

Testimony on Senate Bill 134 Senator J. Brenden
January 17, 2013
Senate Judiciary
Room 300, Capitol 9:00

Title: A bill for an act entitled: An act revising the Montana Elder and Persons With Developmental Disabilities Abuse Prevention Act; Clarifying the definition of "older person;" eliminating the requirement in prosecutions that an older person be unable to provide personal protection due to mental or physical impairment or frailties or dependencies brought about by advanced age; providing for a minimum prison sentence in certain circumstances; amending sections 52-3-803 and 52-3-825, MCA; and providing an immediate effective date and an applicability date.:

My name is Kelly Williams; I am the Administrator of the Senior and Long Term Care Division in the Department of Public Health and Human Services.

Adult Protective Services are provided by the Senior and Long Term Care Division of the Montana Department of Public Health and Human Services (DPHHS), to reduce or remove the risk of physical or mental harm that has occurred or is occurring to a person, as a result of abuse, neglect or exploitation.

These services are provided to persons over the age of 60, physically or mentally disabled adults and adults with developmental disabilities who are at risk of physical or mental injury, neglect, sexual abuse or exploitation.

Adult Protective Services are emergency intervention activities which may include: investigating complaints, coordinating family and community support resources, strengthening current living situations, developing and protecting personal financial resources and facilitating legal intervention.

Approximately 4,100 Montanans received some form of assistance through the Adult Protective Services program in FY2012.

The number of vulnerable people living in Montana communities has grown rapidly over the past few years; the demand for the services provided by APS workers continues to increase. Investigations of allegations of abuse,

neglect and exploitation have increased from 5974 in 2010, up slightly to 6,017 in 2012.

Of the 6,017 allegations received; 63% or (3,808) were related to neglect, 21% or (1,237) to exploitation and 16 %or (972) to abuse.

Of the 1237 allegations investigated related to exploitation approximately 1,116 were financial exploitation referrals or concerns. Of the 1,116 allegations investigated 324 were deemed by social workers to indicate that some form of financial exploitation occurred.

I have attached a summary document that breaks down the allegations received in Montana in 2012 by the category of allegation for your information.

The Senior and Long Term Care Division assumes that by eliminating a section of the statute which County Attorneys have deemed to be a barrier to prosecuting cases of financial exploitation, this bill may make it more likely that such cases can and will be prosecuted. We also assume the bill may deter cases of financial exploitation by threatening mandatory jail time for persons prosecuted and convicted of such crimes.

Based on these assumptions the Department is in support of Senate Bill 134.

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Montana Public Health and Human Services
OPM Report of APS Allegations Summary by State

Reporting Period Start Date : '01-JUL-2011' Through : '30-jun-2012'

**** = No Data

Allegation Description	Allegation Count	Percent
Abuse	972	16.15%
Exploitation	1237	20.56%
Neglect	3808	63.29%
Total Allegations: 6017		

**** = No Data

Allegation Sub-Type Description	Sub-Type Total	Percent Subtype
Financial	1116	18.55%
Medical	555	9.22%
Mental	411	6.83%
Mental Health	270	4.49%
Other	469	7.79%
Physical	935	15.54%
Self	2179	36.21%
Sexual	82	1.36%
Total Sub-Types: 6017		

Montana Public Health and Human Services
OPM Report of APS Allegations, Sub-Type and Determination in State
Reporting Period Start Date : '01-JUL-2011' Through : '30-jun-2012'

**** = No Data

Allegation	Allegation Sub-Type	Determination Description	Determination Total	Percent
Abuse	Mental	Adult Maltreatment Indicated	133	13.68%
		Adult Maltreatment Not Indicated	154	15.84%
		Closed Without Findings	121	12.45%
		Insuff. Info. to Warrent Invest.	3	0.31%
	Other	Adult Maltreatment Indicated	37	3.81%
		Adult Maltreatment Not Indicated	66	6.79%
		Closed Without Findings	32	3.29%
		Insuff. Info. to Warrent Invest.	7	0.72%
	Physical	Adult Maltreatment Indicated	98	10.08%
		Adult Maltreatment Not Indicated	110	11.32%
		Closed Without Findings	118	12.14%
		Insuff. Info. to Warrent Invest.	11	1.13%
	Sexual	Adult Maltreatment Indicated	21	2.16%
		Adult Maltreatment Not Indicated	26	2.67%
Closed Without Findings		32	3.29%	
Insuff. Info. to Warrent Invest.		3	0.31%	
Exploitation	Financial	Adult Maltreatment Indicated	324	26.19%
		Adult Maltreatment Not Indicated	460	37.19%
		Closed Without Findings	276	22.31%
		Insuff. Info. to Warrent Invest.	52	4.20%
	N/A	4	0.32%	
	Other	Adult Maltreatment Indicated	30	2.43%
		Adult Maltreatment Not Indicated	29	2.34%
		Closed Without Findings	33	2.67%
		Insuff. Info. to Warrent Invest.	7	0.57%
		Adult Maltreatment Indicated	7	0.57%
Adult Maltreatment Not Indicated		10	0.81%	
Physical	Adult Maltreatment Not Indicated	5	0.40%	
	Closed Without Findings			

Allegation	Allegation Sub-Type	Determination Description	Determination Total	Percent
Neglect	Medical	Adult Maltreatment Indicated	193	5.07%
		Adult Maltreatment Not Indicated	243	6.38%
		Closed Without Findings	112	2.94%
		Insuff. Info. to Warrent Invest.	5	0.13%
		N/A	2	0.05%
	Mental Health	Adult Maltreatment Indicated	142	3.73%
		Adult Maltreatment Not Indicated	66	1.73%
		Closed Without Findings	57	1.50%
		Insuff. Info. to Warrent Invest.	5	0.13%
	Other	Adult Maltreatment Indicated	83	2.18%
		Adult Maltreatment Not Indicated	103	2.70%
		Closed Without Findings	31	0.81%
		Insuff. Info. to Warrent Invest.	11	0.29%
	Physical	Adult Maltreatment Indicated	190	4.99%
		Adult Maltreatment Not Indicated	281	7.38%
		Closed Without Findings	99	2.60%
		Insuff. Info. to Warrent Invest.	6	0.16%
Self	Adult Maltreatment Indicated	1063	27.91%	
	Adult Maltreatment Not Indicated	776	20.38%	
	Closed Without Findings	325	8.53%	
	Insuff. Info. to Warrent Invest.	13	0.34%	
	N/A	2	0.05%	
Total:			6017	

EXHIBIT NO. 2

DATE 1.17.13

BILL NO. SB 134

Schindler, Pam

From: Niki Zupanic <nikiz@aclumontana.org>
Sent: Wednesday, January 16, 2013 12:24 PM
To: murphter5@yahoo.com; sales4mtsenate@hotmail.com; shannonjaugare@aol.com; blewettformontana@gmail.com; scott@scottboulanger.com; senatorbrenden@gmail.com; robyn@robyndriscoll.com; larry@imt.net; cliff@larsenusa.com; cvvincent@hotmail.com; SenatorWittich@montana.com; sen.jfielder@legmt.gov
Cc: Burkhardt, Julianne; Schindler, Pam
Subject: ACLU opposition to SB 113
Attachments: SB 113 admissibility of prior acts Blewett.pdf

Dear Members of the Senate Judiciary Committee,

Please find attached the ACLU of Montana's opposition to SB 113, heard this morning in your committee. My apologies that testimony in other committees prevented me from sharing this with you in person today. As always, please let me know if you have any questions regarding our position on this bill or any other.

Best,
Niki

Niki Zupanic, Public Policy Director
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Find out more about our legal, legislative and educational work. www.aclumontana.org
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American Civil Liberties Union
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Dear Members of the Senate Judiciary Committee,

The American Civil Liberties Union of Montana opposes SB 113. This bill removes important safeguards contained in our rules of evidence that protect due process rights and ensure that accused individuals have a fair trial, free from undue prejudice.

Generally, we allow evidence of prior acts only in very limited circumstances and only for very specific purposes, such as proving the defendant's intent, that the crime wasn't the result of a mistake or accident, or that the defendant had a common plan between the alleged crime and the prior acts. SB 113 would create an exception to this general rule and allow prosecutors to use evidence that currently would not be allowed.

The reason for having such limitations on when the prosecution may introduce this type of evidence is that we don't want the person accused of a crime to be put on trial for things that he or she has been accused of in the past. We want the defendant to be tried fairly, and only for the crime that is being alleged in the current case.

That's not to say that prior acts are never relevant or useful to a jury; and under specific circumstances, current law already allows this type of evidence to be introduced. Our current rules of evidence allow evidence of prior acts to be introduced when it will be relevant and the possibility of unfair prejudice against the defendant doesn't outweigh the usefulness of the evidence. Right now we have a well-crafted balance that preserves the due process rights of the accused, while still allowing some evidence to be used in limited cases. SB 113 upends this balance and compromises the due process rights of defendants.

The crimes alleged in these types of cases are reprehensible and inexcusable. But the same reason why we would be tempted to treat these crimes differently and to lower the standard for introducing this evidence are the same reasons why need to be even more vigilant in protecting against undue prejudice.

Respectfully,

Niki Zupanic
Public Policy Director

