preponderance of the evidence that the defendant [is mentally
32 retarded] **has an intellectual or developmental disability**; or

33 (2) If the trier does not find beyond a reasonable doubt at least one of the statutory
34 aggravating circumstances set out in subsection 2 of section 565.032; or

35 (3) If the trier concludes that there is evidence in mitigation of punishment, including
36 but not limited to evidence supporting the statutory mitigating circumstances listed in subsection
37 3 of section 565.032, which is sufficient to outweigh the evidence in aggravation of punishment
38 found by the trier; or

39 (4) If the trier decides under all of the circumstances not to assess and declare the
40 punishment at death. If the trier is a jury it shall be so instructed.

41

42 If the trier assesses and declares the punishment at death it shall, in its findings or verdict, set out
43 in writing the aggravating circumstance or circumstances listed in subsection 2 of section
44 565.032 which it found beyond a reasonable doubt. If the trier is a jury it shall be instructed
45 before the case is submitted that if it is unable to decide or agree upon the punishment the court
46 shall assess and declare the punishment at life imprisonment without eligibility for probation,
47 parole, or release except by act of the governor or death. The court shall follow the same
48 procedure as set out in this section whenever it is required to determine punishment for murder
49 in the first degree.

50 5. Upon written agreement of the parties and with leave of the court, the issue of the
51 defendant's [mental retardation] **intellectual or developmental disability** may be taken up by
52 the court and decided prior to trial without prejudicing the defendant's right to have the issue
53 submitted to the trier of fact as provided in subsection 4 of this section.

54 6. As used in this section, the terms "[mental retardation] **intellectual disability**" or
55 "[mentally retarded] **intellectual or developmental disability**" refer to a condition involving
56 substantial limitations in general functioning characterized by significantly subaverage
57 intellectual functioning with continual extensive related deficits and limitations in two or more
58 adaptive behaviors such as communication, self-care, home living, social skills, community use,
59 self-direction, health and safety, functional academics, leisure and work, which conditions are
60 manifested and documented before eighteen years of age.

61 7. The provisions of this section shall only govern offenses committed on or after August
62 28, 2001.

 630.003. 1. There is hereby created a department of mental health to be headed by a
2 mental health commission who shall appoint a director, by and with the advice and consent of
3 the senate. The director shall be the administrative head of the department and shall serve at the
4 pleasure of the commission and be compensated as provided by law for the director, division of
5 mental health. All employees of the department shall be selected in accordance with chapter 36.

6 2. (1) The "State Mental Health Commission", composed of seven members, is the
7 successor to the former state mental health commission and it has all the powers, duties and
8 responsibilities of the former commission. All members of the commission shall be appointed
9 by the governor, by and with the advice and consent of the senate. None of the members shall
10 otherwise be employed by the state of Missouri.

11 (2) Three of the commission members first appointed shall be appointed for terms of
12 four years, and two shall be appointed for terms of three years, and two shall be appointed for
13 a term of two years. The governor shall designate, at the time the appointments are made, the
14 length of the term of each member so appointed. Thereafter all terms shall be for four years.

15 (3) At least two of the members of the commission shall be physicians, one of whom
16 shall be recognized as an expert in the field of the treatment of nervous and mental diseases, and
17 one of whom shall be recognized as an expert in the field of intellectual or developmental
18 disabilities. At least two of the members of the commission shall be representative of persons
19 or groups who are consumers having substantial interest in the services provided by the division,
20 one of whom shall represent persons with an intellectual disability or developmental disability
21 and one of whom shall represent those persons being treated for nervous and mental diseases.
22 Of the other three members at least one must be recognized for his expertise in general business
23 management procedures, and two shall be recognized for their interest and expertise in dealing
24 with alcohol/drug abuse problems, or community mental health services.

25 3. The provisions of sections 191.120, 191.125, 191.130, 191.140, 191.150, 191.160,
26 191.170, 191.180, 191.190, 191.200, 191.210 and others as they relate to the division of mental
27 health not previously reassigned by executive reorganization plan number 2 of 1973 as submitted
28 by the governor under chapter 26 are transferred by specific type transfer from the department
29 of public health and welfare to the department of mental health. The division of mental health,
30 department of health and welfare, chapter 202 and others are abolished and all powers, duties and
31 functions now assigned by law to the division, the director of the divisions of mental health or
32 any of the institutions or officials of the division are transferred by type I transfer to the
33 department of mental health.

34 4. The Missouri institute of psychiatry, which is under the board of curators of the
35 University of Missouri is hereafter to be known as the "Missouri Institute of Mental Health".
36 The purpose of the institute will be that of conducting research into improving services for
37 persons served by the department of mental health for fostering the training of psychiatric
38 residents in public psychiatry and for fostering excellence in mental health services through
39 employee training and the study of mental health policy and ethics. To assist in this training,
40 hospitals operated by and providers contracting with the department of mental health may be
41 used for the same purposes and under the same arrangements as the board of curators of the
42 University of Missouri utilizes with other hospitals in the state in supervising residency training
43 for medical doctors. Appropriations requests for the Missouri institute of mental health shall be
44 jointly developed by the University of Missouri and the department of mental health. All
45 appropriations for the Missouri institute of mental health shall be made to the curators of the
46 University of Missouri but shall be submitted separately from the appropriations of the curators
47 of the University of Missouri.

48 5. There is hereby established within the department of mental health a division of
49 developmental disabilities. The director of the division shall be appointed by the director of the
50 department. The division shall administer all state facilities under the direction and authority of
51 the department director. The Marshall Habilitation Center, the Higginsville Habilitation Center,
52 the Bellefontaine Habilitation Center, the Nevada Habilitation Center, the St. Louis
53 Developmental Disabilities Treatment Centers, and the regional centers located at Albany,
54 Columbia, Hannibal, Joplin, Kansas City, Kirksville, Poplar Bluff, Rolla, St. Louis, Sikeston and
55 Springfield and other similar facilities as may be established, are transferred by type I transfer
56 to the division of developmental disabilities.

57 6. All the duties, powers and functions of the [advisory council on mental retardation and
58 community health centers, sections 202.664 to 202.666,] **Missouri developmental disabilities**
59 **council** are hereby transferred by type I transfer to the division of [mental retardation and]
60 developmental disabilities of the department of mental health. The [advisory council on mental
61 retardation and community health centers] **Missouri developmental disabilities council** shall
62 be appointed by the division director.

63 7. The advisory council on [mental retardation and] developmental disabilities heretofore
64 established by executive order and all of the duties, powers and functions of the advisory council
65 including the responsibilities of the provision of the council in regard to the Federal
66 Development Disabilities Law (P.L. 91-517) and all amendments thereto are transferred by type
67 I transfer to the division of [mental retardation and] developmental disabilities. The advisory
68 council on [mental retardation and] developmental disabilities shall be appointed by the director
69 of the division of [mental retardation and] developmental disabilities.

70 8. The advisory council on alcoholism and drug abuse, chapter 202, is transferred by type
71 II transfer to the department of mental health and the members of the advisory council shall be
72 appointed by the mental health director.

 630.340. 1. With the approval of the director, the head of any mental health or
2 [retardation] **developmental disability** facility or regional center operated by the department
3 may establish a vocational activity center for its patients or residents.

4 2. Each facility or regional center shall keep revenues received from the activity center
5 in a separate account. The acquisition costs to obtain materials to produce any goods sold and
6 other expenses shall be paid from this account. A minimum amount of money necessary to meet
7 cash flow needs and current operating expenses may be maintained in this account. The
8 remaining funds from sales of the activity center shall be deposited monthly in the state treasury
9 to the credit of the general revenue fund.

10 3. This section shall not be construed to authorize any facility or regional center to
11 establish an activity center on the grounds for patients or residents who could participate in a
12 sheltered workshop, as defined and authorized in sections 178.900 to 178.960, off the grounds
13 of the facility or regional center.

 633.020. 1. The "Missouri Developmental Disabilities Council", consisting of up to
2 twenty-five members, the number to be determined under the council bylaws, is hereby created
3 to advise the division and the division director.

4 2. The members of the Missouri planning council for developmental disabilities, created
5 by executive order of the governor on October 26, 1979, for the remainder of their appointed
6 terms, and up to five persons to be appointed by the director, for staggered terms of three years
7 each, shall act as such advisory body. At the expiration of the term of each member, the director
8 shall appoint an individual who shall hold office for a term of three years. At least one-half of
9 the members shall be consumers. Other members shall have professional, research or personal
10 interest in intellectual disabilities and developmental disabilities. At least one member shall be
11 a manager of or a member of the board of directors of a sheltered workshop as defined in section
12 178.900. No more than one-fourth of the members shall be vendors or members of boards of
13 directors, employees or officers of vendors, or any of their spouses, if such vendors receive more
14 than fifteen hundred dollars under contract with the department; except that members of boards
15 of directors of not-for-profit corporations shall not be considered members of board of directors
16 of vendors under this subsection.

17 3. Meetings shall be held at least every ninety days or at the call of the division director
18 or the council chairman, who shall be elected by the council.

19 4. Each member shall be reimbursed for reasonable and necessary expenses, including
20 travel expenses, pursuant to department travel regulations, actually incurred in the performance
21 of his official duties.

22 5. The council may be divided into subcouncils in accordance with its bylaws.

23 6. The council shall collaborate with the department in developing and administering a
24 state plan for intellectual disabilities and developmental disabilities services.

25 7. No member of a state advisory council may participate in or seek to influence a
26 decision or vote of the council if the member would be directly involved with the matter or if he
27 would derive income from it. A violation of the prohibition contained herein shall be grounds
28 for a person to be removed as a member of the council by the director.

29 8. The council shall be advisory and shall:

30 (1) Promote meetings and programs for the discussion of reducing the debilitating effects
31 of intellectual disabilities and developmental disabilities and disseminate information in
32 cooperation with any other department, agency or entity on the prevention, evaluation, care,
33 treatment and habilitation for persons affected by intellectual disabilities and developmental
34 disabilities;

35 (2) Study and review current prevention, evaluation, care, treatment and rehabilitation
36 technologies and recommend appropriate preparation, training, retraining and distribution of
37 manpower and resources in the provision of services to persons with an intellectual disability or
38 a developmental disability through private and public residential facilities, day programs and
39 other specialized services;

40 (3) Recommend what specific methods, means and procedures should be adopted to
41 improve and upgrade the department's intellectual disabilities and developmental disabilities
42 service delivery system for citizens of this state;

43 (4) Participate in developing and disseminating criteria and standards to qualify [mental
44 retardation or] developmental disability residential facilities, day programs and other specialized
45 services in this state for funding or licensing, or both, by the department.

633.105. The regional centers shall be the entry and exit points in each region
2 responsible for securing comprehensive [mental retardation] **intellectual** and developmental
3 disability services for clients of the department. The center shall carry out this responsibility
4 either through contracts purchasing the required services or through the direct provision of the
5 services if community-based services are not available, economical or as effective for the
6 provision of the services.

633.401. 1. For purposes of this section, the following terms mean:

2 (1) "Engaging in the business of providing health benefit services", accepting payment
3 for health benefit services;

4 (2) "Intermediate care facility for the [mentally retarded] **developmentally disabled**",
5 a private or department of mental health facility which admits persons who are mentally retarded
6 or developmentally disabled for residential habilitation and other services pursuant to chapter
7 630. Such term shall include habilitation centers and private or public intermediate care facilities
8 for the [mentally retarded] **developmentally disabled** that have been certified to meet the
9 conditions of participation under 42 CFR, Section 483, Subpart 1;

10 (3) "Net operating revenues from providing services of intermediate care facilities for
11 the [mentally retarded] **developmentally disabled**" shall include, without limitation, all moneys
12 received on account of such services pursuant to rates of reimbursement established and paid by
13 the department of social services, but shall not include charitable contributions, grants,
14 donations, bequests and income from nonservice related fund-raising activities and government
15 deficit financing, contractual allowance, discounts or bad debt;

16 (4) "Services of intermediate care facilities for the [mentally retarded] **developmentally**
17 **disabled**" has the same meaning as the term used in Title 42 United States Code, Section
18 1396b(w)(7)(A)(iv), as amended, and as such qualifies as a class of health care services
19 recognized in federal Public Law 102-234, the Medicaid Voluntary Contribution and Provider
20 Specific Tax Amendment of 1991.

21 2. Beginning July 1, 2008, each provider of services of intermediate care facilities for
22 the [mentally retarded] **developmentally disabled** shall, in addition to all other fees and taxes
23 now required or paid, pay assessments on their net operating revenues for the privilege of
24 engaging in the business of providing services of the intermediate care facilities for the [mentally
25 retarded or] developmentally disabled in this state.

26 3. Each facility's assessment shall be based on a formula set forth in rules and regulations
27 promulgated by the department of mental health.

28 4. For purposes of determining rates of payment under the medical assistance program
29 for providers of services of intermediate care facilities for the [mentally retarded]
30 **developmentally disabled**, the assessment imposed pursuant to this section on net operating
31 revenues shall be a reimbursable cost to be reflected as timely as practicable in rates of payment
32 applicable within the assessment period, contingent, for payments by governmental agencies, on
33 all federal approvals necessary by federal law and regulation for federal financial participation
34 in payments made for beneficiaries eligible for medical assistance under Title XIX of the federal
35 Social Security Act.

36 5. Assessments shall be submitted by or on behalf of each provider of services of
37 intermediate care facilities for the [mentally retarded] **developmentally disabled** on a monthly
38 basis to the director of the department of mental health or his or her designee and shall be made
39 payable to the director of the department of revenue.

40 6. In the alternative, a provider may direct that the director of the department of social
41 services offset, from the amount of any payment to be made by the state to the provider, the
42 amount of the assessment payment owed for any month.

43 7. Assessment payments shall be deposited in the state treasury to the credit of the
44 "Intermediate Care Facility [Mentally Retarded] **Developmentally Disabled** Reimbursement
45 Allowance Fund", which is hereby created in the state treasury. All investment earnings of this
46 fund shall be credited to the fund. Notwithstanding the provisions of section 33.080 to the
47 contrary, any unexpended balance in the intermediate care facility [mentally retarded]
48 **developmentally disabled** reimbursement allowance fund at the end of the biennium shall not
49 revert to the general revenue fund but shall accumulate from year to year. The state treasurer
50 shall maintain records that show the amount of money in the fund at any time and the amount
51 of any investment earnings on that amount.

52 8. Each provider of services of intermediate care facilities for the [mentally retarded]
53 **developmentally disabled** shall keep such records as may be necessary to determine the amount
54 of the assessment for which it is liable under this section. On or before the forty-fifth day after
55 the end of each month commencing July 1, 2008, each provider of services of intermediate care
56 facilities for the [mentally retarded] **developmentally disabled** shall submit to the department
57 of social services a report on a cash basis that reflects such information as is necessary to
58 determine the amount of the assessment payable for that month.

59 9. Every provider of services of intermediate care facilities for the [mentally retarded]
60 **developmentally disabled** shall submit a certified annual report of net operating revenues from
61 the furnishing of services of intermediate care facilities for the [mentally retarded]
62 **developmentally disabled**. The reports shall be in such form as may be prescribed by rule by
63 the director of the department of mental health. Final payments of the assessment for each year
64 shall be due for all providers of services of intermediate care facilities for the [mentally retarded]
65 **developmentally disabled** upon the due date for submission of the certified annual report.

66 10. The director of the department of mental health shall prescribe by rule the form and
67 content of any document required to be filed pursuant to the provisions of this section.

68 11. Upon receipt of notification from the director of the department of mental health of
69 a provider's delinquency in paying assessments required under this section, the director of the
70 department of social services shall withhold, and shall remit to the director of the department of
71 revenue, an assessment amount estimated by the director of the department of mental health from
72 any payment to be made by the state to the provider.

73 12. In the event a provider objects to the estimate described in subsection 11 of this
74 section, or any other decision of the department of mental health related to this section, the
75 provider of services may request a hearing. If a hearing is requested, the director of the

76 department of mental health shall provide the provider of services an opportunity to be heard and
77 to present evidence bearing on the amount due for an assessment or other issue related to this
78 section within thirty days after collection of an amount due or receipt of a request for a hearing,
79 whichever is later. The director shall issue a final decision within forty-five days of the
80 completion of the hearing. After reconsideration of the assessment determination and a final
81 decision by the director of the department of mental health, an intermediate care facility for the
82 [mentally retarded] **developmentally disabled** provider's appeal of the director's final decision
83 shall be to the administrative hearing commission in accordance with sections 208.156 and
84 621.055.

85 13. Notwithstanding any other provision of law to the contrary, appeals regarding this
86 assessment shall be to the circuit court of Cole County or the circuit court in the county in which
87 the facility is located. The circuit court shall hear the matter as the court of original jurisdiction.

88 14. Nothing in this section shall be deemed to affect or in any way limit the tax-exempt
89 or nonprofit status of any intermediate care facility for the [mentally retarded] **developmentally**
90 **disabled** granted by state law.

91 15. The director of the department of mental health shall promulgate rules and
92 regulations to implement this section. Any rule or portion of a rule, as that term is defined in
93 section 536.010, that is created under the authority delegated in this section shall become
94 effective only if it complies with and is subject to all of the provisions of chapter 536 and, if
95 applicable, section 536.028. This section and chapter 536 are nonseverable and if any of the
96 powers vested with the general assembly pursuant to chapter 536 to review, to delay the effective
97 date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of
98 rulemaking authority and any rule proposed or adopted after August 28, 2008, shall be invalid
99 and void.

100 16. The provisions of this section shall expire on September 30, 2015.

660.075. 1. The division of medical services shall not issue a provider agreement to an
2 intermediate care facility for the [mentally retarded] **developmentally disabled** provider after
3 May 29, 1991, unless and until the department of mental health transmits a certification of
4 authorization to provide services, provided, however, a profit or not-for-profit provider may
5 operate a single home of six beds or less without issuance of a certificate to the division of
6 medical services. Such certification shall be provider specific and shall contain the number of
7 beds authorized.

8 2. Notwithstanding any other provision of law to the contrary, any provider intending
9 to operate an intermediate care facility for the [mentally retarded] **developmentally disabled** in
10 excess of those beds in existence on May 29, 1991, shall give notice to the department of mental

11 health of any intent to do so between July first and October first of the fiscal year preceding the
12 fiscal year in which they intend to operate such facility.

13 3. In addition to other good cause as established by administrative rules promulgated by
14 the director of the department of mental health, such intermediate care facility for the [mentally
15 retarded] **developmentally disabled** operations as may be accommodated within the home and
16 community-based waiver for the developmentally disabled shall be refused certificates of
17 authorization by the department of mental health. The division of medical services shall refuse
18 intermediate care facility for the [mentally retarded] **developmentally disabled** provider
19 agreements to providers to whom the department of mental health has refused certificates of
20 authorization.

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