Montana State Legislature

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Testimony in Support of Senate Bill 357

Prepared for:

Madam Chair Rice

House Judiciary Committee

2005 Montana Legislative Session

Explanation of Need for Criminal Background Checks for Social Work Licensure Applicants

A convicted child molester from Florida moved to Arkansas and obtained a social work license. The potential for the convict to perpetrate a new sex offense against children was only possible because at that time, Arkansas did not do criminal background checks on social work licensure applicants. In 1997, Arkansas passed a law that requires not only social workers, but all mental health workers to have a criminal background check prior to licensure. The Arkansas Social Work Licensing Board reports that since the law was passed, approximately thirty social work applicants have had positive checks but qualified for a waiver under the provisions of the law. They also reported that individuals sometimes do not continue with the social work licensing process once they learn that they have to submit to a criminal history check (Jones, 2004). As the Montana Code Annotated is written now, that same convicted child molester could just as easily have moved to Montana and obtained a social work license, putting our children's safety in jeopardy. The proposed legislation would eliminate the possibility of a convicted sex offender working with Montana's children.

A literature search of 519 articles across several disciplines revealed several examples of applicants in various fields concealing a criminal history. InfoMart Inc, a pre-employment screening company, reported that of the applicants they screen, "8.3% have a criminal history, and 23% have misrepresented their employment or education credentials" (Mayer, 2002). Of school employees in New Jersey, "2,340 applicants have been disqualified for past criminal convictions since 1987" (Miller, 1994). At one Ivy League medical school, criminal records checks were not done and the school was chagrined to learn from the newspaper that one of their new students had been convicted of manslaughter (Bonsteel, 1997). In 1997, USA Today reported that "Seven percent of all rapes, eight percent of robberies and sixteen percent of assaults occur at work" (Niam, 1997). Social work is not immune to the ills that befall other professions and because of the vulnerable client populations they routinely work with, social workers should be held to the same or higher scrutiny as other fields. The proposed legislation would thwart convicted criminals attempting to evade detection and perpetrate new crimes.

Nationally, the MENTOR/National Mentoring Partnership runs background checks on individuals applying to mentor children and youth. Margo Pedroso is Director of Government Relations and Director of the SafetyNET pilot program. Montana is one of the states participating in the pilot study. Pedroso reports that although the data from the pilot are still being compiled, anecdotally, eight percent of the applicants they screen were arrested or convicted of crimes most relevant to working with kids. The crimes included violence, sexual misconduct, offenses against minors and drug related offenses. She reports that of those with a criminal record, ten percent applied using a different name than they were convicted under. She further reports that of those with a criminal record, twenty-five percent have a record in a state other than the one they are applying from. MENTOR's anecdotal statistics highlight the issue of convicted criminals moving out of state, changing their names and attempting to gain access to new victims. The proposed legislation would prevent any of those out-of-staters from using Montana's residents as their chosen victims.

In Nevada, Emma Okafor is a social worker who lies on job applications, changes her name, commits crimes and gets hired at school after school as a university professor, because no

one is checking her criminal history. In 1991, Nevada stripped Okafor of her social work license for being "accused of cashing more than $10,000 in forged checks and fraudulently using the credit cards of elderly residents at a Las Vegas nursing home where she was the director of social services. According to police reports, Okafor continued to buy clothes and jewelry on one man's credit cards even after he had died" (Haworth, 1998). According to the Montana Code Annotated as it is written now, Okafor could readily obtain a social work license in Montana and continue her string of crimes. The proposed legislation would ensure that Okafor and others like her would not be able to conceal their criminal histories and gain access to our vulnerable residents.

In San Antonio, Pamela Beasley White, a licensed social worker, "searched for poor clients who qualified for Medicaid...billed $470,156 to the Texas Medicaid program...(and) received $378,219...(of which) at least $275,039 was fraudulent...between 2001 – 2003...a federal grand jury indicted her on 24 counts, including health care fraud, money laundering and making false statements" (Contreras, 2003). As the Montana code is written now, Pamela White could move to Montana and obtain a social work license despite her crime. An individual like Pamela White would not only hurt clients, she would wreak havoc on the Montana Medicaid program. The proposed legislation would prevent her from ever having access to Montana clients to begin with.

In Michigan, Beth Kaplansky and her supervisor Lori Ann Wright, "were charged...with second-degree felony child abuse," in the case of a four-year-old foster child who "was beaten to death in his new foster home...the caseworkers overlooked evidence of abuse...including two black eyes and a fractured shoulder" (Brooks, 2003). As the Montana Code Annotated is written now, Kaplansky and Wright could move to Montana and obtain their social work licenses. The proposed legislation would prevent them or others like them from ever assuming responsibility for any of Montana's children.

In Massachusetts, Norman Yelle, a social worker who "served as president of Babe Ruth Baseball for the Fall River Area for the past 24 years...admitted yesterday to bookmaking for an allegedly violent organized crime ring" (Lawrence, 2003). As the Montana Code Annotated is written now, Yelle could move to Montana, obtain his social work license and continue his criminal enterprises. The proposed legislation would not allow his criminal enterprise to ever gain a foothold in Montana.

In Minnesota, social worker Lisa Lange "was charged with bribery...(for) a kickback billing scheme. Social worker Lori Leeds and Zufan Asgedom...co-owners of Edina Day Time Seniors...also were charged with bribery...Leeds was also charged with theft by swindle for fraudulently billing Medicaid for $136,752." Lange manipulated the assessment criteria for elderly clients so they could be placed in Edina Day Time Seniors and Leeds then billed Medicaid for "services...that were done by unqualified workers or were not done at all." Those unqualified workers were discovered to be Lange's husband, son, sister and niece. Lange "referred clients to (Edina Day Time Seniors) in exchange for work for (her family members)." County Attorney Amy Klobuchar stated that "public servants that are paid to help vulnerable adults have to be held to the highest standards" (Chanen, 2004). As the Montana Code Annotated is written now, the social workers involved in this crime could move a short distance

to Montana and obtain their social work licenses. The proposed legislation would prevent those social workers or others like them from being granted access to our elderly residents and to Montana's Medicaid dollars.

In Alabama, social worker Ian Taylor was "convicted...of ten charges including rape, indecent assault and indecency with a child...he had previously admitted three charges of indecent assault against two other girls" (Birmingham Post, 2004). Taylor was a residential care worker at the St. John's Centre. His victims were as young as ten years old and his crimes spanned from 1983 – 1990. Taylor, a married father, also "began a relationship with a sixth girl after she left the home and had a daughter with her." As the Montana Code Annotated is written now, Taylor could move to Montana and obtain his social work license, which would allow him to work alone with the same young girls he has already perpetrated crimes against. The proposed legislation would ensure that Taylor and others like him would never have access to our vulnerable daughters.

In Minnesota, Donald Leonard Keys, a social worker licensed in Minnesota and Wisconsin, "was charged with...using a minor in a sexual performance and...child pornography" (Estrada, 2003). Keys "is accused of having sex with a 16 year old boy...investigators...say (Keys) was using various aliases to participate in Internet chat rooms with young men and boys." During the investigation, it was discovered that Keys "surrendered his license in Minnesota in 1996 for his role in a scheme to bilk an elderly man in Hennepin County." Investigators also learned that "Keys did not disclose a 1971 sexual assault conviction," when applying for his social work license. The alleged victim told investigators that "he had met Keys on the Internet as a 16-year-old...had been taken to Keys' St. Paul house...(and) once there, Keys took sexually explicit photographs of the boy." A search of Keys' home turned up "computers, hundreds of floppy disks, videotapes and pictures, including sexually explicit photos of the 16-year-old boy." Paul Schnell, spokesman for the St. Paul Police Department, stated that investigators "are also looking into Keys' work history to see if other victims can be found...(because) these cases create the concern of other victims." As the Montana Code Annotated is written now, Keys could easily move to Montana and obtain a social work license. The proposed legislation would prevent him and others like him from moving to Montana and preying on our youth.

In Boston, a home health aide murdered his 32-year-old quadriplegic client and the client's 77-year-old grandmother. His reason for committing the crime was to "cover up thefts he had made from the home. A background check would have turned up six larceny-related convictions." His employer was found negligent in not conducting a background check that would have prevented a convicted felon from caring for the vulnerable client, who had cerebral palsy. "The defendants, Trusted Health Resources and Visiting Nurses Association of Boston...were ordered to pay $26.5 million in compensatory and punitive damages" (Connerly, 2004). Although not a social worker, this brutal crime demonstrates the propensity of convicted offenders to perpetrate new crimes on vulnerable clients. As the Montana Code Annotated is written now, the convicted murderer could move to Montana and receive a social work license, despite being a ruthless killer. The proposed legislation would prevent this type of heinous crime from happening in Montana and it would also serve to protect the state from legal and financial liability.

In Seattle, Virginia Mason Medical Center did not conduct criminal background checks on its contract employees. As a result, Raymond Kupfer Jr. "was charged with fondling a 48-year-old patient...while wheeling her to the radiology unit, then sexually assaulting her while moving her from a gurney to a bed." A criminal background check would have revealed that Kupfer "was a Level III sex offender – or one at the highest risk for re-offending – with nine felony convictions, including three counts of child molestation, burglary and failure to register as a sex offender. Virginia Mason has since checked the background of 200 other contract employees and fired three of them" (Benko, 2004). Although not a social worker, this horrendous crime highlights the recidivism risk that sex offenders present. The proposed legislation would preclude people like Raymond Kupfer, Jr. from ever obtaining a Montana social work license. There is no more sobering a scenario than a convicted sex offender being given a license by the state of Montana, granting them access to work alone with children, the elderly and everyone in between.

In our own backyard, Rita Watson Bennet, a Child & Family Services social worker from Bozeman, was sentenced in 2003 for buying cocaine from one of her clients. Bennet was caught in a sting operation after "she told one of her clients she would allow him to return home to his family if he would provide her with cocaine" (Brown, 2003). As the Montana Code Annotated is written now, Rita Bennet could still be granted a Montana social work license, despite her criminal conviction. A social work license would allow her access to the same vulnerable client population that she perpetrated a crime on before.

In addition to the risk of clients being harmed, there is a growing risk for legal and financial liability when incidents occur. Negligent hiring is an emerging area of the law. The "litigation focuses on the forseeability of the cause of the injury" (Burns, 2004). It stands to reason that if a company is held liable for a criminal offense committed by an employee with a criminal history, so too could a state be held liable for a criminal offense committed by a licensed social worker with a criminal history.

The Arkansas experience highlights an oversight in social work licensing laws nationwide. Arkansas, and effective in 2005 Nevada, are the only states that mandate criminal background checks prior to licensure, leaving children and other vulnerable clients across the rest of the country at risk of harm and leaving states potentially liable for unknowingly licensing convicted offenders. All states require some combination of education, experience, examination, supervision and references, in order to obtain a social work license. Many states include some kind of fitness to practice provision, however, only Arkansas and Nevada have established a mechanism whereby that fitness can be verified. Some states have provisions to impose a sanction or revoke a license if a criminal history is later discovered, however, that does nothing to prevent a convicted offender from receiving a social work license in the first place. Some states require their applicants to self-report any criminal history, however, since convicted offenders are moving out of state, changing their names and concealing their criminal pasts, relying on self-reports is entirely ineffective for discovering a criminal history. The enclosed chart of the fifty states plus the District of Columbia lists the fitness provisions present in state laws as they currently stand.

As the Montana Code Annotated is written now, all that is required to obtain a Montana social work license is the requisite education, experience, supervision, letters of reference and a promise to abide by social work ethical standards. The offenders described above or others like them could obtain a Montana social work license without the state even knowing about their criminal history. The offenders would then have access to work alone, in private settings, with the same types of vulnerable clients they have already perpetrated crimes against. As Montana continues to experience an influx of out-of-staters moving in, the chances of the Arkansas experience being repeated here will only increase. Convicted criminals could be working as licensed social workers right now, and we would have no way of knowing it. Our children, our elderly, the mentally ill and other vulnerable residents of our great state are endangered by the lack of a criminal background check requirement for social work licensure applicants in Montana.

The Montana Code Annotated already recognizes the "profound impact" social workers have on vulnerable residents in our state. The primary purpose of the proposed Montana social work background check act is to strengthen that recognition by preventing convicted offenders from perpetrating new crimes against social work clients. The secondary purpose is to protect the state from being held liable should a convicted offender perpetrate a new crime against a vulnerable client. A tertiary purpose is to protect the state's Medicaid funding from being bilked by unscrupulous social workers, who have access to billing Medicaid once they are granted a social work license. The proposed legislation establishes a clear and effective mechanism for verifying the fitness of a social work licensure applicant to practice, thereby ensuring public safety and protecting vulnerable clients. The proposed bill maximizes client and legal protection at minimal expense to the state, since candidates for licensure will pay all costs associated with the background checks. The state needs to be able to make a fully informed decision about who it chooses to serve its most vulnerable residents. Definitive knowledge via a fingerprint background check, rather than relying on vague terms or self-reports, allows the state to discover a criminal history and then decide on a case-by-case basis if the criminal history impedes the applicant's ability to provide social work services in a manner consistent with public safety. The proposed legislation includes a provision that is consistent with the Montana Constitution, Article II, Section 28, by allowing convicted offenders to demonstrate that they are rehabilitated and their previous crimes do not endanger vulnerable clients. Evaluating applications on a case-by-case basis when a criminal history exists is a fair method for weighing public safety against individual rehabilitation and making a licensing decision accordingly. The proposed legislation is also consistent with Montana Code Annotated 44-5-601, the National Crime Prevention and Privacy Compact, Article IV Authorized Record Disclosures, which mandates that "the state statute (must) explicitly authorize national indices checks" for criminal history records. Codifying the criminal background checks, rather than just including them in the Montana Social Work Licensing Board regulations, is a statutory necessity.

Passing the proposed statute sends the right message at the right time. Our children, elderly and other vulnerable residents of this state cannot afford to wait until a tragedy happens here to take action. We must proactively prevent convicted offenders from turning Montana residents into their new victims. We need to close the gateway that currently exists and deter out of state offenders from moving to Montana and obtaining a social work license. The power to protect those who need us the most lies within our hands. Codifying criminal background checks

for social work license applicants is a clear and effective mechanism for protecting the public and ensuring the safety of our vulnerable residents. We owe them nothing less.

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State	Fitness to Practice Provisions in State Codes as of 11/29/2004
Alabama	Ascribe to a Professional Code of Ethics
Alaska	Good Moral Character, Good Professional Standing
Arizona	None
Arkansas	Applicants Shall be Required to Submit to a State and National Fingerprint Criminal Background Check, Licensure May be Denied for Commission of Any of a List of Thirty-Two Criminal Offenses
California	Absence of Crimes or Acts Constituting Grounds for Denial of Licensure, Zero Tolerance for Licensing Sex Offenders, Applicant Required to Self-Report All Felonies and Misdemeanors (Except Minor Traffic Violations) on Application Form
Colorado	Jurisprudence Exam
Connecticut	None
Delaware	Absence of Disciplinary Action
District of Columbia	None
Florida	Knowledge of the Rules Governing the Practice of Clinical Social Work
Georgia	None
Hawaii	None
Idaho	Good Moral Character
Illinois	Good Moral Character
Indiana	Absence of a Conviction for a Crime that has a Direct Bearing on the Individual's Ability to Practice Competently, Absence of a Disciplinary Action, Applicant Required to Self-Report All Felonies and Misdemeanors (Except for minor Traffic Violations) on Application Form
Iowa	Adherence to Standards of Professional Conduct
Kansas	Merits Public Trust
Kentucky	Good Moral Character
Louisiana	Good Moral Character
Maine	Adherence to Professional Ethics, Demonstrate Trustworthiness
Maryland	Good Moral Character
Massachusetts	Adherence to Professional Standards
Michigan	None
Minnesota	Adherence to Standards of Professional Conduct, Absence of Conduct Warranting

	Disciplinary Action
Mississippi	Continuing Good Moral Character, Absence of the Conviction of a Felony Related to the Practice of Social Work for the Previous Ten Years, Absence of a Declaration of Mental Incompetence, Freedom from Dependency on Alcohol or Drugs, Applicant Must Check "Yes" or "No" Regarding Convictions for Any Crime or Violation of Law (Except Minor Traffic Violations) on Application Form
Missouri	Good Moral Character, Absence of Felony Convictions for the Previous Ten Years, Applicant Must Self-Report on the Application Form All Convictions, Pleas or Suspended Imposition of Sentence for Felonies and Misdemeanors
Montana	Abides by Social Worker Ethical Standards
Nebraska	None
Nevada	Effective 2005, Applicant Must Submit to a National Fingerprint Criminal Background Check, if any Criminal History Exists Within Previous Ten Years, Applicant Must Appear Before the Board to Demonstrate Rehabilitation and that the Public Is Not Endangered, Prior to the Issuance of a License, if Rehabilitation is Not Demonstrated or if a Previous Criminal Offense Indicates a Danger to the Public, the License is Denied
New Hampshire	None
New Jersey	None
New Mexico	None
New York	Good Moral Character
North Carolina	None
North Dakota	Adhere to a Professional Code of Ethics
Ohio	Good Moral Character
Oklahoma	Good Moral Character
Oregon	Exam Regarding Oregon Statutes and Administrative Rules Governing the Practice Standards and Responsibilities of a Licensed Clinical Social Worker
Pennsylvania	Good Moral Character, Absence of the Conviction, Admission of Guilt or Plea of Nolo Contendere of a Drug Felony, Applicant Must Self-Report on the