

**MINUTES**

**MONTANA SENATE  
52nd LEGISLATURE - REGULAR SESSION**

**COMMITTEE ON JUDICIARY**

**Call to Order:** By Chairman Dick Pinsoneault, on March 12, 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:** none

**HEARING ON HOUSE BILL 307**

**Presentation and Opening Statement by Sponsor:**

Representative Joe Quilici, District 71, told the Committee HB 307 extends the filing time requirements for cases involving sexual offenses against minors. He said present law requires that a crime must be reported to law enforcement officers within 72 hours or that good cause be shown. Representative Quilici explained that HB 307 eliminates the 72 hour requirement, and said the funding is actuarially sound and would not affect compensation.

**Proponents' Testimony:**

John Connor, Montana County Attorneys, told the committee that Mike McGrath, Lewis and Clark County Attorney is in Appropriations and could not be present, but the bill came about through Mr. McGrath's office. He said child abuse victims are unable to get compensation, when they have not reported in time, and that these cases then require administrative review to waive the time requirement. Mr. Connor explained that he does not believe that is

productive, and said these reporting requirements are sometimes unrealistic.

Cheryl Bryant, Crime Victims Unit, Department of Justice, read from prepared testimony in support of HB 307 (Exhibit #1). She said victims can report incidents within 72 hours or show good cause and file claims within one year or show good cause now. Ms. Bryant explained that some claims are denied because the adults do not respond to show good cause. She said about 1300 claims have been filed since January 1978, and a great majority of these are sexually abused minors.

Colette Baumgardner, Legislative Aide, Democratic Women's Caucus for the House and Senate, stated Caucus support of HB 307.

Mike McGrath, Lewis & Clark County Attorney, said he was also representing the County Attorneys Association. He said there have been problems over the years getting counseling compensation for sexual assault victims, and that the bill would resolve this issue.

#### Opponents' Testimony:

There were no opponents of HB 307.

#### Questions From Committee Members:

There were no questions from the Committee.

#### Closing by Sponsor:

Representative Quilici said he believes the bill is an important amendment to the Crime Victims Compensation Act, and asked the Committee to pass HB 307.

### HEARING ON HOUSE BILL 211

#### Presentation and Opening Statement by Sponsor:

Representative Dorothy Bradley, District 79, said the purpose of HB 211 is to amend the rape statutes to include homosexual rape.

She said the bill was requested and written by the Gallatin County Attorney's office, and that this is particularly important with regard to victims who are children.

Representative Bradley advised the Committee that eliminating "persons of the opposite sex" takes the penalty up to 40 years. She said that if the offender is a minor the county attorney can petition to transfer the case to the district court.

Representative Bradley explained an incident in Gallatin County where a 17 year old male molested two girls, ages 7 and 8,

and raped a 5-year-old brother. She said the incident was not considered to be rape, but deviate sexual conduct (Exhibit #2).

Proponents' Testimony:

John Connor, Montana County Attorneys Association, said he supported the testimony of Representative Bradley.

Diane Sands, Montana Women's Lobby, said she believes all rapes and sexual assaults should be prosecuted under the same section of the code, and the penalties should be equalized.

Opponents' Testimony:

There were no opponents of the bill.

Questions From Committee Members:

Senator Towe asked Representative Bradley why the language at the bottom of page 2, top of page 3 was deleted. Representative Bradley replied it was deleted because it would have to go to deviate sexual conduct statutes if a boy was raped. She said it was determined that the language was not needed.

Senator Towe asked Representative Bradley if she was saying that there is no deviant sexual conduct without consent that does not constitute rape. He said, "One is the person who knowingly engages in deviate sexual conduct, and the one deleted is the person convicted of sexual intercourse without consent". Representative Bradley replied that she believes this language is no longer necessary.

Senator Towe asked John Connor if he agreed with Representative Bradley. Mr. Connor replied he did.

Closing by Sponsor:

Representative Bradley made no closing comments.

EXECUTIVE ACTION ON HOUSE BILL 211

Motion:

Senator Mazurek made a motion that HB 211 BE CONCURRED IN.

Discussion:

There was no discussion.

**Amendments, Discussion, and Votes:**

There were no amendments.

**Recommendation and Vote:**

The motion made by Senator Mazurek carried unanimously.

**HEARING ON HOUSE BILLS 269 AND 270****Presentation and Opening Statement by Sponsor:**

Representative Vicki Cocchiarella, District 59, advised the Committee she would like hear HBs 269 and 270 at the same time, as they both deal with incidents against children. She reported that a nine-year-old Missoula girl was traumatized for several days following an obscene phone call, and said two children from Billings were traumatized by a man who exposed himself to them. Representative Cocchiarella further reported that a blind woman from Missoula, whose husband is an invalid, repeatedly receives obscene phone calls from a mentally disturbed man and has turned to her (Cocchiarella) for help. She said people who do this are violent or potentially violent, and urged the Committee to think of their own homes and their spouses who may be alone while they were at the Legislature.

Representative Cocchiarella told the Committee that Mike Scalloti testified in the House and presented research reported from a New York study indicating that of 142 exhibitionists studied there were 73,000 victims and 77,700 acts of exposure, mostly to women and children. She said 35 of the offenders committed rape. Representative Cocchiarella advised the Committee that 19 obscene phone callers had approximately 2,000 victims out of 2,600 calls, and 7 of them had committed rape. She further advised them that a study in Missoula of 22 exhibitionists, showed 33,000 acts were committed to more than 30,000 victims. She said a study of obscene phone callers showed 1,500 acts occurring to 1,000 victims, and an average of 300 phone calls.

Representative Cocchiarella told the committee the bills create an increased penalty for these crimes, including more treatment time. She said Dr. Scalloti testified that these programs were successful, and asked the Committee to take care of women and children in Montana.

**Proponents' Testimony:**

John Connor, Montana County Attorneys Association, explained that both bills were requested by the County Attorneys, as the feeling was that they were dealing with indecent exposure and that these people need to be looked at in an evaluation and treatment area, as well as with regard to penalties. He said confrontation works, and both bills seek to do this.

Betty Wing, Deputy County Attorney, Missoula, said the bills were the result of the Child Protection Team of which Dr. Scalloti is a member. She explained a situation in Missoula where a young man won't quit making obscene telephone calls, and is in jail for three months. Ms. Wing stated this is not enough time to treat the young man.

Ms. Wing advised the Committee that cases can be taken into district court to get the supervision of an adult probation and parole officer. She commented that there are many acts of indecent exposure on the University of Montana campus.

Ron Silvers, Director, Center for Sexual Health, Helena, said the Center serve more than 100 clients, both perpetrators and victims. He said victim clients do not regard perpetrators as humorous, but as frightening. Mr. Silvers explained that the vast majority of offenders engage in multiple sex crimes. He explained that the victims learn the same common elements of power and control from the offender, and that offenders do not stop, but continue to seek pleasure. Mr. Silvers told the Committee there are very few self-help referrals, and that external motivation has proved to be very helpful (along with incarceration) in the beginning. He further stated that many choose prison rather than therapy because it is so difficult.

Janice Frankino Doggett, Women's Law Section of the State Bar, told the Committee that, as a law student, she was a victim of obscene phone calls for two and one-half years. She said she left Missoula to get away, but he called once in Helena at her parents' home.

Colette Baumgardner, Legislative Aide, Democratic Women's Caucus for both the Senate and the House, stated her support of the bills.

Star Jameson, Director, Rape Crisis Center, Missoula, read from prepared testimony in support of HB 270, (Exhibit #3).

Diane Sands, Montana Women's Lobby, stated her support for both bills. She said these are not victimless crimes and it is important that the offenders get treatment. She said it is equally important that the message gets out as to the seriousness of these crimes, and to stop violence against women and children.

Senator Fred Van Valkenburg, District 30, asked the Committee to support the bills and said he would carry them in the Senate.

#### Opponents' Testimony:

There were no opponents of the bill.

**Questions From Committee Members:**

Senator Pinsoneault asked John Connor what would be the best means to trace an obscene phone call and how difficult it would be. John Connor replied that most victims call law enforcement agencies who work with the phone companies. He commented that this is not difficult to do.

Senator Towe asked John Connor why language was included in (B) of HB 270 stating "repeated disturbances by phone calls". Mr. Connor replied that language is in the bill with respect to (A) and (b) only, and not in other areas where it is not as serious. He said he prosecuted a person in Ravalli County who had called the county attorney and his wife, and had the power cut off at a judge's home. Mr. Connor told the Committee that repeat offenses need to be dealt with more severely, as they can be very harmful.

**Closing by Sponsor:**

Representative Cocchiarella asked the Committee to think about these bills, and to remember that they were drafted to help people and not to put them away.

**EXECUTIVE ACTION ON HOUSE BILL 270****Motion:**

Senator Grosfield made a motion that HB 270 BE CONCURRED IN.

**Discussion:**

There was no discussion on the bill.

**Amendments, Discussion, and Votes:**

There were no amendments.

**Recommendation and Vote:**

The motion made by Senator Grosfield carried unanimously.

**EXECUTIVE ACTION ON HOUSE BILL 269****Motion:**

Senator Grosfield made a motion that HB 269 BE CONCURRED IN.

**Discussion:**

There was no discussion on the bill.

**Amendments, Discussion, and Votes:**

There were no amendments.

**Recommendation and Vote:**

The motion made by Senator Grosfield carried unanimously. Senator Pinsoneault said he would carry the bill.

**HEARING ON HOUSE BILL 735****Presentation and Opening Statement by Sponsor:**

Representative Bruce Measure, District 6, said HB 735 deals with insurer reimbursements to injured or third party claimants, who have a hard time collecting for incidental damages. He stated Senator Brown had a similar bill, and that they met with Mike Sherwood, Montana Trial Lawyers Association, to substantially alter this bill.

**Proponents' Testimony:**

Eric Thueson, Montana Trial Lawyers Association, told the Committee it was hard to understand any opposition to the bill under the Unfair Trade Practices Act. He said there are no ulterior motives in hanging on to money on the part of a person who owes it, and that if he owed money he would pay it. Mr. Thueson commented that the problem is the insurance companies don't want to deal that way. He submitted findings in a case before Judge John McCarvel (Exhibit #4).

Mike Sherwood, Montana Trial Lawyers Association, advised the Committee he received a call shortly before the bill drafting request deadline concerning problems a Kalispell attorney had regarding liability when it is reasonably clear that the monies should be paid. He commented that he has no personal experience in this area.

Mr. Sherwood told the Committee the original bill draft was completely different from the bill before them. He explained that SB 281 (Senator Bob Brown) was designed to address the same problem, i.e., requiring the driver to carry a "mini" health plan. Mr. Sherwood said it did not seem fair to place the burden on the insured to protect them from unfair trade practice, and further stated that after SB 281 was tabled, HB 735 was very much revised. He commented that testimony in the House indicated that this was not a problem.

Mr. Sherwood said it is very clear in the rulings of both Federal Judges Hatfield and Lovell that third party claimants do not have the same rights as the insured and there is no "bad faith". He said the bill is needed to uphold the language of Judge

McCarvel and not what Judges Hatfield and Lovell are saying. He commented that consistency is needed because third party claimants should have the same rights, and asked the Committee to adopt HB 735.

### Opponents' Testimony:

Representative Brent Cromley, District 94, told the Committee he is a practicing attorney in Billings. He said the bill leaves out the person being sued, who has purchased an insurance policy. He stated he believes the bill, basically, takes the insurance companies off the hook.

Representative Cromley explained that the problem is with the person who has been sued. He said that, under this bill, insurance companies can start to freely pay out medicals, etc., and that the person is left with only the amount of coverage not paid out. He commented that the Committee may want to make benefits payable with the okay of the insured.

John Maynard, Helena attorney, said HB 735 is an attempt to expand 1987 legislation which codified insurance "bad faith" legislation. He said this issue was recognized earlier by the Montana Supreme Court when they based their language on California's, but that language has now been overruled in California. Mr. Maynard stated that payment for damages is also part of the equation, and said that a case won in district court can be brought to higher court for "bad faith".

Mr. Maynard advised the Committee of Belling v Shelsky (recently tried in Helena) in which the plaintiff sought \$183,000 in damages and rejected an offer by the insurance company of \$7,500. He reported that the plaintiff visited a chiropractor 320 times, incurring medical expenses of \$11,780, but the jury awarded no monies and said none of the treatments were necessary.

Mr. Maynard said that, as currently written, HB 735 would require the insurance company to pay expenses on demand. He said he did not believe it is necessary to expand insurance "bad faith" beyond the model act, and proposed amendments (Exhibit #5).

Geri Nainer, Claims Agent, State Farm Insurance, Helena, told the Committee she had reviewed all claims for bodily injury in the Helena office and found 36 pending cases. She reported that all were paid within one week, but 27 of those elected to submit to their own carrier, and would be compensated by State Farm when their claim is concluded. Ms. Nainer stated that the nine remaining claims are being expense-advanced by State Farm to avoid hardship (25 percent of the 36 claimants). She said that of 733 claimants in the state, the handling percentages are about the same. Ms. Nainer told the committee that there has been no financial hardship to any claimants.

Tom Ramboldt, Farmers Insurance Group, told the Committee he opposes the wording of the bill. He said it is company policy is

to advance-pay bills and wage loss if there is no other collateral source. Mr. Ramboldt explained the company does not want to place third party claimants in hardship situations and is considerate in making decisions to pay. He said policy limits of \$25,000-\$50,000 are not much in today's world, and in such cases settlement can be larger than limits. Mr. Ramboldt commented that there is no language in the bill addressing who is responsible for payment in situations such as three-vehicle accidents.

Jacqueline Terrell, American Insurance Association, told the Committee her group of 240 Property and Casualty Insurers writes 30% of property casualty and 19% of auto insurance. She said the Association opposes HB 735, and believes Representative Cromley hit exactly on the problem. Ms. Terrell told the Committee the bill leaves out the most important person to the insurance company, which is the insured. She stressed that it is important the Committee remember this, as companies are required by law to protect the insured and indemnify the insured to the amount of coverage.

Ms. Terrell said she believes HB 735 is redundant to Montana law, as subsections (6) and (13) of the Uniform Trade Practices Act require prompt payment and allow no leveraging of claims. She said the bill seeks payment on damages most often disputed in trials, and that 25-10-303, MCA, gives further protection to injured parties for immediate payment and also provides recourse.

Jacqueline Terrell told the Committee the bill is inconsistent with the Unfair Trades Practices Act, and that it would diminish reserves and expose the insured to excess judgment, resulting in increased insurance costs. She said The Association believes HB 735 is inconsistent with the Unfair Trade Practices Act, and should remain unamended. Ms. Terrell asked that the Committee not concur in this bill.

Gene Phillips, National Association of Independent Insurers, said the Insurers write 25% of property casualty insurance in Montana, and told the Committee he believes the bill is not necessary. He read from page 3, line 24 of the bill, and said he supported the testimony of the other opponents.

Tom Hopgood, Health Insurance Association of America, stated the bill is overbroad in making payments, and does not make any differentiation between third party payments and insured party payments. Mr. Hopgood suggested that following "promptly pay" on page 3, line 20, "third party" be inserted.

#### Questions From Committee Members:

Chairman Pinsonault commented that he had limited experience with property insurance carriers, and asked Eric Thueson for his experience. Mr. Thueson replied his greatest problems are with State Farm. He referred to the copy of the Jerry Atwood case

provided by Judge McCarvel, and Young v State Farm which was heard by Judge Hatfield.

Chairman Pinsoneault asked Eric Thueson to respond to Jacqueline Terrell's testimony that the primary obligation is to the insured, 25-10-303, MCA. Mr. Thueson replied that with the public policy of Montana, insurance companies could soften policy limits.

Senator Pinsoneault asked Eric Thueson who should make payments when there are two or three negligent parties. Mr. Thueson replied that if they are not obligated to pay immediately, they would not have to pay. He said they have the right of contribution from joint tort feasons.

Senator Mazurek asked Eric Thueson if he would object if this were tightened down like pre-judgement interests. Mr. Thueson replied future medicals is not a problem, and said he had no objections. He stated he would caution the Committee not to create a situation where future damages would be precluded, and that he did not believe this language could be put in the bill without watering down the possibility of claiming future wages.

Senator Mazurek asked Mike Sherwood how the bill got from requiring the carrier to pay, to the "bad faith" section requiring no direct obligation. Mr. Sherwood replied that he did have "incurred" expenses in the language, but Gene Jarussi in Billings has such an instance right now, where the doctor won't do surgery without the money up front. He stated that with respect to Senator Mazurek's last question, testimony in the House indicated this was already in 33-18-201 and -202, MCA. Mr. Sherwood commented that maybe State Farm is paying like it says, but in two cases they are not, and that Judge Hatfield said they did not have a duty to pay.

Senator Mazurek asked if 27-1-210, MCA, (pre-judgement interest) is not working. Senator Towe replied the problem is that injured parties are incurring ongoing medical bills that giving pre-judgement interest to will not resolve.

Senator Halligan asked Representative Measure to respond to Representative Cromley's statement regarding policy limits being eaten up. Representative Measure replied he believes the problem occurs anyway, and would happen regardless.

Senator Svrcek said he was unsure of discussion about where liability is reasonably clear. Eric Thueson replied it is largely a question of fact, and said he did not believe the proposed amendment would water down the language in the bill.

Senator Crippen asked what "reasonably clear" is, and how it is determined. Eric Thueson replied it is defined in the Claims Practices Act. He explained that, as an attorney, he defines it as a situation where arguments can be made that the injured victim did

something wrong, but where the insurance company is wrong and will end up paying.

Senator Crippen commented that he used to adjust insurance years ago, and would never have leveraged policy limits, as that would be a violation of ethics. He further commented that many things have changed now. Eric Thueson replied that the whole purpose of leveraging a case to settle, is that the victim is still being victimized. He stated it bothers him that a case can be leveraged for less than it is worth.

Senator Mazurek advised Eric Thueson that is covered at the top of page 4 of the bill. Mr. Thueson replied it does not apply to this situation.

Senator Crippen said it might appear the insured is liable. He cited an example where a mechanic recently worked on a vehicle, and asked if the insured would be admitting liability if payments were made immediately. Eric Thueson replied he didn't think that would happen, and would be covered by the Rules of Evidence.

Senator Doherty asked if it is good public policy to shift the burden to other insurance companies when the liability is reasonably clear. John Maynard replied that the amendment recognizes situations where there is no collateral source.

Senator Doherty asked why there is concern if this is current policy. Joan Maynard replied the amendments provide for a new cause of action in which there could be additional new lawsuit and a new cause of action.

Senator Doherty stated that, based on a case he is dealing with, he did not believe the State Farm Insurance information was true.

Closing by Sponsor:

Representative Measure said he was surprised by some of the testimony at this hearing. He stated that Rule 411 covers possibilities addressed by Senator Crippen, and said the law now stands for plaintiff's attorneys. He commented that if Jacqueline Terrell was correct in her statement that this law already exists, "we should get on with it".

EXECUTIVE ACTION ON HOUSE BILL 307

Motion:

Senator Brown made a motion that HB 307 BE CONCURRED IN.

Discussion:

There was no discussion.

Amendments, Discussion, and Votes:

There were no amendments.

Recommendation and Vote:

The motion made by Senator Brown carried unanimously. Senator Van Valkenburg will carry the bill.

Discussion of HOUSE BILL 391

Senator Rye advised the Committee he would vote no on the bill, as he feels defining clergy is very difficult. Senator Halligan explained that under existing law, it is anyone who holds himself to be a leader of a parish or group in solemnization.

Senator Towe commented that he had an amendment which might help. Valencia Lane explained the amendments with the gray bill attached (Exhibit #6).

Senator Halligan made a motion to strike subparagraph (iii), on page 3 of the bill before dealing with the Towe amendment.

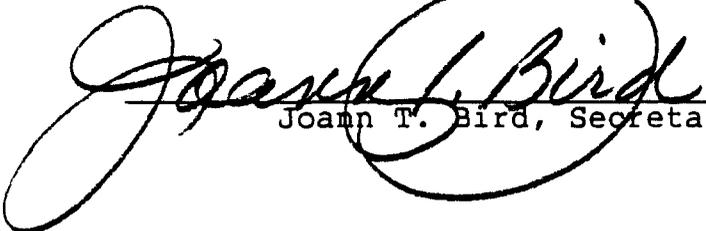
Senator Mazurek stated that gets to the very fundamental right of priests and confession. Senator Halligan replied that is covered in (I) on page 2 of the bill.

Senator Svrcek expressed asked to delay executive action on HB 391 since half of the Committee members were gone, and the bill raises some issues. Chairman Pinsoeneault agreed to delay executive action until Saturday, March 16, 1991.

ADJOURNMENT

Adjournment At: 11:50 a.m.

  
\_\_\_\_\_  
Senator Dick Pinsoeneault, Chairman

  
\_\_\_\_\_  
Joann T. Bird, Secretary

DP/jtb

ROLL CALL

SENATE JUDICIARY COMMITTEE

52<sup>nd</sup> LEGISLATIVE SESSION -- 1991

Date 3-12-91

NAME	PRESENT	ABSENT	EXCUSED
Sen. Pinsoneault	✓		
Sen. Yellowtail	✓		
Sen. Brown	✓		
Sen. Crippen	✓		
Sen. Doherty	✓		
Sen. Grosfield	✓		
Sen. Halligan	✓		
Sen. Harp	✓		
Sen. Mazurek	✓		
Sen. Rye	✓		
Sen. Svrcek	✓		
Sen. Towe	✓		

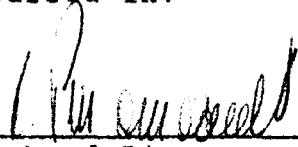
Each day attach to minutes.

SENATE STANDING COMMITTEE REPORT

Page 1 of 1  
March 12, 1991

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 307 (third reading copy -- blue), respectfully report that House Bill No. 307 be concurred in.

Signed: 

Richard Pinsoneault, Chairman

1991 3-12-91  
Add. Coord.

Sec. of Senate

531223SC.Sj1



SENATE STANDING COMMITTEE REPORT

Page 1 of 1  
March 12, 1991

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 269 (third reading copy -- blue), respectfully report that House Bill No. 269 be concurred in.

Signed: *R. Pinsonneault*  
Richard Pinsonneault, Chairman

LB 3/12/91  
Amd. Cbord.

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Sec. of Senate



Exhibit #1  
3-12-91  
HB 307

HB307 TESTIMONY

Cheryl Bryant  
Crime Victims Unit

The Crime Victims Compensation Act has two time limits. The first limit is a requirement to report the crime to law enforcement within 72 hours or have good cause why it was not reported. The second time limit is a requirement to file the claim within one year of the crime or have good cause why not.

In the early 80's we began to receive claims where the victim was a sexually abused minor. These children usually did not tell anyone about the crime for a time, in some cases, a considerable amount of time. We used the good cause provision to automatically extend the time limit. The time limit began to run when the claimant, who is always an adult, learned of the crime. The claimant was requested to provide good cause if the adult claimant did not report to law enforcement within 72 hours. Two requests were sent. In many cases, the adult claimant simply did not respond, did not provide any reason at all to extend the time.

The one year filing limit worked the same way. The time was automatically extended to the date the claimant learned of the crime. The adult claimant was asked to provide good cause why the claim was not filed within one year of when the adult claimant learned of the crime.

Ex. 1

3-12-91

HB 307

There have been 1,295 claims filed for minor victims since the beginning of the program in January, 1978. While not all of these are sexually abused children, the majority are. Only one claim has been denied because there was no report at all to law enforcement. Thirty-nine claims were denied because the report was late and the adult claimant did not provide good cause to extend the time limit.

While we have the authority to extend both time limits, we do not have the authority to ignore the law and award benefits when no good cause has been provided. Changing the law would allow an award of benefits in these cases.

Ex 1  
3-12-91

Claims filed since 1/1/78

minor victims	1,295
adult victims	<u>2,249</u>
	3,544

Claims denied for no report to law enforcement

minor victims	1
adult victims	<u>24</u>
	25

Claims denied for late report to law enforcement-no good cause provided by adult claimant to extend the time

minor victims	39
adult victims	<u>16</u>
	55

Claims denied for not filing within one year-no good cause provided by adult claimant to extend the time

minor victims	29
adult victims	<u>12</u>
	41

Claims filed FY 78 (six months)	16	\$2,643
Claims filed FY 79	93	\$84,720
Claims filed FY 90	434	\$343,390
secondary	<u>56</u>	
	490	
Claims filed FY 91 (1/24/91)	239	\$258,282

Exhibit #2  
12 Mar 91  
#B 211

The law presently discriminates between the sexes for young victims of sexual crimes and for violent victims of sexual crimes, because Sexual Intercourse Without Consent can only be committed on someone of the opposite sex. This means that if an adult male penetrates a five-year-old girl, he will be sentenced to not less than two or more than forty years in the Montana State Prison. However, if the same adult male penetrates a five-year-old boy, he can be sentenced only to a maximum term of twenty years.

Deviate Sexual Conduct encompasses two totally separate types of crime: Consensual conduct between two adults of the same sex and sexual violence against a juvenile or adult of the same gender. These patently are not the same types of offense and should not be included together under one definition. Even though the sentencing provisions for Deviate Sexual Conduct distinguish between the consensual and non-consensual aspects of this crime, the penalty is not the same for sexually molesting a little girl and for sexually molesting a little boy. Furthermore, "without consent" is not an element of the crime of Deviate Sexual Conduct -- it relates only to the sentencing provisions -- while it is an element of the offense of Sexual Intercourse Without Consent that the prosecution must prove beyond a reasonable doubt. So, eliminating this irrationally discriminating language will also help protect a defendant's right to have every element of the offense proven beyond a reasonable doubt.

One further problem created by the present state of the law involves juveniles offenders. If a teenage offender penetrates a small child of the same sex, his case cannot be transferred to

Ex. 2

3-12-91

HB 211

District Court. If he penetrates a young child of the opposite sex, however, he may be tried as an adult in District Court. This also irrationally discriminates between young victims based on their sex. A case actually arose where a seventeen-year-old male penetrated a five-year-old boy but only sexually assaulted his seven- and eight-year-old sisters. Because he had not committed Sexual Intercourse Without Consent against any of the three victims, he could not be tried in District Court or be sentenced under the sentencing provisions applicable to adults. The offender walked off with only a year of probation and NO sexual offender treatment. The little boy ended up in Rivendell Treatment Center for a year because of the trauma he suffered as a result of the sexual abuse. This type of discrimination should not exist in the law.

The bill presently before this committee will eliminate this irrational discrimination against young girls and young boys that are sexually molested. It leaves intact one law prohibiting sexual conduct between consenting adults of the same gender and creates one law prohibiting non-consensual sexual violence against anyone, a much more rational classification of crimes. It unifies the penalties for both adult and juvenile offenders without regard for the non-consensual victim's gender.

Therefore, I support passage of this bill.

Jennifer Bondy  
Deputy County Attorney  
Gallatin County

EXHIBIT #3  
March 14, 1991  
HB 270



# WOMEN'S PLACE

*Women working together to end domestic and sexual violence*

March 12, 1991

TO: Senator Tom Pinnseneault, Chair  
Senate Judiciary Committee

FROM: Star Jameson, Coordinator

RE: House Bill 270 - Privacy in Communication

Since February, 1987, three crisis lines in the State of Montana have received obscene phone calls from the same man. To date, he has called 14 times to ask us to keep him from raping his stepdaughter, variously called Jennifer, Tracy or Nancy. He then puts the child, who is hysterical, on the phone to plead with us to talk him out of hurting her. There is some question if he is also the child, or if there is a female cohort in this drama. He asks the crisis line worker to talk him through orgasm (which some have done to keep him on the line long enough to trace the call) and then hangs up. His last call on January 17, 1991, was traced. We are in the process of procuring a subpoena to release that number to the authorities.

The effect these phonecalls have on our crisis workers is devastating, as are the effects of obscene phonecalls on any person, especially children. Most common are feelings of nausea, revulsion, shame and helplessness. While quick-thinking persons might scream into the phone or quickly hang up, others may not be able to take care of themselves as well, being caught by surprise. It is indeed an invasion of one's privacy and sense of well being to be exposed to such illness without warning.

In the past, we assumed men who made obscene calls limited their depravity to that one avenue, as we assumed peeping toms never moved into "more damaging" behaviors. Current research tells us this is not the case. Sexual offenders participate in a wide array of grossly stimulating behaviors, obscene phonecalls being one of the most common.

Lest we assume this is a rare occurrence, Missoula County received 124 reports of obscene phonecalls in 1989, and 130 in 1990. U. S. West Tel-Abuse Office reports in 1987, 420 reports of violations of privacy which warranted traps being put on individual phone lines which resulted in 98 suspects prosecuted in the State of Montana.

Frankly, I am doubtful that increasing penalties for these behaviors will actually dissuade offenders from misusing the phone. If it does, all the better. I do believe it will help law enforcement continue to track and penalize sex offenders who compulsively intrude on the peace and privacy of citizens.

Judiciary

3-14-91

HB 270

WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Dated this 12<sup>th</sup> day of March, 1991.

Name: STAR JAMESON

Address: 70 Women's Place Rape Crisis Center  
Missoula

Telephone Number: ~~921~~ 543-7606

Representing whom?

VICTIMS OF OBSCENE PHONECALLS

Appearing on which proposal?

270

Do you: Support?  Amend?  Oppose?

Comments:

I wish to make a verbal statement  
validating the connection between  
obscene phonecallers and other sex  
offenses and to offer statistics on  
# of calls per year in Montana

RECEIVED  
AUG 22 1983  
REGISTRAR

EXHIBIT #  
12 Mar 91  
HB 735

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IN THE DISTRICT COURT OF THE EIGHTH JUDICIAL DISTRICT OF THE  
STATE OF MONTANA, IN AND FOR THE COUNTY OF CASCADE

\*\*\*\*\*

JERRY T. ABBOTT, ) No. BDV-83-387  
 )  
Plaintiff, ) ORDER  
 )  
vs. )  
 )  
JUDITH A. BENYO and STATE )  
FARM MUTUAL AUTOMOBILE )  
INSURANCE COMPANY, )  
 )  
Defendants. )

\*\*\*\*\*

The defendant State Farm's motion to dismiss and  
the defendant Judith Benyo's motion for separate trials came  
on for hearing before this Court at 10:00 o'clock a.m., July  
26, 1983. This Court has now considered the written briefs  
of the parties and the oral arguments of counsel and finds  
and orders as follows.

I. STATE FARM'S MOTION TO DISMISS

The defendant State Farm alleges that the plaintiff  
has failed to state a cause of action under the Unfair Trade  
Practices Act, Section 33-18-201, M.C.A., et. seq. and the  
decision of the Montana Supreme Court in Klaude v. Plink, 40  
St. Rptr. 64 (1983). The issue this Court must determine is  
whether or not under any given set of facts the defendant  
State Farm can be found in violation of the Unfair Trade Practices  
Act for failing to promptly pay undisputed medical expenses when  
it knows that liability is clear.

The defendant State Farm maintains that as a matter  
of law prompt payment of medical expenses to claimants is not  
required under the Act even if liability is clear. The plaintiff,  
on the other hand, maintains that whether or not State Farm  
has such a duty is a question of fact, which depends upon the  
circumstances.

1 This Court holds that a failure to promptly pay  
2 medical expenses can be a violation of the Unfair Trade  
3 Practices Act. Section 33-18-201(6) states that insurance  
4 companies have a duty "to attempt in good faith to effectuate  
5 prompt, fair, and equitable settlement of claims in which  
6 liability has become reasonably clear". Just as the issue of  
7 negligence is ordinarily a question for the jury, so is the  
8 issue of "good faith" a question for the jury, which depends  
9 upon the circumstances. See Sparks v. Republic National Life  
10 Insurance Company, 647 P.2d 1127 (Ariz.1982). Thus, a jury  
11 can find that under the circumstances State Farm has acted in  
12 bad faith by failing to promptly pay undisputed medical expenses  
13 when it knew that liability was clear.

14 As stated in Klaudt v. Flink, supra at 68, the  
15 "important problem" the legislature was attempting to speak to  
16 in passing the Unfair Trade Practices Act was to prevent insur-  
17 ance companies from exerting "leverage against individual  
18 claimants because of the disparity in resource base". Depending  
19 on the circumstances, a jury can find that by refusing to promptly  
20 pay undisputed medical expenses, State Farm was exerting leverage  
21 against the plaintiff, who was then placed under increased  
22 economic and emotional duress.

23 IT IS THEREFORE ORDERED that State Farm's motion to  
24 dismiss is denied.

25 II. DEFENDANT BENYO'S MOTION FOR  
26 SEPARATE TRIALS

27 The defendant Benyo contends that this Court in its  
28 discretion should order that the personal injury claim be  
29 tried separately from the insurance bad faith claim. The  
30 defendant State Farm joins in this contention. The defendants  
31 argue that allowing the bad faith claim to be tried simultaneously  
32 with the liability claim will allow the introduction of evidence

1 of liability insurance, which is contrary to Montana Rule of  
2 Evidence 411. The defendants further maintain that trying the  
3 actions together will ultimately result in the introduction of  
4 evidence related to offer of settlements, which is contrary  
5 to Montana Rule of Evidence 408.

6 This Court finds no merit in these contentions.

7 First, the Montana Supreme Court in Klaudt v. Flink,  
8 supra at 68, held that M.R. Evid. 411 was not a barrier to  
9 trying the liability and insurance bad faith claims in the  
10 same lawsuit. In pertinent part, the Court stated:

11 We have considered whether the result  
12 here reached contravenes the purpose  
13 of Rule 411, M.R. Evid., on the  
14 admissibility of insurance. The  
15 Rule only prohibits the introduction  
of insurance where it is offered for  
the purpose of showing negligence or  
liability. Here, the issues to be tried  
are separate and the Rule is not violated.

16 This language is fully applicable here. Furthermore, the defen-  
17 dants' contention that trying these claims together will result  
18 in the disclosure of settlement offers has no merit, since there  
19 have been no settlement offers by State Farm at all to pay  
20 medical expenses.

21 The defendants further maintain that trying the claims  
22 in separate lawsuits will further judicial economy. It is  
23 difficult, however, to envision how two separate lawsuits can  
24 be less expensive and time consuming to either this Court or  
25 the litigants. "A single trial generally tends to lessen the  
26 delay, expense and inconvenience to all concerned, and the Courts  
27 have emphasized that separate trials should not be ordered unless  
28 such a disposition is clearly necessary". 5 Moore's Federal  
29 Practice, ¶ 42.03, pp. 42-37 to 42-38. Here, the defendants  
30 have failed to show that separate trials are "clearly necessary".

31 Finally, under Klaudt v. Flink, supra, this Court must  
32 also consider prejudice to the plaintiff in determining whether

-X-  
3-12-91  
HB 735

1 or not separate trials should be ordered. In Klaedt, the "sole  
2 issue" was whether or not the plaintiff's cause of action "against  
3 a defendant's insurer [could be] . . . prosecuted jointly with  
4 an action against the defendant insured". The Montana Supreme  
5 Court held that it could be. The Court reasoned that "justice  
6 delayed is often justice denied". Id. at 68. Thus, to address  
7 this problem of delayed justice, the legislature passed the  
8 Unfair Trade Practices Act which prohibits insurance companies  
9 from forcing both litigants and claimants into protracted  
10 litigation as a means of exerting leverage against them. Here,  
11 separate lawsuits would increase the delay the plaintiff must  
12 face before his claim is finally resolved.

13 IT IS THEREFORE ORDERED that the defendants' motion  
14 for separate trials is denied.

15 DATED this 19 day of August, 1983.

16  
17 JOHN M. McCARVEL  
18 District Judge

19 cc: Jardine, Stephenson, Blewett & Weaver  
20 Orzivi, Conklin & Nybo  
21 Erik B. Thueson  
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Proposed Amendments to HB 735  
Prepared by John H. Maynard  
for State Farm Insurance Companies

12 MAY 91  
HB 735

1. Page 3, line 20, following "pay" insert "reasonable and necessary"

2. Page 3, line 22, following "clear" insert "and when no collateral source exists to pay these damages."

EXHIBIT I 6  
12 Mar 91  
HB 391

Amendments to House Bill No. 391  
Third Reading Copy (Blue)

Requested by Senator Towe  
For the Committee on Judiciary

Prepared by Valencia Lane  
March 11, 1991

1. Page 2, line 16.

Following: "(B)"

Insert: "or (4)(c)"

2. Page 2, line 25.

Following: "HIS"

Strike: "SPIRITUAL PROFESSIONAL"

Following: "CAPACITY"

Insert: "as a clergyperson or priest"

3. Page 3, lines 1 through 3.

Following: "(II)" on line 1

Strike: remainder of line 1 through "CONFIDENTIAL" on line 3

Insert: "the statement was intended to be a part of a  
confidential communication between the clergyperson or  
priest and the member of his church or congregation"

4. Page 3, line 7.

Following: line 6

Insert: "(c) A clergyperson or priest is not required to make a  
report under this section if the communication is required  
to be confidential by canon law, church doctrine, or  
established church practice."

Ex. 6  
3-12-91  
HB 391

1 HOUSE BILL NO. 391

2 INTRODUCED BY DARKO, FRITZ, HALLIGAN, VAUGHN,

3 HANSEN, COCCHIARELLA, SCHYE, BROOKE, D. BROWN, RANEY

4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO INCLUDE CLERGY IN  
6 THE LIST OF PERSONS REQUIRED TO REPORT SUSPECTED CHILD  
7 ABUSE; AND AMENDING SECTION 41-3-201, MCA."

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

10 Section 1. Section 41-3-201, MCA, is amended to read:

11 "41-3-201. Reports. (1) When the professionals and  
12 officials listed in subsection (2) know or have reasonable  
13 cause to suspect, as a result of information they receive in  
14 their professional or official capacity, that a child is  
15 abused or neglected, they shall report the matter promptly  
16 to the department of family services or its local affiliate,  
17 which then shall notify the county attorney of the county  
18 where the child resides.

19 (2) Professionals and officials required to report are:

- 20 (a) physician, resident, intern, or member of a
- 21 hospital's staff engaged in the admission, examination,
- 22 care, or treatment of persons;
- 23 (b) a nurse, osteopath, chiropractor, podiatrist,
- 24 medical examiner, coroner, dentist, optometrist, or any
- 25 other health or mental health professional;

1 (c) Christian Science practitioner and religious  
2 healers;

3 (d) school teachers, other school officials, and  
4 employees who work during regular school hours;

5 (e) a social worker, operator or employee of any  
6 registered or licensed day-care or substitute care facility,  
7 or any other operator or employee of a child-care facility;

8 (f) foster care, residential, or institutional worker;  
9 or

10 (g) a peace officer or other law enforcement official;  
11 or

12 (h) clergy.

13 (3) Any person may make a report under this section if  
14 he knows or has reasonable cause to suspect that a child is  
15 abused or neglected.

16 (4) (A) No A EXCEPT AS PROVIDED IN SUBSECTION (4)(B), A  
17 person listed in subsection (2) may not refuse to make a  
18 report as required in this section on the grounds of a  
19 physician-patient or similar privilege. Subsection (2)(h) is  
20 not intended to interfere with the practice of religion

21 (B) A CLERGYPERSON OR PRIEST IS NOT REQUIRED TO MAKE A  
22 REPORT UNDER THIS SECTION IF:

- 23 (1) THE KNOWLEDGE OR SUSPICION OF THE ABUSE OR NEGLECT
- 24 CAME FROM A STATEMENT OR CONFESSION MADE TO THE CLERGYPERSON  
OR PRIEST IN HIS ~~SPiritual~~ <sup>do a clergy</sup> PROFESSIONAL CAPACITY; <sup>or priest</sup>



the statement was intended to be a part of a confidential communication between the clergyperson or priest and the member of his church or congregation

~~(II) CANON LAW, CHURCH DOCTRINE, OR ESTABLISHED CHURCH PRACTICE REQUIRES THE CLERGYPERSON OR PRIEST TO KEEP THIS STATEMENT OR CONFESSION CONFIDENTIAL; AND~~

(III) THE PERSON WHO MADE THE STATEMENT OR CONFESSION DOES NOT CONSENT TO THE DISCLOSURE BY THE CLERGYPERSON OR PRIEST.

(c) A clergyperson or priest is not required to make report under this section if the communication is required to be confidential by canon law, church doctrine, or her established church practice.

- (5) The reports referred to under this section shall contain:
  - (a) the names and addresses of the child and his or her parents or other persons responsible for his or her care;
  - (b) to the extent known, the child's age, the nature and extent of the child's injuries, including any evidence of previous injuries;
  - (c) any other information that the maker of the report believes might be helpful in establishing the cause of the injuries or showing the willful neglect and the identity of person or persons responsible therefor; and
  - (d) the facts which led the person reporting to believe that the child has suffered injury or injuries or willful neglect, within the meaning of this chapter."

-End-

COMMITTEE ON

Judiciary

H.B.

VISITORS' REGISTER 211-269-270-307-735

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Kandace K. Kellow	Womens <del>to</del> Place	269 270	X X	
STAR JAMESON	VICTIMS OF RAPE	270	✓	
BETTY WING	MSLA CHILD PROTECTIVE TEAM MISSOURI Co ATTORNEY	269 270	X	
R. Ashat	State Farm Ins	735		X
Gene Phillips	MT. ASSOC. IND. INS. ALLIANCE AMER. INS	735		X
Cheryl Bryant	Crime Victims Union	307	✓	
Tom Hopgood	Health Ins Assoc America	HB 735		✓
Tom Rambold	FARMERS Ins. Group	HB 735		X
John Maynard	State Farm	HB 735		X
Wlette Baumgardner	Democratic Women's Caucus	HB 307	✓	
"	"	HB 269	✓	
"	"	HB 270	✓	
Jane Duggitt	Womens Law Section State Bar	HB 307	✓	
"	"	HB 269	✓	
"	"	HB 270	✓	
Eric Thuesen	Montana Trial Lawyers	HB 735	X	
Randy Dix		HB 735	X	
Ron Silvers	Center for Sexual Health Mental Health Services	269 HB 270	X	
John Connet	MT County Attys Assn	HB 307	X	
John Connor	" " " "	269 HB 270	X	
John Connor	" " " "	HB 211	X	
Jacqueline N. Terrell	Am Ins. Assoc	HB 735		X
Brent Cromley	Rep.	HB 735		X