MINUTES

MONTANA SENATE 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Dick Pinsoneault, on February 15, 1991, at 10:00 a.m.

ROLL CALL

Members Present:

Dick Pinsoneault, Chairman (D) Bill Yellowtail, Vice Chairman (D) Robert Brown (R) Bruce Crippen (R) Steve Doherty (D) Lorents Grosfield (R) Mike Halligan (D) John Harp (R) Joseph Mazurek (D) David Rye (R) Paul Svrcek (D) Thomas Towe (D)

Members Excused: none

Staff Present: Valencia Lane (Legislative Council).

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Announcements/Discussion:

HEARING ON SENATE BILL 250

Presentation and Opening Statement by Sponsor:

Senator Tom Keating, District 44, said SB 250 amends the laws relating to commitment of persons who are developmentally disabled; provides an administrative screening process prior to commitment; clarifies terminology; and provides for a new definition of seriously developmentally disabled. He said the bill addresses problems at Eastmont with clients from Boulder.

Proponents' Testimony:

Bob Anderson, Administrator, Special Services, Eastmont in Glendive, read from prepared testimony in support of the bill. He said Boulder is facing a certification problem, and that the

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Governor appointed an interagency task force whose four-phase plan was released in November 1990. He explained that the action on phases 1-3 will be taken in FY90-91, and that on phase 4 will be taken over the next biennium.

Mr. Anderson stated that the task force put together the recommendations in this bill (Title 50, Chapter 20), which redefines services for the developmentally disabled and gives rule-making authority to establish residential screening committees. He said the bill also has a fiscal note.

Janice Frisch, Management Operations Bureau Chief, Developmental Disabilities Division, Department of Social and Rehabilitative Services (SRS), read from prepared testimony in support of the bill (Exhibit #1).

Greg Olsen, Developmental Disabilities Planning and Advisory Council, also read from a prepared statement in support of the bill (Exhibit #2).

Chris Volinkaty, lobbyist for developmentally disabled, advised the Committee that deinstitutionalization began in 1975. She urged the Committee to adopt the bill which, she said, is supported by both consumers and providers. She stated she believes the Human Services Subcommittee has done a good job in meeting the needs of 1,000 people on the waiting list.

Kelly Moorse, Executive Director, Mental Disabilities Board of Visitors, stated her support of the bill. She commented that amendments were made in 1979 and 1987, but this is the first overhauling since Senator Towe introduced this legislation in 1975. She explained that Boulder and Eastmont have asked for clarification of their positions (Exhibit #3).

Rick Sherwood, attorney representing the Montana Advocacy Program, read from a prepared statement in support of changes made in the bill (Exhibit #4).

Opponents' Testimony:

Mark Langdorf, Staff Representative, American Federation of State, County, and Municipal Employees (AFL-CIO), Montana Council 9, said he represented more than 3,000 public sector employees. He advised the Committee that section 2, #15 is too restrictive and would exclude individuals. Mr. Langdorf read the definition of developmentally disabled in the bill, and said residential facility review teams do not include direct care staff from Boulder or Eastmont who provide 90 percent of residential care.

Mr. Langdorf said he was concerned with out-of-state care, and that he believes those with families in Montana should be cared for in Montana (Exhibit #5).

SENATE JUDICIARY COMMITTEE February 15, 1991 Page 3 of 10

Russ Myers, employee at the Boulder facility, told the Committee he is the appointed guardian for his nephew who was committed to Boulder and was later placed in a group home in Bozeman, and then moved to Butte. He said he believes his nephew was "warehoused", and commented that he is against the phase-down at Boulder. Mr. Myers said people will not receive the same type of care in group homes that they receive in Boulder. He stated that each behavioral problem is unique in itself, and that the bill would have a detrimental monetary impact on Butte, Boulder, Whitehall and surrounding areas.

Questions From Committee Members:

Senator Doherty asked Mark Langdorf to point to the section of the bill applying to out-of-state care. Mr. Langdorf replied this language is not in the bill directly. He said the facts are that many developmentally disabled persons have been routed to neighboring states, and that he has been contacted by families of clients asking why this was done. Bob Anderson replied he is unaware of developmentally disabled adults being sent out-of-state for services, but dually-diagnosed adolescents are sent out-ofstate because there are no provisions in-state for them. Mr. Anderson estimated this figure to be about 40 children, and said provisions in the bill will change this over the next biennium.

Senator Towe asked why the bill would eliminate protection with regard to waiver on page 12, lines 9-17 (section 7). Cary Lund, attorney, SRS, replied that entry to a facility will be by petition to the court, and administrative screening will occur.

Senator Towe asked if there would be no 30-day evaluations. Cary Lund replied he thought that was correct, but he would check and get back to Senator Towe if he were wrong. He said SRS did set out to remove voluntary placement in facilities.

Senator Towe asked if administration of proceedings were changed in section 9 of the bill. Mr. Lund replied that the professional person concept of a screening committee was "beefed up".

Senator Towe asked about "responsible person". Cary Lund replied he did not believe that language was changed.

Senator Towe asked about changes at the bottom of page 10 and the top of page 11 dealing with treatment. He stated that prior law existed solely because developmentally disabled rehabilitation was outside the facility. Senator Towe asked if this change were intended. Cary Lund replied that from the 1977 Legislative session, 53-20-132, MCA, prohibited court-ordered placements.

Closing by Sponsor:

Senator Keating thanked the Committee and advised them of an amendment to correct a typographical error on the last page of the bill. He said 1993 should be 1995 (Exhibit #6).

HEARING ON SENATE BILL 257

Presentation and Opening Statement by Sponsor:

Senator Del Gage, District 5, said the bill would put a law enforcement advisory council in place for more coordination, rather than trying to put an enforcement effort together when an emergencies arises.

Proponents' Testimony:

Marc Racicot, Attorney General, Department of Justice (DOJ), said the bill is a housekeeping mechanism and an effort to establish strong ties between local law enforcement and DOJ. He advised the Committee that meetings on this issue have been ongoing for the past two years, and that there have been a number of situations in which DOJ was called upon to act on behalf of local authorities.

Mr. Racicot explained that the bill provides explicit authority for an advisory council to meet to establish protocol. He stated that paragraph 2 of section 5 says "must" have a multijurisdictional role, and should be amended to state "shall".

Mr. Racicot reported that the bottom line is this legislation makes provision for operating rules to define and specify agency rules in DOJ for any situation with which the Department may become involved. He said it will serve to create a long and stable relationship with local law enforcement.

Bill Fleiner, Lewis and Clark County Undersheriff, and Montana Peace Officers Association, stated his support of the bill.

Opponents' Testimony:

There were no opponents of SB 257.

Questions From Committee Members:

Senator Mazurek asked why this legislation is needed, and if DOJ did not already have this authority. Marc Racicot replied he wanted to establish this for a long time in the future, "as sometimes roles are unclear when several counties are involved". He said he wanted everyone to operate under the same rules. Senator Mazurek asked if this could be done under the authority to set up councils. Mr. Racicot replied there is no rule right now.

SENATE JUDICIARY COMMITTEE February 15, 1991 Page 5 of 10

Senator Harp asked for clarification on provisions for peace officers in section 5, and if the bill would put everyone under one section. Marc Racicot replied that is contained in section 4, but is not as explicit. He stated that this language is also contained in section 3, but paragraph 2 is new. Mr. Racicot said section 1 contains operating provisions.

Senator Towe said he did not understand the fiscal note. Marc Racicot replied he contemplated nine advisory council members who would be reimbursed for four meetings annually.

Senator Towe asked Mr. Racicot if he wanted the number of members of the advisory council to be flexible. Mr. Racicot replied he did, but anticipated nine members.

Senator Halligan stated he was uncomfortable with allowing DOJ to pick an advisory council, as it could then fire any council member. He said he believed there should be some objectivity in the selection process. Marc Racicot replied that Senator Halligan's point was well-taken, and that terms could be established to permit carryover. He added that he originally proposed this, but the Peace Officers suggested that it be removed.

Closing by Sponsor:

Senator Gage made no closing comments.

HEARING ON SENATE BILL 270

Presentation and Opening Statement by Sponsor:

Senator Bob Williams, District 15, said the bill would allow and regulate amusement games. He explained it was the result of problems people had with carnival games, and that the matter had been discussed with Bob Robinson, Gambling Control Division Administrator.

Senator Williams submitted an amendment to cover an omission when the bill was drafted, and said it is important that this legislation be effective upon signature, because of the upcoming carnival season (Exhibit #7).

Proponents' Testimony:

Bob Robinson, Gambling Control Division Administrator, DOJ, said the fair boards expressed their concerns to him. He stated that SB 431 prohibits or defines gambling as any risk based on chance. He advised the Committee he worked with carnivals to determine which games could be played and tried to focus on games of skill, since games of chance cannot be played (Exhibits #8 and 9).

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Mr. Robinson reported that an attorney requested to be advised as to whether or not crane games were a gambling device if prizes had money attached. He said the Attorney General decided such games were illegal, and that this decision was upheld by the Flathead District Court.

Mr. Robinson explained that the bill describes games, how they are to be used, where they may be played, and takes them out of the gambling arena. He commented that he is mostly in agreement with the bill, but has serious objections to games of chance. Mr. Robinson stated it was tough to come up with fair language to deal with policy issues on games of amusement, and said he supported Senator Williams' amendment. He explained that amendment 5 was in the original draft of the bill, and serves to reinforce existing gambling law.

Representative Don Steppler, District 21, said he was testifying as a representative of the Richland County Fair and Rodeo. He read from prepared testimony, and said he agreed that guidelines were necessary. He asked the Committee to support SB 270.

Patrick Holt, Missoula attorney, said he assisted Bob Robinson and Lois Menzies (Gambling Control Division) in drafting this bill. He stated he believes it is most important to understand that the drafters researched restrictions of other states, and said the goal is not to create a new industry in the state. Mr. Holt advised the Committee that the gambling act eliminated many games, and that carnivals are trying to get back to status quo on games which have always been played in Montana.

Mr. Holt reported that the drafters discussed skill versus chance, and said it is important to note the context of what is and what is not chance as it relates to amusement games. He stated that not more than \$5 can be risked on games and there can be no fraud upon players. He further stated that prizes must be tangible personal property, and that enforcement is intended to be uniform.

Bill Chiesa, General Manager, Metro Park, Billings, told the Committee he serves as general chairman for 38 fairs in Montana. He said he believes the bill is housekeeping which needs to be done, as carnivals at fairs generate a good deal of income to the state and bring families. He encouraged the Committee to support the bill.

Robert Ziegler, Dawson County Commissioner, stated his support of the bill.

Sam Yenusiak, Western Montana Fair, explained that carnival proceeds from fairs can add 15-20 percent to a county budget. He said he believes fairs try hard to be a family event.

Mr. Yenusiak testified on behalf of Gordon Morris, Montana Association of Cities and Towns, in support of the bill.

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Larry Stollfuss, Executive Director, Rocky Mountain Association of Fairs, stated that all 38 fairs in Montana support the bill. He advised the Committee that he is also a school superintendent, and that the gambling act even made cake walks a form of gambling (Exhibit #10).

Dave McClure, Central Montana Fair Board, Lewistown, said last season many families asked what had happened to their favorite games.

Jack Ziegler, Yellowstone County Commissioner, asked to go on record in support of SB 270.

Eleanor Pratt read from testimony in support of the bill.

Bob Severtson, Chairman, Hill County Fair Board, Havre, urged the Committee to support the bill. He said it is a big part of the cultural aspect of communities, and that he believes if carnivals are lost it will affect fairs. He commented that he has served on the Fair Board for 22 years.

Gloria Paladichuk, Richland County Commissioner, stated her support of the bill.

Gary Koepplin, Ravalli County Fair, Hamilton, commented that carnivals are a major revenue generator for fairs.

Linda Stoll-Anderson, Lewis and Clark County Commissioner, asked the Committee to support the bill.

John Labenburg, Fort Peck, said he worked on the bill. He stated the income and fanfare produced by carnivals are part of rural America, and that it is important to the economy and society of rural America to pass this bill.

Mik Mikkelson, A&M Novelty, Belgrade, told the Committee he began working on the crane game problem with the Attorney General's office in 1990. He explained that this situation is addressed and corrected in the bill. Mr. Mikkelson advised the Committee that "on a 29.8 percent payout on 30 percent gross revenue, 35 percent of that figure was paid to the location, 17.8 percent went to expenses, and 17.4 percent went to the community".

Opponents' Testimony:

Harley Warner, Montana Association of Churches, said he opposed the bill as it was originally written, because it would allow casino nights. He stated he supports the bill with the amendments and agreed with the concepts in the bill, as his own church sponsors games to fund a mission project in Guatemala. Mr. Warner told the Committee he sees having no limit on personal property prizes as a problem. Gary Bennett, Montana Coin Machine Operators, told the Committee he is a reluctant opponent, as the bill doesn't allow for a regulatory or rulemaking authority, requires no licenses, and sets no limits or caps on payout. He commented that there have been problems with gray areas in the gambling bill in the past, and that he doesn't want the same thing to happen with this legislation.

Mr. Bennett advised the Committee there is a \$2 limit on bets in the gambling statutes, and said he believes the bill sets gambling back about 15 years. Mr. Bennett added that he wants to find a way to allow these games of amusement in the state, but believes the bill has serious problems. He suggested a four or five day permit exempting carnival games from the gambling act.

Questions From Committee Members:

Chairman Pinsoneault asked Patrick Holt to address the statements made by Gary Bennett in opposition to the bill. Mr. Holt replied said he believed there are legitimate concerns, except amusement games cannot be operated by for-profit enterprises. He read from page 3, line 8, sections 5 and 6, and said the intent is that amusement games are to be restricted to what they have always been used for. He added that the bill does not restrict churches and cake walks.

Chairman Pinsoneault asked Patrick Holt to comment on limits on tangibles of \$50 or \$100. Mr. Holt said he believed economics would limit prizes given, and that winners can trade prizes in, but cannot receive cash for them. He commented that if no one wins a game, no one will probably play that game, and said the games are designed to establish competition.

Senator Towe asked if the definition of operator on page 3 allows anyone to be an operator. Mr. Holt replied it does.

Senator Towe commented that "business association or similar entity" in the bill would allow anyone to run these games in a bar. Mr. Holt replied that issue should receive further consideration. He stated that the idea behind that language was groups of shopping center merchants, and that maybe it needed to be cleaned up.

Senator Mazurek asked if a shopping center mall could set up a permanent carnival. Mr. Holt replied there is no real prevention of this.

Senator Mazurek asked about the focus on time limits. Mr. Holt replied 10 days to 2 weeks was discussed during the drafting stage. He added that carnivals must be licensed in Missoula County, and are subject to police investigation.

Senator Mazurek asked if any effort were made to deal with short-term bingo games. Mr. Holt replied that the drafters did not

perceive bingo as a problem. He said the goal was to address games wiped out by the gambling act.

Senator Mazurek asked how the \$5 limit was arrived at. Reed Williams, Inland Empire Shows, reported that it was derived from operators in Billings and covers three tries.

Senator Doherty asked if there were any concern on the part of DOJ that Indian reservations can allow larger prizes to be picked up. Bob Robinson replied he was not sure where this would fall or if it were even class 3 gaming.

Senator Grosfield asked what class 3 gaming includes. Bob Robinson replied that if it were taken out of the gambling statute, but were addressed by the Indian Gaming Regulatory Act, he was fairly confident it would not apply.

Senator Grosfield asked Reed Williams what the maximum value of prizes offered is. Mr. Williams replied it is \$5 or \$6, and for average games it is \$1 or \$2. He advised the Committee he opposed limits as operators must negotiate with importers who constantly increase their prices. Mr. Williams said he did not believe \$5 to win a \$10,000 diamond would work as the prize would have to be too unattainable versus the profit.

Senator Mazurek asked about rulemaking and enforcement authority. Mr. Holt replied that was discussed and considered in the draft, but is already included under DOJ. He said the idea is to continue cooperation between the industry and the Gambling Division, and to establish uniform guidelines within the state.

Senator Towe asked where one can go to get clarification of permission except to local jurisdictions. Mr. Holt replied the language in the bill says games can't be controlled by any external means. Reed Williams stated that if there were questions on the local level they would defer to Bob Robinson.

Senator Towe commented that a county attorney does not have to go along with the Gambling Control Division. Mr. Holt replied it would be a difficult problem in that respect, but the goal of the bill is to promote harmony.

Closing by Sponsor:

Senator Williams thanked the Committee for the time spent hearing SB 270.

EXECUTIVE ACTION ON COMMITTEE BILL

Motion:

Senator Svrcek made a motion to request a committee bill to increase the statute of limitations for filing complaints with the

SENATE JUDICIARY COMMITTEE February 15, 1991 Page 10 of 10

Human Rights Commission from 180 days to 1 year because of language in SB 199. He said he believes the Committee needs to look at this and to provide consistency for filing of complaints within that state agency.

Discussion:

Senator Mazurek commented that his sense was a committee bill on this issue would not get much of a fair hearing.

Senator Rye asked Senator Brown for his opinion on the issue. Senator Brown, sponsor of SB 199, replied it is not a big deal and can be addressed next session, but it would not hurt to do it now.

Senator Yellowtail stated he believed it would be worth doing.

Senator Towe commented that there is some justification for consistency.

Senator Mazurek stated his express reason for changing the statute on housing complaints was to meet federal requirements. He said that since the state agency takes the responsibility of handling the complaint, it is not necessarily typical of the statutes of limitation.

Senator Svrcek said that no other statute is this short.

Amendments, Discussion, and Votes:

Recommendation and Vote:

Senator Svrcek's motion failed 5-7 in a roll call vote (Attached).

ADJOURNMENT

Adjournment At: 12:05 p.m.

Chairman Chairman Secre arv

DP/jtb

ROLL CALL

5	SENATE	JUDICIARY	_ COMMITTEE

5200 LEGISLATIVE SESSION -- 1989

Date<u>15 F269</u>/

NAME	PRESENT	ABSENT	EXCUSED
Sen. Pinsoneault			
Sen. Yellowtail	~		
Sen. Brown			
Sen. Crippen			
Sen. Doherty			
Sen. Grosfield			
Sen. Halligan			
Gen. Harp			
Sen. Mazurek	. \		
Sen. Rye			
Sen. Svrcek			
Sen. Towe			
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Each day attach to minutes.

Exhibit#1 15 Feb 91 SB 250

TESTIMONY OF THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES BEFORE THE JUDICIARY COMMITTEE (Re: SB 250 - Amending the Laws Relating to Commitment of Persons with Developmental Disabilities) February 15, 1991

The Developmental Disabilities Division supports the adoption of SB250. These revisions in the commitment law are an integral part of changes occurring in Montana's developmental disabilities service system.

Two critical components within this bill are the:

- 1. change in the definition of the seriously developmental disabled. This new definition more clearly defines which individuals are most appropriately served by community services and those who are more appropriately served within the The new definition will only allow institution. commitment of those persons in need the of specialized treatment because they exhibit behaviors that pose an imminent risk of serious harm to themselves or others. This change will allow institutional programs to specialize their treatment program and better meet the needs of persons with intensely, these challenging In turn, the community programs will behaviors. provide services to all who do not meet this new definition.
- 2. the change in the process by which recommendations are provided to courts relating to the commitment of persons with developmental disabilities. This change will better ensure that all community options have been explored and that the institution is considered the most appropriate service for an individual. The judicial system will have better information upon which to base its decisions. Those individuals who should not be in the institution can be diverted to community services.

As both the institutional and community programs continue to evolve to better serve individuals with developmental disabilities and their families, it is important that roles be clearly assigned. SB250 assists in this process.

Thank you for the opportunity to comment.

Submitted by:

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Janice Frisch, Chief Management Operations Bureau Developmental Disabilities Division





Planning For The Future Of Services In Montana

Developmental Disabilities Planning & Advisory Council

Post Office Box 526 Helena, Montana 59624 Phone 406-444-1334

TESTIMONY BEFORE THE SENATE JUDICIARY COMMITTEE

Mr. Chairman, Members of the Committee, for the record, my name is Greg Olsen. I am the Director of the State of Montana Developmental Disabilities Planning and Advisory Council.

I am here in that capacity to represent the Council in their support of Senate Bill 250.

This bill forms the backbone of the Governor's Action Plan to down-size the Montana Developmental Center. Through a redefinition of what constitutes a serious developmental disability, the mission of MDC becomes clear and a permanent place for the facility is created within the developmental disabilities service system in the state.

If this bill becomes law, MDC will no longer be subject to surprise or inappropriate admissions as has occurred in the past. In addition, all proposed admissions and readmissions to the facility will be reviewed by a committee composed of personnel from institutional and community services to ensure that all persons in need of services will receive a timely and appropriate assessment of their needs and a determination of where best those services can be delivered.

The Council urges your support for this bill.

FEBRUARY 15, 1991 SENATE BILL 250 GREG A. OLSEN



Exhibit #3 15 Feb 9/ SB 250

CAPITOL STATION

OFFICE OF THE GOVERNOR MENTAL DISABILITIES BOARD OF VISITORS

STAN STEPHENS, GOVERNOR

STATE OF MONTAN

(406) 444-3955 OR TOLL FREE 1-(800)-332-2272

HELENA, MONTANA 59620

15 February 1991

Senator Pinsoneault, Chairman Senate Judiciary Committee Room 325, State Capitol Helena, Montana 59620

Chairman Pinsoneault and Members of the Committee,

For the record, my name is Kelly Moorse and I am the Executive Director of the Mental Disabilities Board of Visitors. The Board of Visitors is charged with reviewing patient care and treatment at the state institutions which serve persons with a developmental disability (Montana Developmental Center and Eastmont Human Services Center) and mental health facilities. The Board of Visitors supports the changes identified in Senate Bill 250.

Although amendments were made to the Developmental Disabilities Act in 1979 and 1987, this is the first major overhaul of this act since it was introduced by Senator Towe in the 1975 session.

We feel Senate Bill 250 is a vital component in the agency collaboration which has developed the Montana Developmental Disabilities Service System. For the past several years, the Board of Visitors review of Montana Developmental Center at Boulder and Eastmont Human Services has asked for clarification of their mission, who they intend to serve and their respective roles in the delivery of services to persons with a developmental disability. With the implementation of the new missions and the changes proposed in Senate Bill 250, we are in a better position to provide quality treatment for those individuals with a developmental disability who will services, be it in the community or within the institution.

The Board of Visitors urges your support of Senate Bill 250. Thank you.

Sincerely,

Kelly Moorse Executive Director

Exhibi+#4 15 Feb91 SB250

WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.
Dated this 15 day of February, 1991.
Name: Rick Sherwood
Address: montane advocacy Program, 1410 8th ave
Helena, mt 59601
Telephone Number: <u>YYY-3889</u>
Representing whom?
- montana advocacy Brogram
Appearing on which proposal?
SB 250
Do you: Support? / Amend? Oppose?
Comments:
MAP appreciated the State's invitation to participate
MAP appreciated the State's invitation to participate in the task force which made the recommendation
which led to this bill. There were diverse view
on the task force. The bill does not
make all of the changer which MAP believer
are necessary to protect the right of person
with developmental disabilities. MAP
does support SB 250 though, since it
makes improvements in the existing law's
treatment of persons with developmental
disabilities particularly those with
serious developmental disabilities.



WRITTEN TESTIMONY OF

MARK LANGDORF STAFF REPRESENTATIVE AMERICAN FEDERATION OF STATE, COUNTY, AND MUNICIPAL EMPLOYEES MONTANA COUNCIL 9

ON SENATE BILL 250

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FEBRUARY 15, 1991

Good morning, Mr. Chairman, members of the Committee. I am Mark Langsdorf, Staff Representative of the American Federation of State, County and Municipal Employees (AFSCME) Council 9. AFSCME represents almost 3,000 Montana public sector employees, including those at Montana Developmental Center at Boulder. Nationwide, AFSCME represent over 200,000 public and private sector health care workers.

I appreciate the opportunity to address the Committee regarding Senate Bill 250.

I am here today to speak in opposition to several sections of Senate Bill 250.

First, the newly proposed definition of "seriously developmentally disabled" in Section 2, number 15, is so restrictive that it will exclude many individuals for whom treatment in a residential facility, like Montana Developmental Center is essential to their health and well being.

The definition in S.B. 250 requires that a developmentally disabled person have "behaviors that pose an imminent risk of serious harm to self or others" or "require total care". It is easy to see many severely or profoundly retarded persons who are medically frail, have a second diagnosis of mental illness, or who's behavior would not typically be classified as posing an

-1-

imminent risk of serious harm being excluded under this definition. These individuals will be ignored by the private sector system of care who's incentive is to care for those easiest to care for and those who will be least expensive to care for. Public sector residential facilities are the only source of care for these individuals.

Ex. #5 275-91

58250

More specifically, the types of individuals who benefit from services provided in residential facilities who would be excluded under the proposed definition include:

- Individuals with conditions like Pica, stereotypy and other specialized disorders which require skill and experience of state employees.
- o Dually diagnosed individuals.
- Medically fragile individuals who, though cognitively impaired, nevertheless can benefit from specialized active treatment provided in publicly-operated facilities.
- o Mentally retarded individuals with one or more of the following handicaps: epilepsy, cerebral palsy, spina bifida, vision, hearing or behavioral problems. In 1982, in one major nationwide study 60% of those individuals in ICF/MR's had one additional major

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EX#F 2-15-91 SB 200

handicap; 37% had two or more handicaps in addition to mental retardation.

Profoundly disabled individuals (IQs twenty or lower:
 60% of the current nationwide population of large
 ICF/MR's.

The second area of concern to us is that the residential facility review team is not mandated to include direct care staff from Montana Developmental Center and Eastmont Human Services Center. The direct care staff from these two institutions work with the developmentally disabled on a daily basis and provide 90% of the residents's care. It is their job to know and understand the care and treatment of the developmentally disabled and they should be integral to the review process.

The planning process that has taken place in Montana to date indicates that if not mandated by the legislature, the perspective provided by direct care workers will not be considered, or even worse rejected. Montana's sister states have taken a different approach, acknowledged the importance of the direct care workers and made them an integral part of the court mandated review, patient reviews and system planning.

Finally, we are very disturbed by this bill's directive regarding out-of-state care. It seems to us that if a persons family, home and/or friends live in Montana, that their care

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should be provided in state. Out-of state care should only be paid for under unusual circumstances, where a developmentally disabled person's family or friends are legal guardians and are out of state. Montanans must care for Montanans here in Montana.

EX#5 SO 25-0 2-15-91

I urge you to make amendments to this bill to make the definition of seriously developmentally disabled a reasonable and workable definition, requires that direct care workers be involved with the court review system, and promotes in-state care for Montana's developmentally disabled.

At this time I would like to turn the podium over to 2 Montana Developmental Center employees who are also guardians of developmentally disabled individuals. They bring to you the real story of what the developmentally disabled need and how hard it is to find that care.

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Exhibit # 6 57eh 91 58250

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AMENDMENT TO SB 250 Introduced Bill Copy

Prepared by the Departments of Institutions and Social and Rehabilitation Services. This amendment is necessary to correct an apparent typing error in the Introduced Bill as the LC copy was correct.

Page 48, Line 20 Delete: "1993" Add: "<u>1995</u>"

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Exhibit #7 15 F26 91 SB 270

PROPOSED AMENDMENTS TO SENATE BILL NO. 270

Submitted by Senator Bob Williams February 15, 1991

1. Page 1, line 11. Strike: "4" Insert: "5" 2. Page 2, line 20. Following: "operator" Insert: "as defined in subsection (6)(a)" 3. Page 3, line 8. Following: "who" Insert: ": (a)" 4. Page 3, line 12. Following: "games" Insert: "or; (b) makes a crane game available for public play on his premises or a premises owned by another person" 5. Page 4. Following: line 18 Insert: "NEW SECTION. Section 4. Gambling and illegal gambling devices and enterprises prohibited. An arcade, concessionaire, nonprofit organization, or operator may not make available for play a gambling or illegal gambling device or enterprise governed under Title 23, chapter 5, parts 1 through 6. Renumber: subsequent sections 6. Page 6, line 17.

Strike: "<u>4</u>" Insert: "5"

Exhibit #8 15 Feb 91 53270

Testimony on Senate Bill 270

Submitted by Bob Robinson, Administrator Gambling Control Division, Department of Justice February 15, 1991

Senate Bill 431 enacted by the 1989 Legislature had an unanticipated impact on certain carnival and amusement games. The most graphic example is the crane game. A county attorney, after seeing crane games used as a gambling device in licensed casinos, requested an Attorney General's opinion concerning its legality.

The Attorney General's opinion, (43 Op. Att'y Gen. No. 39) issued in October, 1989, determined that a crane game was an illegal mechanical gambling device. Subsequently, Flathead County District Court ruled a that crane game met the definition of a illegal gambling device.

This bill, with the amendment offered by the Division, would allow the operation of amusement games, including crane games, and establish standards for operating the games. Most importantly, the bill would exclude amusement games and crane games from the definition of gambling and from regulation under the gambling laws. Carnival games that depend upon chance or lot to determine the winner are considered illegal gambling activities under the current definition of gambling. The carnival industry willingly modified or withdrew several games during the 1990 carnival season to comply with this law.

This bill, developed by the industry and the Department, defines amusement games, sets standards for their play, and ensures that carnival games were legally operated in the future.

The Department generally supports this bill but has one reservation. On page 1, lines 16 and 17, the bill defines an amusement game as one whose outcome depends on "skill, mixed chance, and skill and chance." The Department believes that a

problem or conflict arises when a game is authorized whose outcome is determined by chance alone, which exactly meets the definition of gambling, but is exempt from the gambling law. The Division suggests that the law allow only those games that operate on the basis of skill or mixed chance or skill and that games of pure chance be left in the gambling arena.

SB270.RJR RJR/dcg



Revised April 5, 1990

Carnival Game Guidelines Prepared jointly by: Gambling Control Division, Department of Justice Rocky Mountain Fair Managers Association (Montana Committee) Representatives of the Outdoor Amusement Business Association

A. INTRODUCTION

In 1989 the Legislature significantly revised Montana's public gambling statutes. Gambling was defined as an activity in which something of value is risked for a gain which is contingent in whole in part upon an element of chance (23-5-112,(10) MCA). In or addition, the Legislature required the Department of Justice and the courts to strictly construe the law defining the gambling activities allowed by the Legislature. During the deliberations on gambling legislation the impact of the revised laws on carnival activities was not examined or discussed. Subsequently, it has become evident that a number of carnival games commonly played across the state of Montana involve gambling activity. The Montana Department of Justice, Carnival Operators, and Fair Managers Association jointly developed this document to provide guidance relative to the operation of carnival games in Montana to ensure gambling is eliminated from any offered activity.

B. NON-GAMBLING ACTIVITIES (PERMISSIBLE)

In applying the provisions of Title 23, Chapter 5, Montana Codes Annotated, it was not the intention of the Legislature to prohibit the conduct of games of skill. Consequently, the gambling statutes described in Title 23, Chapter 5 do not apply to the participants in an athletic or sporting event. Therefore, those carnival games which can be consistently won by individuals possessing an adequate level of skill will be considered sporting events and the participants are not subject to direct control by the Department of Justice; however, as a precaution, the following guidelines are suggested for all carnival games:

- 1. Carnival games must be conducted in a fair and honest manner;
- 2. The operator of the game should post in a conspicuous place (observable by the player) a sign stating:
 - a. name of the game;
 - b. cost per play;
 - c. rules of play;
 - d. how the game is won.
 - e. name of the game owner.

Lettering should be plain and clearly visible to the player.

- 3. The on site office of the carnival operator should retain a list of the full name and address of all carnival game owners;
- 4. No prize shall be displayed which cannot be won.
- 5. Game operators may exchange a small merchandise prize for one of equal or greater value.
- 6. The game must be attainable and possible with reasonable skill under the rules stated (no gaffs).
- 7. The outcome of any game must be based upon the skill of the player and not the judgement or determination of the operator (i.e. games including foul lines, rim shots, alibis etc.).
- 8. No concealed numbers or conversion charts, can be used in the play of the game.

The following describes games which the Department of Justice believes can be consistently won by an individual possessing an adequate skill level. The games are similar to athletic or sporting events in which those directly participating would not be considered by the Department of Justice to be involved in a gambling activity:

1. Dart games where the player may win the game by throwing the darts at a clearly visible target. This would not include dart games played with score boards with squares or targets so small as to be extremely difficult for the player to hit a selected target or which lack the necessary score combinations to win the prize or any form of dart game which has coded tags or symbols behind the balloon or other concealed target used to determine the winner. Winners must be determined strictly through their skill in being able to hit a designated target. The game may be either a choice or build up game. This group includes, but is not limited to games known as:

a.	Balloon Dart;
b.	Bust One;
c.	Bust Three;
d.	Tic, Tac, Toe;
e.	Target Dart
f.	Star Dart;
g.	Poster Dart;
h.	Cross Bow;
i.	Apple Cherry Dart;
j.	Small Mirrors;
k.	T-shirts;

2. Ball games where the player possessing a reasonable amount of skill may consistently win through throwing or rolling a ball at a particular type of target. This classification does not generally include games in which a ping pong or other similar ball

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is thrown in an attempt to land in another object such as a gold fish bowl or goblet. This group includes, but is not necessarily limited to, games commonly known as:

- a. Speed Ball where the winner is governed by the speed of the pitch, not by a match to any particular score;
- b. Long Range Football;
- c. Short Range Basketball;
- d. Long Range Mini Basketball;
- e. Milk Can;
- f. Peach Basket Toss as long as the play of the game does not involve foul lines, does not prohibit rim shots, and if baskets are not modified or angled in such a way as to make it nearly impossible for a reasonably skilled player to win;
- g. Tip 'Em Coke;
- h. Break a Bottle;
- i. Can Alley;
- j. Skee Ball where the device replicates a bowling game.
- 3. Guns or shooting games where the player with reasonable skill can consistently win by shooting at a target or hitting a particular target to win the game. This group includes, but is not necessarily limited to:
 - a. Shoot Out the Star provided that there are sufficient number of bb's to allow the player possessing a reasonable amount of skill to actually be able to shoot out the star;
 - b. Cross Bow;
 - c. Cork Gun;
 - d. Balloon Race;
- 4. Ring tosses where the player possessing a reasonable amount of skill would be able to consistently win by throwing a ring over or around a target to win. In most cases, the ring must be completely over the target to win, according to the specified rules of the game. This group includes, but is not necessarily limited to:
 - a. Ring Toss;
 b. Coke Ring;
 c. Rabbit or Duck Ring;
 d. Cone Pitch;
 e. Hula Hoop Bear Pitch;
- 5. Miscellaneous games in which a player possessing a reasonable amount of skill would be able to consistently win the game. These games include, but are not necessarily limited to:
 - a. Bottle Up or similar games the player picks up an empty bottle using a pole with a ring on the end of the string without allowing the bottle to fall off the stand;
 - b. Rope Ladder a ladder is on the swivel and if you can crawl to the top of the ladder you win;
 - c. Dip Bowling the bowling ball is rolled on the track over

an incline into a depression and must stay in the depression to win.

The carnival games listed above are described in general terms as there may be other games similar to these which would not constitute gambling activities pursuant to the Department of Justice' interpretation of Title 23, Chapter 5, Montana Codes Annotated.

In each case, if a player's ability to win any of the above games is restricted through the operator's display of prizes which cannot be won, alibis, concealed numbers, conversion charts, alterations to the game, or other gaffs, the Department will consider those games as gambling activities and may choose to investigate, and seek prosecution of the operator for fraud (23-5-156, MCA) or theft (45-6-301, MCA) and/or prohibited gambling (23-5-151, MCA).

C. GAMBLING ACTIVITIES (PROHIBITED)

The following describes those games which would be considered gambling activities as they are not an athletic or sporting activity and the outcome is determined by chance:

- 1. Mechanical games: Games in which a device which is often adjustable is used in order to determine the outcome of the game. This includes games commonly known as:
 - a. Dozer;
 - b. Cranes;
 - c. Diggers;
 - d. Frog Bog;
 - e. Circular Sweeper;
 - f. Flip a Chicken
- 2. Games in which the player selects a target or prize and the winner is determined through a concealed ticket, stamp, tag, number, or other similar symbol. These types of games include, but are not limited to:
 - a. Duck Ponds (This game will be allowed if there is a prize every time of equal value or, if the prize values vary, the ducks must be visibly labeled on the portion of the duck which is out of the water as to which prize a player can win by picking the duck);
 - b. Add 'Em Up Dart;
- 3. Gambling games which are a slightly altered version of games commonly used for a commercial gambling activity as follows:
 - a. Pokerino A mechanical roller rotates five tumblers with playing cards on them. The customer stops each tumbler individually, trying for a good poker hand. The better the hand, the more coupons won. Coupons are traded in for prizes;
 - b. Gold Fish or Goblet Pitch Ping pong or other similar balls are tossed at gold fish bowls or goblets. If the ball

lands in the bowl, you win the gold fish or other prize;

c. Derby or Roll A Ball - Balls are rolled one at a time into numbered holes. The first person to reach the required number wins;

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- d. Crazy Ball Money is placed on a color-coded counter. The ball or block is tossed onto the color-coded playing field. The player wins when the corresponding color comes up;
- e. Color Wheel This is similar to Crazy Ball only a color-coded wheel is used.

Any of the above-referenced games will be considered possession of illegal gambling devices or schemes subject to appropriate enforcement action (23-5-102, MCA) or investigation to determine the level of fraudulent or gambling activity (23-5-156, MCA).

Upon receipt of a written request, the Gambling Control Division, Department of Justice, will review other proposed variations of games or new carnival games in order to determine the applicability of Title 23, Chapter 5, Montana Codes Annotated. The written request should include a complete description of the play of the game, and, if possible, a video tape example. The Department may require a live demonstration of any game submitted for consideration. The Department shall make a determination as to whether the proposed game is a gambling activity and notify, in writing, the person submitting the request for carnival game review. The person may request a hearing to consider whether the proposed game is a gambling activity by submitting a written request to the department within 30 days of receipt of the department's decision. From this point forward, all proceedings shall be conducted in accordance with the Montana Administrative Procedure Act and the Attorney General's model rules of procedure.

Attached: Telephone numbers and addresses of the investigators

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WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.
Dated this 15th day of February, 1991.
Name: Larry Stollfuss Address: Box 255
Carter- MT 59400
Telephone Number: 734-5395
Representing whom?
Rocky mountain Association of Fairs
Appearing on which proposal?
5.3.270
Do you: Support? Amend? Oppose?
Comments:
Representing the 38 Montana Fairs who are
member of the Rocky MTW. Ass of Fairs We support
SB270 It provides the proper amount of control
in the Amusement games industry Amusement games
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needed revenue for the industry to function in a profit
mode within the State. S.B 270 will allow carnidals
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are dependent on carninal's for a large portion of their
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