

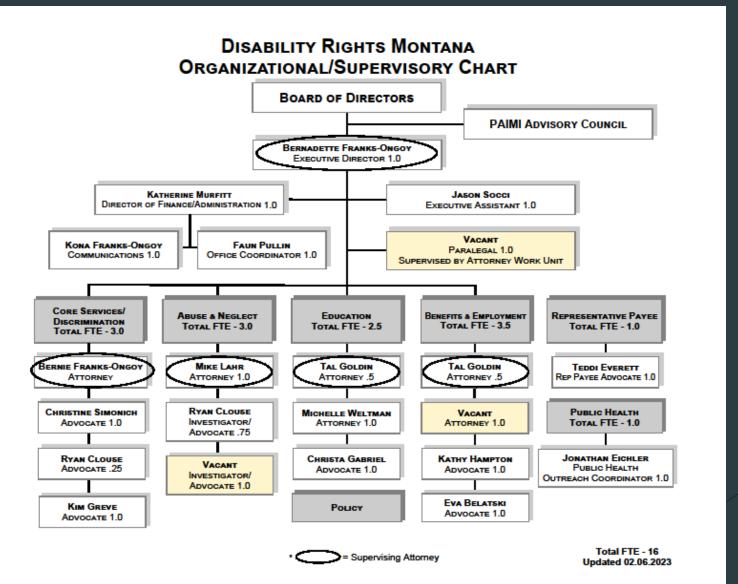
Appropriations Subcommittee B (Health and Human Services) February 7, 2023

Disability Rights Montana

- ► The Protection and Advocacy system created by Congress in 1975
- created under federal statutes to protect the human, civil, and legal rights of people with disabilities
- ► In 1977 DRM was designated as the state's Protection and Advocacy system by Governor Thomas Judge
- federally funded part of a national network
- private nonprofit 501(c)3
- ▶ independent of state government
- attorneys and advocates



Organizational Chart



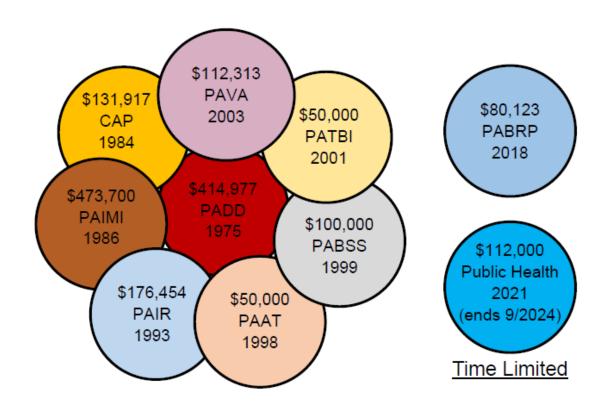
List of grants

- ► 1975 PADD Protection & Advocacy for Individuals with Developmental Disabilities
- ▶ 1984 CAP Client Assistance Program
- ▶ 1986 PAIMI Protection & Advocacy for Individuals with Mental Illness
- ▶ 1993 PAIR Protection & Advocacy of Individual Rights
- ▶ 1998 PAAT Protection & Advocacy for Assistive Technology
- ▶ 1999 PABSS Protection & Advocacy for Beneficiaries of Social Security
- ► 2001 PATBI Protection & Advocacy for individuals with Traumatic Brain Injury
- ▶ 2003 PAVA Protection & Advocacy for Voter Access
- ▶ 2018 PABRP Protection & Advocacy for Beneficiaries with Representative Payees Program
- ▶ 2022 Public Health

Mandate Directives

- Client directed
- Legal-based independent
- Consumer managed
- Continuum of services
- Statewide
- Legal interest, not best interest.

P&A Grant Diagram



Annually Combined Grants: \$1,589,484

Disability Rights Montana's mission is to protect and advocate for the human, legal, and civil rights of Montanas with disabilities while advancing dignity, equality, and self-determination

The Protection and Advocacy System Mandate

- Monitor facilities which serve people with disabilities and investigate allegations of abuse, neglect and rights violations in these facilities.
- ► To pursue legal, administrative, & other appropriate remedies, to ensure the protection of, and advocacy for, the rights of people with disabilities.
- ► This mandate is shared by most of the 10 P&A programs.
- ► Each P&A organization has individual eligibility criteria and/or scope of services.

Continuum of Services

- 1. Information on disability-related rights, services, benefits, and resources that are available in Montana.
- 2. Referral to law firms, agencies, and resources
- 3. Advocacy in team meetings, support in filing grievances/appealing decisions, encourage self-advocacy
- 4. Training consumers/professionals, e.g., voting rights
- 5. Monitoring of activities and facilities
- 6. Interaction and participation on committees/task forces
- 7. Individual legal representation litigation
- 8. Class Action litigation
- 9. Legislative advocacy

Quick Facts

Population

- ▶ People living in Montana: 1,050,493
- Montana adults with a disability 26%, ≈233,000

Education

- ▶ 20,014 K-12 students identified under IDEA in AY 2021-22
- 2:1 approximate ration of people without disabilities to people with disabilities who have less than a high school diploma.
- 3:1 approximate ratio of people without disabilities to people with disabilities who have a college degree.

Employment

Percentage of population employed (2019) - 38.9% (people with disabilities) vs 78.6% (people without disabilities)

Sources:

Population - CDC.gov - https://www.cdc.gov/ncbddd/disabilityandhealth/impacts/montana.html
K-12 Child Count - Special Education Report to the Board of Public Education at 15 (Office of Public Instruction June, 2022), available at: https://opi.mt.gov/Portals/182/Page%20Files/Special%20Education/IDEA%20Data/Special%20Education%20Report%20to%20the%20Board%20of%20Public%20Education.pdf?ver=2020-07-21-122718-700

Educational attainment: Disability Statistics & Demographics Rehabilitation Research & Training Center, Annual Report on People with Disabilities in America at 8-9 (2020), available at https://disabilitycompendium.org/annualreport
Employment. *Id.* at 11.



Who Does DRM Serve?

People with **Disabilities** who may be:

- Residents of public institutions
- Residents of private facilities (group homes, etc.)
- ► Children & Youth
- Adults in the community
- ► Hospital patients
- ▶ People on SSI/SSDI
- People who want to vote
- Students seeking appropriate education
- ► Any person who qualifies under the ADA¹ as a person with a disability is eligible for DRM services

DRM Does not assist with

- Divorce
 - Child custody
- Estate Planning
- Criminal Representation
- Drafting Wills
- Personal injury
- Bankruptcy matters
- Tax issues
- Malpractice
- Pension
- Property disputes

¹ See 42 U.S.C. § 12102.

DRM 6 Work Units

- 1. Core Services/Discrimination
- 1. Abuse and Neglect
- 2. Education
- 3. Benefits and Employment
- 4. Policy
- 5. Representative Payee



Abuse & Neglect - Federal Definitions

► Abuse:

- ▶ Verbal harassment
- ► Nonverbal harassment
- ► Mental and emotional harassment
- ► Rape or sexual assault
- ▶ Striking
- ► Excessive force when being put in bodily restraints
- ▶ Use of bodily or chemical restraints
- ► Financial exploitation

See 45 C.F.R. § 10802. (1) (PAIMI) & § 1326.19 (PADD)





- ▶ Neglect
 - ► Failure to establish/carry out an appropriate individual treatment program
 - ► Not providing nutrition, clothing or health care
 - ► Not providing a safe environment
 - ► Failure to maintain adequate numbers of trained staff
 - ► Failure to prevent self-abuse
 - ► Failure to take steps in preventing harassment or assault by a peer
 - ► Lack of discharge planning

See 45 C.F.R. §10802.(5) (PAIMI) & § 1326.19 (PADD)



Mandated to Monitor Facilities

- "facilities" may include, but need not be limited to, hospitals, nursing homes, community facilities for individuals with mental illness, board and care homes, homeless shelters, and jails and prisons
- Regular monitoring visits to
 - ► Montana State Hospital (MSH), Warm Springs
 - ► Intensive Behavior Center (IBC), Boulder
- bi-annual monitoring visits to
 - ► PRTFs (Shodair in Helena; YBGR in Billings)
 - ► MMHNCC in Lewistown
- as needed monitoring visits to any other facility that serves people with disabilities

Disability Rights Montana Access Authority

Access to all areas patients use (e.g., gym, bathrooms, recreational areas, sleeping quarters, etc.)

Access anytime & unannounced

Access to Death records

Investigate abuse and neglect

A person's records (w/signed ROI or probable cause)

All info is confidential

Records DRM can request:

- ► Handwritten notes
- ► Electronic files
- ▶ Policies & Procedures
- Incident & Investigation Reports
- ► Training Records
- ▶ Photographs
- ▶ Video
- Audio

Brown v. Bd. of Ed. of Topeka, Shawnee Cty., Kan., 347 U.S. 483 (1954)

"In these days, it is doubtful that any child may reasonably be expected to

opportunity, where the state has undertaken to provide it, is a right which must

succeed in life if he is denied the opportunity of an education. Such an

be made available to all on equal terms."

- Chief Justice Earl Warren for the Court

Key Civil Rights Laws we enforce

- ► The Rehab. Act of 1973 ("Section 504"), 29 U.S.C. 794; regulations throughout government agencies, see especially 34 C.F.R. Part 104
- ▶ Individuals with Disabilities Education Act, 20 U.S.C. § 1400, et seq.
- ► Americans with Disabilities Act, 42 U.S.C. § 12101, et seq.: Title I, II,
- ► **Title IX** of the Education Amendments of 1972, 20 U.S.C. § 1681(a) (sex discrimination).
- ► Title VI and VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d, et seq. (race, color, national origin) and religion, sex (in employment)
- ► Fair Housing Act, 42 U.S.C. §§ 3601-19, discrimination in housing related transactions (race, color, religion, sex, familial status, national origin, and disability).
- ► Montana Human Rights Act, Title 49, MCA; A.R.M Ch. 24.8 (DOLI, Human Rights Bureau). See also Title 49, Ch. 4., M.C.A. and Montana Gov't Code of Fair Practices, Title 49, Ch. 3, M.C.A.

The Americans with Disabilities Act - the ADA passed July 26,1990 - 33 years ago



"This act is powerful in its simplicity. It will ensure that people with disabilities are given the basic guarantees for which they have worked so long and so hard: independence, freedom of choice, control of their lives, the opportunity to blend fully and equally into the rich mosaic of the American mainstream."

-President George H.W. Bush on signing the ADA

The ADA - Congressional Intent

- ► The Americans with Disabilities Act (ADA) is a broad civil rights law that prohibits disability discrimination in all areas of public life. 42 U.S.C. § 12101, et seq.
- ► The ADA was passed in 1990 "to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities."
- ► The ADA was amended in 2008 to clarify its broad coverage against discrimination that applies to all people with disabilities. 42 U.S.C. § 12101.

The ADA - Definition of Disability

The term "disability" means, with respect to an individual—

- (A) a physical or mental impairment that **substantially limits one or more major life activities** of such individual;
- (B) a **record** of such an impairment; or
- (C) being regarded as having such an impairment (as described in paragraph (3)).
- "...major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working."
- "... a major life activity also includes the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions."
- "The definition of disability . . . shall be construed in favor of broad coverage"
- "The determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures [except ordinary eyeglasses. . ." 42 U.S.C. § 12102 (emphasis supplied).

The ADA's anti-segregation purposes

- ► The legislative findings make clear one of the ADA's goals is to remedy the isolation and segregation of people with disabilities, including in institutions.
- Congress specifically found that:
- "historically, society has tended to isolate and segregate individuals with disabilities, and despite some improvements, such forms of discrimination against individuals with disabilities continues to be a serious and pervasive social problem;"
- "discrimination against individuals with disabilities persists in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and access to public services;" and that
- "the Nation's proper goals regarding individuals with disabilities are to assure...
 full participation [and] independent living." 42 U.S.C. § 12101 (emphasis added).

The ADA's "integration mandate"

► Congress directed the U.S. Department of Justice (DOJ) to issue regulations implementing the ADA and to ensure they were consistent with regulations implementing Section 504 of the Rehabilitation Act, which prohibits disability discrimination by recipients of federal funding.

► The ADA's "integration mandate" mirrors that of Section 504 and requires public entities to "administer services, programs, and activities in the most integrated setting appropriate" to the needs of people with disabilities. 28 C.F.R. § 35.130 (emphasis supplied).

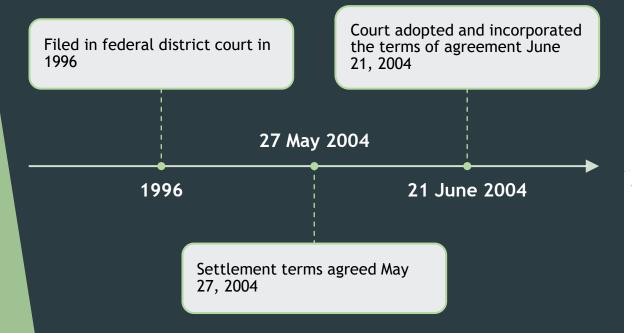
Olmstead v. L.C. ex rel. Zimring, 527 U.S. 581 (1999)

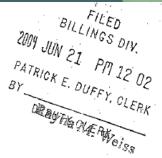
- ▶ In Olmstead, the U.S. Supreme Court addressed the issue of whether a state violated the ADA by refusing to provide community services to two women institutionalized in the state's hospital who wanted to, and whose treating professionals believed could, live in the community.
- ► The Supreme Court held that "unjustified isolation . . . is properly regarded as discrimination based on disability" under the ADA. 527 U.S. at 597.
- ► The Court noted that institutionalization "perpetuates unwarranted assumptions that persons so isolated are incapable or unworthy of participating in community life" and "severely diminishes the everyday life activities of individuals, including family relations, social contacts, work options, economic independence, educational advancement, and cultural enrichment." 527 U.S. at 600.
- ▶ The Court found that the ADA requires placement of persons with disabilities in the community instead of an institution when community services are appropriate, the individual does not oppose community services, and when the placement can be reasonably accommodated. 527 U.S. at 587.

Olmstead v. L.C. ex rel. Zimring, 527 U.S. 581 (1999)

- Since the Supreme Court's Olmstead decision, courts have interpreted the decision and applied the ADA's integration mandate to a wide range of other situations.
- ► Courts have found that Olmstead applies to segregation, or risk of segregation, not only in state-operated institutions, but also in other types of residential and day program settings that segregate individuals with disabilities, such as privately operated Intermediate Care Facilities, psychiatric hospitals, nursing facilities, board and care homes, and sheltered workshops.
- ► For comprehensive information about Olmstead implementation and enforcement, see:
 - ► https://www.ada.gov/olmstead/
 - ► https://archive.ada.gov/olmstead/q&a_olmstead.htm

Disability Rights Montana - filed class action lawsuit





IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

HELENA DIVISION

TRAVIS D., et al.

Plaintiffs,

ORDER AMENDING
JUDGMENT

-vs
MONTANA DEVELOPMENTAL CENTER, et al.

Defendants.

Pursuant to the stipulation and joint motion of the parties,
IT IS ORDERED that the Rule 60(a) motion to adopt and incorporate
the terms of the class action settlement [Dkt. No. 423] is
granted.

Travis D., et al. vs Eastmont Human Services, Montana Developmental Center, er al.

- ▶ Disability Rights Montana, (then called MAP) filed a civil rights class action lawsuit in 1996 representing a group of residents of Montana Developmental Center and Eastmont Human Services Center in Glendive.
- ► The plaintiff sought to require the state to provide them with appropriate community services in smaller, more home-like settings rather than institutional facilities.
- ► The case was settled May 27, 2004
- ► Lawsuit led to the 2003 legislature closing Eastmont Human Services (HB 727) as a cost saving measure.
- ▶ Modified the commitment criteria to MDC eliminating the provision that allows for people with developmental disabilities to be committed based on the presences of self-care deficiencies.
- Expanded community services.

Travis D., et al. vs Eastmont Human Services, Montana Developmental Center, er al.

- ► Closed Units 16A/B at MDC which had been housing people with self-care deficiencies as to require near total care. And moved all into appropriate community settings.
- ► Established a transition process to move the identified residents into appropriate community services.
- ▶ Required the state to hire consultants to train and implement person centered planning for residence in the facility and those consumers in community services.
- ► Required the state to commit \$200,000 annually of state money, to be matched to the extent possible with federal money, for crisis prevention and intervention services to help maintain people in their community placement and reduce crisis admissions to MDC

Prison Litigation - Disability Rights Montana, Inc. v. Brian M. Gootkin, et al., CV-15-22-DWM.

- ► Case filed in 2015 alleged the state violating the right of prisoners with serious mental illness to be free from cruel and unusual punishment under the Eighth Amendment of the United States Constitution for failure to provide appropriate mental health services and treatment.
- ▶ Settled in March, 2022 with significant reforms to the treatment of inmates with serious mental illness to include:
 - Housing for inmates with serious mental illness (SMI) must have natural light and working toilets
 - Minimum out of cell time
 - Recreation and structured programing
 - ▶ Amend DOC polices as it relates to inmates with SMI
 - No disciplinary write ups for behavior that is a manifestation of mental illness
 - Mental Health training for correctional officers
 - Individualized suicide prevention plans for at risk inmates
 - Treatment plans for inmates who are SMI
 - ▶ Appropriate licensed therapist, mental health techs and activities coordinators
 - Independent monitor appointed



SB 5 Working Group

- ▶ DRM has been involved in the SB5 Working Group since September 2019.
- ▶ Participated in most large SB5 working group for the past 3 ½ years
- Participated in following small groups created to focus on issues:

Positive Behavior Support Small Group
Person-Centered Language Small Group
Client Rights Small Group
Definitions Small Group
Incident Management Manual Review Small Group
Visions, Goals, and Objectives (VGO) Small Group
Personal Support Plan (PSP) Manual Small Group

▶ DRM's participation included extensive research into legal issues, in-depth comparisons with other state regulations to find the best models for consideration by the working groups for potential administrative rule revisions.

The Yellow Bags: Discharges into Homelessness from Montana State Hospital



- Report released in December 2022
- ► Purpose to highlight the broken underfunded mental health services system.
- ► To acknowledge the practice and begin a dialogue to seek solutions.
- ▶ It was not to blame or shame any person, provider, or state employee.
- ► The report is factual.
- ▶ Being committed to one of the most expensive treatment facilities in the State then discharged to homelessness is a system failure

Groups we are part of

- Seat on the State Rehabilitation Council
- Member of the DDP Mortality Review Work Group
- Seat on the Montana Council on Developmental Disabilities
- Seat of the Special Education Advisory Panel (result of litigation)
- Senate Bill 5 Working Group
- Guide House Medicaid Rate Study Steering Committee



How DRM fulfills its mandate, How we move forward

- Acknowledge progress.
- ► Highlight failures for the purpose of achieving integrated communities were people with disabilities have equal opportunities.
- Create change through:
 - ▶ Education
 - Advocacy
 - **▶** Litigation
 - **▶** Collaborations

Thank you,

Questions?

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