MINUTES

MONTANA HOUSE OF REPRESENTATIVES 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Bill Strizich, on January 24, 1991, at 8:10 a.m.

ROLL CALL

Members Present:

Bill Strizich, Chairman (D)

Vivian Brooke, Vice-Chair (D)

Arlene Becker (D)

William Boharski (R)

Robert Clark (R)

Paula Darko (D)

Budd Gould (R)

Royal Johnson (R)

Vernon Keller (R)

Thomas Lee (R)

Bruce Measure (D)

Charlotte Messmore (R)

Linda Nelson (D)

Jim Rice (R)

Angela Russell (D)

Jessica Stickney (D)

Howard Toole (D)

Diana Wyatt (D)

Members Excused: Rep. Brown, Rep. Whalen

Staff Present: John MacMaster, Leg. Council Staff Attorney

Jeanne Domme, Committee Secretary

Please Note: These are summary minutes. Testimony and

discussion are paraphrased and condensed.

HEARING ON HB #211

AMENDING THE SEXUAL INTERCOURSE WITHOUT CONSENT STATUTE

Presentation and Opening Statement by Sponsor:

REP. BRADLEY, HOUSE DISTRICT 79, stated that the concept of this bill was brought to her by the County Attorney's Office in Gallatin County. It is to eliminate, under the rape statute six

words; "a person of the opposite sex." This will equalize the sentences, particularly when involved in a homosexual rape or sexual abuse against boys and girls. Line 22 of page 1, deals with rape of juveniles in which the penalty is a maximum of 40 years. By eliminating the language concerning 20 years penalty, we did two things. One, if one is involved in a homosexual rape of children, boys and girls, that person would fall under the section dealing with penalty up to 40 years instead of, as now, 20 years. The second, 41-5-206 in the Montana Statutes, deals with transfer of cases to criminal court. The language states that if the person charged with 12 years of age or more, the intent of the conduct alleged to be unlawful and the unlawful act constitutes sexual intercourse without consent and therefore, the county attorney can petition the case to the District Court.

Proponents' Testimony:

Jennifer Bordy, Deputy Gallatin County Attorney, stated that because the youth statutes do no permit transfer to District Court unless the offense is sexual intercourse without consent, an offender is tried in youth court and usually walks out without being sentenced to treatment. The other problems with the law as it now stands, does not address non-consensual sexual intercourse when it occurs even between two adult males. It shouldn't be any less a crime if a person forcefully makes another engage in sexual intercourse with them whether or not it be a person of the same sex or the opposite sex. Particularly when it comes to children, it should be no less a crime whether that person molests a child of the same sex or of the opposite sex.

Also, under the definition of deviate sexual conduct, two different crimes exist. One, between consenting adults of the same sex and the other, without consent usually when the victim is less than sixteen years old. It shouldn't be considered the same crime between two consenting adults as between an adult and a child. The way the statute is worded now, "without consent" in acts of deviate sexual conduct, it makes it difficult to tell whether consent is an element of crime that the state would have to prove in criminal prosecution. This is because the only place the words "without consent" appear is in the sentencing portion of the statute.

Opponents' Testimony: none

Questions From Committee Members: none

Closing by Sponsor: none

HEARING ON HB #191 UNIFORM CONFLICT OF LAWS -- LIMITATIONS ACT

Presentation and Opening Statement by Sponsor:

REP. MEASURE, HOUSE DISTRICT 6, stated that HB 191 is an act adopting the uniform conflict of laws, providing for a method of determining the applicable statute of limitations when other state laws are involved in a civil proceeding in Montana. What

the bill addresses are situations where the laws of other states may be applied in Montana. For one reason or another, if a statute of limitations in another state is shorter or longer and either the plaintiff is denied for a conflict of laws or the defendant might have a problem with too long of a statute of limitations of this bill is required to resolve such problems. The American Bar Association have been meeting in an effort to resolve conflicts in laws. They started addressing the problem of statute of limitations in 1982 and adopted a statute of limitations act which they offered to all the state legislatures to adopt. At present, only about 7 states have adopted this uniform legislation.

Proponents' Testimony:

SENATOR MAZUREK, HOUSE DISTRICT 23, stated that HB 191 outlines a procedure whereby, if an incident or injury occurs in one state and the court decides to choose the substantive law of that state, it can know how to determine what kind of claim one can bring, what the value of the claim would be. At the same time, one could also adopt the statute of limitations law of that state. This is a fairness bill that is a good idea. "I urge you to consider it."

John Alkie, Montana Defense Trail Lawyers Association, stated they also support this bill.

Michael Sherwood, Montana Trial Lawyers Association, stated his association supports this bill for the reasons set forth by the other proponents.

Opponents' Testimony: none

Questions From Committee Members:

REP. TOOLE asked SEN. MAZUREK what effect the amendment to the existing statute in section 8 has? SEN. MAZUREK said that the section the amendment is in is basically an escape clause for already existing claims.

Closing by Sponsor: none

HEARING ON HB #221 REVISION OF AMT. OF FINE CREDITED FOR JAIL TIME FOR TRAFFIC VIO.

Presentation and Opening Statement by Sponsor:

REP. TOOLE, HOUSE DISTRICT 60, noted that HB 221 is an act to increase to \$25 a day the rate by which a person offsets a fine if that person cannot pay or does not pay it, by spending time in jail. This amends two sections, 61-8-711 and 61-9-511, both are inclusive codes and bring these provisions into conformity with the Criminal Code provisions.

Proponents' Testimony:

Peter Funk, Assistant Attorney General, Department of Justice, affirmed the Department's support of this bill. He stated that the fiscal note does have an effect on the Department of Justice. Mr. Funk said he would be glad to answer any questions regarding this issue.

Pat Bradley, Montana Magistrates Association, stated that the judges in courts of limited jurisdiction support this bill.

Opponents' Testimony: none

Questions From Committee Members: none

Closing by Sponsor: none

HEARING ON HB #197 CLARIFY PENALTY FOR UNREASONABLE DELAY IN PAYMENT OF WORKERS' COMP CLAIMS

Presentation and Opening Statement by Sponsor:

REP. BOHARSKI, HOUSE DISTRICT 4, stated that HB 197 is a clean up bill that was brought to him by the codes commissioner. He stated that he has some amendments that John MacMaster helped draft. EXHIBIT 1 The bill will read "The workers compensation judge may increase the full amount of a benefits due a claimant during the period of delay or refusal to pay." Rep. Boharski said that the difference from the way the bill was initially drafted, is that it had said that in a workers compensation case the judge could take the full amount of your benefits, multiply it by 20%. By dropping that amendment it is clarified in the bill for the lower courts.

Proponents' Testimony:

George Wood, Montana Self Insurers Association, stated he represents the employers in Montana who self insure their benefits. We rise to the support the bill as amended since it restates what the Supreme Court has said the section meant.

Nancy Butler, State Compensation Mutual Insurance Fund, stated they support the bill as amended. "Our initial concern was that time period to which the penalty applied be placed back in the bill and it is believed that is what the amendment does.

Oliver Goe, Montana Municipal Insurance Authority, stated they support the bill as amended.

Jan Van Riper, representing herself, stated she is in support of the bill except for one word. She said the word "compensation" appears before the word "benefit" throughout the bill. Since there are two primary benefits of workers compensation, by using the word compensation, we will see some dispute as to whether or not the penalty provision applies to unreasonable delay in medical benefits. This committee could end run that dispute by taking the word "compensation" out.

Michael Sherwood, Montana Trial Lawyers Association, stated his Association supports this bill with the amendment that has been submitted by Rep. Boharski. Mr. Sherwood said further that the Trial Lawyers support the amendment outlined by Ms. Van Riper.

Opponents' Testimony: none

Questions From Committee Members:

REP. RICE asked Ms. Van Riper if it would be better to strike compensation or to add compensation and medical benefits? Ms. Van Riper said she would rather the committee strike the word compensation.

Closing by Sponsor: none

EXECUTIVE ACTION ON HB #131

Motion: REP. BROOKE MOVED HB 131 DO PASS.

Motion: REP. BROOKE moved to amend HB 131 with the amendments from the sub-committee gray bill.

Discussion:

John MacMaster stated that the gray bill takes the original copy of the bill and put two different sets of amendments into it. These were wanted by various groups of people interested in the bill. In the gray bill, anything that is in all capital letters and underlines is material that the amendments serve. Also, anything that is struck through is material that the amendments delete in the bill.

REP. BROOKE stated in the testimony, that the medical examiner inserted amendments in the gray bill which primarily focus on defining burial sites a little more clearly and the relationship between the coroner and those finding any particular skeletal remains. She noted that Paul Johnson was present from the Attorney General's office and if the committee needed further clarifications on the intent of the sub-committee amendments he would answer any questions. She stated that the other set of amendments were worked through from the interest of the Montana Power Company and were agreed to by the drafters of the bill.

REP. BOHARSKI asked John MacMaster asked why section 13 hadn't changed much in regard to criminal penalties.

John MacMaster noted that up until the 1987 session, criminal and civil penalties forfeitures were most always earmarked to certain programs. It had gotten to the point where no one seemed to know what was happening and the pie was being separated over 100%. The Magistrates Association came in with the bill that took almost all civil and criminal penalty forfeitures and amended dozens of sections of law to provide that half of the money would go to the county in which the civil penalty was assessed and the other half would go to the state treasury to be divided up into 5 or 6 different programs.

REP. BOHARSKI stated that he was concerned about the funding for this board. He said he would like the funding to be through the appropriations committee like every other project. Appropriations may then wish to take it out of the General Fund.

REP. BROOKE said the penalties could follows the same line that criminal penalties do now and 50% would go to the county and 50% would go to the state treasury. I think that it is legitimate to say the fees, grants, and donations, could follow into that same fund. They are just asking for \$5000 for start-up fees and project these other monies will support the on-going work.

REP. JOHNSON stated that he believed the committee has a better chance of getting the funds out of the General Fund instead of the source currently in the bill.

<u>Motion</u>: REP. JOHNSON moved to amend HB 131 by clarifying that there will be a General Fund appropriating in the amount of \$5000 to support the start-up of the board.

Discussion:

REP. BROOKE said she wasn't clear if there is a more secure way of finding funding for this board, but she was willing to take a shot at the General Fund and would appreciate any help on this approach if chosen.

REP. DARKO said we should set up a Special Revenue Account that could be started up by the General Appropriations Fund.

Vote: Motion carried.

Motion: REP. BROOKE MOVED HB 131 DO PASS AS AMENDED.

Motion/Vote: REP. RICE moved to amend HB 131. (Refer to Standing Committee Report). Motion carried.

Motion/Vote: REP. LEE moved to amend HB 131 in section 6 that would allow 30 days to make petition from discovery. It would make it a total of 60 days. Motion carried.

Motion/Vote: REP. BOHARSKI moved to amended HB 131. (Refer to Standing Committee Report) Motion carried.

CHAIRMAN STRIZICH said there are too many areas in the gray bill that need special attention and would like to appoint a subcommittee to work out the details and bring a better view of this bill to the committee. Rep. Brooke, Chair; Rep. Rice; Rep. Russell; Rep. Toole were appointed to the sub-committee.

EXECUTIVE ACTION ON HB #173

Motion: REP. TOOLE MOVED HB 173 DO PASS AS AMENDED.

Motion: REP. TOOLE moved to amend HB 173. (Refer to Standing Committee Report)

Discussion:

REP. TOOLE stated he is concerned about rights of any people under the government to have their retirement benefits removed for them. His amendment would strike section 4 entirely.

REP. RICE stated he doesn't feel the amendment says anything about the retirement benefits one way or the other. It is saying, we are not going to guarantee to the judges that they always get their retirement.

Vote: Motion carried.

Motion: REP. TOOLE moved to amend HB 173. EXHIBIT 2

Discussion:

REP. TOOLE said that his amendment deals with the clarification of disclosure. He stated that he asked Judge Sullivan if the committee could clarify the time of the disclosure of these proceedings, in the bill, would it be agreeable to him. Sullivan was looking for guidance from legislature and would be happy with that. The proceedings of the commission before the law, are all confidential until the time that the board makes a finding of good cause for further proceedings against the judge. At that point in time, under these very statutes, public disclosure is granted. These amendments will clarify the time of this statute.

Vote: Motion carried.

Motion: REP. TOOLE MOVED HB 173 DO PASS AS AMENDED.

Discussion:

John MacMaster clarified that the title will have to amended accordingly and in the title on line 9, where it states "modifying public disclosure requirements", the bill with the last amendment does not modify much of anything. It clarifies public disclosure requirements. I would amend the title accordingly by changing "modifying" to "clarifying".

HOUSE JUDICIARY COMMITTEE

January 24, 1991

Page 8 of 8

Motion/Vote: REP. TOOLE moved to amend HB 173 with the amendment stated by John MacMaster. Motion carried.

Motion/Vote: REP. TOOLE MOVED HB 173 DO PASS AS AMENDED. Motion carried.

EXECUTIVE ACTION ON HB #211

Motion/Vote: REP. GOULD MOVED HB 211 DO PASS. Motion carried unanimously.

EXECUTIVE ACTION ON HB #191

Motion/Vote: REP. MEASURE MOVED HB 191 DO PASS. Motion carried unanimously.

EXECUTIVE ACTION ON HB #221

EXECUTIVE ACTION ON HB #197

Motion: REP. BOHARSKI MOVED HB 197 DO PASS.

Motion/Vote: REP. BOHARSKI moved to amend HB 197. EXHIBIT 1
Motion carried.

Motion/Vote: REP. MEASURE moved to amend HB 197 with the amendment requested by Ms. Van Riper to drop the word "compensation" before benefits anywhere it appears in the bill. Motion carried.

Motion/Vote: REP. RICE MOVED HB 197 DO PASS AS AMENDED. Motion carried.

ADJOURNMENT

Adjournment: 11 a.m.

BILL STRIZICH, Chair

JEANNE DOMME, Secretary

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HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL

DATE an 24, 1991

			·
NAME	PRESENT	ABSENT	EXCUSED
REP. VIVIAN BROOKE, VICE-CHAIR	/		
REP. ARLENE BECKER			
REP. WILLIAM BOHARSKI			
REP. DAVE BROWN		····	
REP. ROBERT CLARK		enter de la constantina della	
REP. PAULA DARKO			
REP. BUDD GOULD	/,		
REP. ROYAL JOHNSON			
REP. VERNON KELLER			
REP. THOMAS LEE			
REP. BRUCE MEASURE		,	
REP. CHARLOTTE MESSMORE			
REP. LINDA NELSON			
REP. JIM RICE			
REP. ANGELA RUSSELL			
REP. JESSICA STICKNEY			
REP. HOWARD TOOLE	//		
REP. TIM WHALEN			
REP. DIANA WYATT			
REP. BILL STRIZICH, CHAIRMAN			

HOUSE STANDING COMMITTEE REPORT

January 24, 1991 Page 1 of 1

Mr. Speaker: We, the committee on <u>Judiciary</u> report that <u>House</u>

<u>Bill 173</u> (first reading copy -- white) <u>do pass as amended</u>.

Signed: Bill Strizich, Chairman

And, that such amendments read:

1. Title, lines 6 through 8. Strike: "THAT" on line 6 through "MODIFYING" on line 8

2. Title, line 9. Strike: "3-1-1105," Strike: "3-1-1111" Insert: "3-1-1122"

3. Title, lines 9 and 10. Strike: "REPEALING" on line 9 through "MCA; " on line 10

4. Page 1, lines 13 through 23.
Strike: section 1 of the bill in its entirety
Renumber: subsequent sections

5. Page 4, lines 2 through 15.

Strike: sections 4 and 5 of the bill in their entirety

Insert: "Section 3. Section 3-1-1122, MCA, is amended to read:

"3-1-1122. Judge's waiver of confidentiality -- hearing made public. The In addition to the public disclosure required under 3-1-1107, 3-1-1121, and 3-1-1123 through 3-1-1126, the commission must allow public access to all papers filed with and testimony and hearings before the commission or masters in a given case if the judge against whom a complaint has been filed waives his right of confidentiality and requests in writing that the proceedings be accessible to the public. Public disclosure of information required under 3-1-1107, 3-1-1121, and 3-1-1123 through 3-1-1126, is not contingent upon a waiver under this section."

Renumber: subsequent section

11:4-50B

HOUSE STANDING COMMITTEE REPORT

			Janu	ary 24	, 1991
				Page	1 of 1
Mr. Speaker: We, the commit	ttee on	Judiciary	_ report	that	House
Bill 211 (first reading co	opy w	hite) <u>do p</u>	ass .		
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HOUSE STANDING COMMITTEE REPORT

January 24, 1991 Page 1 of 1

Mr. Speaker: We, the committee on <u>Judiciary</u> report that <u>House</u>

<u>Bill 191</u> (first reading copy -- white) <u>do pass</u>.

Signed:

Bill Strizich, Chairman

HOUSE STANDING COMMITTEE REPORT

January 24, 1991
Page 1 of 1

Mr. Speaker: We, the committee on <u>Judiciary</u> report that <u>House</u>

<u>Bill 221</u> (first reading copy -- white) <u>do pass</u>.

Signed:

Bill Strizich, Chairman

HOUSE STANDING COMMITTEE REPORT

January 24, 1991 Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that House Bill 197 (first reading copy -- white) do pass as amended .

Bill Strizich, Chairman

And, that such amendments read:

1. Page 1, line 19. Following: "increase" Insert: "by 20%"

2. Page 1, line 20. Following: line 19

Strike: "a claimant's compensation"

Following: "benefits"

Strike: "by 20%"

Insert: "due a claimant during the period of delay or refusal to pay,"

3. Page 1, line 21. Strike: "compensation"

4. Page 2, line 1. Strike: "compensation"

Amendments to House Bill No. 197 First Reading Copy

Requested by Representative Boharski For the Committee on Judiciary

Prepared by Greg Petesch and John MacMaster January 22, 1991

1. Page 1, line 19. Following: "increase" Insert: "by 20%"

2. Page 1, line 20. Following: line 19

Strike: "a claimant's compensation"
Following: "benefits"
Strike: "by 20%"
Insert: "due a claimant during the period of delay or refusal to pay,"

3. Page 1, line 21. Strike: "compensation"

4. Page 2, line 1.

Strike: "compensation"

Amendments to House Bill No. 173 First Reading Copy

Requested by Reps. Whalen, Rice, and Toole For the Committee on the Judiciary

> Prepared by John MacMaster January 22, 1991

1. Title, lines 6 through 8.

Strike: "THAT" on line 6 through "MODIFYING" on line 8

2. Title, line 9.

Strike: "3-1-1105," Strike: "3-1-1111"

Insert: "3-1-1122"

3. Title, lines 9 and 10.

Strike: "REPEALING" on line 9 through "MCA;" on line 10

4. Page 1, lines 13 through 23.

Strike: section 1 of the bill in its entirety

Renumber: subsequent sections

5. Page 4, lines 2 through 15.

Strike: sections 4 and 5 of the bill in their entirety

Insert: "Section 3. Section 3-1-1122, MCA, is amended to read:

"3-1-1122. Judge's waiver of confidentiality -- hearing made public. The In addition to the public disclosure required under 3-1-1107, 3-1-1121, and 3-1-1123 through 3-1-1126, the commission must allow public access to all papers filed with and testimony and hearings before the commission or masters in a given case if the judge against whom a complaint has been filed waives his right of confidentiality and requests in writing that the proceedings be accessible to the public. Public disclosure of information required under 3-1-1107, 3-1-11 $\overline{21}$, and 3-1-1123 through 3-1-1126, is not contingent upon a waiver under this section.""

Renumber: subsequent section

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