



EXHIBIT /
DATE 1/19/05
HB 197

MONTANA ADVOCACY PROGRAM

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House Bill 197

Hearing in House Judiciary Committee, January 19, 2005

The Montana Advocacy System is in support of increasing the penalties for people who take advantage of their position to harm people with developmental disabilities in recognition of their greater vulnerability to abuse and neglect. As that is clearly the intention of House Bill 197, we are generally in support of the measure. However, the bill as written has unintended consequences that we believe need to be addressed.

In our work, we represent people with developmental disabilities who live in the community and the Montana Developmental Center. In the group living situations that are common in the institution and in community group homes, there can be conflict between residents. The most appropriate way to deal with these conflicts is to work with the residents in conflict to help them resolve issues. Unfortunately, because of the way this law is written, if two residents have a conflict and one causes any physical or mental injury to the other, it would be punishable as a felony. This would be true even if under criminal law the injury that was caused would only support a charge of misdemeanor assault.

This problem lies in the definition sections of Title 52. The definitions of "abuse" and "sexual abuse" do not require that the person charged with such an offense has taken advantage of a position of authority, confidence or trust. Those definitions are probably appropriate for those provisions within that section as it stands currently. However, because this is the same definition used for the offense in HB 127, it opens the door to the sort of situation noted above.

We do not understand that this is the intended purpose of this bill, but instead it is intended to target persons who take advantage of their authority or their position of trust or confidence by abusing, neglecting or sexually abusing a person with developmental disabilities. To ensure that the bill serves that purpose, we strongly urge that the bill is amended to clearly encompass the offenses intended, and avoid the real possibility of a felony prosecution of a person with a developmental disability for a conflict with another resident.