HOUSE BILL NO. 270

INTRODUCED BY COCCHIARELLA, VAN VALKENBURG, DOWELL, WYATT

IN THE HOUSE

JANUARY 19, 1991

INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.

FIRST READING.

JANUARY 31, 1991 COMMITTEE RECOMMEND BILL DO PASS. REPORT ADOPTED.

FEBRUARY 1, 1991 PRINTING REPORT.

FEBRUARY 2, 1991 SECOND READING, DO PASS.

FEBRUARY 4, 1991 ENGROSSING REPORT.

FEBRUARY 5, 1991 THIRD READING, PASSED. AYES, 98; NOES, 1.

TRANSMITTED TO SENATE.

IN THE SENATE

ON JUDICIARY.

FIRST READING.

FEBRUARY 6, 1991

MARCH 12, 1991

MARCH 14, 1991

MARCH 15, 1991

SECOND READING, CONCURRED IN.

COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.

INTRODUCED AND REFERRED TO COMMITTEE

THIRD READING, CONCURRED IN. AYES, 48; NOES, 0.

RETURNED TO HOUSE.

IN THE HOUSE

MARCH 16, 1991

RECEIVED FROM SENATE.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

INTRODUCED BY Conditional in Single Buy Diget 1 2 3 A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO THE PENALTY 4 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 OFFENSE A FELONY; AND AMENDING SECTION 45-8-213, MCA." 8 9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: 10 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

Montana Legislative Council

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

13 (d) by means of any machine, instrument, or contrivance14 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;

(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

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l 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-

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STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for <u>HB0270</u>, 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:

- 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:

		<u>FY 92</u>		FY 93		
	<u>Current Law</u>	Proposed Law	Difference	<u>Current Law</u>	Proposed Law	Difference
<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

DATE

ROD SUNDSTED, BUDGET DIRECTOR Office of Budget and Program Planning

VICKI COCCHIARELLA, PRIMARY SPONSOR

Fiscal Note for <u>HB0270</u>, as introduced

DATE

HB 270

52nd Legislature

LC 0467/01

APPROVED BY COMMITTEE

ON JUDICIARY House BILL NO. 270 1 INTRODUCED BY 2 3 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: *45-8-213. Privacy in communications. (1) Except as 12 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;

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

13 (d) by means of any machine, instrument, or contrivance14 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;

(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

21 (iii) uses, attempts to use, or communicates to others 22 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

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SECOND READING

HB 210

LC 0467/01

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l 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.

(b) On a second conviction of subsection (1)(a) or
(1)(b), a person shall be imprisoned in the county jail for
a term not to exceed 1 year or be fined an amount not to
exceed \$1,000, or both.
(c) On a third or subsequent conviction of subsection
(1)(a) or (1)(b), a person shall be imprisoned in the state
prison for a term not to exceed 5 years or be fined an

19 amount not to exceed \$10,000, or both."

-End-

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INTRODUCED BY Cardligella In Vilke Buy Drivel Wygest 1 2 3 4 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.*

9

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

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:

16 (a) with the purpose to terrify, intimidate, threaten, 17 harass, annoy, or offend, communicates with any person by telephone and uses any obscene, lewd, or profane language, 18 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 making of a threat or lewd or lascivious suggestions is 22 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

Montana Legislat ve Council

other thing of value from any person or to disturb by
 repeated telephone calls the peace, guiet, 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 5 by use of a hidden electronic or mechanical device which 6 reproduces a human conversation without the knowledge of all 7 parties to the conversation. Subsection (c) does not apply 8 9 to duly elected or appointed public officials or employees 10 when the transcription or recording is done in the performance of official duty, to persons speaking at public 11 meetings, or to persons given warning of the recording. 12

13 (d) by means of any machine, instrument, or contrivance14 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;

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;

(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

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THIRD READING HB **290**

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.

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

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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-

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HB 0270/02

1	HOUSE BILL NO. 270	1	(b) uses a telephone to attempt to extort money or any
2	INTRODUCED BY COCCHIARELLA, VAN VALKENBURG,	2	other thing of value from any person or to disturb by
3	DOWELL, WYATT	3	repeated telephone calls the peace, quiet, or right of
4		4	privacy of any person at the place where the telephone call
5	A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO THE PENALTY	5	or calls are received;
6	FOR THE OFFENSE OF VIOLATING PRIVACY IN COMMUNICATIONS;	6	(c) records or causes to be recorded any conversation
7	INCREASING THE PENALTY FOR CERTAIN REPEAT OFFENSES INVOLVING	7	by use of a hidden electronic or mechanical device which
8	ILLEGAL TELEPHONE CALLS; MAKING A THIRD OR SUBSEQUENT	8	reproduces a human conversation without the knowledge of all
9	OFFENSE A FELONY; AND AMENDING SECTION 45-8-213, MCA."	9	parties to the conversation. Subsection (c) does not apply
10		10	to duly elected or appointed public officials or employees
11	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:	11	when the transcription or recording is done in the
12	Section 1. Section 45-8-213, MCA, is amended to read:	12	performance of official duty, to persons speaking at public
13	"45-8-213. Privacy in communications. (1) Except as	13	meetings, or to persons given warning of the recording.
14	provided in 69-6-104, a person commits the offense of	14	(d) by means of any machine, instrument, or contrivance
15	violating privacy in communications if he knowingly or	15	or in any other manner:
16	purposely:	16	(i) reads or attempts to read any message or learn the
17	(a) with the purpose to terrify, intimidate, threaten,	17	contents thereof while it is being sent over a telegraph
18	harass, annoy, or offend, communicates with any person by	18	line;
19	telephone and uses any obscene, lewd, or profane language,	19	(ii) learns or attempts to learn the contents of any
20	suggests any lewd or lascivious act, or threatens to inflict	20	message while it is in a telegraph office or is being
21	injury or physical harm to the person or property of any	21	received thereat or sent therefrom; or
22	person (the use of obscene, lewd, or profane language or the	22	(iii) uses, attempts to use, or communicates to others
23	making of a threat or lewd or lascivious suggestions is	23	any information so obtained;
24	prima facie evidence of an intent to terrify, intimidate,	24	(e) discloses the contents of a telegraphic message or
25	threaten, harass, annoy, or offend);	25	any part thereof addressed to another person without the
	Δ		-2- HB 270
	Montana Legislative Council		REFERENCE BILL

REFERENCE BILL

HB 0270/02

permission of such person, unless directed to do so by the 1 2 lawful order of a court; or 3 (f) opens or reads or causes to be read any sealed 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 7 publishes any of the contents of the letter knowing the same to have been unlawfully opened. 8 9 (2) (a) A person convicted of the offense of violating 10 privacy in communications shall be fined not to exceed \$500 11 or imprisoned in the county jail for a term not to exceed 6 12 months, or both. 13 (b) On a second conviction of subsection (1)(a) or 14 (1)(b), a person shall be imprisoned in the county jail for 15 a term not to exceed 1 year or be fined an amount not to 16 exceed \$1,000, or both. 17 (c) On a third or subsequent conviction of subsection 18 (1)(a) or (1)(b), a person shall be imprisoned in the state 19 prison for a term not to exceed 5 years or be fined an 20 amount not to exceed \$10,000, or both."

-End-

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HB 270