EXHIBIT 7
DATE 1/31/2013
HB 269

civil rights protection & advocacy system for montana

disability rights montana

formerly Montana Advocacy Program

January 31, 2013

Dear Committee Members of the House Judiciary Committee:

Assault is already illegal in Montana. HB 269 would create new law with the identical elements as the current assault law, except that it would only apply if the victim was a health care or emergency health care worker. We are very concerned that because people with disabilities often encounter health care workers when they are in psychiatric crisis, hospitalized, or otherwise receiving treatment for chronic conditions such as dementia, they will prosecuted disproportionately for such offenses.

Currently it is equally illegal to assault a health care provider, a legislator or a school teacher. Assault upon any individual is not sanctioned. The current penalty in each of these circumstances is up to 6 months in jail or a $500.00 fine. This bill would increase the penalty for the very same act to up to 10 years in prison and/or a $50,000.00 fine if the same act is taken against a health care provider. This is a jaw dropping increase in the penalty for this offense.

The typical motivation for creating such an increased penalty is deterrence. It is unclear whether such a substantial increase for an offense that is already illegal has any deterrent effect for the general population. However, it is very unlikely to have any deterrent effect where the individuals committing this offense are in psychosis, mental health crisis or have dementia. All this bill will do is to give them much more serious sentences, with imprisonment, if they should commit an assault.

Even though one would hope that people who committed assault while in a psychiatric crisis, or those with autism, other developmental disability or dementia would not be charged with such a crime, or would have a defense of "mental disease or defect" in these cases, that is by no means certain. Although the presence of a "mental disease or defect" is a defense to a felony charge in Montana, the defense has been narrowly interpreted by the Montana Supreme Court. For example, as recently as December of 2008, the Court found that a man with schizophrenia who was not using medication at the time of the crime was capable of understanding his actions, did not have a mental disease or defect, and could be prosecuted for his offense. *Montana v. Meckler*, 190 P.3d 1104 (2008).

We respectfully ask that you reject this bill.

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