

MINUTES

MONTANA SENATE  
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Bruce D. Crippen, on January 26,  
1989, at 10:00 a.m.

ROLL CALL

Members Present: Chairman Crippen, Vice Chairman Bishop,  
Senator Beck, Senator Brown, Senator Halligan, Senator  
Harp, Senator Jenkins, Senator Mazurek, Senator  
Pinsoneault, Senator Yellowtail

Members Excused: None

Members Absent: None.

Staff Present: Valencia Lane, Legislative Staff Attorney,  
Rosemary Jacoby, Committee Secretary

Announcements/Discussion: There was none.

HEARING ON HOUSE BILL 38

Presentation and Opening Statement by Sponsor:

Representative Ralph Eudaily of Missoula, District 60,  
opened the hearing. He stated that the purpose of this  
bill is to allow the University system retirement  
program as property that may be exempted in a  
bankruptcy proceeding. He said this bill would correct  
the law as was intended 2 years ago. It had been  
submitted incorrectly because of an oversight in the  
drafting of the previous bill. The bill would give the  
same benefits to employees of the University system as  
other state employees have, he said.

List of Testifying Proponents and What Group they Represent:

David Evenson, Montana University System

List of Testifying Opponents and What Group They Represent:

None

Testimony:

David Evenson, representing the Montana University System, agreed with Representative Eudaily. He felt that the bill corrected a defect in legislation. The defect was caused by an oversight in the bill draft presented last session in the legislature, he said. He said there was no reason why these employees should be treated differently.

Opponents:

None

Questions From Committee Members: Senator Mazurek asked if the matter had been brought up that Judge Peterson's bankruptcy court threw out that legislation 2 years ago.

Representative Eudaily replied that it wasn't.

Senator Mazurek stated that in the past they made the proceedings regarding bankruptcy. He asked if there would be any problems if they included that language.

Representative Eudaily replied that there would not be any problem.

Senator Beck questioned if Judge McDonough's court decision had been challenged.

Senator Mazurek felt he didn't know, but thought Judge McDonough had a bill which would correct the oversight.

Closing by Sponsor: Representative Eudaily closed.

HEARING ON SENATE BILL 214

Presentation and Opening Statement by Sponsor:

Representative Pipinich, District 33, opened the hearing. He stated that the Department supported the repeal of limitation of funding for subsidizing

adoption. He continued that this would allow transfer of funds and would not cost the state any more money. In fact, this would save the state money in long run.

List of Testifying Proponents and What Group they Represent:

Gary Walsh, Department of Family Services

List of Testifying Opponents and What Group They Represent:

None

Testimony:

Gary Walsh, represented the Department of Family Services.  
(See Exhibit 1).

Questions From Committee Members: Senator Beck asked what was the average amount of the notification.

Gary Walsh replied that it varied depending on the case.

Senator Beck asked if transfer of foster care money for was available for this purpose.

Gary Walsh stated that he transfers health care funds to use on the adoption program. He explained that they already have custody of these children, and their goal was to make sure they were adopted. If there are kids with special needs they will be provided for until they are adopted.

Senator Halligan asked what he does with institutions were used to help these children with special needs as well a normal child when putting them up for adoption.

Gary Walsh replied that the Casey program is of use to them. Kids are referred to them if there is a opening.

Senator Beck asked if there was a fiscal note for the bill.

Gary Walsh stated the amount of money that the kids are considered for in this program are already being paid for under foster care. He explained that they would be transferring some of the money from the foster care program to the adoption.

Closing by Sponsor: Representative Pipinich closed.

HEARING ON SENATE BILL 157

Presentation and Opening Statement by Sponsor: Senator Nathe, District 10, opened the hearing. He stated that the bill was to create a statute of limitations for civil actions to recover damages for injury suffered as a result of childhood sexual abuse. He asked that the discovery exception be applied to the sexual abuse case where there is intentional conduct on the part of the abuser. He pointed that there were amendments that needed to be considered. On page 2, line 4 after the word "injury", strike "or condition"; line 6, strike "or"; line 7, strike "condition"; and on line 10, strike "or condition". (See Exhibit 2).

List of Testifying Proponents and What Group they Represent:

Jean Kemmis, Parents Anonymous of Montana  
Holly Franz, Women's Section of the State Bar  
Leo Gallagher, Himself  
Noel Larrivee Atty, Attorney, Children's Advocate  
Brenda Nordlund, Montana Women's Lobby  
Janet R. Allison, Ph.D, Herself  
Dr. Hugh Black, Montana Psychological Association  
Steve Waldron, Mental Health Centers  
Megan Hill, Montana Catholic Conference  
Tony Nickolas, Montana Education Association  
Susan Swinehart, St. Peters Hospital  
Holly Kalczezc, OPI  
Georgina Park, Montana Committee for Prevention of  
Child Abuse and Child & Family Resource Council  
Leslie Burgess, Herself  
Elizabeth Williams, Herself  
Bob Dozier, Himself  
Susan Kraft Ball, Herself and family  
Marti Adrian, Himself  
Judy Langley, Herself

List of Testifying Opponents and What Group They Represent:

None

Testimony:

Jean Kemmis, representing Parents Anonymous, stated "This statute amends section 27-204 to allow victims of child sexual abuse the opportunity to prove that discovery, to the statute of limitations that applies to these

cases. Under current law the statute of limitation would not apply in many cases. They presently begin at the age of 18, run for three years, and ends at age 21. The victim of child or sexual abuse must bring a civil action against the abuser before she reaches the age of 21 or she is forever barred from recovery, said Ms. Kemmis. As in the criminal section, this general statute of limitation is workable in circumstances where the abuser is a stranger to the child. In the situation where the abuser is a parent or step-parent, relative or close authority figure, it is not workable. In practice, the statute of limitation acts to bar victims' recovery of child or sexual abuse by keeping them out of the court. By doing this, it also acts to protect abusers from a natural responsibility for the enormous counselling expenses incurred by these victims. Of the two bills, criminal and civil, the civil is directly from the Supreme Court case, E & EW vs. DCH from 1987-88. In that case the court wasn't asked to apply the existing discovery. The court declined to do this, stating that the legislature holds prerogative on statute of limitations. The issue is whether these victims should be allowed access to the court. Abusers do not pay for counselling of long-term therapy that is necessary to the victim. This is due to the statute of limitations which does not take into account the victim's nature to conceal. If the committee concludes that it is unjust to continue those rules that victims cannot apply, then it is appropriate to grant them the best of the "discovery rule". This will allow them an opportunity to prove that it was caused by circumstances." (See Exhibit 3).

Holly Franz, representing Women's Section of the State Bar, pointed out that statute of limitations are designed to determine how long the court will remedy and remain available to an injured person. She felt 3 years was a fair time period for the court to remain available because, after a period of time, the witness may not remember what happened and the evidence of that injury would have healed. She felt the concept of fairness supported extension of the doctrine to survivors of sexual abuse. The discovery doctrine would allow claimants to bring a civil action after discovery of the injury.

Leo Gallagher, representing himself, stated that the problem concerning child and sexual abuse of the generational nature tends to repeat itself time after time. As a

Deputy County Attorney, he thought that the committee should realize the great difficulty in a criminal case, because the offender has the right to silence. He believed that giving the victim of the crime a fighting chance to civil courts would open up the chance for the victim to obtain justice. The judicial system will find justice in the person who committed the injury and will pay for their act, he stated. These injuries are not only expensive to the victim, but to society itself. He asked for their support.

Noel Larrivee, representing Children's Advocate, stated that a 28 year old woman, who was prosecuted in Missoula County for 4 counts of arson, had been seriously abused

as a child. The first time she attempted suicide by drinking Drano at 10 years old of age. He said that the abuse performed by this woman's mother on her was extended over a period of 10 years (Refer to the book Sybil). Another more recent case involved a 9-year-old girl. She, too, was involved with her mother and was sexually assaulted. He felt that this might be difficult to believe, but the mother tied her child's arms to the bed posts, and told her that this was what her grandfather did to her and was going to share her experience with her. In each of those incidents, the 28-year-old woman was prosecuted by the county and was incarcerated for nine months. The younger girl went through a period of counselling for two years duration. Her father, who ultimately took custody of the child, had to take a second job in order to afford the counselling that this young girl desperately needed. When you look at the cost, she said, you need to look at either prevention or the deterrent effect. He solicited support of SB 157.

Brenda Nordlund, representing the Montana Women's Lobby, stated that she was in support of SB 157. (See Exhibit 4).

Dr. Janet Allison, Ph.D., representing herself, stated that she supported SB 157. (See Exhibit 5).

Hugh M. Black, Ph.D., representing the Montana Psychological Association, stated that the association supported extending the statute of limitations for recovery of actual damages caused by sexual abuse of minors for reasons of justice and equity. (See Exhibit 6).

Steve Waldron, represented the Montana Mental Health Centers. He pointed out that the Montana Residential Town and Home Association would like to take a position in favor of SB 157. The offenders tend to offend over and over again, he said. He felt it would be advantageous to the abused to extend the criminal statute of limitation in order to prevent further abuse and appropriate treatment. This bill addressed the needs of the offenders as well as the abused, he said. The cost of this treatment is quite high, but victims of child and sexual abuse don't respond without at least short-term therapy. He also wanted to point out that, requiring the offender to pay the cost of the damage is a therapeutic issue, in addition to a moral or ethical issue. The offenders respond better when they are forced to pay for that treatment and the treatment of the victims. He urged a Do Pass on SB 157.

Megan Hill, represented the Montana Catholic Conference. She stated she would like the committee to support SB 157. (See Exhibit 7).

Tony Nickolas, represented MEA. She wanted to be on record in support of SB 157.

Susan Swinehart, represented St. Peters Hospital. She stated that she was in support of SB 157.

Holly Kaleczczc, represented OPI. She felt that the circumstances surrounding sexual abuse of children indicated an unusual civil statute of limitations. She urged support of SB 157.

Georgina Park, represented Child and Family Resource Council and the Montana Community for Prevention of Child Abuse. She stated that her organization was comprised of nine local councils. The Montana Community for Prevention of Child Abuse feels there needs to be more effort made towards prevention of child abuse. They understand the budget restraints the legislature is working under, she said, and urged the committee to support SB 157.

Leslie Burgess, represented herself and appeared as a proponent. She said she was a survivor of incest (See Exhibit 8).

Elizabeth Williams, represented herself, giving written testimony to the committee. (See Exhibit 9).

Bob Dozier, represented himself and his wife. He stated that his wife was in counseling for five years, but did not start until she was 30 years old. Until she had counselling, she did not realize that she actually had a feeling of hate, resulting from being an abused child. Up until that point in her life, she always thought she was part of the problem. It wasn't until the five years of counseling that she began to realize the importance of identifying and dealing with her problems. He said he still had the financial burden of the five years of counselling and expected that she would need two more years. He felt the bill would not help them, but was necessary to help others. He said he would like to see all of the dollars that are spent each year on therapy for abused children. The people paying for the therapy are not the ones who should be paying, he said. (See Exhibit 10).

Susan Kraft Ball, represented herself. (See Exhibit 11).

Marti Adrian, represented herself and urged passage of the bill.

Judy Langley, represented herself and appeared as a proponent.

(Exhibits 12 through 20 were left with the committee to be placed in the record.)

Questions From Committee Members: Senator Mazurek stated that Jeanne Kemmis would like the "language or condition" deleted in the amendment, and asked what its significance was.

Jeanne Kemmis replied that the amendment was suggested by Kimberly Kradolfer who had some questions about whether the state would be liable under this bill. There was also a concern about the term "more condition". The injury or condition language is the language which is used in the Washington bill, she said. When the bill was originally drafted, only the term "injury" was used. The legislative council included the two words and Kimberly thought that the words "or condition" might allow the splitting of cause of actions. She



stated that they had no problem withdrawing the suggested language.

Senator Halligan asked Jeanne Kemmis if the insurance would still be liable.

Jeanne Kemmis replied that most insurance would, in most policies, not cover intentional acts. For that reason in the first sentence of the bill, we included, specifically, that the bill would only apply to the intentional act which followed the Washington model.

Senator Pinsonneault stated the Crime Victim's Compensation Act is very successful, and wondered why the victims didn't follow the scope of that act.

Jeanne Kemmis replied that she was not familiar with that funds, but it does involve public funds. She felt the abuser should pay for the pain caused.

Allison stated that she used the Crime Victim's Compensation act many times in working with child victims of sexual abuse. Limitations which are placed on that money require that it be a case that can be prosecuted. It has to fall under the statute limitations for criminal prosecution: Five years or at least five years of the report being made.

Senator Pinsonneault asked why we don't amend the scope of this act to include these victims, rather than wasting time on civil actions.

Janet Allison was aware of the amount of money in the fund, and knew that it was extremely limited.

Senator Pinsonneault asked if there was an identifiable age where a child simply does not fabricate.

Janet Allison stated that most kids don't fabricate. She thought it was a rare case where they did fabricate and it was usually because they felt they were in danger and couldn't do anything else. They are in danger psychologically and physically.

Senator Pinsonneault asked John Madsen from Family Services if the department had a position on this bill.

John Madsen replied that the department would support anything that would help recovery.

Senator Pinsoneault asked Noel Larrivee if the mother, who was discussed in earlier testimony, had ever been charged with her abuse.

Noel Larrivee stated that the mother was diagnosed as schizophrenic and was hospitalized. Her case was never prosecuted because of the extent of her mental disability that she suffered.

Senator Mazurek asked Jeanne Kemmis if she had heard the proposal by Susan Swinehart to change the time period to five years.

Jeanne Kemmis replied that those proposals would expand the bill beyond what had been asked, she said. Regarding the term "recently discovered", she stated that the courts would probably apply it implicitly in terms of the number of years of the statute of limitations. She believed that it was needed to keep up with the general rules.

Senator Mazurek asked Jeanne Kemmis had looked at the retroactive applicability of this bill.

Jeanne Kemmis replied that they originally had looked at the possibility of retroactive application that would allow people who have discovered longer than three years ago to come under a grandfather clause of some sort and decided not to pursue that approach. In this approach only the people who have discovered within the last three years will be allowed.

Senator Jenkins stated that he would like to censor the news media over the last bill. He felt that the media should not have included the witnesses' names.

Senator Beck asked if this bill could be used to convict a person who committed the crime or could it be used against the mother who knew of the crime but didn't stop it.

Jeanne Kemmis replied that limiting the effect of the action would only be intentional acts. He didn't believe there would apply to a spouse would allow abuse to continue.

Senator Beck asked if there was abuse in that area as well.

Jeanne Kemmis replied that there is and she thought that it was a judgement call.

Senator Crippen asked if this bill used the language was the same as in the Washington statute.

Jeanne Kemmis replied that it was the same language as in the Washington statute. She stated that they were told that the bill was not intended to apply to the negligence of omission of the spouse. It was Washington's opinion that the extension would not apply to the omission to act.

Closing by Sponsor: Senator Nathe closed.

#### DISPOSITION OF SENATE BILL 164

Discussion: Senator Crippen stated that there would be discussion on SB 164.

Valencia Lane stated that the amendments to be discussed are: 1. Senator Yellowtail (See Exhibit 21). 2. Senator Mazurek and others (See Exhibit 22). 3. Senator Jenkins (See Exhibit 23). 4. Senator Rasmussen's amendments. (See Exhibit 24). 5. Montana Trial Lawyers Association amendments (Exhibit 25). She also stated that there was a mock gray bill including Senator Mazurek's amendments (Exhibit 26) and a mock gray bill containing Senator Rasmussen's amendments (Exhibit 27).

Senator Yellowtail called the committee's attention to page 3 line 7 of his amendments regarding the matter of the understanding of the minor pertaining to the abortion. (See Exhibit ).

Valencia Lane stated that Senator Jenkins' first amendment, page 1, line 17 would have the effect of requiring notification of one parent only, and not both parents. The second amendment is to correct what appears to be an oversight in the bill where an appeal can be perfected from the lower court decision to the Supreme Court, which was an oversight in the Missouri law as well. Both amendments are addressed in the Mazurek and

company amendments.

Valencia said the committee had eliminated the section that the Montana Trial Lawyers amendment would have amended.

She asked the committee to look at the Rasmussen amendments. She said the major amendment would take out Section 13 which would have repealed 50-20-107. It would leave 50-20-107 on the book, which requires spousal notification before an abortion can be performed. That particular statute has been ruled unconstitutional by the Montana Supreme Court. She stated that the Rasmussen group does not want to be responsible for taking spousal notification off the book even though it has been ruled unconstitutional. They would like to see that left for a later date for someone else to do.

Senator Mazurek asked Valencia if that was also related to amendment #7.

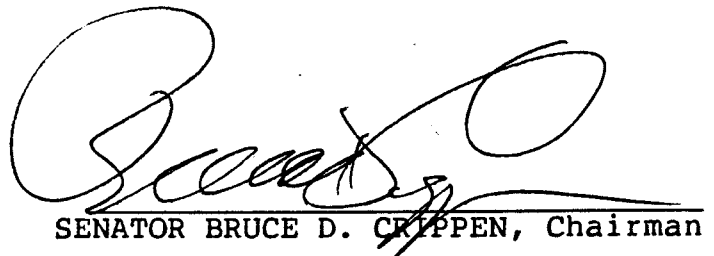
Valencia Lane replied that it was the same. She stated that #7 would leave it on the books and amend the language to take parental notification. On page 7 of the mock gray bill, they are deleting their amendment of 50-20-108 which refers to spousal notification.

Senator Mazurek stated that the bill was making a notification bill out of a consent statute. He stated that they are trying to clean up the language. Valencia added it would also change the place in which the law would be codified, placing it under the Youth Court.

Senator Crippen stated that action would be taken on this bill at a later date.

ADJOURNMENT

Adjournment At: 11:45 a.m.



SENATOR BRUCE D. CRIPPEN, Chairman

BC/rj  
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ROLL CALL

JUDICIARY

COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date Jan 26

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| NAME                | PRESENT | ABSENT | EXCUSED |
|---------------------|---------|--------|---------|
| SENATOR CRIPPEN     | ✓       |        |         |
| SENATOR BECK        | ✓       |        |         |
| SENATOR BISHOP      | ✓       |        |         |
| SENATOR BROWN       | ✓       |        |         |
| SENATOR HALLIGAN    | ✓       |        |         |
| SENATOR HARP        | ✓       |        |         |
| SENATOR JENKINS     | ✓       |        |         |
| SENATOR MAZUREK     | ✓       |        |         |
| SENATOR PINSONEAULT | ✓       |        |         |
| SENATOR YELLOWTAIL  | ✓       |        |         |
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|                     |         |        |         |

Each day attach to minutes.

NAME: David Ewensov DATE: 1-26-89

ADDRESS: 33 S Last Chance Gulch

PHONE: 444-6570

REPRESENTING WHOM? Montana University System

APPEARING ON WHICH PROPOSAL: HR -38

DO YOU: SUPPORT?  AMEND?  OPPOSE?

COMMENTS: this bill corrects a defect in legislation. the defect was caused by an oversight in the bill draft presented to the legislature last session.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

Gary Walsh

SENATE JUDICIARY  
EXHIBIT NO. 1  
DATE 1-26-89  
BILL NO. SB 214

January 25, 1989

TESTIMONY IN SUPPORT OF SB214

An act removing the law that limits the money available for subsidized adoption.

Submitted by Gary Walsh, Department of Family Services

The Department supports the repeal of Section 53-4-305, MCA which states that the Department may not expend or obligate funds in excess of those specifically appropriated for the purpose of subsidized adoption. The elimination of this restriction would allow the Department to transfer foster care funds for use in the subsidized adoption program.

The subsidized adoption program provides:

- a monthly maintenance payment and/or
- a medical subsidy

The purpose of the subsidized adoption program is to encourage and promote the adoption of children with special needs. These children are hard to place because of:

- physical or mental disease or disability, or
- recognized high risk of physical or mental disease or disability, or
- are members of a sibling group.

In addition to being hard-to-place, the child must be:

- legally free for adoption,
- under 18 years of age at the time a subsidized adoption contract is signed, and
- adoptive placement is in his best interest.

Families who adopt these special needs children are carefully screened and subject to a home study and approved as adoptive parents prior to placement.

The subsidized adoption program is beneficial to the child and the agency. The children benefit because they are placed in a permanent home. The benefits to the agency are:

- elimination of the need for continued supervision by a department social worker, and
- since the subsidy payments are less than foster care payments, the department's costs are reduced.

There are currently 96 subsidized adoption cases. The annualized savings for these cases is \$110,912.



SENATE JUDICIARY

EXHIBIT NO. 1, D. 3

DATE 1-26

BILL NO. SB 214

The subsidized adoption program is an ideal program because it provides a mechanism to place children in permanent homes in a cost effective manner. The department urges your support for passage of SB214.

SB214.TESTIMONY

Subsidized Adoption Savings  
 Estimated Annual Costs for current placements  
 Lotus: Subadot  
 RWE: 1/23/89  
 Source: December Invoice

| Client | Monthly Cost | Annual Cost | Regular Foster Care Cost | Savings  |
|--------|--------------|-------------|--------------------------|----------|
| 1 RS   | 330.00       | 3,960.00    | 4,244.95                 | 284.95   |
| 2 TO   | 225.00       | 2,700.00    | 4,244.95                 | 1,544.95 |
| 3 CO   | 225.00       | 2,700.00    | 4,244.95                 | 1,544.95 |
| 4 BO   | 225.00       | 2,700.00    | 4,244.95                 | 1,544.95 |
| 5 BS   | 268.00       | 3,216.00    | 3,390.85                 | 174.85   |
| 6 CS   | 278.00       | 3,336.00    | 3,390.85                 | 54.85    |
| 7 JC   | 254.00       | 3,048.00    | 4,244.95                 | 1,196.95 |
| 8 PH   | 165.00       | 1,980.00    | 3,390.85                 | 1,410.85 |
| 9 DF   | 230.00       | 2,760.00    | 4,244.95                 | 1,484.95 |
| 10 RC  | 245.00       | 2,940.00    | 4,244.95                 | 1,304.95 |
| 11 LS  | 150.00       | 1,800.00    | 3,390.85                 | 1,590.85 |
| 12 DC  | 250.00       | 3,000.00    | 3,390.85                 | 390.85   |
| 13 RS  | 150.00       | 1,800.00    | 3,390.85                 | 1,590.85 |
| 14 JF  | 230.00       | 2,760.00    | 4,244.95                 | 1,484.95 |
| 15 SW  | 208.33       | 2,499.96    | 3,390.85                 | 890.89   |
| 16 CH  | 338.00       | 4,056.00    | 3,390.85                 | (665.15) |
| 17 CH  | 125.00       | 1,500.00    | 3,390.85                 | 1,890.85 |
| 18 CG  | 200.00       | 2,400.00    | 4,244.95                 | 1,844.95 |
| 19 AV  | 240.00       | 2,880.00    | 3,390.85                 | 510.85   |
| 20 JW  | 200.00       | 2,400.00    | 3,390.85                 | 990.85   |
| 21 PS  | 50.00        | 600.00      | 3,390.85                 | 2,790.85 |
| 22 DS  | 50.00        | 600.00      | 3,390.85                 | 2,790.85 |
| 23 JS  | 50.00        | 600.00      | 3,390.85                 | 2,790.85 |
| 24 TW  | 150.00       | 1,800.00    | 3,390.85                 | 1,590.85 |
| 25 DR  | 240.00       | 2,880.00    | 4,244.95                 | 1,364.95 |
| 26 OR  | 240.00       | 2,880.00    | 3,390.85                 | 510.85   |
| 27 SC  | 247.00       | 2,964.00    | 3,390.85                 | 426.85   |
| 28 JB  | 242.00       | 2,904.00    | 3,390.85                 | 486.85   |
| 29 RB  | 242.00       | 2,904.00    | 3,390.85                 | 486.85   |
| 30 MO  | 268.70       | 3,224.40    | 3,390.85                 | 166.45   |
| 31 JH  | 200.00       | 2,400.00    | 3,390.85                 | 990.85   |
| 32 NL  | 268.00       | 3,216.00    | 3,390.85                 | 174.85   |
| 33 JA  | 268.00       | 3,216.00    | 3,390.85                 | 174.85   |
| 34 SK  | 250.00       | 3,000.00    | 3,390.85                 | 390.85   |
| 35 SJ  | 268.70       | 3,224.40    | 3,390.85                 | 166.45   |
| 36 RB  | 150.00       | 1,800.00    | 3,390.85                 | 1,590.85 |
| 37 CB  | 242.90       | 2,914.80    | 3,390.85                 | 476.05   |
| 38 MA  | 268.00       | 3,216.00    | 3,390.85                 | 174.85   |
| 39 TS  | 268.00       | 3,216.00    | 3,390.85                 | 174.85   |
| 40 HB  | 242.90       | 2,914.80    | 4,244.95                 | 1,330.15 |
| 41 JV  | 100.00       | 1,200.00    | 3,390.85                 | 2,190.85 |
| 42 CB  | 242.90       | 2,914.80    | 3,390.85                 | 476.05   |
| 43 RJ  | 268.70       | 3,224.40    | 4,244.95                 | 1,020.55 |
| 44 BS  | 240.00       | 2,880.00    | 3,390.85                 | 510.85   |
| 45 MF  | 232.50       | 2,790.00    | 3,390.85                 | 600.85   |
| 46 AC  | 247.00       | 2,964.00    | 3,390.85                 | 426.85   |
| 47 LD  | 268.70       | 3,224.40    | 3,390.85                 | 166.45   |
| 48 CD  | 268.70       | 3,224.40    | 3,390.85                 | 166.45   |

## SENATE JUDICIARY

EXHIBIT NO. 1-2-5DATE 1-26-80BILL NO. SB 214

|    |    |        |          |          |          |
|----|----|--------|----------|----------|----------|
| 49 | JB | 200.00 | 2,400.00 | 3,390.85 | 990.85   |
| 50 | CS | 268.00 | 3,216.00 | 3,390.85 | 174.85   |
| 51 | AP | 268.00 | 3,216.00 | 3,390.85 | 174.85   |
| 52 | SH | 200.00 | 2,400.00 | 3,390.85 | 990.85   |
| 53 | SB | 200.00 | 2,400.00 | 3,390.85 | 990.85   |
| 54 | EH | 334.00 | 4,008.00 | 3,390.85 | (617.15) |
| 55 | AB | 200.00 | 2,400.00 | 3,390.85 | 990.85   |
| 56 | VS | 150.00 | 1,800.00 | 4,244.95 | 2,444.95 |
| 57 | RB | 150.00 | 1,800.00 | 4,244.95 | 2,444.95 |
| 58 | DH | 200.00 | 2,400.00 | 4,244.95 | 1,844.95 |
| 59 | VH | 200.00 | 2,400.00 | 4,244.95 | 1,844.95 |
| 60 | JG | 200.00 | 2,400.00 | 3,390.85 | 990.85   |
| 61 | JG | 200.00 | 2,400.00 | 3,390.85 | 990.85   |
| 62 | ET | 268.00 | 3,216.00 | 3,390.85 | 174.85   |
| 63 | AH | 200.00 | 2,400.00 | 3,390.85 | 990.85   |
| 64 | CH | 258.80 | 3,105.60 | 3,390.85 | 285.25   |
| 65 | JC | 240.00 | 2,880.00 | 4,244.95 | 1,364.95 |
| 66 | JS | 230.00 | 2,760.00 | 3,390.85 | 630.85   |
| 67 | EK | 150.00 | 1,800.00 | 4,244.95 | 2,444.95 |
| 68 | MR | 50.00  | 600.00   | 3,390.85 | 2,790.85 |
| 69 | JR | 50.00  | 600.00   | 3,390.85 | 2,790.85 |
| 70 | ZM | 269.00 | 3,228.00 | 3,390.85 | 162.85   |
| 71 | MS | 1.00   | 12.00    | 3,390.85 | 3,378.85 |
| 72 | TS | 1.00   | 12.00    | 3,390.85 | 3,378.85 |
| 73 | LS | 78.18  | 938.16   | 3,390.85 | 2,452.69 |
| 74 | JH | 200.00 | 2,400.00 | 4,244.95 | 1,844.95 |
| 75 | TH | 200.00 | 2,400.00 | 4,244.95 | 1,844.95 |
| 76 | LH | 275.00 | 3,300.00 | 4,244.95 | 944.95   |
| 77 | RL | 175.00 | 2,100.00 | 4,244.95 | 2,144.95 |
| 78 | JN | 150.00 | 1,800.00 | 4,244.95 | 2,444.95 |
| 79 | JR | 140.00 | 1,680.00 | 4,244.95 | 2,564.95 |
| 80 | WR | 140.00 | 1,680.00 | 4,244.95 | 2,564.95 |
| 81 | JS | 100.00 | 1,200.00 | 4,244.95 | 3,044.95 |
| 82 | JH | 100.00 | 1,200.00 | 4,244.95 | 3,044.95 |
| 83 | RH | 275.00 | 3,300.00 | 4,244.95 | 944.95   |
| 84 | KC | 275.00 | 3,300.00 | 3,390.85 | 90.85    |
| 85 | TG | 200.00 | 2,400.00 | 4,244.95 | 1,844.95 |
| 86 | JM | 100.00 | 1,200.00 | 4,244.95 | 3,044.95 |
| 87 | CG | 270.00 | 3,240.00 | 3,390.85 | 150.85   |
| 88 | JA | 268.00 | 3,216.00 | 3,390.85 | 174.85   |
| 89 | GG | 270.00 | 3,240.00 | 3,390.85 | 150.85   |
| 90 | RR | 230.00 | 2,760.00 | 4,244.95 | 1,484.95 |
| 91 | JG | 270.00 | 3,240.00 | 3,390.85 | 150.85   |
| 92 | DD | 250.00 | 3,000.00 | 3,390.85 | 390.85   |
| 93 | SP | 268.70 | 3,224.40 | 3,390.85 | 166.45   |
| 94 | HF | 250.00 | 3,000.00 | 3,390.85 | 390.85   |
| 95 | DS | 310.00 | 3,720.00 | 4,244.95 | 524.95   |
| 96 | AR | 268.00 | 3,216.00 | 3,390.85 | 174.85   |

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241,940.52      352,852.80      110,912.28

SENATE JUDICIARY

EXHIBIT NO. 2

DATE 1-26-89

BILL NO. SB 157

Amendments to Senate Bill No. 157  
First Reading Copy (WHITE)

Requested by Senator Nathe  
For the Committee on Judiciary

Prepared by Valencia Lane  
January 24, 1989

1. Page 2, line 4.  
Following: "injury"  
Strike: "or condition"

2. Page 2, lines 6 and 7.  
Following: "injury" on line 6  
Strike: the remainder of line 6 through "condition" on line 7

*P.2 line 10  
F: "injury"  
S: "or condition"*

Submitted by Jeanne Kemmis  
Parents Anonymous of Montana  
Missoula, MT

SENATE JUDICIARY

EXHIBIT NO. 3

DATE 1-26-99

BILL NO. SB 157

MEMORANDUM IN SUPPORT OF LEGISLATION  
APPLYING THE DISCOVERY RULE TO CIVIL SUITS  
BROUGHT BY ADULT SURVIVORS OF CHILDHOOD SEXUAL ABUSE

I. Purpose of the Legislation

The discovery rule states that a statute of limitations does not begin to run until a plaintiff discovers or through the use of reasonable diligence should have discovered that he or she is injured and that the injury was caused by the defendant's misconduct. The civil bill applies the discovery rule to tort cases brought by adult survivors of childhood sexual abuse.

II. Facts

Childhood sexual abuse is a problem of immense proportion in the United States today. The American Psychological Association estimates that 12 million to 15 million women in the United States have suffered incestuous abuse, and that about one-half of these cases involved father-daughter or stepfather-stepdaughter incest. Brozan, Helping to Heal the Scars Left by Incest, NY Times, Jan. 9, 1984, at B2, col. 6. One expert's study estimates that over one-quarter of the population of female children have experienced sexual abuse before the age of 14, and well over one-third have had such an experience by the age of 18 years. D. Russell, Incidence and Prevalence of Sexual Abuse of Female Children, 7 Child Abuse & Neglect 133, 145, (1983). There is virtually unanimous agreement that sexual abuse is the fastest growing form of reported child abuse. K. MacFarlane & J. Waterman, Sexual Abuse of Young Children 5 (1986). The vast majority of investigated reports prove valid. R. Summit, The Child Sexual Abuse Accommodation Syndrome, 7 Child Abuse & Neglect 177, 178 (1983).

Experts estimate that the average age of a victim of childhood sexual abuse is age 8; victims' ages range from birth to age 18. See, M. Kirkpatrick, ed., Women's Sexual Experience 133 (1982). The duration of the abuse, however, may cause age estimations to be artificially high because the age listed as the age of abuse is almost always the victim's age at the time a report is made, and sexual abuse often begins long before it is reported. See K. MacFarlane & J. Waterman, supra at 7. Many experts believe that most child victims of sexual abuse were less than 8 years old at the time of initiation. See, e.g., R. Summit, supra at 178.

The abusers are usually family members, friends, and neighbors, and they are predominantly male. D. Finkelhor, Sexually Victimized Children 73-75 (1979). Traditionally, girls were believed to be

sexually abused far more often than boys. S. Butler, Conspiracy of Silence: The Trauma of Incest 5 (1978) (citing V. DeFrancis, Protecting the Child Victim of Sex Crimes Committed by Adults 56, 66 (1969) (study concluding that 97% of offenders are adult males and 87% of child victims are females)). Recently, it has emerged that boys are abused much more frequently than previously believed. Surveys of child molesters (who are predominately male) have demonstrated that as many as 85% of them were themselves abused as children. K. MacFarlane & J. Waterman, supra at 9-10.

It is estimated that anywhere from 50% to 90% of all sexual abuse of children goes unreported. S. Butler, supra at 12-13. A central element of childhood sexual abuse is secrecy: childhood sexual abuse happens when the child is alone with the abuser, and the secrecy makes it clear to the child that the activity is something bad and dangerous. R. Summit, supra at 181. Physical violence and/or the threat of physical violence, threats of harm to the victim's siblings or mother, the threat of abandonment or separation, and other psychologically coercive tactics used by the abuser result in the child becoming virtually incapable of disclosing the abuse. M. de Young, The Sexual Victimization of Children 41 (1982). Moreover, many of the victims are simply too young to be able to communicate effectively the abuse, or may be unaware that the behavior is anything unusual or inappropriate. K. MacFarlane & J. Waterman, supra at 5-7. In any event, children who do break this silence are rarely believed. M. Kirkpatrick, supra at 128-29.

The adult expectation that victims of abuse will exercise self-protection and immediately disclose the abuse ignores the inherent authority of the adult and the corresponding helplessness of the child. R. Summit, supra at 182-84. The fact that the abuser is often in a trusted and apparently loving position only increases the child's helplessness and powerlessness.<sup>1</sup> "Adults must be reminded that the wordless action or gesture of a parent is an absolutely compelling force for a dependent child and the threat of loss of love or loss of family security is more frightening to the child than any threat of violence." Id. at 183.

If the child does not seek or receive immediate intervention and protection, the child's only option becomes accommodating to the reality of continuing sexual abuse. The child faced with continuing abuse somehow must achieve a sense of control. He or she cannot safely conceptualize a parent as bad because to do so is tantamount

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<sup>1</sup> A typical reaction of child victims is "to play possum," that is to feign sleep, to shift position, and to pull up the covers. Small creatures simply do not call on force to deal with overwhelming threat. Where there is no place to run, they have no choice but to try to hide." R. Summit, supra at 183.

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to abandonment. <sup>2</sup> Thus, the only acceptable option for the child becomes assumption of responsibility for the abuse. R. Summit, supra at 184-86. this "accommodation syndrome" requires an internalization of the child's rage, fear, confusion, and sadness. This internalization of anger and anxiety is a survival mechanism that often leads to self-destructive and other destructive behaviors. Id. For example, a study of 195 female clients of a community mental health center found that 54.9% of the survivors of childhood sexual abuse reported previous suicide attempts, as opposed to 22.6% of nonvictims. The study further found that 92.9% of the women whose first suicide attempt occurred before age 13 were victims of childhood sexual abuse, and 87.2% of those whose first attempt was during adolescence were childhood sexual abuse victims. J. Briere & M. Runtz, Suicidal Thoughts and Behaviors in Former Sexual Abuse Victims, 18 Can. J. Behavioral Sci. 413 (1986).

In accommodating to an intolerable situation, a victim of childhood sexual abuse will often repress the abuse for many years. E.S. Blume, The Walking Wounded: Post-Incest Syndrome, 15 SIECUS Report 5 (1986).

Many, if not most, survivors of child sexual abuse develop amnesia so complete that they simply do not remember that they were abused at all; or, if they do remember, they minimize or deny the effects of the abuse so completely that they cannot associate it with any later consequences. They are the "walking wounded," functional adults who bear, often secretly, lifelong pain and impaired emotional functioning.

Id. (emphasis in original). One study of 53 female outpatients participating in therapy groups for incest survivors determined that 64% of the patients studied did not have full recall of the sexual abuse but reported some degree of amnesia, and 28% of the women reported severe repression. J. Herman & E. Schatzow, Recovery and Verification of Memories of Childhood Sexual Trauma, 4 Psychoanalytic Psychology 1, 4 (1987). For most victims, it takes years to come to

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<sup>2</sup> This process is described as a "vertical split in reality testing:"

If the very parent who abuses and is experienced as bad must be turned to for relief of the distress that the parent has caused, then the child must, out of desperate need, register the parent--delusionally--as good. Only the mental image of a good parent can help the child deal with the terrifying intensity of fear and rage which is the effect of the tormenting experiences. The alternative--the maintenance of the overwhelming stimulation and the bad parental image--means annihilation of identity, of the feeling of the self. So the bad has to be registered as the good. This is a mind-splitting or mind-fragmenting operation.

R. Summit, supra at 184 (quoting Shengold, Child Abuse and Deprivation: Soul Murder, 27 J. Am. Psychoanalytic Ass'n 539 (1979) (emphasis in original)).

terms with the emotional injuries brought on by the sexual abuse. J. Herman, Father-Daughter Incest 177 (1981).

As a victim of childhood sexual abuse becomes an adult, he or she will often begin to exhibit signs of trauma. Adult survivors of childhood sexual abuse are more likely than their nonvictimized counterparts to manifest depression, self-destructive behavior, anxiety, feelings of isolation and stigma, poor self-esteem, a tendency toward revictimization, and substance abuse. A. Browne & D. Finkelhor, Initial and Long-Term Effects: A Review of the Research in D. Finkelhor, ed., Child Sexual Abuse: New Theory and Research, 143, 152-163 (1984). Difficulty in trusting others and sexual maladjustment are additional long-term effects reported by empirical researchers. Id. A childhood sexual abuse survivor might have partially or completely repressed the memory of the abuse, but the trauma might nevertheless be reenacted in nightmares, "flashbacks," and periods of disassociation. J. Herman, D. Russell, & K. Trocki, Long-Term Effects of Incestuous Abuse in Childhood, 143 Am. J. Psychiatry 1293 (1986).

A victim of childhood sexual abuse often denies injury as a coping response, and the shame, self-blame, and secrecy associated with childhood sexual abuse often inhibit a victim's understanding of its effects. See R. Summit, supra at 186-190. The accommodation process, in which the child has assumed responsibility for the abuse and internalized his or her feelings of rage and anxiety, often make victims incapable of discovering their injuries for many years. A genuine understanding of the extent and cause of the injuries sustained by a survivor of childhood sexual abuse is unlikely to be developed until the survivor receives mental health treatment. J. Herman, Father-Daughter Incest, supra at 177-196.

### III. Legal Remedies

The criminal justice system has been largely inadequate to address the issue of childhood sexual abuse. The crime is seldom reported, and the possibility of conviction has been remote. See V. DeFrancis, supra at 187-191. One expert has estimated that conviction rate for childhood sexual abuse at 1% of all cases. D. Russell, The Secret Trauma 86 (1986). Consequently, for many survivors of childhood sexual abuse, civil redress is the primary available form of legal remedy. The most formidable procedural bar to such suits is the application of statutes of limitation to traditional tort claims. M. Salten, Statutes of Limitation in Civil Incest Suits: Preserving the Victim's Remedy, 7 Harv. Women's L.J. 189, 190 (1984); see also Comment, Tort Remedies for Incestuous Abuse, 13 Golden Gate U. L. Rev. 609, 628-31 (1983).

When addressing the statute of limitations problem two years ago, the Washington Supreme Court, in a 5-4 decision, declined to apply the discovery rule to civil suits brought by survivors of childhood sexual abuse. Tyson v. Tyson, 107 Wn.2d 72, 727 P.2d 226 (1986). A strong dissenting opinion discussed the necessity for application of the discovery rule in these cases. 107 Wn.2d at 80-



94. The dissent pointed out that the purpose of the discovery rule is:

to provide an opportunity for an adult who claims to have been sexually abused as a child to prove not only that she was abused and that the defendant was her abuser, but that her suffering was such that she did not and could not reasonably have discovered all the elements of her cause of action at an earlier time. The policy behind providing this opportunity has been demonstrated: the nature of child sexual abuse . . . is often so secretive, so humiliating, and so devastating that a victim typically represses the events until the abuse is "discovered" -- often through psychotherapy, and often well into adulthood.

107 Wn.2d at 93-94 (emphasis in original). The concurring opinion to the majority's decision noted the strength of the dissent's arguments, but stated that "[t]his is the exclusive province of the legislature, and the judiciary must not invade it." Id. at 80.

In March, 1988, the Washington Legislature elected to act within its province for establishing statutes of limitations and adopted legislation specifically applying the discovery rule to civil suits involving sexual abuse of children. Under Washington law, suits seeking damages for injury suffered as a result of childhood sexual abuse must be commenced within three years of the act of abuse allegedly causing injury or within three years of the time the victim discovered that the injury was caused by the abuse, whichever period expires later.

The Montana Supreme Court also was asked recently to apply the discovery rule to civil cases involving sexual abuse of children in the case entitled E. and D.W. v. D.C.H., 754 P.2nd 817 (1988). Like the Washington Supreme Court, the Montana Court found that "(w)hile this Court is aware of the horrifying damage inflicted by child molesters, it is not for us to rewrite the statute of limitations to accommodate such claims through judicial fiat. Such a task is properly vested in the legislature." (Emphasis added). Id. The civil statute of limitations bill proposed to the 1989 Montana Legislature is modeled after Washington law and asks the Legislature to act within its vested authority to establish, as did the Washington Legislature, an appropriate discovery rule exception to the statute of limitations in cases involving sexual abuse of children.

IV. Application of the Discovery Rule

Traditionally, statutes of limitation begin to run on the date of the wrongful act or omission which is the basis of the plaintiff's claim. Developments in the Law: Statutes of Limitations, 63 Harv. L. Rev. 1177, 1200-02 (1950). In instances where injured plaintiffs may not know or be expected to know of their injuries until after the statute of limitations period has expired, courts have fashioned the "delayed discovery" exception. The discovery rule provides that the statute of limitations does not begin to run until the plaintiff learns or in the exercise of reasonable care and diligence should

have learned of the wrongdoing. Johnson v. St. Patrick's Hospital, 148 Mont. 125, 417 P.2d 469, 473 (1966).

In determining whether to apply the discovery rule, courts traditionally have balanced the possibility of stale claims against the unfairness of precluding meritorious causes of action. Grey v. Silver Bow County, 149 Mont. 213, 425 P.2d 819, 821 (1967).

Montana's substantial body of case law applying the discovery rule has been explicitly approved by the State Legislature. In 1987, the Legislature amended Section 27-2-102 of the Montana Code to read in part as follows:

(3) The period of limitation does not begin on any claim or cause of action for an injury to person or property until the facts constituting the claim have been discovered, or, in the exercise of due diligence, should have been discovered by the injured party if:

(a) the facts constituting the claim are by their nature concealed or self-concealing; or

(b) before, during, or after the act causing the injury, the defendant has taken action which prevents the injured party from discovering the injury or its cause.

The discovery rule is particularly well-suited to cases involving childhood sexual abuse. Indeed, the Surgeon General's Northwest Conference on Interpersonal Violence specifically recommended application of the discovery rule to childhood sexual abuse cases. Conference Recommendations, dated September 23-26, 1987. The psychological trauma associated with childhood sexual abuse will often result in the victim lacking the means or ability to ascertain his or her injuries and their cause.

The public policy considerations underlying use of the discovery rule clearly support its application in cases involving childhood sexual abuse. The discovery rule, for example, is often applied in breach of trust cases. Skierka v. Skierka Bros. Inc., 629 P.2d 214, 218 (Mont. 1981). The same policies supporting application of the discovery rule in breach of trust cases support protection of plaintiffs' remedies in childhood sexual abuse cases: the victim of childhood sexual abuse is typically inexperienced in interpersonal relations and must rely on adults for that knowledge. Moreover, the legitimacy of a child's trust in and reliance on his or her family members historically has been recognized by the courts and legislatures. See Salten, supra at 209.

Similarly, the discovery rule applies to fraudulent concealment claims. Monroe v. Harper, 164 Mont. 23, 518 P.2d 788, 790 (1974); Keneco v. Cantrell, 174 Mont. 130, 136, 568 P.2d 1225, 1228 (1977). And surely an adult's failure to disclose to the child essential information about a child's rights and limits on the adult's rights--or plain deceit on these matters--may be treated as a fraud upon that child. See Salten, supra at 210-11.

As stated more fully above, it is not unusual for a victim of childhood sexual abuse to repress all memory of the abuse. See E.S. Blume, supra at 5. In any case, most victims will be unable to connect their injuries with the abuse for many years. Id. Moreover, injuries related to childhood sexual abuse often include problems in interpersonal relations, low self-esteem, feelings of isolation, and sexual dysfunction, all of which are unlikely to manifest themselves clearly until adulthood. M. Tsai, S. Feldman-Summers & M. Edgar, Childhood Molestation: Variables Related to Differential Impacts on Psychosexual Functioning in Adult Women, 88 J. Abnormal Psych. 407, 414 (1979). Generally, it is only when an adult survivor of childhood sexual abuse enters therapy that any meaningful understanding of his or her injuries can be developed. M. Salten, supra at 202.

Discovery of the cause of a childhood sexual abuse survivor's injuries can also take years. Many victims are convinced that they are to blame for the abuse. See M. de Young, supra at 41. The concept of "blameless ignorance" historically has been a central justification for use of the discovery rule. See Urie v. Thompson, 337 U.S. 163, 170 (1949). That concept is clearly relevant in childhood sexual abuse cases. The trauma associated with sexual abuse causes a victim to be unable to connect his or her injury with the abuse. The victim thus is "blamelessly ignorant" of his or her abuse-related injuries. The abuser, on the other hand, is the direct cause of the victim's trauma, and should not be permitted to profit from the fact that discovery of the cause of a victim's injuries may occur long after the traditional statute of limitations period has elapsed.

No public benefit supports a rule that shields childhood sexual abusers from the consequences of their conduct. See Comment, Adult Incest Survivors and the Statute of Limitations: The Delayed Discovery Rule and Long-Term Damages, 25 Santa Clara L. Rev. 191, 217-18 (1985). Civil suits act as deterrents to unacceptable behavior. The hope is that this legislation, along with providing victims of childhood sexual abuse with a remedy, will have a chilling effect on potential abusers.

## V. Conclusion

If the traditional statute of limitations "date of wrongful conduct" rule is applied to civil suits brought by adult survivors of childhood sexual abuse, we effectively deny these plaintiffs a remedy. The discovery rule clearly is appropriate in these cases; application of the rule would mean that the statute of limitations for adult survivors of childhood sexual abuse would not begin to run until the plaintiff's injuries, and the fact that they were caused by the abuse, are discovered or should have been discovered by the plaintiff. The latent nature of many of the injuries and the time required to discover their cause, as well as the offender's role in coercing the child's silence, make application of the discovery rule essential in intentional tort suits alleging injuries resulting from

childhood sexual abuse. Indeed, these cases are perhaps the most compelling examples of the need for the discovery rule. Legislative action is essential to provide survivors of childhood sexual abuse with a genuine and meaningful legal remedy.

Adapted from a paper by Jana Mohr

P.O. Box 1099

Helena, MT 59624

406/449-7917

Mr. Chairman, members of the committee,

My name is Brenda Nordlund and I appear on behalf of Montana Women's Lobby in support of SB 157.

Our support is based, in part, on the following factors:

1. The Surgeon General's Northwest Conference on Interpersonal Violence specifically recommended application of the discovery rule to childhood sexual abuse cases. The psychological associated with childhood sexual abuse will often result in the victim lacking the means or ability to ascertain his or her injuries and their cause.

2. Public policy considerations underlying the use of the discovery rule support its application in cases of this nature. Analogy can be drawn to causes of action involving "breach of trust" and "fraudulent concealment", where the discovery rule is applied in Montana. [See, Skierka v. Skierka Bros. Inc., 629 P.2d 214, 218 (Mont., 1984), Monroe v. Harper, 164 Mont. 130, 136, 518 P.2d 788, 790 (1974); and Keneco v. Cantrell, 174 Mont. 130, 136, 568 p.2d 1225, 1228 (1977)]

The same policies supporting application of the discovery rule in breach of trust cases support protection of plaintiffs' remedies in childhood sexual abuse cases: the victim of childhood sexual abuse is typically inexperienced in interpersonal relations and must rely on adults for that knowledge. Likewise, drawing comparison to fraudulent concealment cases, an adult's failure to disclose to the child essential information about a child's rights and limits on the adult's rights--or plain deceit on these matters--may be treated as a fraud upon that child.

Secrecy is a common thread in these causes of action, and is equally prevalent in childhood sexual abuse cases.

3. The concept of "blameless ignorance" historically has been a central justification for use of the discovery rule. that concept is clearly relevant in childhood sexual abuse cases. [See, Urie v. Thompson, 337 U.S. 163, 170 (1949)]

It is not unusual for a victim of childhood sexual abuse to repress all memory of the abuse. Most victims will be unable to connect their injuries with the abuse for many years. Injuries related to childhood sexual abuse often include problems in interpersonal relations, low self-esteem, feelings of isolation, and sexual dysfunction, all of which are unlikely to manifest themselves clearly until adulthood. Generally, it is only when an adult survivor of childhood sexual abuse enters therapy that any meaningful understanding of his or her injuries can be developed.

SENATE JUDICIARY

FILE NO. 1-26-89

DATE 1-26-89

BILL NO. SB 157

P.O. Box 1099

Helena, MT 59624

406/445-1511

Discovery of the cause of a childhood sexual abuse survivor's injuries can take years. Many victims are convinced that they are to blame for the abuse. The trauma associated with sexual abuse causes a victim to be unable to connect his or her injury with the abuse. The victim is thus "blamelessly ignorant" of his or her abuse-related injuries. The abuser, on the other hand, is the direct cause of the victim's trauma, and should not be permitted to profit from the fact that discovery of the cause of action of a victim's injuries may occur long after the traditional statute of limitations period has elapsed.

4. Finally, and perhaps most importantly, no public benefit supports a rule that shields childhood sexual abusers from the consequences of their conduct. Civil suits act as a deterrents ~~to~~ unacceptable behavior. Our hope is that this legislation, along with providing victims of childhood sexual abuse with a remedy, will have a chilling effect on potential abusers.

Survivors of childhood sexual abuse deserve an opportunity to present their cause of action. SB 157 will afford them that opportunity. We urge a do pass recommendation for SB 157.

S.B. 157

I am Janet R. Allison, Ph.D., a licensed psychologist from Missoula. I am here to testify on behalf of S.B. 157, based on my past decade of intensive work with child sexual abuse victims, offenders, families, and adult survivors. As you may know, in the past ten to fifteen years professionals and the general public have increasingly come to recognize the scope of this problem. Researchers have found that at least 33% of girls, and at least 20% of boys, are sexually abused by the time they reach adulthood.

The long-term effects of child sexual abuse on victims are devastating, and often require extensive psychotherapy. Although the need for psychotherapy is caused by the abuse, survivors almost never receive compensation for therapy expenses from their offenders. Their failure to demand such compensation (by filing a lawsuit by the age of 21) is caused by limitations that are beyond their control, because of the psychological realities that are part and parcel of the experience of child sexual abuse. These are the psychological realities that would be explained in detail in front of a jury, if S.B. 157 were to become law and if a survivor were filing suit. I will attempt to outline them only briefly for you here.

From my experience as a clinician dealing with sexual abuse cases, and from the body of literature regarding the effects of such victimization, it is clear that there is a constellation of symptoms that generally result from sexual abuse by a trusted authority figure. Often some or most of these symptoms are latent until well into adulthood--that is, they don't appear or don't develop their full intensity until the survivor is grappling with adult stresses such as marriage, raising children, etc. These long-term negative effects include: chronic depression, low self-esteem, chronic irrational guilt, suicidal and other self-destructive thoughts and behaviors, inability to trust, lack of assertiveness, difficulty with intimate relationships, sexual problems and dysfunctions, disassociation of self from experience, recurrent nightmares, flashbacks to the abuse, disproportionate negative reactions to certain persons and events, eating disorders, alcohol and drug abuse, promiscuity, involvement in prostitution, the tendency to be revictimized, and the tendency to victimize others.

Although the victim/survivor of child sexual abuse suffers more and more from these increasingly chronic symptoms, she or he has no way to connect them with the earlier experience of sexual abuse, without some form of expert input. This

usually occurs through work with a psychotherapist who can point out the connections, or sometimes through magazine articles, TV shows about sexual abuse, public presentations by experts, etc. But without education from an outside expert source, no one would recognize that a group of several of these symptoms strongly suggests the likelihood that child sexual abuse is the cause--and, prior to the past fifteen years, no one did recognize that connection.

Sexual abuse survivors have specific impairments that make them even less likely to connect their symptoms with their history of sexual abuse. First, the secrecy, which surrounds the abuse and is imposed by the offender (and which I described in testimony for S.B. 122), ensures that the victim has no perspective on the sexual contact except for what the offender communicates--often that it is "normal" and good, rather than destructive to her. Second, the inherent authority of the offender, and his position of trust, puts the child in a terribly helpless, powerless position. Unless someone somehow intervenes and offers protection for victims, they are forced, for their own survival, to find ways to accommodate to the ongoing abuse.

The "child sexual abuse accommodation syndrome," first described by R. Summit in 1983, revolves around the victim's need to cope with the contradiction between what the perpetrator is supposed to be (good, loving, trustworthy) and what he is doing (which is painful, confusing, and bad). The healthy, normal child who is subjected to this ongoing contradiction accommodates by viewing the perpetrator as good, to avoid the emotional devastation of experiencing an essential caretaker as bad. And so the only acceptable option for the victim is to assume responsibility for the abuse. Naturally, this leads to many of the symptoms that I have already listed--the rage over the victimization is suppressed and internalized, leading to self-hatred and self-destructiveness. Victims not only behave in various self-destructive ways, but come to feel guilty about everything bad that happens in their lives. Thus, they assume that their many problems are somehow their own fault, and have not the slightest understanding that those problems were caused by the offender's behavior.

What is more, accommodation to the intolerable anxiety, pain, and confusion of sexual abuse often includes actually repressing the memory of the abuse altogether. Many survivors of sexual abuse develop amnesia so complete that they simply do not remember that they were sexually abused at all; others remember only one or a few incidents out of the years of abuse they endured. Obviously, until survivors recover their memory of the abuse (often many years later, with the help of a psychotherapist who suspects sexual abuse may be the cause of their constellation of symptoms), they have no way of seeking compensation for its effects.



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Even if, somehow, a young survivor of sexual abuse discovered the nature of his or her injuries and their causes in time to file a lawsuit by the age of 21, the chances of the suit actually being filed are probably nil. I have only seen one survivor in all of my experience who reached the point of even considering bringing suit against her offender at the age of 21. (In this case, the offender had been only a temporary member of her family.) This young woman certainly did not have the psychological strength to follow through with taking such action. Adolescents and young adults are still too immature and too emotionally attached to their families to be capable of this type of action against family members or close friends. In my professional opinion, I would estimate that less than five percent of incest survivors could, mentally and emotionally, even consider filing a lawsuit against their offenders by the age of 21; I doubt that any would be capable of actually filing and following through with such a suit by that age.

In fact, very few survivors of any age would actually file lawsuits against their offenders. Bringing suit against a family member or close friend brings tremendous stigma, family and social disruption, and pain to the plaintiff, especially when sexual contact is involved. The long, hard process of carrying such a lawsuit to completion would demand emotional reserves and resilience beyond what many sexual abuse survivors have, even after extensive psychotherapy.

In sum, the psychological realities that survivors of child sexual abuse endure make it impossible for them to discover the cause of their increasingly severe and chronic problems unless they receive expert input, which usually comes in the form of psychotherapy years into adulthood. In order to deal with the effects of their abuse, survivors often need extensive psychotherapy, the cost of which is an overwhelming burden for them. S.B. 157 would allow the possibility for a small percentage of survivors to seek compensation from those who are responsible for the injuries. In the vast number of sexual abuse cases in which criminal prosecution cannot occur, this would create one other way for us as a society to communicate that we hold child molesters responsible for their crimes against children. I urge you to support this important legislation.

## Testimony in Support of S.B.157

Testifying: Hugh M. Black, Ph.D., Licensed Clinical Psychologist  
in private practice in Helena, MT

Representing: Montana Psychological Association

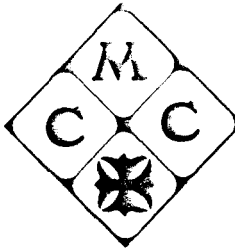
The Montana Psychological Association supports extending the statute of limitations for recovery of actual damages caused by sexual abuse of minors for reasons of justice and equity. It is well documented that children find it psychologically difficult to report sexual abuse in the best of circumstances because they frequently believe it is their fault, and when they do report it they are often not believed. Clinicians frequently report the debilitating effect on adults of their childhood sexual exploitation and the difficulty they have working through the trauma sufficiently to be able to go on with their lives. Frequently they are so damaged that their inner conflicts preoccupy them to the point that they are emotionally unable to support themselves and are receiving State assistance. In cases where the exploitation can be proven, this bill would shift the costs of treatment from the State (Medicaid) to the assailant. Furthermore, sexual molesters frequently continue their behavior under the hope that they will never be exposed. This bill may provide some deterrence to those predators who are capable of anticipating the future, in the knowledge that they may some day be required to make restitution.

Most people think of sexual abuse as involving young girls, but there are an increasing number of young men who are now reporting sexual abuse that occurred when they were children. In our culture it is much more difficult for male juveniles or adolescents to report this exploitation due to societal shame, as well as the reasons females find it difficult. Boys believe frequently that the exploitation happened to them because there is something abnormal about them, rather than the predator.

The Montana Psychological Association urges this committee and the Senate to pass this bill to further protect those citizens who need special protection, and to provide some opportunity for just redress to those who have been exploited when they were helpless. Often, the capacity to obtain redress can aid mightily in allowing an emotionally disabled person become a productive member of society.



Hugh M. Black, Ph.D.  
Licensed Clinical Psychologist  
License # 133 (Montana)



# Montana Catholic Conference

SENATE JUDICIARY

EXHIBIT NO. 7

BILL NO. SB 157

January 26, 1989

## CHAIRMAN CRIPPEN AND THE SENATE JUDICIARY COMMITTEE

I am Megan Hill, representing the Montana Catholic Conference.

Members of the church's clergy often deal with both sides of the child abuse issue--the abused as well as the abusers.

It is important to realize that this is an intergenerational problem; those abused often repress the feelings about their own experience, later abusing their own children. The costs of counseling to help break this vicious cycle are often very burdensome and may continue for years. However, if damages were available in child abuse cases, the chain of continued sexual abuse of children would have a chance at being broken.

We strongly urge your support of SB 157.



Leslie Burgess  
Missoula, MT

SB 157

SENATE JUDICIARY

EXHIBIT NO. 8 12.1

DATE 1-26-89

BILL NO. SB157

My name is Leslie Burgess. I am a survivor of incest. I had a complete memory block until I was 32 about the incest that I experienced between the ages of 4 to 7. I did not remember what had happened to me. When I was 32 I sought therapy because I was depressed and suicidal and very concerned about my inability to form or maintain intimate relationships. It was after nearly a year of therapy that I started to recall my memories. I believe that it became safer to remember because I was older, far away from the situation in time and space and had the support of my therapist. Remembering enabled me to finally work through the pain and begin the long healing process.

I now remember the abuse as starting when I was four. The last incident of abuse that I remember was when I was seven. During that time period, I was fondled, masturbated upon and forced to "perform" oral sex. I had my privacy invaded when I was bathing and when I was sleeping as well as at other times. I was told that if I told anyone, my younger brother would die. I was four years old and I believed it.

As a young adult I abused alcohol, drugs and food and I was very sexually promiscuous. I suffered a long-term depression and made two suicide attempts between the ages of 18 and 25. I had extremely low self-esteem and I was in a brutal battering relationship for almost four years. I didn't remember at that time that I had been sexually abused as a child and it wasn't until I was 32 and in therapy that I realized that my problems were a result of the childhood sexual abuse I had experienced.

At this point I have a tremendous time, energy, and monetary investment in healing so that I can realize some of my potential as a contributing member

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of society. It would be appropriate for the abuser to bear the financial burden, at least, of the cost of my therapy. However, to use the court system to allow me to do so is impossible for me because of the statute of limitations. I had no memory of the incest until I was 32 but the current law requires me to have taken action by the time I was 21. Blocked memory is certainly a factor that needs to be taken into account in reassessing the law in regard to the statute of limitations because it makes impossible the option of pursuing civil suit until such time that memory is recalled.

I hope that you will consider that the discovery rule is applicable to incest. For someone in my position, this addition would be the only way that I could recover damages for the cost of therapy from my abuser at the time that it was possible for me to do so - when I was an adult and after I recovered my memory and connected my problems as an adult with what happened to me as a child.

Mr. Chairman, Members of the Committee, I am Elizabeth Williams. I am 37 years old. I was sexually assaulted from the time I was 5 until I was 12. Intercourse was forced upon me beginning at the age of 9. An overwhelming fear of abandonment; a paralyzing fear of adult anger; and threats made by my abuser that he would kill a member of the family if I told, kept me silent about the abuse until I was 12 years old. At that time I told a friend of my abuser's actions. Upon disclosure, a family meeting was held at which my abuser was confronted with having sexually molested me. He denied having had any type of sexual contact with me. Many adult family members expressed shock and anger that I would fabricate such a story.

From that point on, I was labled a liar, and a trouble maker. I was forbidden to have contact with my abuser, his family, and all other extended family members. I was accused of having had sexual relationships with boys at school. I was forbidden to tell anyone about the abuse and all open reference to the abuse was terminated. My immediate family shunned me. I was treated with contempt and greeted by silence. All of this produced confusion, shame and guilt within me. Looking back now, as an adult, I realize I was faced with conflicts and contradictions that my child's mind could not begin to grasp.

I spent much of my youth trying to deal with the disruption I felt I had caused within my family and with the resulting isolation and condemnation. It is unthinkable that I could have brought civil suit' against my abuser when I was between the ages of 18 and 21, for I firmly believed that I had wronged the family and especially my abuser. In my mind, I was to blame. I felt responsible for the incestuous acts themselves; I felt responsible for telling my "secret" to a friend, whil at the same time not telling someone sooner; and I felt an overwhelming burden of responsibility for the trouble I had caused my abuser and my family. Therefore, I wanted to place the entire matter behind me and get as much distance from it as possible. My overall reaction to memories of the incidents of sexual abuse and the events surrounding my disclosure was to forget them. By the time I was 17, I had no specific memories of the incidents and recollections of my childhood in general were vague. I left home at 18, married someone I had only known for 2 weeks, and began a family of my own.

Between the ages of 18 and 21, I was an unusually distressed young person who had very little comprehension of my problems. I had no idea that what I thought were not unusual mood problems, would later turn into severe depression and suicidal intentions. I had no way of knowing that later I would develop extreme marital problems in this marriage and in a subsequent marriage.

Between the ages of 18 and 21, I obtained prescription drugs to help deal with family distresses. I did not know that 10 years later I would be so dependent on drugs, that I could not make it through a day without them. E 9 15

I had no idea that my frustrations and anxieties about parenting would lead me to follow the pattern of abuse that had been used on my. As a very young parent, I had no way of knowing that my emotional problems would become so bad that I would physically and emotionally abuse my own children.

Although I had experienced difficulties between the ages of 18 and 21, I had no idea that my emotional problems would later grow so severe that they would nearly destroy my life and the lives of my husband and children.

As an adult I have had extreme difficulty establishing and maintaining relationships of trust. I have had many sexual problems including promiscuity. I have suffered chronic insomnia caused by the same terrifying, repeated nightmare.

In my early 30's I began having even more terrifying nightmares; severe episodes of suicidal depression; and feelings of suffocation during marital relations. My marriage quickly deteriorated and in November of 1983 I sought counseling with Dr. Allison to confirm my decision to divorce my spouse, and by so doing, put an end to my problems. During our first session, much to my surprise, Dr. Allison suggested that my difficulties most likely stemmed from my incestuous childhood rather than from my marriage.

The most difficult thing for me to come to terms with in therapy, was that I was the victim and not the perpetrator of the sexually abusive relationship with my abuser. My resistance broke down somewhat in therapy, as I realized that my experiences were much the same as other adults who had been victimized as children. As my therapy progressed, I began to think more and more about responsibility.

I had spent thousands of dollars for counseling; I still had bills to pay; and I knew I needed more counseling, which would cost me more. I felt my abuser should at least be required to pay a portion of my counseling fees. I decided to file a civil suit against my offender. The District Court Judge stated in his decision, that my action was barred by the Statute of Limitations Law. I appealed to the Montana Supreme Court. That court agreed, but they recommended that the legislature change the Statute of Limitations Law to allow such actions.

I appeal to you at this time to pass the bill now before you and give adult survivors of sexual abuse in this state the opportunity to place responsibility for the acts committed against them as children squarely on the shoulders of their abusers. I appeal to you to allow these survivors the opportunity to force their offenders to help pay for their recovery, which costs thousands of dollars.

I am aware that passage of this bill will in no way effect my case against my abuser, for it is closed. My hope in testifying before you, is that other survivors will have the opportunity to sue their offenders. I urge you to pass Senate Bill 157. Thank You.

TESTIMONY--SENATE BILL 157, SENATOR DENNIS NATHE, SPONSOR DATE 1-26-89BILL NO. SB 157

Mr. Chairman, Members of the Committee:

My name is Fay Dozier of Reedpoint, Montana. You may recall that I previously testified on SB122. I am unable to give oral testimony on SB 157, but want my testimony on the record.

As I previously testified, I was sexually abused for 13 years. I had devastating emotional problems for many years after the abuse stopped. I sought help from various therapists for those problems from the time I was 18, but they always treated the symptoms, never the problem. I later came to call it "bandaid therapy". Throughout the years, I also suffered many physical problems, but the physicians could never find anything medically wrong with me.

In September of 1980, at the age of 30, I was suffering so greatly from severe depression, increased alcohol abuse, self-hatred and thoughts of suicide, that my husband had to force me to go back into therapy. I spent six months with an individual therapist. He seemed to give some credence to the possibility that the sexual abuse might have something to do with my problems. At the end of six months, he referred me to a therapist who conducted group therapy sessions for adult, female sexual abuse victims. By this time, I was 31 years old. I spent from March of 1981 to October of 1984 processing through my feelings of rage, pain, fear, guilt and self-hatred. During that time, I learned that my behavior and problems (both physical and emotional) were common characteristics of sexual abuse victims.

Not only was my recovery a long and painful process, but it was also a financial hardship to my family. The cost of the therapy from 1980 to 1984 was over \$5,000. We are still paying off this debt. Throughout the years I would estimate it has cost me well over \$30,000 to try to get help for the emotional, mental and physical pain caused by the sexual abuse.

If there had been a law such as this proposed one, I could have sought remedy through the courts to at least recover monetary damages for what was done to me. I couldn't stop him by filing criminal charges, but at least he might have been exposed and such an action might have been a deterrent so that he would not have continued molesting as he has done.

I strongly support Senate Bill 157. Thank you.

  
Fay Dozier



My name is Susan Kraft Ball. I am 31 and a survivor of childhood sexual abuse. Although Montana has been my home for 10 years and I discovered my abuse less than 3 years ago, passage of this important legislation will not help me personally. Montana law would not apply to my case because my abuser lives in another state where the molestation also occurred. My motivation for this testimony is that I feel compelled to do whatever I can to help prevent even one child from having to experience the trauma and lifetime consequences of sexual abuse. I also want to help child victims and adult survivors to have access to the courts in order to have the opportunity to place the burden of responsibility for abuse and its resulting damage on the violators rather than on the innocent victims. I hope that my own history might give you some insight into the dynamics of sexual abuse and its consequences, and help you understand why the legislation before you needs to be passed.

My father was manic/depressive and from the time I was 8 or 9 until his suicide when I was 15, he was tortured by prolonged periods of suicidal depression and hospitalization, and brief manic episodes. My mother had to work full time and was preoccupied with my father's illness and suicide. I was the youngest of 3 sisters, and we all focused our lives on trying to help our parents. I did not understand what was happening to my father and family; I felt abandoned, confused, responsible, and desperately in need of love and attention. My abuser was a close family friend, lay minister, and lay counselor. My mother was dependent on him as a trusted advisor, confidant, and, after my father's death, lover. My sisters and I were also dependent on him as our primary source of nurturance - as a "surrogate" father.

I believe my molestation began when I was about 12, as this father figure very gradually introduced fondling and intercourse into our relationship. He told me not to tell because my mother and other people would not understand that he was just helping me discover my inner-self, my unique beauty, and my sexuality. He told me

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he "could be charged with statutory rape, go to jail, and lose everything he had, and I didn't want that to happen did I?". I felt more confused and guilty, and experienced a great deal of anxiety with each sexual encounter. I didn't know how to stop him without risking his rejection. I felt trapped by my family's emotional dependence on my abuser and feared further abandonment if I said anything or told anyone, so I remained silent. The abuse continued past my 18th birthday; even after I left home for college and work, the pattern of abuse and secrecy remained unbroken and would be repeated every time I returned home to visit. The longer it continued the more responsible I felt for meeting his needs, for the continuation of the abuse, and for maintaining the secrecy, and the guiltier I felt for not being able to stop it.

I now understand that I learned to cope with the repeated trauma through: 1) rationalization - "Since everybody trusts and loves him, this must be OK, and it must be good for me because he tells me it is..."; 2) minimization - "He isn't physically hurting me, therefore I can do this small thing for him, besides his needs are more important ..."; 3) splitting - I hid my inner turmoil by presenting a public image of what I thought people liked, I only acknowledged to myself and others the positive aspects of my relationship with my abuser, and I would disassociate from my emotions and even from my body during the actual abuse - like watching a scene from a movie; 4) denial - I denied my feelings - they were too confusing and painful, I denied that there was anything negative or unusual about my relationship with my abuser, and I denied to myself that the earlier abuse took place, and 5) escape - I escaped my feelings and thoughts by "spacing out" for hours on end in front of the television set.

I had memories and flashbacks of the fondling and intercourse I had experienced primarily during episodes of abuse and during intimate or sexual experiences in my

adult years (I rarely dated during my teen years). I had never told anyone of my experiences nor did I comprehend that what I had experienced was molestation or incest (clinical definition) until after I was forced to disclose those experiences to my mother in the Spring of 1986 and to her counselor in June of that same year. My mother had found out while on a romantic vacation with my abuser the summer before, when he remarked on how fascinating it was that she made love just like her daughters. After several months of personal counseling, she confronted my sisters and I with this information and flew us home to discuss it as a family and with her counselor. During that family meeting I discovered that my sisters had also experienced similar long-term abuse and we recently confirmed that a female foster child had also been molested by this same person in our home. My mother's counselor convinced me that I had indeed been a victim of sexual abuse and suggested that I seek professional help when I got back to Montana to help deal with some of the inevitable consequences. Some of the consequences I have experienced include: susceptibility to repeated victimization, confusion about sex and intimacy, splitting and sexual dysfunction, depression and low self-esteem, and chronic headaches and nausea.

For several months after returning to Montana I tried unsuccessfully to block out the memories and feelings that came flooding back into my mind after so many years of suppression. I believe that had I not been forced to disclose, and had I not received counseling that helped me recognize the connection between my abuse and its repercussions in my own life, I probably would have maintained the secret for years until later life crises would have lead me to examine the causes. But it was like opening Pandora's Box - once the secret was out, the ugly and painful realities of my experiences and their consequences could no longer be pushed back into "safe" dark corners of my mind. I had to start dealing with them, and that has been an extremely costly, time consuming, disturbing, and painful process. I have been in

individual, group, and marital counseling for 2 years. Sometimes I find myself wishing I had been paralyzed in an accident so that I would have some physical basis for my sexual dysfunction. Many times I have wished for my life to end so that I wouldn't have to feel or deal with it anymore, and so that my husband and our relationship would be free of its torturous impacts. It is an agonizing process to unlearn the lessons of the past and learn how to live as a functional, healthy person. I read everything I can on the subject, which, in addition to therapy, helps me understand that even though the influences of sexual abuse never go away there are ways of lessening its hold on my life.

I have recently made the very difficult decision to initiate a civil suit against my abuser in the State of Colorado. My abuser has not indicated any remorse or willingness to take responsibility for his acts of abuse, and has continued to place himself in a position of trust with other vulnerable children. I therefore felt it was necessary to go through the legal process to attempt to place legal, moral, and financial responsibility where it properly belongs, and to do what I can to make sure this chronic abuser doesn't hurt any more children. However, the lower court has ruled that the statute of limitations started running when I turned 18 regardless of the continuation of the abuse or the date of "discovery", similar to the present interpretation of Montana law. I am currently appealing that decision and hope that I will not be permanently barred from the justice system while my abuser escapes responsibility and potentially continues his abusive behavior unchecked.

Unfortunately, because of the dynamics of child sexual abuse, current Montana law effectively bars most victims due access to the courts and inadvertently protects child molesters. This legislature has the opportunity to make a positive difference in the lives of many innocent victims. You can help make Montana a better, safer place to live and grow-up. Please vote for this legislation. Thank you.

SB 157 - Revised Civil Statute of Limitations for Child Sexual Abuse <sup>Bill No.</sup> SB 157

My name is Patricia; I am a 28 year old incest survivor. I've already submitted testimony under this same alias for SB 122 (Revised Criminal Statute of Limitations for Child Sexual Abuse) which contains a more detail version of my childhood experiences.

I was sexually abused starting before I turned 3 to 17 years of age by 6 perpetrators who were mainly family members. My family was severely dysfunctional and alcohol abuse was prominent. Unspoken family rules such as don't trust, don't feel, and don't tell were ingrained and backed up with verbal abuse and physical violence by all family members. I felt trapped and isolated. I was on my own to deal with the sexual abuse and believed I had no other choice but to submit when cornered by an abuser. When I confided in 4 different adults about my abuse I only received negative feedback that reinforced my feelings of helplessness and responsibility. When I was 17 I began a long period of alcohol and drug abuse, and became sexually promiscuous because I felt helpless against any sexual advance. Shortly after I left home at 18, I married a man who continued to sexually abuse me, and we divorced three years later. I had relied on my family for reaffirmation and acceptance until quite recently. I feel this dependency on my family prevented me from discovering the connection between my behavior and the sexual abuses.

I sought counseling at the age of 25 because I had been physically abusing my current spouse and children. In an attempt to find out why and correct it before I lost my husband and children I entered counseling and eventually an incest survivors' group. I have been in counseling ever since and have gradually discovered the connection between the repercussions I have experienced and my abuse. I believe the following repercussions are the direct result of the

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combined abuses I experienced as a child: severe depressions, suicidal attempts, tendencies, and other self-destructive behaviors, alienation from peers, spouse, children, and society in general, anxiety, insomnia, inability to make decisions for myself, mistrust and fear of people, confusion, eating disorders, and a loss of personal identity. Even though they could also have been produced by the different forms of abuse individually, I feel the sexual abuse in particular intensified the repercussions dramatically. The repercussions I feel are due solely to the sexual abuses, and which especially affect my marriage are: sexual promiscuity, flashbacks to the abuses, nightmares of sexual abuse, confusion about sexuality, and shame of and disassociation from my body, and the irrational fear of being sexually abused by my husband.

I feel passage of SB 157 would provide me with an opportunity to pursue compensation for damages inflicted by those who abused me. I did not choose to be sexually abused and dealing with the damages has been, and will continue to be, a long, time consuming, and costly process. Medicaid has helped pay for my therapy and medical expenses so far, but I expect to be paying on the balance for many years. The repercussions resulting from sexual abuse are life long and also affect my spouse, children, and close friends. I have been receiving therapy since 1985 and I know that I will probably continue to need it off and on for the rest of my life. The opportunity to try to get compensation from my abusers would put responsibility where it belongs and would help relieve Medicaid and myself of its burden. I believe at least three of my abusers are still abusing children and one other is in prison due to molesting another child. Forcing them to take moral, legal, and financial responsibility would hopefully help deter them from abusing other children.

Mr. Chairman and Members of the Committee:

My name is Kay I'm 34 years old and I live in Missoula County.

When my stepfather first sexually abused me at nine or ten years old, I was in bed. I pretended to be asleep because I was so horrified. The next day I acted like everything was OK because I really wanted it to be. After the second sexual abuse, my stepfather warned me not to tell my mother. He said telling her would only make it worse. Since my stepfather had in the past protected me from physical and emotional abuse by my mother, I felt not telling was the lesser of two evils. But the confusion of my former abuse protector turning into a sexual abuser made me feel abandoned.

Initially the sexual abuse involved manipulation (breasts, genitals, etc.), using sexual language like a lover would use, and making me manipulate him. This occurred in private. Some abuse, such as covert fondling, continued even with other family members present which was humiliating. There were no "safe" times when I didn't worry about being assaulted. The abuse continued for some time -- I'm not sure how long due to memory lapse. I felt awful; bad, ashamed, like somehow I deserved this abuse that I sensed was wrong.

My sister disclosed the abuse to our mother who then questioned my stepfather. He admitted it and said the abuse would stop but it continued on a lesser degree (brushing my breasts supposedly on accident, peeking through doors, and constant innuendos). I felt overwhelmed and insecure never knowing where or when I was safe. I avoided my stepfather whenever possible but never dreamed there could be any help, especially legally.

After that I was subjected to many abusive behaviors by my mother. She made as many, if not more, threats to guarantee secrecy and to protect my stepfather. The effects of her not protecting me and then blaming me for the sexual assaults caused even more emotional damage. I internalized the effects by daydreaming of

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dying. I didn't know there were laws to protect children. I only knew that my protectors were my parents and in this case they were also the abusers.

Finally, after four or five years of this covert abuse, my sister and I were able to talk about it with each other since she was also a victim. We would stay awake at night, standing guard, to see if our stepfather was coming into the room so we could protect each other from him -- something no child should have to do. We became emotionally exhausted.

We were attending a church high school youth camp when my sister and I first told outsiders about the sexual abuse. We decided to run away because the youth directors assured us safety and protection. We stayed with church leaders a couple of days, then the police picked us up and took us to juvenile hall. That was horrifying for me. I was put in a cell, stripped and given jail clothes to wear. I was booked and fingerprinted -- treated like a criminal further reinforcing the guilt imposed by my mother. We told the authorities the reason we ran away was because of sexual abuse. They didn't say or do anything.

The next morning our stepfather and mother came to get us. I was terrified and felt my life was in jeopardy since the authorities, our last hope of protection, were willing to send us back to an abusive home. Our stepfather promised the probation officer he would get help for him and us, though we never received it. Not having stood up for myself before, I was petrified at the thought of going back home. Picture your most horrifying fears coming true and you'll sense the fear I felt that day.

The whole thing was smoothed over as if nothing had happened. In the name of secrecy, my other siblings were never permitted to know the reason why we ran away. My feelings were invalidated. The idea that sexual abuse was "no big deal" was enforced even further. There was no one to turn to for help.

Before the abuse happened, I wanted to go to college and be a teacher. After the abuse, all that mattered was being as safe as I could while I had to live there and to move out as early as possible -- which I did by marrying at 17. I just wanted to get all that behind me and make a new life for myself.



I wish it was possible to simply start new from today but the abuse still haunts me. I was totally unaware of the ongoing effects of sexual abuse. I haven't been able to have a successful relationship or even to ask for my needs to be met. I raged out of control the first year of my marriage, only to feel worse about myself. I lacked self-esteem. I suffered varying degrees of anorexia in my twenties. I worked to exhaustion trying to feel like I was worth something. I've done crazy things to get male approval. I've protected my children to the point of smothering them due to my fears of them being sexually abused too. I've been severely depressed and contemplated suicide on several occasions. I wanted to be loved so badly. I felt awful for so long but never knew why.

Years later, in my thirties, I was in a physically abusive relationship. I went to a therapist for help. That's when I started piecing the craziness of my life together and realized some of the effects the sexual abuse had.

I would avoid legal remedy if there were compensation or ways to deal with this on a level of honesty. Since there aren't, the laws need to support the victim as much as possible. To my knowledge, my stepfather has never received any help for his sickness and could therefore still be an abuser.

I wasn't aware of ongoing effects from the abuse within the statute of limitations. My testimony supports the proposed delayed discovery law -- it would be a great benefit to survivors under duress and the illusion that sexual abuse is "no big deal." The fact that cases will be brought into public court with more media exposure will show victims they can stand up against their abusers. The abusers will be sent the message that this dark secret has come to light and that retribution for their actions is likely.

Sexual abuse and its effects can cover a wide range. I think people saw abuse only as violent, gory sexual assault and that "fondling children [wasn't] that destructive." That may change and make the public more aware with the passage of this law. The proposed law gives victims the time they may need to recognize and admit to the devastation caused them by being sexually abused.

Thank you.

January 10, 1989

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My name is Sandra Ward Gursky. I am forty five years old, and I am a SURVIVOR 14  
OF CHILDHOOD SEXUAL ABUSE. DATE 11-26-89

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I was six years old when it began. I was the "favorite" child in the family. He took me everywhere with him. He took me to his place of work, but only when no one was there. There he made me watch him urinate, and then he would make me touch his genitals. When my Mother was out in the evening, he would take me into their bedroom and take off my clothes from the waist down and make me sit on his bare body while he lay on the bed. I cannot say if there was intercourse. These two incidents happened over and over during a two year period. I remember them very clearly, but when I try to remember past a certain point, I cannot. Those two years contain many blank spots. I do remember being in fear constantly. He told me he would hurt me if I didn't do what he wanted. Since he beat my Mother and brother regularly, I was sure he would. He also told me he would kill me if I told anyone.

When I was not quite eight, it ended. My Mother, who had suspected, forced me to tell her. I was terrified, but he did nothing. Nothing that is, except watch me all the time. Until I was sixteen years old, I spent all my waking hours trying to blend into the walls, so that he, or no other man, for that matter, would notice me. I was withdrawn, extremely shy, felt I was not a good person, and was petrified of even the idea of sex. At sixteen, he approached me once more. I ran away from home and never went back. Fortunately, I had Grandparents who were willing to accept me into their home.

At thirty four, my second marriage was showing signs of failure. I had always felt that everything that went wrong in my life was my fault, so this must be too. Why should I have a good relationship, after all, I was a terrible person, with no worth. Why would anyone want to treat me well. I started drinking heavily to numb the pain of living. From there, I started to think about suicide, as an escape from this destructive life. At thirty six, feeling that my whole life was a failure, and after a particularly close call with the drinking and the suicide thoughts, I went into therapy. I thought I needed help because I was a failure at living and I had

to fix me. But, during the two year period of my therapy, I discovered that I had been emotionally crippled by the Childhood Sexual Abuse. It had affected my whole life. I was a victim as a child, and as an adult, I remained a victim. I knew no other way to live. I was unable to choose a healthy life style. My relationships had all been destructive and abusive. I was dysfunctional in every aspect of my life. I overprotected my child and other children. I was suspicious of every man. I was also sexually dysfunctional. The deep, dark secret of my past always made me feel like I was a freak, and unworthy of any kind of "good life". I had struggled all my life, all because an adult male had used me--a little child--as a sex toy. And, I was not the only one he had abused. Two of his brothers' daughters were his victims also. There may have been others, but we never knew of them.

At the age of thirty eight, after two years of therapy, I discovered the connection between the abuse I had suffered and my dysfunctional life. By then, my abuser had killed himself and my Mother. It was too late to do anything about my abusers actions.

As a victim, I had spent a major portion of my life trying to deal with the crippling emotional impact of this abuse. I was struggling with long before I knew that it was the problem. The therapy that was necessary to help me put my life together, was very expensive, emotional and time consuming.

I think that both the bills put forth during this legislative session could be a deterrent to this abuse. If the abuser knew that he/she could be called to account for his/her actions against a child, even years after the event, perhaps more of them would get help and/or think before acting on their sick impulses. We must all be held accountable for our actions. The statute of limitations, set as they are, prevent many victims of this abuse from ever taking any action towards their abuser. While they are children, they have no power to do so, and once they have reached adulthood or discovery, the statutes have expired. The secret is kept, and the abusers continue to abuse our children.

My name is Rosanne E. Davis. I am 36 years old and a resident of Missoula, Montana for the past five and a half years.

After years of maintaining the conspiracy of silence in my family, I am giving my testimony in support of the proposed change in the current statute of limitations in regard to child sexual abuse cases.

I am doing so because I am a survivor of child sexual abuse who has had no remedy, and therefore, no rights. Even if the proposed change is passed, it will not benefit me directly but my testimony is important in enabling other survivors, both men and women, to pursue redress.

Shortly after moving to Missoula in 1983 I began experiencing night terrors. I felt that someone or something was creeping around my bedroom and I was too paralyzed with fear to get up. I laid awake all night and slept when I could during the day. I entered counseling after several weeks of this.

During the initial interview, much to my surprise, my therapist asked if I had been sexually abused as a child. Until that point in time I believed that I had never told anyone what had happened to me. Thus my odyssey began. I found myself as a thirty year old woman sleeping with the lights on at night because I was afraid of the dark. The majority of the following testimony is derived from memories gathered within the past five years.

I am the oldest of six children. I have two sisters, both of whom were also sexually abused, and three brothers, one of whom I suspect was abused sexually. From the outside, I imagine that we looked like the all-American family. My mother was a homemaker until my parent's separation and subsequent divorce. My father, and abuser, worked as an electronics engineer and was President of the Jaycees. We were practicing Episcopalians.

The earliest memory that I had of being sexually abused occurred when I was five or six years old. This involved sexual intercourse by my abuser. Incidents of sexual abuse repeatedly occurred until I was twelve years old ranging from sexual fondling to intercourse. I was requested to manually stimulate my abuser on several occasions.

I did not know until 1984, at the age of 32, that the sexual abuse began before I was three years old. This knowledge had a profound affect on me. As a child I reasoned that the abuses I had experienced occurred because I was a bad child who deserved to be punished. As a teenager, I had been led to believe that I had seduced my father, as a five year old. I owned the responsibility for what had happened to me; I thought it was my fault. Not only did I carry that shame and guilt for over twenty years, I actively hid in fear that someone would find out what a truly evil person I was.

Not only was I sexually abused, I was also verbally, physically and psychologically abused. I was told before the age of ten that I was a "slut". I was told that I was nothing; that my abuser had created me and that I was a "slave". I suffered severe beatings with belts, sticks, ping pong paddles; and was thrown, shoved, slapped, kicked and hit with a fist.

As a child, I believed that other families were like ours. Not until I was approximately nine years old did I suspect that something was wrong when my abuser had begun threatening me with death should I ever tell anyone what he was doing.

I had no reason to doubt the sincerity of my abuser's threats. I believed that he could, at any moment, choose to kill me. He forced my sisters and I to witness the death of our kittens by stoning them. He strangled the neighbor's cat. He beat our dog to death. I refused pets fearing that my abuser would kill them as well. I was pulled into deep water at a lake and while my abuser sexually assaulted me, he held me at chin level in the water and told me that if I made a sound, he would drown me. He kept a gun in the house that had a silencer which he would screw on and sitting by the open back door, shot anything that trespassed our property.

Within an eleven year period, our family moved a minimum of six times. We had telephones in our home until my abuser ripped the last one from the wall when my mother attempted to call for help. He broke her wrist. My mother did not own a driver's license or know how to drive a car until she was almost forty years old. I am convinced that my abuser purposefully chose to isolate the family.

He decided with whom I could be friends and at a moments notice would tell me that I couldn't play or talk to someone ever again. And I did not. In fact, I stopped making friends with other children because I could not stand the pain of losing them. I could not count on anything; love became equated with violence. I spent most of my childhood alone, hoping that someone would see what was happening and rescue me. No one ever did, although I learned later that people suspected the violence in our household.

My abuser was omnipotent. I lived in constant fear, trying to anticipate his moods in order to avoid another abusive event. Prior to my twelfth birthday I had decided that when the next episode of abuse happened I was going to shoot my abuser with his own gun. I couldn't see any other way to make it stop.

My abuser was removed from our household in 1964 after he sexually molested an eleven year old friend of my sister's. He was sent to prison and my family moved out of state. My mother was thirty-two years old and had six children ranging in age from twelve to two.

As a teenager I lived in extreme poverty and was working when I was thirteen. I spent most of my time on the streets, started drinking at fifteen, attempted suicide at sixteen and was pregnant by seventeen. I married. Two children and five years later I was divorced. I raised my children alone for fourteen years and remain single.

The only discussion, (prior to therapy) concerning the sexual abuses I experienced as a child, was with my mother when I was approximately fourteen. I simply told her that it had happened and did not go into any detail; I wanted to protect her. At that time my mother denied knowledge of the sexual abuse. I was told that good people "forgive and forget". I spent the rest of my life forgetting which I was able to do until the night

terrors began.

I have since learned that my mother did know about the sexual abuse because I told her when I was three years old. She has stated that I sought protection from her again when I was nine and then at eleven. I have no memory of these events and can assume, at this point, that I had simply resigned myself to an environment that I had no control over.

Given the fact that child protective services did not exist, a welfare program did not exist and battered women went unnoticed, my mother did not possess any alternatives to protect either herself or her children. My abuser/father was both verbally and physically abusive to my mother. She attempted to have my abuser committed at one point, only to be told that he would be given thirty days written notice. We would certainly have been dead by that time. She went to our minister for help who told her that she should try harder to make the marriage work. She managed to get my abuser to leave the family several times before I was eight years old, only to have him return with promises that it would never happen again. My mother could not tell her family. Both she and my abuser had been abused as children. In the finish, she resigned herself to the circumstances in her life just as I did later.

I did not bring suit within the current statute of limitations because I was incapable of doing so. The experiences of my childhood were recalled through the therapeutic process. I continue to remember secrets long hidden. I was unable to place responsibility on my abuser, rather than on myself, until I was in my early thirties.

I firmly believe that this proposed legislation would act as a deterrent in sexual crimes against children because it would provide recourse where none exists. The fact remains that my abuser has been able to avoid responsibility for his crimes because I would have had to pursue remedy no later than the age of sixteen. It is unrealistic to assume that I had the ability to do so when I was entrenched in repressing any memory of what happened to me and the fact that I was well on the road of self-abuse.

The effects of enduring at least nine years of child abuse left me without a sense of whom I am other than as a victim because I was socialized to be one. My self-respect was non-existent. I did not and still do not feel that I have the right to ask for anything or to say "no". I would not let anyone know that I was in need because to do so would have made me vulnerable to abuse. The need to have control over every aspect of my life in order to feel safe has at times been overwhelming. My trust in other human beings has just begun to grow. I thought that I was never really the person that people knew me to be; I was lying and hiding in fear that if anyone knew, they would reject me. I developed my first real friendship in 1983 at the age of thirty-one. Suicidal ideation and depression were ever-present aspects of my life until 1985. I have a sporadic history of abusing drugs and alcohol to numb the pain just enough to get through another day. I am still deathly afraid of anyone's anger. I find myself hyper-sensitive and intimidated by male authority

figures. I have effectively managed to sabotage most successes because they are incompatible with my self-concept as a loser. I was unable to allow my children to love me and for me to love them.

I have pursued therapy when I could financially afford to. I have come to understand that the trauma of my childhood is not something that I can rid my soul of, although I have tried. I am learning to live with the pain of what happened to me without shame or guilt. And I will struggle with this for the rest of my life.

1/17/89

To Whom it May Concern,

I was molested as a child. In 1965 at the age of four I did not have the power to tell of my abuse. I blocked it from my memory.

Seven years later when I remembered, it was too late for me to take legal action. There was no intervention or advocacy for me and I suffered in silence for many years.

To this day I am without legal means or rights to sue my assailant. My rights were gone before I was ever advised of them. I have spent thousands of dollars in my recovery. As a Medicaid patient the taxpayers have spent for my recovery.

If the Statute of Limitations had been extended before my twenty third birthday, I would have been able to seek restitution.



It is absolutely imperative for the millions of sexually abused children to have a voice.

Our society is morally obligated to listen to their voices and we are morally obligated to take action against abuse. We must allow our children to have the power to say no.

As the parent of a sexually abused child and as a survivor of sexual abuse, I'm telling you it is hellish torture and I strongly urge you to extend the statute of limitations.

Thank you,  
Kermit Hoff

1-26-89  
EXH NO. 5B 157

1/17/89

To Whom it may Concern,

" I think we should change this law because if people get molested and dont tell within seven years then they dont get to get it off their chest and tell by suing the person who molested them. "

" If I myself didnt report it in seven years I would feel really bad cause I hadnt gotten it off my chest.

If I hadnt told, that person would still be molesting children and I feel very strongly about children's rights. I think this law will encourage children to tell their problems. That's why I think we should change

this law "

Violet Gyles

Age 9

## Legislative testimony for Senate Bill 157

I was sexually abused from the time I was five years old, and possibly younger, until I was twelve. The sexual, emotional, and other physical harrassment and abusive treatment was continuous. Ingrained into my psyche during these years was fear, anger, helplessness, hopelessness, the feeling that I was somehow bad, shamefull, and "dirty", worthlessness, the inability to trust, and a great sadness. I thought the abuse would last as long as I would. In fact that childhood feeling of hopelessness was in a sense very true. It has lasted my lifetime --- never leaving for a moment, and only until recently not caused an inner uprising of intense fear and anger.

When the abuse finnaly ended, the psychological traumas had begun their devastating effects. Unable to cope with the reality of my feelings about what had happened, I blocked it from my memory at about age thirteen. Through my teen years acceptance within my family and with my peers was made very difficult by my behavior as a confused child turning to inappropriate means of behavior in order to be noticed, heard, accepted. I was raped at age twelve. I ran away from home at age twelve. I became such a "problem child" that I was placed in a mental hospital for a time. Eventually, I withdrew, and upon reaching adulthood I found myself in control only through rigidity of standards and opinions that I'd set for myself. My family still considered me a bit confused, but I was seemingly "straightening out". In reality I'd developed a strong front to use for the world to see, because I was unable to look at the real me or to have anyone else see too deeply. By the time I reached adulthood I had thought of everything from suicide to drugs to prostitution, but fortunately never acted on any of them. Never once did it occur to me what the source of my inner agony was. I did not even remember that the sexual abuse had occured until I was 27 years old--- long after reaching majority. Even then I was unable to come to grips with the reality of it for another three years. By that time my marriage was having problems, a small business I'd begun was barely kept going, and I was an emotional wreck. In short, the controlled facade that I'd so carefully built was crumbling in the light of remembered horrors, and I was crumbling with it.

Never once during these three years that I'd remembered the abuse, did I ever consider legal action. I hated my abuser, and yet loved him too. It is a very odd thing to love someone who has been so undeniably cruel, and yet I cannot ignore that feeling. I blamed myself for what had happened, although in truth it was in no way my responsibility. It took me three years of constant therapy to even be able to write my abuser a letter stating the facts and that I was aware of them. Even after that three years, I was terrified of his and my family's reaction. He has denied it entirely, but unlike most women the majority of my family believes me. Taking this action was one of the most difficult things I've ever done. The fear that was ingrained in me as a young child should I ever dare to tell the secret certainly did not diminish in my adulthood. There is no way I would have had the emotional wherewithall to bring legal action against this person until only two years ago --- 14 years after I reached majority. I now have the emotional strength and the understanding of the complexity of the psychological devastation that sexual abuse causes to take action if I choose to --- but the statute of limitations is past. And so a person who has done a cruel and permanent injustice to another person will remain unscathed by his actions except within the closed doors of his family.

We must be able to trust our protection under the law. The abusive person must know there is rightful recourse for the pain and suffering he is inflicting. I believe that ability to take recourse should begin upon the victim's full understanding of the damage inflicted. The psychological effects of sexual abuse are deep and lasting. But as a child living with this and growing to adulthood I had no understanding whatsoever that my problems were due to sexual abuse. Upon even

SENATE JUDICIARY  
EVENT NO. 18, p.2  
DATE 1-26-89  
BILL NO. SB 157

remembering it I was too traumatized to do anything about it. It has taken years and years to learn to live with myself and the facts. Life is complex --- people are complex. The revision of the law proposed in the bills before you would recognize that complexity and preserve the rights and due process that is due each individual.

Does my abuser continue to abuse children? I do not know. But I do hope that if he has, that child will survive to adulthood and be able to reach an understanding of herself and the ramifications of his unjust behavior, and still be able to take action at whatever level she so chooses and finds not one door closed to her plea.

I urge you to listen, to understand, and to pass Senate Bills 122 and 157.

Signed,

KGF



Box 463

Florence, Mt. 59833

1/19/89

SB 157  
SB 122

SENATE JUDICIARY  
EXHIBIT NO. 19  
DATE 1-26-89  
BILL NO. SB 157

Ladies and Gentlemen;

My name is Nocona. For legal purposes I chose not to use my legal name.

When I left my hometown in 1980, on my way to Montana, I was 21 years old. At the time I left I did not realize my statute of limitations was running out. I did not know I had a statute. I thought if I left and changed my name my life would be different, I would be different. I believed I could handle my past and emotions without counseling. I did not think there was anything wrong with me. I look back now and realize I had no responsibility, trust, self-esteem, honesty, family, childhood or God.

I was kept from my family for approximately six years. The excuses - endless. Only through counseling did I relate the damages of my past and present to the abuse. My anger is most dangerous to myself. I don't know how to be angry. I wasn't allowed to show anger. I used drugs and food as a way to cope with everyday life. I now have a child and I am very conscience of changing his diaper and teaching him his body parts. I can't say the word "no" to my husband when I am in an intimate situation. I am in approximately four hours weekly of intensive counseling.

I went public with my abuse shortly after the birth of my child and had told nobody before. My husband of four years had no idea. I did not have the trust in anybody to tell.

I could not go to the police for my offender was a police officer. I could not go to the church for my offender was my Sunday school teacher. People have asked me, "why did it take so long to come forward?" My offender had threatened my life saying, "if you tell anyone I will kill you." I was also told, "how easy it would be to break your neck." I believed this. I still do.

I have carried my abuse with me since I was six years old. It stepped for awhile until I was 10 years old, then continuously to the age of 16 years old. I am the eldest of five children, three girls and two boys. There was not anyone to turn to.

After I told my husband of my years of abuse, he confronted my offender with his knowledge and asked for help paying for the counseling I was to face. My offender refused to pay what my insurance would not cover and began denial. We were told we would have to take legal measures in order for my abuser to take responsibility for the damages caused.

On my second visit to my therapist I asked her if, "I was the way I am because of the sexual abuse?". I didn't know the answer to my question. That was my point of discovery.

When my emotions come into my life, be it anger, distrust, helplessness and depression, they are not that of an adult. They are that of a 10 year old. This is where I quit growing emotionally. 10 year olds can not protect themselves even in the body of an adult. 10 year olds can not protect

themselves while doing sexual acts of adults. An adult can protect a child of 10 years old. There are three years of my life I can't remember, 13, 14, and 15. I think that my mind is wonderful in the way it protects me and I think that when I am strong enough to remember, I'll remember.

The nature of my abuse was; me touching my offenders private parts at the age of six years old. At 10 years old my offender would intrude the bathroom while I was urinating. At 11 years old there were pornographic movies for stimulation and learning techniques, oral sex, use of an instrument, voyeurism (having me watch my offender with another victim and non-victim) and sexual intercourse.

I did these things to save my life. I would survive by pretending I was not there or by focusing on an object so I would not feel. I did feel disbelief. I did feel betrayed then and now. The betrayal of someone I trusted was beyond my comprehension as a child. I felt it was my fault, that I had done something wrong, but I couldn't figure out what it was. I did feel it was the only way this person loved me. I felt sorry for my offender. As a child there was no logic. As an adult there is no logic. I was my offenders property to do with as wanted.

With the denial, this abuser has not accepted the responsibility of these actions and does not acknowledge any wrong

doing. Three young children were being abused at the same time my abuser was allowed to work with children in the community based on trust. Present laws with their short statute of limitations are obviously ineffective in preventing sexual abuse. The abuser avoids discovery and prosecution by simply threatening a terrified child with physical harm. Their abusers need to be made responsible to their victims through more encompassing legislation. Then and now it is accepted by society as a problem, the victims problem. With the statistics as they are known, it is an epidemic that needs to be controlled. It needs to protect children who are so helpless and defenseless against abusers with power and strength. We need to stop this vicious cycle of abuse. Children need to be heard and protected. They need to be given a chance in life to live it to the fullest and to become responsible adults.

I did not realize until recently how my life was affected by my abuse. The simplest things in life are so difficult to perform, ordering out of a restaurant menu to being overwhelmed by ordinary everyday household chores or looking at my husband and child after I have verbally channeled my unwanted anger at them. Thinking in a matter of five minutes, four different ways to commit suicide. I isolate myself from people who love and care for me and try to get close to me. I push them away for fear of being rejected.



I am reprogramming 24 years of habits, addictions and survival techniques that are of no use to me as an adult. When my husband married me he had no idea of my past and now he feels the rape, abuse and anger that I do, because he loves me. I see the pain in his eyes, for me. I see his helplessness. How do I teach my child the important morals in life; trust, self-esteem, honesty, responsibility, family and God if I don't know how myself? I am learning at 30 years old, ever since the silence was broken.

SENATE JUDICIARY

EXHIBIT NO. 20

DATE 1-26-89

BILL NO. SB 1577

Kim Darling  
626 N. Caravan  
Missoula, MT 59802  
January 18, 1989

TESTIMONY FOR THE LEGISLATIVE RECORD RELATIVE TO SENATE BILL 122

I am an incest survivor. I discovered this when I was twenty-nine years old. Prior to this discovery, I suffered suicidal depression for ten years. I was disabled by an eating disorder and drug addictions. I began seeing therapists when I was twenty-eight because of difficulties in my marriage. Although the therapy was helpful, I had a sense that I had still not gotten to the source of my difficulties. Then, while participating in a workshop on incest as part of training to work in a crisis intervention network, I encountered a list of characteristics of incest survivors. Every item on the list applied to me. The next day, during the course of personal sharing in the workshop, I began to remember specific incidents of sexual abuse in my childhood. The process of remembering continues for me even now.

Since the time of the initial discovery, I have completed a BA in Social Work and am working in the recovery process with other survivors. This recovery process requires letting go of feelings of responsibility for what happened to us as children. It requires moving through intense feelings of anger, fear, grief and shame. This recovery process begins after we break through the very thing that helped us to survive, that is, denial. Again and again I have seen women accomplish this in their late twenties and early thirties. It is unrealistic to expect survivors to be willing or able to confront their abusers while they are still dependent, physically, emotionally, and economically on the familial system in which the abuse occurred. In young adulthood, the denial that allows for survival is still functional.

I confronted the man who abused me about that abuse three years after I began to remember it. He laughed at me. He denies still, as he did then, that what he did to me was injurious. He is supported in his denial by a cultural denial of the existence and extent of injury done by the sexual abuse of children.

I urge you to pass this bill before you. It is a significant step in breaking through cultural denial of the effects of childhood sexual abuse.

SB 157

NAME: James R. Dillman, DTR DATE: 1/20/79

ADDRESS: 128 S. 6th W. - Missoula 59801

PHONE: 543-8415

REPRESENTING WHOM? self

APPEARING ON WHICH PROPOSAL: SB 157

DO YOU: SUPPORT?  AMEND?  OPPOSE?

COMMENTS: see exhibit 5

Multiple horizontal lines for additional comments or notes.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Megan Hill DATE: 7/26/85

ADDRESS: Box 1708 - Helena - 59602

PHONE: 442-5761

REPRESENTING WHOM? MT. CATHOLIC CONF

APPEARING ON WHICH PROPOSAL: SB 157

DO YOU: SUPPORT?  AMEND?  OPPOSE?

COMMENTS: WRITTEN TESTIMONY  
See exhibit 7

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Leslie Burgess DATE: 1/26/89

ADDRESS: 1802 Trail St. Missoula MT 59801

PHONE: 728 3577

REPRESENTING WHOM? self

APPEARING ON WHICH PROPOSAL: SB 157

DO YOU: SUPPORT?  AMEND?  OPPOSE?

COMMENTS: see exhibit 8

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.



EXHIBIT NO. \_\_\_\_\_

DATE 1-26-89

BILL NO. SB 157

DATE: 26 Jan 1989

NAME: Susan Kraft Ball

ADDRESS: 1104 Toole Ave, Missoula, MT 59802

PHONE: (406) 728-7591

REPRESENTING WHOM? Myself and my family

APPEARING ON WHICH PROPOSAL: SB 157

DO YOU: SUPPORT?  AMEND? \_\_\_\_\_ OPPOSE? \_\_\_\_\_

COMMENTS: The legislators provide victims of child sexual abuse access to the justice system and should help deter child molestation. As a survivor of sexual abuse I strongly support this bill.

see exhibit 11

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SB 157

NAME: Jonathan Park DATE: 1/26/89

ADDRESS: P.O. Box 3805

PHONE: 728-5427

REPRESENTING WHOM? Member Committee for Prevention of Child Abuse  
Child & Family Resource Council

APPEARING ON WHICH PROPOSAL: SB 157

DO YOU: SUPPORT? X AMEND? \_\_\_\_\_ OPPOSE? \_\_\_\_\_

COMMENTS: \_\_\_\_\_  
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PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.



NAME: Leo GALLICHER DATE: 1/26/88

ADDRESS: 1203 Hauser, Helena, MT

PHONE: (406) 443-1291

REPRESENTING WHOM? Self

APPEARING ON WHICH PROPOSAL: SB 157

DO YOU: SUPPORT?  AMEND?  OPPOSE?

COMMENTS: I support the ~~cont~~ extension  
of the statute of limitations in civil actions  
as perhaps the most effective way  
to seek redress ~~from~~ for the victims  
of crime.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SB 157

NAME: Holly Franz DATE: 1/26/89

ADDRESS: 653 N Warren Helena, MT

PHONE: 443-2001 442-8560

REPRESENTING WHOM? Women's Section of The State Bar

APPEARING ON WHICH PROPOSAL: SB 157

DO YOU: SUPPORT?  AMEND?  OPPOSE?

COMMENTS: The concept of fairness which  
supports the discovery doctrine suggests  
extension of the doctrine to survivors  
of sexual abuse. The discovery doctrine  
will allow claimants to bring a civil  
action after discovery of the injury and  
the cause of the injury.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

To: Valencia Lane

From: Bill Yellowtail

Subject: Amend SB 164

Here is an additional amendment  
to SB 164:

PAGE 3, line 7 following "abortion" insert

"and the risks and consequences of  
carrying the pregnancy to term"

To INSERT INTO MAZUREK & Co. amendments:

16. Page 3, line 7.

Following: "abortion"

insert: "and the risks and  
consequences of carrying  
the pregnancy to term"

Amendments to Senate Bill No. 164  
First Reading Copy (WHITE) BILL NO. SB 1164Requested by Senators Mazurek, Brown, Yellowtail,  
Halligan, and Bishop  
For the Committee on JudiciaryPrepared by Valencia Lane  
January 25, 1989

1. Title, line 6.

Following: "FOR"

Strike: "CONSENT AND"

Insert: "A"

Following: "JUDICIAL"

Strike: "BYPASS"

Insert: "EXEMPTION FROM THE NOTIFICATION REQUIREMENT"

2. Title, line 8.

Strike: "FELONY"

Insert: "MISDEMEANOR"

3. Page 1, line 17.

Following: "abortion to"

Strike: "each"

Insert: "a"

Following: "parent"

Insert: "having actual care, custody, or control of the minor"

4. Page 1, line 24 through page 2, line 2.

Following: "emancipated" on line 24

Strike: remainder of line 24 through "(1)(b)." on page 2,  
line 2

Insert: "; or"

5. Page 2, lines 3 and 4.

Following: "granted" on line 3

Strike: remainder of line 3 through "abortion" on line 4

Insert: "an exemption from the notification requirement of  
subsection (1)"

6. Page 2, lines 5 through 10.

Following: "[section 5]" on line 5

Strike: remainder of line 5 through "[section 8]" on line 10

7. Page 2, lines 11 through 14.

Following: "Procedure." on line 11

Strike: remainder of line 11 through "by a" on line 14

Insert: "The minor may be granted an exemption from the notification requirement of [section 1] by the youth"

8. Page 2, line 15.

Strike: "7"

Insert: "6"

9. Page 2, line 16.

Strike: "majority rights"

Insert: "exemption from parental notification requirement"

10. Page 2, line 17.

Following: "minor"

Strike: "or her guardian"

11. Page 2, line 18.

Following: "minor"

Strike: "or guardian"

12. Page 2, line 21.

Following: "minor"

Strike: "or the guardian of the minor"

13. Page 2, line 25.

Strike: "each"

14. Page 3, line 1.

Following: "(i)"

Insert: "a"

Following: "parent"

Insert: "having actual care, custody, or control of the minor or the guardian of the minor"

Following: ";

Insert: "or"

15. Page 3, line 2.

Following: line 1

Strike: subsection (ii) in its entirety

Renumber: subsequent subsection

16. Page 3, line 10.

Following: "abortion;"

Insert: "and"

17. Page 3, lines 11 through 19.

Strike: subsections (f), (g), and (h) in their entirety

Insert: "(f) a statement that the minor requests appointment of counsel or a guardian ad litem."

18. Page 3, lines 20 and 21.

Following: "minor" on line 20

Strike: remainder of line 20 through "guardian" on line 21

19. Page 3, line 23.

Following: "on"

Strike: "the merits of"

20. Page 3, lines 23 and 24.

Following: "petition" on line 23

Strike: remainder of line 23 through "[section 3]" on line 24

21. Page 4, line 1.

Following: "fee"

Strike: "for the hearing"

22. Page 4, lines 1 and 2.

Following: "If" on line 1

Strike: remainder of line 1 through "party" on line 2

Insert: "the minor"

23. Page 4, line 3.

Following: "counsel"

Strike: "at least 24 hours before the time of the hearing"

Insert: "for the minor"

24. Page 4, lines 7 and 8.

Following: "(2) the" on line 7

Strike: remainder of line 7 through "abortion" on line 8

Insert: "circumstances of the relationship between the minor and the parent, guardian, or person standing in loco parentis to be notified under [section 1]"

25. Page 4, lines 9 through 12.

Following: "find" on line 9

Strike: remainder of line 9 through "minor" on line 12

Insert: "relevant in determining whether the minor shall be granted an exemption from the notification requirement of [section 1]"

26. Page 4, lines 17 through 21.

Following: "petition for" on line 17

Strike: remainder of line 17 through "finding" on line 21

Insert: "an exemption from the notification requirement of [section 1]"

Renumber: subsequent subsection

27. Page 5, line 2.

Following: line 1

Strike: "or by a parent or guardian of the minor"

28. Page 5, lines 3 through 5.

Following: "appeal." on line 3

Strike: remainder of line 3 through "order." on line 5

29. Page 5, line 9.

Following: "shall"

Strike: ", by court rule,"

30. Page 5, line 11 through page 6, line 5.

Strike: sections 7 and 8 in their entirety

Renumber: subsequent sections

31. Page 6, line 6.

Following: "Violation."

Strike: "Performance of"

Insert: "A person convicted of performing"

32. Page 6, line 7.

Following: "of"

Strike: "[sections 1 through 8] is a felony"

Insert: "[section 1] shall be fined an amount not to exceed \$500  
or be imprisoned in the county jail for a term not to exceed  
6 months, or both"

33. Page 7, line 4.

Strike: "8"

Insert: "6"

34. Page 9, line 21.

Strike: "9"

Insert: "7"

STATE JUDICIARY

REPORT NO. 22

DATE \_\_\_\_\_

ROLL NO. \_\_\_\_\_

35. Page 9, lines 22 and 23.  
Strike: "Title 50, chapter 20, part 1"  
Insert: "Title 41, chapter 5"

36. Page 9, line 24.  
Strike: "9"  
Insert: "7"



SENATE JUDICIARY  
CREDIT NO. 23  
DATE 1-26/89  
BILL NO. SB 164

Amendments to Senate Bill No. 164  
First Reading Copy (WHITE)

Requested by Senator Jenkins  
For the Committee on Judiciary

Prepared by Valencia Lane  
January 24, 1989

1. Page 1, line 17.  
Following: "abortion to"  
Strike: "each"  
Insert: "a"

2. Page 5, line 2.  
Following: "by a"  
Strike: "parent or"  
Insert: "court-appointed"

SENATE JUDICIARY  
EXHIBIT NO. 24  
DATE 1-26-89  
BILL NO. SB 164

Amendments to Senate Bill No. 164  
First Reading Copy

Requested by Senator Rasmussen  
For the Committee on Judiciary  
Prepared by Greg Petesch  
January 23, 1989

1. Title, line 8.

Following: ";"

Strike: remainder of line 8 through ";" on line 9

Insert: "AND"

Following: "41-1-405,"

Strike: "50-20-108"

Insert: "50-20-107"

2. Title, line 10.

Following: "50-20-109, MCA"

Strike: remainder of line 10 through " MCA"

3. Page 1, line 16.

Following: "physician"

Insert: "or his agent"

Following: "gives"

Insert: "at least"

4. Page 1, line 23.

Following: "."

Insert: "The time of delivery of constructive notice is considered to occur at 12 o'clock noon on the next day on which regular mail delivery takes place, subsequent to mailing."

5. Page 2, line 21.

Following: "shall"

Insert: "thereafter"

6. Page 3, line 25.

Following: line 24

Strike: "or"

7. Page 7, line 6 through page 8, line 5.

Strike: section 11 in its entirety

Insert: "Section 11. Section 50-20-107, MCA, is amended to read:

"50-20-107. Written notice to spouse ~~or parent~~ required.

~~(1) No abortion may be performed upon any woman in the absence of-~~

~~(a) the written notice to her husband, unless her husband is voluntarily separated from her-~~

~~(b) the written notice to a parent, if living, or the custodian or legal guardian of such woman if she is under 18 years of age and unmarried.-~~

~~(2) Violation of this section is a misdemeanor. "~~

Amendments to Senate Bill No. 164  
First Reading Copy (WHITE)

Requested by Montana Trial Lawyers' Association  
For the Committee on Judiciary

Prepared by Valencia Lane  
January 25, 1989

1. Page 5, line 16.  
Following: "assault or"  
Strike: "personal injury of"  
Insert: "battery upon"

2. Page 5, line 19.  
Following: "through 8]"  
Insert: "and within the scope of any consent granted pursuant to  
[section 5]"

(MAZUREK & Co.)  
VERSION

EXHIBIT NO. \_\_\_\_\_  
DATE \_\_\_\_\_  
BILL NO. \_\_\_\_\_

1 INTRODUCTION BY *Sen. Rasmussen Head* *Sen. Blaine* *Sen. Kelly*  
 2 *Sen. Krehbiel* *Sen. Neuhoff*  
 3 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING PARENTAL  
 4 NOTICE BY A PHYSICIAN BEFORE HE PERFORMS AN ABORTION ON A  
 5 MINOR; PROVIDING PROCEDURES FOR ~~CONSENT AND~~ <sup>A</sup> EXEMPTION FROM THE  
 6 PROVIDING THAT VIOLATION OF NOTIFICATION PROCEDURES <sup>NOTIFICATION</sup> ~~AND~~ <sup>A</sup> REQUIREMENT  
 7 CONSTITUTES A <sup>CRIMINAL OFFENSE</sup> ~~TORT~~; CLARIFYING THAT SPOUSAL NOTICE IS NOT  
 8 REQUIRED; AMENDING SECTIONS 41-1-405, 50-20-108, AND  
 9 50-20-109, MCA; AND REPEALING SECTION 50-20-107, MCA."

1 ~~minor. The term "emancipated" has the meaning provided~~  
 2 ~~in 41-1-405 and 41-1-406;~~  
 3 (3) the minor has been granted ~~an exemption from the notification~~  
 4 ~~requirements of the act by court order pursuant to requirement~~  
 5 [section 5] ~~and the attending physician has received the~~ <sup>of</sup> ~~written~~ <sup>subsection</sup>  
 6 ~~informed written consent of the minor, or~~ <sup>(1)</sup>  
 7 ~~if the minor has been granted judicial consent to the~~  
 8 ~~abortion by written court order in accordance with section~~  
 9 ~~51 and the minor is having the abortion in compliance with~~  
 10 ~~section 51.~~

11 NEW SECTION. Section 2. Procedure. ~~The right of~~  
 12 ~~minor to self-consent to an abortion by court order under~~  
 13 ~~section 51(1) or court order pursuant to the notification~~  
 14 ~~requirements of the act shall be granted by court order pursuant~~  
 15 ~~to sections 3 through 6.~~ <sup>of Section 17 by</sup>  
 16 NEW SECTION. Section 3. Petition for ~~injunction~~ <sup>abortion</sup>  
 17 (1) The minor ~~or the guardian~~ shall make an application to ~~the~~ <sup>parental</sup>  
 18 the youth court, which shall assist the minor ~~in~~ <sup>notification</sup>  
 19 preparing the petition required for the hearing pursuant to  
 20 [section 4] and the notice of appeal required pursuant to  
 21 [section 6]. The minor ~~or the guardian~~ shall  
 22 file the petition, setting forth:  
 23 (a) the initials of the minor;  
 24 (b) the age of the minor;  
 25 (c) the name and address of ~~the~~

13 ~~the minor may be granted an exemption from the notification~~  
 14 ~~requirements of the act pursuant to the procedures set forth~~  
 15 ~~in sections 3 through 6.~~ <sup>of Section 17 by</sup>  
 16 NEW SECTION. Section 3. Petition for ~~injunction~~ <sup>abortion</sup>  
 17 (1) The minor ~~or the guardian~~ shall make an application to ~~the~~ <sup>parental</sup>  
 18 the youth court, which shall assist the minor ~~in~~ <sup>notification</sup>  
 19 preparing the petition required for the hearing pursuant to  
 20 [section 4] and the notice of appeal required pursuant to  
 21 [section 6]. The minor ~~or the guardian~~ shall  
 22 file the petition, setting forth:  
 23 (a) the initials of the minor;  
 24 (b) the age of the minor;  
 25 (c) the name and address of ~~the~~

SENATE JUDICIARY  
 EXHIBIT NO. 26  
 DATE 1-26-89  
 BILL NO. SB 164

INTRODUCED BILL  
SB 164



1 [section 5] may be taken to the supreme court by the minor  
 2 ~~as by the guardian of the minor. The minor is not~~  
 3 required to pay a filing fee for the appeal. ~~the notice of~~  
 4 ~~appeal must be given within 24 hours from the date~~  
 5 ~~of issuance of the order.~~ The record on appeal must be  
 6 completed and the appeal perfected within 5 days from the  
 7 filing of the notice of appeal. Because time may be of the  
 8 essence regarding the performance of the abortion, the  
 9 supreme court shall ~~by contract~~ provide for expedited  
 10 appellate review of cases appealed under this section.

11 ~~NEW SECTION. Section 7. Immunity from liability of~~  
 12 petition filed pursuant to [section 3] is granted under  
 13 [section 5], the informed consent of the minor, pursuant to  
 14 a court grant of majority rights, or the judicial consent  
 15 bars any action by a parent or guardian of the minor on the  
 16 grounds of assault or personal injury of the minor by those  
 17 performing the abortion. The immunity granted extends only  
 18 to the performance of the abortion in accordance with  
 19 [sections 1 through 8] and to any necessary accompanying  
 20 services that are performed in a competent manner. The costs  
 21 of the action must be borne by the parties.

22 NEW SECTION. Section 8. Written consent -- no  
 23 abortion against minor's will. If a minor desires an  
 24 abortion, she must be orally informed of and shall sign the  
 25 written consent in the same manner as provided in the

1 ~~may be performed~~  
 2 except that an abortion may be performed against the will of  
 3 a minor pursuant to a court decree, described in [section  
 4 5(2)], stating that the abortion is necessary to preserve  
 5 ~~the health of the minor.~~

6 NEW SECTION. Section 7. Violation ~~of section 5~~ *an* ~~person~~ *performing*  
 7 abortion in violation of ~~section 5~~ *shall be fined an amount*  
 8 *not to exceed \$500 or be imprisoned in the*  
 9 *county jail for a term*  
 10 *not to exceed 6 months,*  
 11 *or both.*

12 Section 41-1-405. Emergencies and special situations. (1) Any ~~not to~~  
 13 health professional may render or attempt to render ~~to~~ *render*  
 14 emergency service or first aid, medical, surgical, dental,  
 15 or psychiatric treatment, without compensation, to any  
 16 injured person or any person regardless of age who is in  
 17 need of immediate health care when, in good faith, the  
 18 professional believes that the giving of aid is the only  
 19 alternative to probable death or serious physical or mental  
 20 damage.

21 (2) Any health professional may render nonemergency  
 22 services to minors for conditions which will endanger the  
 23 health or life of the minor if services would be delayed by  
 24 obtaining consent from spouse, parent, parents, or legal  
 25 guardian.

26 (3) No consent shall be required of any minor who does  
 27 not possess the mental capacity or who has a physical  
 28 disability which renders him incapable of giving his consent

1 preserve the life of the mother.

2 (3) The timing and procedure used in performing an

3 abortion under subsection (1)(b) of this section must

4 be such that the viability of the fetus is not intentionally

5 or negligently endangered, as the term "negligently" is

6 defined in 45-2-101(37). The fetus may be intentionally

7 endangered or destroyed only if necessary to preserve the

8 life or health of the mother.

9 (4) No physician, facility, or other person or agency

10 shall engage in solicitation, advertising, or other form of

11 communication having the purpose of inviting, inducing, or

12 attracting any person to come to such physician, facility,

13 or other person or agency to have an abortion or to purchase

14 abortifacients.

15 (5) Violation of subsections (1), (2), and (3) of this

16 section is a felony. Violation of subsection (4) of this

17 section is a misdemeanor." <sup>11</sup>

18 NEW SECTION. Section ~~33~~ <sup>12</sup> Repealer. Section 50-20-107,

19 MCA, is repealed.

20 NEW SECTION. Section ~~34~~ <sup>12</sup> Codification instruction.

21 [Sections 1 through ~~7~~ <sup>7</sup>] are intended to be codified as an

22 integral part of ~~mini Title 41, Chapter 5~~ <sup>7</sup> ~~mini Title 41, Chapter 5~~

23 provisions of ~~mini Title 41, Chapter 5~~ <sup>7</sup> ~~mini Title 41, Chapter 5~~, apply to

24 [sections 1 through ~~7~~ <sup>7</sup>].

25 NEW SECTION. Section ~~36~~ <sup>13</sup> Severability. If a part of

1 [this act] is invalid, all valid parts that are severable

2 from the invalid part remain in effect. If a part of [this

3 act] is invalid in one or more of its applications, the part

4 remains in effect in all valid applications that are

5 severable from the invalid applications.

-End-

SENATE JUDICIARY

FILE NO. 26 pg 3

DATE \_\_\_\_\_

BILL NO. \_\_\_\_\_



1 [section 5] may be taken to the supreme court by the minor  
 2 or by a parent or guardian of the minor. The minor is not  
 3 required to pay a filing fee for the appeal. The notice of  
 4 intent to appeal must be given within 24 hours from the date  
 5 of issuance of the order. The record on appeal must be  
 6 completed and the appeal perfected within 5 days from the  
 7 filing of the notice of appeal. Because time may be of the  
 8 essence regarding the performance of the abortion, the  
 9 supreme court shall, by court rule, provide, for expedited  
 10 appellate review of cases appealed under this section.

11 NEW SECTION. Section 7. Immunity from suit. If the  
 12 petition filed pursuant to [section 3] is granted under  
 13 [section 5], the informed consent of the minor, pursuant to  
 14 a court grant of majority rights, or the judicial consent  
 15 bars any action by a parent or guardian of the minor on the  
 16 grounds of assault or personal injury of the minor by those  
 17 performing the abortion. The immunity granted extends only  
 18 to the performance of the abortion in accordance with  
 19 [sections 1 through 8] and to any necessary accompanying  
 20 services that are performed in a competent manner. The costs  
 21 of the action must be borne by the parties.

22 NEW SECTION. Section 8. Written consent -- no  
 23 abortion against minor's will. If a minor desires an  
 24 abortion, she must be orally informed of and shall sign the  
 25 written consent in the same manner as an adult. No abortion

1 may be performed on any minor against the will of the minor,  
 2 except that an abortion may be performed against the will of  
 3 a minor pursuant to a court decree, described in [section  
 4 5(2)], stating that the abortion is necessary to preserve  
 5 the life of the minor.

6 NEW SECTION. Section 9. Violation. Performance of an  
 7 abortion in violation of [sections 1 through 8] is a felony.

8 Section 10. Section 41-1-405, MCA, is amended to read:  
 9 "41-1-405. Emergencies and special situations. (1) Any  
 10 health professional may render or attempt to render  
 11 emergency service or first aid, medical, surgical, dental,  
 12 or psychiatric treatment, without compensation, to any  
 13 injured person or any person regardless of age who is in  
 14 need of immediate health care when, in good faith, the  
 15 professional believes that the giving of aid is the only  
 16 alternative to probable death or serious physical or mental  
 17 damage.

18 (2) Any health professional may render nonemergency  
 19 services to minors for conditions which will endanger the  
 20 health or life of the minor if services would be delayed by  
 21 obtaining consent from spouse, parent, parents, or legal  
 22 guardian.

23 (3) No consent shall be required of any minor who gives  
 24 not possess the mental capacity or who has a physical  
 25 disability which renders him incapable of giving his consent

DATE \_\_\_\_\_  
 FILE NO. \_\_\_\_\_  
 27 ps2



1 preserve the life of the mother.

2 (3) The timing and procedure used in performing an  
3 abortion under subsection (1)(b) of this section must  
4 be such that the viability of the fetus is not intentionally  
5 or negligently endangered, as the term "negligently" is  
6 defined in 45-2-101(37). The fetus may be intentionally  
7 endangered or destroyed only if necessary to preserve the  
8 life or health of the mother.

9 (4) No physician, facility, or other person or agency  
10 shall engage in solicitation, advertising, or other form of  
11 communication having the purpose of inviting, inducing, or  
12 attracting any person to come to such physician, facility,  
13 or other person or agency to have an abortion or to purchase  
14 abortifacients.

15 (5) Violation of subsections (1), (2), and (3) of this  
16 section is a felony. Violation of subsection (4) of this  
17 section is a misdemeanor."

~~Section 13~~ *i.c. Keep 50-20-107 on the books (as amended) (see amend #7)*

20 NEW SECTION. Section 14. Codification instruction.  
21 [Sections 1 through 9] are intended to be codified as an  
22 integral part of Title 50, chapter 20, part 1, and the  
23 provisions of Title 50, chapter 20, part 1, apply to  
24 [sections 1 through 9].

25 NEW SECTION. Section 15. Severability. If a part of

1 [this act] is invalid, all valid parts that are severable  
2 from the invalid part remain in effect. If a part of [this  
3 act] is invalid in one or more of its applications, the part  
4 remains in effect in all valid applications that are  
5 severable from the invalid applications.

-End-

## VISITORS' REGISTER

| NAME                          | REPRESENTING                    | BILL # | Check One |        |
|-------------------------------|---------------------------------|--------|-----------|--------|
|                               |                                 |        | Support   | Oppose |
| Ray Redick                    | Self                            | SB157  | X         |        |
| James R. Allison, PhD         | "                               | SB157  | X         |        |
| Elizabeth Williams            | Self                            | SB157  | X         |        |
| Katherine Frittle             | self                            | SB157  | X         |        |
| Kevin Burger                  | self                            | SB157  | X         |        |
| Leo GALLAGHER                 | self                            | SB157  | X         |        |
| Robert Dozier                 | Self                            | SB157  | X         |        |
| Mary Walsh                    | DFS                             | SB24   | X         |        |
| Judith Lange                  | self                            | SB157  | X         |        |
| Mont. Assoc. of Psychologists | Self, William Kays              | SB157  |           |        |
| Hugh M. Black (H)             | Mont. Psychological Assn        | SB157  | X         |        |
| Ieni Niklas                   | Montana Ed. Assn                | SB157  | X         |        |
| Megan Hill                    | MT. Catholic Conf.              | SB157  | X         |        |
| Susan Sombartel               | St Peter's Hospital             | SB157  | X         |        |
| JUDITH CARLSON                | NASW                            | SB157  | X         |        |
| Susan Kraft Ball              | Self                            | SB157  | X         |        |
| Brenda Nordlund               | MT Women's bobbing              | SB157  | X         |        |
| Kael K. Jarrice               | Attorney - Children's Advocate  | SB157  | X         |        |
| Sten Waldron                  | mental health center            | SB157  | X         |        |
| John Madsen                   | Family Services                 | SB157  | X         |        |
| Karen Rothy                   | Cutterton Home                  | SB157  | X         |        |
| Jani Lambren                  | Vol. of America                 | SB157  | X         |        |
| Go Octor                      | Youth Services Center           | SB157  | X         |        |
| Norene Coone                  | Bullaten Park Co Youth Council  | SB157  | X         |        |
| Jan Shaw                      | Helena Youth Resources          | SB157  | X         |        |
| George Gripe Park             | Child & Family Resource Council | SB157  | X         |        |

## VISITORS' REGISTER

| NAME              | REPRESENTING                      | BILL # | Check One                           |                                     |
|-------------------|-----------------------------------|--------|-------------------------------------|-------------------------------------|
|                   |                                   |        | Support                             | Oppose                              |
| Marie A. Emerson  | Parents Anonymous                 | 157    | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| Cheryl Foye       | self                              | 157    | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| Scarpe Sponseller | Child & Family Resource Co.       | 157    | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| Debby Huigen      | ALASW                             | 157    | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| DAVE EMMISON      | A Unity System                    | H3-38  | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| Jeanne Kemmis     | Parents Anonymous of MT           | 157    | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| Blk Kaler         | OPI                               | 157    | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| Mary Westwood     | self - attorney                   | 157    | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| Blk Fran          | Women's Section of State Bar      | 157    | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| Nancy Duggan      | Mont & Friday                     | 157    | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| FRANK L. ORSICO   | MONTANA COURT REPORTERS ASSOC. SB | 209    | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| Jerry Kules       | MONTANA COURT REPORTERS ASSOC. SB | 209    | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| Becky Orsico      | MONTANA COURT REPORTERS ASSOC. SB | 209    | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| Gandi Nordhagen   | Montana Court Reporters Assoc.    | SB 209 | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| Armel Audus       | Mont Court Rep Assn               | SB 209 | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| Zander Blewett    | Self                              | SB 208 | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| Robert NIEBOER    | Mont Reporter Assn                | SB 209 | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| Sharon L. GAUGHAN | Mont Reporter Assn                | SB 209 | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| Sam T. Maskey     | Mont Reporter Assn                | SB 209 | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| A Buck Bales      | Mont Chamber of Commerce          | SB 208 | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| J. Whithead       | Liability Co.                     | SB 208 | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| John Hudis        | MTA - Pac Power                   | 208    | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| Les Berry         | MTA                               | 208    | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| Tim Robison       | Mont Liability Conflic            | 208    | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| Mike Sherwood     | MTLA                              | 208    | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| James A. Croner   | Court Reporters                   | 209    | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |

VISITORS' REGISTER

| NAME            | REPRESENTING                | BILL # | Check One |        |
|-----------------|-----------------------------|--------|-----------|--------|
|                 |                             |        | Support   | Oppose |
| Penny Doig      | Courtreporters              | 209    | ✓         |        |
| Hewitt & Gipe   | Florence Co. Comm           | 289    |           | ✓      |
| Jim Donaldson   | Jefferson Co. Taxpayers     | 164    | ✓         |        |
| Jimmy Donaldson | self                        | 164    | ✓         |        |
| Katie Donaldson | "                           | "      | ✓         |        |
| Hany Donaldson  | self                        | 164    | ✓         |        |
| Rith Foley      | self                        | 164    | ✓         |        |
| Matt Fillingier | self                        | 164    | ✓         |        |
| Steven Foley    | self                        | 164    | ✓         |        |
| David Foley     | self                        | 164    | ✓         |        |
| Terri Donaldson | self                        | 164    | ✓         |        |
| J.R. Friesen    | self                        | 164    | ✓         |        |
| Mich. Silling   | Louis & Clark Co. Taxpayers | 164    | ✓         |        |
| Daniel Webb     | self                        | 164    | ✓         |        |
| Tamara R. Blank | self                        | 164    |           | ✓      |
| Karen Webb      | self                        | 164    | ✓         |        |
| Polly Bailey    | self                        | 164    |           | ✓      |
| Patty Carwell   | self + husband              | 164    | ✓✓        |        |
| Nancy Rose      | self + husband              | 164    | ✓✓        |        |
| Liana Hall      | self + family               | 164    | ✓         |        |
| Annie Krafter   | self + family               | 164    | ✓         |        |
| Aun A. O'Keefe  | " "                         | 164    | ✓         |        |
| Mike Baber      | Self                        | 164    | ✓         |        |
| Annie Kostel    | self + family               | 164    | ✓         |        |
| Lee Campbell    | self + family               | 164    | ✓         |        |
| Janey Hancock   | Self                        | 164    | ✓         |        |

## VISITORS' REGISTER

| NAME                        | REPRESENTING                  | BILL #         | Check One |        |
|-----------------------------|-------------------------------|----------------|-----------|--------|
|                             |                               |                | Support   | Oppose |
| ATTP ZEDMAN                 | SAVINGS + LOANS               | SB 138         | X         |        |
| Arlene Kautrich             | Self                          | 164            | X         |        |
| Mary Jane Fox               | self                          | 164            |           | X      |
| Craig R. [unclear]          | Self                          | 164            | X         |        |
| Monie Stuber                | self                          | 164            | X         |        |
| Bill & Barb Walter + family | Self                          | 164            | X         |        |
| Jim REYNOLDS                | ACLU                          | 164            |           | X      |
| Jim REYNOLDS                | SELF                          | 208            |           |        |
| Jo Ann FITZPATRICK          | Pegasus Cold Corp             | 208            |           | X      |
| Jacqueline Derrill          | American Insurance Assoc      | 208            |           | X      |
| J. Paula Kern               | Pro Family Women's Lobby      | 164            | X         |        |
| Donna Wise                  | " " " "                       | 164            | X         |        |
| Juliette Boruma             | self                          |                |           |        |
| Brenda [unclear]            | self                          |                |           |        |
| Margaret STARS              | LIVEMAT <sup>discuss in</sup> | SB 164         |           |        |
| <del>Sharon [unclear]</del> | <del>MT. An. Assoc</del>      | <del>123</del> |           |        |
| D-munk Riles                |                               | 115            | X         |        |
| BETTY BAY                   | MT. DEPT FAMILY SER.          | 115            | X         |        |
| Connie Esickson             |                               |                |           |        |
| MIKE HALL                   | Ariz. Fire. Stru.             | 229            | X         |        |
| Rob [unclear]               | AP                            |                |           |        |
| MIKE [unclear]              | LA C CITY ATTY                | SB 128         |           |        |
| Nancy Lin [unclear]         | Montana Q Lobby               | SB 115         | X         |        |
| Bill Erwin                  | Dept of Justice               | SB 84          | X         |        |
| FRED FLANDERS               | DOC                           | SB 229         |           |        |
| Christie Marrom             | MT Council Mental Health      | SB 84          | X         |        |