

## 1 SENATE BILL NO. 37

2 INTRODUCED BY LYNCH

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING THE HOUSING OF SEX OFFENDERS IN A FACILITY  
5 WITHOUT THE APPROVAL OF THE GOVERNING BODY OR VOTERS OF THE COUNTY IN WHICH THE  
6 FACILITY IS LOCATED; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY  
7 DATE."

8  
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10  
11 **NEW SECTION. Section 1. Vote on housing sex offenders in county.** (1) Except as provided in  
12 subsections (2) and (5), a person convicted of one of the following offenses or of an offense as to which  
13 one of the following offenses is an included offense may not be incarcerated or otherwise housed in a state  
14 prison, boot camp, jail, community corrections facility, prerelease center, mental or other hospital or health  
15 care facility, or other state, county, municipal, or private facility unless a majority of the governing body  
16 or registered voters of the county in which the facility is located votes to allow persons convicted of any  
17 of the following offenses to be incarcerated or housed in the facility:

18 (a) sexual assault, 45-5-502;

19 (b) sexual intercourse without consent, 45-5-503;

20 (c) indecent exposure, 45-5-504;

21 (d) deviate sexual conduct, 45-5-505, or incest, 45-5-507, with a person who did not consent to  
22 the act underlying the offense or when, at the time of the offense, the convicted person was 18 or more  
23 years of age and the offense was committed with a person who consented but was under 16 years of age;  
24 or

25 (e) ritual abuse of a minor, 45-5-627.

26 (2) A vote is not necessary under subsection (1) to place a convicted person in a mental or other  
27 hospital or health care facility for diagnosis or treatment of physical problems or diagnosis, but not  
28 treatment, of mental problems.

29 (3) Except as provided in subsection (4), a vote under subsection (1) may not be taken within 3  
30 years of a prior vote.

1           (4) A vote under subsection (1) must initially be by the governing body, which shall first give notice  
2 of and hold a public hearing on the question. The governing body's vote may be overruled by the  
3 registered voters at an election held within 6 months of the vote of the governing body if, within 3 months  
4 of the vote of the governing body, that body is presented with a petition, signed by at least 5% of the  
5 registered voters, for an election on the question.

6           (5) If the governing body or voters in each county in which the state considers it feasible to  
7 incarcerate or house the persons referred to in subsection (1) in a state facility in the county votes against  
8 it, the state may hold a public hearing in a county in which the state considers it feasible to incarcerate or  
9 house the persons. Following the hearing, the state may incarcerate or house the persons in a state facility  
10 in the county regardless of the prior negative vote. The facility must be on land owned by the state.

11

12           NEW SECTION. Section 2. Applicability. [This act] applies to incarcerations and other placements  
13 that begin after December 31, 1997.

14

15           NEW SECTION. Section 3. Effective date. [This act] is effective on passage and approval.

16

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0037, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act prohibiting the housing of sex offenders in a facility without the approval of the governing body or voters of the county in which the facility is located; and providing an immediate effective date and applicability date.

ASSUMPTIONS:

1. The Department of Corrections (DOC) assumes it would cost approximately an additional \$20 per day if the department were required to send these inmates to out-of-state facilities.
2. Fiscal year 1996 sex offender admissions to Montana State Prison (MSP) were 100; Women's Correctional Center (WCC) admissions were four.
3. In fiscal year 1995, there were three sex offenders housed in pre-release centers in Montana.
4. It is estimated that it costs an average of \$3,318 per trip to transport to or from an out-of-state facility. It is also assumed there are three offenders and two officers on each of 17 trips in fiscal year 1998 and 36 trips in fiscal year 1999.
5. It is estimated that 52 offenders would be affected by this legislation in FY98; 159 in fiscal year 1999.
6. The additional cost of locating placements for these offenders in out-of-state facilities and monitoring the contract provisions would require a 1.00 FTE Placement Specialist (grade 15). Operating costs would be \$3,900 each year and equipment of \$3,962 for fiscal year 1998 only.
7. There is no impact to the Department of Justice.
8. The Department of Commerce/Local Government Assistance Division does not have information in existing database/library that defines the fiscal impact of this bill.

FISCAL IMPACT:

Expenditures:

	<u>FY98</u>	<u>FY99</u>
	<u>Difference</u>	<u>Difference</u>
FTE	1.00	1.00
Increased care and custody	187,200	1,160,700
Personal Services	34,440	34,440
Operating Expenses	60,306	123,348
Equipment	<u>3,962</u>	<u>0</u>
Total	285,908	1,318,488

Funding:

General Fund (01)	285,908	1,318,488
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LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

The costs to the DOC would increase in future years as inmates are brought back to the state for release as well as transferred to the out-of-state facility.

*Dave Lewis* 1-13-97

DAVE LEWIS, BUDGET DIRECTOR DATE  
Office of Budget and Program Planning

J.D. LYNCH, PRIMARY SPONSOR DATE

Fiscal Note for SB0037, as introduced

**SB 37**

APPROVED BY COM ON  
LOCAL GOVERNMENT

SENATE BILL NO. 37

INTRODUCED BY LYNCH, BECK, SHEA, BAER, MENAHAN

A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING THE HOUSING OF SEX OFFENDERS IN A NEW FACILITY WITHOUT THE APPROVAL OF THE GOVERNING BODY OR VOTERS OF THE COUNTY IN WHICH THE FACILITY IS LOCATED IF THE FACILITY WILL HOUSE ONLY OR PRIMARILY SEX OFFENDERS; AMENDING SECTION 76-2-412, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**NEW SECTION.** **Section 1. Vote on housing sex offenders in county.** (1) Except as provided in subsections (2) and (5), a person convicted of OR A MINOR ADJUDICATED A DELINQUENT YOUTH FOR one of the following offenses or of an offense as to which one of the following offenses is an included offense may not be incarcerated or otherwise housed in a state prison, boot camp, jail, community corrections facility, prerelease center, mental or other hospital or health care facility, FOSTER HOME, YOUTH GROUP HOME, COMMUNITY RESIDENTIAL FACILITY, DAY-CARE HOME, or other state, county, municipal, or private facility THAT ONLY OR PRIMARILY INCARCERATES OR HOUSES SUCH PERSONS unless a majority of the governing body or registered voters of the county in which the facility is located votes to allow persons convicted of any of the following offenses to be incarcerated or housed in the facility:

(a) sexual assault, 45-5-502;

(b) sexual intercourse without consent, 45-5-503;

(c) indecent exposure, 45-5-504;

(d) deviate sexual conduct, 45-5-505; or incest, 45-5-507, with a person who did not consent to the act underlying the offense or when, at the time of the offense, the convicted person was 18 or more years of age and the offense was committed with a person who consented but was under 16 years of age;

or

(e) ritual abuse of a minor, 45-5-627.

(2) A vote is not necessary under subsection (1) to place a convicted person in a mental or other

1 hospital or health care facility for diagnosis or treatment of physical problems or diagnosis, but not  
2 treatment, of mental problems.

3 (3) Except as provided in subsection (4), a vote under subsection (1) may not be taken within 3  
4 years of a prior vote.

5 (4) A vote under subsection (1) must initially be by the governing body, which shall first give notice  
6 of and hold a public hearing on the question. The governing body's vote may be overruled by the  
7 registered voters at an election held within 6 months of the vote of the governing body if, within 3 months  
8 of the vote of the governing body, that body is presented with a petition, signed by at least 5% of the  
9 registered voters, for an election on the question.

10 (5) If the governing body or voters in each county in which the state considers it feasible to  
11 incarcerate or house the persons referred to in subsection (1) in a state facility in the county votes against  
12 it, the state may hold a public hearing in a county in which the state considers it feasible to incarcerate or  
13 house the persons. Following the hearing, the state may incarcerate or house the persons in a state facility  
14 in the county regardless of the prior negative vote. The facility must be on land owned by the state.

15

16 **SECTION 2. SECTION 76-2-412, MCA, IS AMENDED TO READ:**

17 **"76-2-412. Relationship of foster homes, youth group homes, community residential facilities, and**  
18 **day-care homes to zoning.** (1) A foster or youth group home operated under the provisions of 41-3-1141  
19 through 41-3-1143 or a community residential facility serving 8 or fewer persons is considered a residential  
20 use of property for purposes of zoning if the home provides care on a 24-hour-a-day basis.

21 (2) A family day-care home or a group day-care home registered by the department of public health  
22 and human services under Title 52, chapter 2, part 7, is considered a residential use of property for  
23 purposes of zoning.

24 (3) ~~The~~ Except as provided in [section 1], the facilities listed in subsections (1) and (2) are a  
25 permitted use in all residential zones, including but not limited to residential zones for single-family  
26 dwellings. Any safety or sanitary regulation of the department of public health and human services or any  
27 other agency of the state or a political subdivision of the state that is not applicable to residential  
28 occupancies in general may not be applied to a community residential facility serving 8 or fewer persons  
29 or to a day-care home serving 12 or fewer children.

30 (4) This section may not be construed to prohibit a city or county from requiring a conditional use

1 permit in order to maintain a home pursuant to the provisions of subsection (1) if the home is licensed by  
2 the department of public health and human services. A city or county may not require a conditional use  
3 permit in order to maintain a day-care home registered by the department of public health and human  
4 services."

5

6 NEW SECTION. Section 3. Applicability. [This act] applies to ~~incarcerations and other placements~~  
7 FACILITIES that begin OPERATING after December 31, 1997.

8

9 NEW SECTION. Section 4. Effective date. [This act] is effective on passage and approval.

10

-END-

STATE OF MONTANA - FISCAL NOTE

Revised Fiscal Note for SB0037, second reading

DESCRIPTION OF PROPOSED LEGISLATION:

An act prohibiting the housing of sex offenders in a facility without the approval of the governing body or voters of the county in which the facility is located; and providing an immediate effective date and applicability date.

ASSUMPTIONS:

1. The Department of Corrections (DOC) assumes that there will be no fiscal impact of this bill as it relates to adult offenders because the DOC has no plans to site any new facilities that primarily incarcerate sex offenders.
2. The DOC assumes that this bill will not impact the proposed Pine Hills expansion designed to house juvenile sex offenders at Miles City.
3. DOC assumes the proposal in the Governor's Executive Budget to allocate approximately \$5.4 million of juvenile placement funds to Judicial Districts is approved.
4. Communities may have more difficulty in siting new facilities designed primarily to house juvenile sex offenders under this bill. This could result in these juveniles needing services in out-of-state facilities.

FISCAL IMPACT:

Based on the above assumptions, there is no fiscal impact to the DOC as a result of this bill.

David Lewis by SB 1/25/97  
DAVE LEWIS, BUDGET DIRECTOR DATE  
Office of Budget and Program Planning

J.D. Lynch 1/27/97  
J.D. LYNCH, PRIMARY SPONSOR DATE

Fiscal Note for SB0037, 2nd reading

Rev. SB 37-#2

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