

1 *House* BILL NO. *270*
 2 INTRODUCED BY *Frankie Miller* *for J. Walker King*
 3 *Dwight Wyatt*

4 A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO THE PENALTY
 5 FOR THE OFFENSE OF VIOLATING PRIVACY IN COMMUNICATIONS;
 6 INCREASING THE PENALTY FOR CERTAIN REPEAT OFFENSES INVOLVING
 7 ILLEGAL TELEPHONE CALLS; MAKING A THIRD OR SUBSEQUENT
 8 OFFENSE A FELONY; AND AMENDING SECTION 45-8-213, MCA."

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

11 **Section 1.** Section 45-8-213, MCA, is amended to read:

12 **"45-8-213. Privacy in communications.** (1) Except as
 13 provided in 69-6-104, a person commits the offense of
 14 violating privacy in communications if he knowingly or
 15 purposely:

16 (a) with the purpose to terrify, intimidate, threaten,
 17 harass, annoy, or offend, communicates with any person by
 18 telephone and uses any obscene, lewd, or profane language,
 19 suggests any lewd or lascivious act, or threatens to inflict
 20 injury or physical harm to the person or property of any
 21 person (the use of obscene, lewd, or profane language or the
 22 making of a threat or lewd or lascivious suggestions is
 23 prima facie evidence of an intent to terrify, intimidate,
 24 threaten, harass, annoy, or offend);

25 (b) uses a telephone to attempt to extort money or any

1 other thing of value from any person or to disturb by
 2 repeated telephone calls the peace, quiet, or right of
 3 privacy of any person at the place where the telephone call
 4 or calls are received;

5 (c) records or causes to be recorded any conversation
 6 by use of a hidden electronic or mechanical device which
 7 reproduces a human conversation without the knowledge of all
 8 parties to the conversation. Subsection (c) does not apply
 9 to duly elected or appointed public officials or employees
 10 when the transcription or recording is done in the
 11 performance of official duty, to persons speaking at public
 12 meetings, or to persons given warning of the recording.

13 (d) by means of any machine, instrument, or contrivance
 14 or in any other manner:

15 (i) reads or attempts to read any message or learn the
 16 contents thereof while it is being sent over a telegraph
 17 line;

18 (ii) learns or attempts to learn the contents of any
 19 message while it is in a telegraph office or is being
 20 received thereat or sent therefrom; or

21 (iii) uses, attempts to use, or communicates to others
 22 any information so obtained;

23 (e) discloses the contents of a telegraphic message or
 24 any part thereof addressed to another person without the
 25 permission of such person, unless directed to do so by the



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1 lawful order of a court; or

2 (f) opens or reads or causes to be read any sealed
3 letter not addressed to himself without being authorized to
4 do so by either the writer of the letter or the person to
5 whom it is addressed or, without the like authority,
6 publishes any of the contents of the letter knowing the same
7 to have been unlawfully opened.

8 (2) (a) A person convicted of the offense of violating
9 privacy in communications shall be fined not to exceed \$500
10 or imprisoned in the county jail for a term not to exceed 6
11 months, or both.

12 (b) On a second conviction of subsection (1)(a) or
13 (1)(b), a person shall be imprisoned in the county jail for
14 a term not to exceed 1 year or be fined an amount not to
15 exceed \$1,000, or both.

16 (c) On a third or subsequent conviction of subsection
17 (1)(a) or (1)(b), a person shall be imprisoned in the state
18 prison for a term not to exceed 5 years or be fined an
19 amount not to exceed \$10,000, or both."

-End-

STATE OF MONTANA - FISCAL NOTE
Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0270, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:


A bill for an act entitled: "An act relating to the penalty for the offense of violating privacy in communications; increasing the penalty for certain repeat offenses involving illegal telephone calls; making a third or subsequent offense a felony; and amending section 45-8-213, MCA."

ASSUMPTIONS:

1. This bill increases the penalty for making obscene, threatening or other undesirable telephone calls and for other violations of privacy in communications. A second offense may be punished by fines and a jail term of up to one year; third or subsequent offenses may be punished by fines and a prison term of up to five years.
2. At present, there are no prison inmates convicted of violation of 45-8-213, MCA. One active probationer was convicted of this offense; an average of 1.2 persons per year have been admitted to probation upon conviction of this offense since 1986. The Montana Board of Crime Control reports an average of 533 obscene phone calls and 523 threatening phone calls each year in 1987, 1988, and 1989.
3. This bill probably will have a small but definitely negative impact on Montana's overcrowded corrections programs. If prosecutions are encouraged by the prospect of greater penalties, the impact could be greater.
4. Assume one person per year will be admitted to Montana State Prison for this offense.

FISCAL IMPACT:

	FY 92			FY 93		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
<u>Expenditures:</u>						
Operating Expenses	0	1,810	1,810	0	2,026	2,026
<u>Funding:</u>						
General Fund (01)	0	1,810	1,810	0	2,026	2,026


ROD SUNDSTED, BUDGET DIRECTOR DATE 1-24-91
Office of Budget and Program Planning


VICKI COCCHIARELLA, PRIMARY SPONSOR DATE
Fiscal Note for HB0270, as introduced **HB 270**

APPROVED BY COMMITTEE
ON JUDICIARY

House BILL NO. *270*

INTRODUCED BY

Cocchiarella *in Valleley*
Daniel D. Regatt

A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO THE PENALTY FOR THE OFFENSE OF VIOLATING PRIVACY IN COMMUNICATIONS; INCREASING THE PENALTY FOR CERTAIN REPEAT OFFENSES INVOLVING ILLEGAL TELEPHONE CALLS; MAKING A THIRD OR SUBSEQUENT OFFENSE A FELONY; AND AMENDING SECTION 45-8-213, MCA."

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Section 1. Section 45-8-213, MCA, is amended to read:

***45-8-213. Privacy in communications.** (1) Except as provided in 69-6-104, a person commits the offense of violating privacy in communications if he knowingly or purposely:

(a) with the purpose to terrify, intimidate, threaten, harass, annoy, or offend, communicates with any person by telephone and uses any obscene, lewd, or profane language, suggests any lewd or lascivious act, or threatens to inflict injury or physical harm to the person or property of any person (the use of obscene, lewd, or profane language or the making of a threat or lewd or lascivious suggestions is prima facie evidence of an intent to terrify, intimidate, threaten, harass, annoy, or offend);

(b) uses a telephone to attempt to extort money or any

other thing of value from any person or to disturb by repeated telephone calls the peace, quiet, or right of privacy of any person at the place where the telephone call or calls are received;

(c) records or causes to be recorded any conversation by use of a hidden electronic or mechanical device which reproduces a human conversation without the knowledge of all parties to the conversation. Subsection (c) does not apply to duly elected or appointed public officials or employees when the transcription or recording is done in the performance of official duty, to persons speaking at public meetings, or to persons given warning of the recording.

(d) by means of any machine, instrument, or contrivance or in any other manner:

(i) reads or attempts to read any message or learn the contents thereof while it is being sent over a telegraph line;

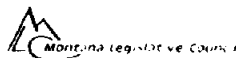
(ii) learns or attempts to learn the contents of any message while it is in a telegraph office or is being received thereat or sent therefrom; or

(iii) uses, attempts to use, or communicates to others any information so obtained;

(e) discloses the contents of a telegraphic message or any part thereof addressed to another person without the permission of such person, unless directed to do so by the

SECOND READING

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1 lawful order of a court; or

2 (f) opens or reads or causes to be read any sealed
3 letter not addressed to himself without being authorized to
4 do so by either the writer of the letter or the person to
5 whom it is addressed or, without the like authority,
6 publishes any of the contents of the letter knowing the same
7 to have been unlawfully opened.

8 (2) (a) A person convicted of the offense of violating
9 privacy in communications shall be fined not to exceed \$500
10 or imprisoned in the county jail for a term not to exceed 6
11 months, or both.

12 (b) On a second conviction of subsection (1)(a) or
13 (1)(b), a person shall be imprisoned in the county jail for
14 a term not to exceed 1 year or be fined an amount not to
15 exceed \$1,000, or both.

16 (c) On a third or subsequent conviction of subsection
17 (1)(a) or (1)(b), a person shall be imprisoned in the state
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19 amount not to exceed \$10,000, or both."

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 3 *Daniel D. Wyatt*

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HOUSE BILL NO. 270

INTRODUCED BY COCCHIARELLA, VAN VALKENBURG,
DOWELL, WYATT

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