

## **MINUTES**

### **MONTANA HOUSE OF REPRESENTATIVES 52nd LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON JUDICIARY**

**Call to Order:** By Chairman Bill Strizich, on February 13, 1991,  
at 7:37 a.m.

#### **ROLL CALL**

**Members Present:**

Bill Strizich, Chairman (D)  
Vivian Brooke, Vice-Chair (D)  
Arlene Becker (D)  
Dave Brown (D)  
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)  
Tim Whalen (D)  
Diana Wyatt (D)

**Members Excused:** William Boharski (R)

**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.

EXECUTIVE ACTION ON HB 428

Motion: REP. GOULD MOVED HB 428 DO PASS. Motion carried unanimously.

EXECUTIVE ACTION ON HB 635

Motion: REP. MEASURE MOVED HB 635 DO PASS.

Discussion: John MacMaster stated that this bill deals with a similar subject as a few other bills. We want to make sure we don't cause any conflict between this bill and the others.

REP. MEASURE stated Sen. Brown's bill has to do more with power of attorney's and is expansive compared to the living will provisions of this bill. HB 635 deals with the power of attorney also. I feel this bill is quite separate from those two.

REP. RICE stated he has some concerns about the bill and would like some extra time to work up some possible amendments. He said as the bill is now there are a lot of people who have made decisions about whether to have a living will or not. Those people who have chosen not to have a living will because they do not to be unplugged, have decided to give this right to someone else. Namely, the family member. I have a concern that we will have to run down those people who have elected to make the decision and tell them your decision not to have a living will has now been superseded by legislation saying because you made that decision you have given that right to someone else. We need to address that somehow and I am not sure how to do that.

REP. MEASURE stated the provisions before the bill said the family would be in a position to make that decision. If you don't do that you are in a situation where the family can't make a decision even in light of the victims wishes and their knowledge of it. That is the position we are in now. Those family members are in a strong position to make those types of decisions of the terminally ill. But some doctors are not going to make the decision because they recognize the rights of the terminally ill to die peacefully. It can be one way or the other. Either those people are excluded from making those decisions or they are included.

REP. BROOKE stated that the bill is well drafted and meets the needs that families dealing with someone who is terminally ill have. I think a family needs the option to make that decision ahead of time for the terminally ill person.

Vote: Motion carried with Rep's: Whalen, Lee and Rice voting no.

HEARING ON HB 451  
REVISE SEXUAL CRIMES

Presentation and Opening Statement by Sponsor:

REP. BROOKE, HD 56, stated this bill is an act to generally revise the laws relating to sexual crimes. In our statutes, we currently have victimless crimes defined as well as terms for which our codes define. This bill is an effort to discern where we need to delete and where we need to add definitions of a where we have a victim and no penalties set in place. Section one contains language that was adopted in HB 113. It defines the meaning of force. Sections 2, 3, and 4 deal with sexual assault, sexual intercourse without consent and indecent exposure. These section delete the spousal exemption for all these crimes. It is a strongly held belief that a person should be protected of a crime regardless of the relationship one has with the defendant. Section 5 brings penalties for the crime of incest into line with the penalties for all forms of sexual intercourse without consent. The punishment is consistent regardless of the relationship of the victim to the offender. The crime is punishable by imprisonment for any term not to exceed 20 years or a fine in the amount not to exceed \$50,000 or both. Section 6 is the date rape section. Evidence of the victims past sexual conduct with the offender is deleted as a defense for the accused. Section 7 states all of the general definitions in 45-2-101 and all the definitions remain the same except on page 11 of the bill. The definition for deviate sexual relations is deleted and the bill continues with no changes.

Proponents' Testimony:

Holly Franz, President, Women's Law Section, gave written testimony in favor of HB 451. EXHIBIT 1

Bob Johnson, Montana Public Health Association, stated he is the Lewis and Clark County Health Officer and also represents himself. The aids issue has been a fantastic and tragic educational experience. About 5 years ago, my health department and staff decided we had to get serious about learning out aids and our mission to help the public contain the spreading of the disease in Montana. It has opened up a whole area that deals with social injustice and unnecessary discrimination.

A public health agency has the responsibility for containing the spread of the disease status. Aids has no cure and is also a disease that impacts all people of all persuasion of all races and all kinds of sexual activities. A significant portion of people who get aids are gay, male homosexuals. People who think they are at a high risk for having the HIV virus need to be tested in our health department. During that process we also spend alot of time and emphasis on counseling these people on how they can prevent them and their sexual partners form getting the

aids virus. In the cases where we identify someone with the aids virus, we then counsel that person on how they can take care of their health, what they should do from then on to keep as healthy as possible, but also counsel that person and ask them to tell us who their sex partners are and were. The process is then followed by a public health nurse to confidentially notify the sex partners of that individual that they should come in to be tested and receive counseling because they have come into contact with someone with the HIV virus. That is the most effective tool we have to contain the spread of this deadly disease. During the process of counselling and those people tell us who their sex partners are, and if there partners are of the same sex, they are admitting to being a felon in the state of Montana. That is a substantial barrier to the process of public health attempting to contain the spread of this disease. For this reason, I ask for your support of HB 451.

John Connor, Montana County Attorney's Association, stated our association generally supports this legislation and would be available for questions about the prosecutory aspects of the bill.

Bill Summers, President - Out in Montana, gave written testimony in favor of HB 451. EXHIBIT 2

Linda Gryczan, Montana Lesbian Coalition, gave written testimony in favor of HB 451. EXHIBIT 3

Steve Simpson, Out in Montana, gave written testimony in favor of HB 451. EXHIBIT 4

Scott Crichton, American Civil Liberties Union of Montana, stated they would like to go on record supporting this bill. We echo the sentiments and logic that has been presented so far.

Amy Pfeifer, Women's Law Section, State Bar of Montana, gave written testimony in favor of HB 451. EXHIBIT 5

Shawna Reinhardt, Missoula resident, gave written testimony in favor of HB 451. EXHIBIT 6

Aylee Hinderks, Date Rape Survivor, Great Falls, gave written testimony in favor of HB 451. EXHIBIT 7

Star Jameson, Director - Rape Center of Northwestern Montana, gave written testimony in favor of HB 451. EXHIBIT 8

Diane Sands, Montana Women's Lobby, stated they are in support of this bill. I would like to submit testimony for people that could not be here. One is for Janet Allison, Ph. D. Psychologist in the state of Montana who is in support of this bill. Another is Ellen Leahy, a Health Officer in the state of Montana who is in support of this bill. EXHIBIT 9 & 10

Opponents' Testimony:

Jay Printz, Ravalli County Sheriff, stated he has mixed emotions on this bill. I have a concern over the portion of the bill that deals with deviate sexual relations that will be stricken. The other proponents talk about consenting adults but no testimony in regards to animals. I have personally investigated several cases where animals have been victimized. The people involved in these types of activities are very sick. If you look at deleting deviate sexual relations, you need to consider leaving in the part about the sexual relations to animals.

Informational Testimony:

Dan Russell, Administrator - Divisions of Corrections, stated it is important to know that there will be a prison impact from this bill. This bill has only two parts that concern us and those relate to the sentencing portion of the bill. There are several portions of the bill that expand the possibility to prosecute for certain sex offenses and the other is the sentence enhancement areas where it double the sentence for incest.

We contacted the attorney general's office and they anticipate an additional 4 or 5 convictions each year and of those, at least 2 or 3 would result in prison sentences. This 2 or 3 additional prison placements combined with all those bills you will hear, will create some serious problems with the prison overcrowding.

Questions From Committee Members:

REP. LEE asked Holly Franz if she would be comfortable in leaving that last part of deviate sexual relations with an animal. Ms. Franz stated it would be correct to say the bestiality portions of the deviate sex has not been the focus of our efforts. I am unaware of whether or not there are other laws that would make such a mistreatment of an animal a criminal act. We have no real strong stand on that particular part of the bill.

REP. JOHNSON asked Ms. Franz why section 16 is added into the bill? Ms. Franz stated because we eliminated the definition of deviate sexual conduct, that is included in a long list of definitions for criminal statutes, when we came to deviate sex it was a "d" word so all of the e through z words got pushed up one number. Because we are numbering all the subsections, the legislative council told us we have to go through and change all of those statutes. You will note when looking at all those various subsections, they have gotten rid of the sub-section so it refers to the definition statutes. In the future when definitions are reordered you will not have to go through and change every single statute from the first of the definitions.

REP. DARKO asked John Conner if he had any idea how many prosecutions are made under section 45-5-505? Mr. Conner stated

doesn't know how many prosecutions have been filed under this section. I know that what Holly Franz said is true that a person my look at this section as a problem with the constitution. It does amount to deny equal protection.

REP. MEASURE asked John Conner why is there a need to decriminalize sex acts between consenting adults in a homosexual or lesbian relationship and increasing penalty for sex acts between adults? Mr. Conner stated he was not involved in the drafting but in the prosecution stand point charges of incest most often arise where there has been a step-father having had some sort of sex offense against his step-daughter. In those instances, they are often charged under the sexual contact language because of the fact it is difficult to prove penetration when they only have the testimony of the child. Holly Franz stated the purpose of our amendment to the incest statute was to allow flexibility, particularly in keeping with rape situations, so the subject of celestial sex is not particularly foremost in our minds. I am not ready to say that I would support decriminalizing incest.

Closing by Sponsor:

REP. BROOKE thanked everyone for their testimony in a sometimes sensitive area. I encourage you support of this bill.

HEARING ON HB 631  
SENTENCE RESTRICTIONS FOR SEXUAL OFFENSES

Presentation and Opening Statement by Sponsor:

REP. MCCULLOCH, SD 96, stated this is a bill that provides mandatory sentence of two years in prison for those offenders convicted of sexual assault against younger children. In my mind there is nothing worse than when this is done to innocent, defenseless children. I have brought this bill to you today because the present system of deterrents is moderate and as a response to the increase of sexual assault done to our children by adults. Adult offenders usually get the equivalent to no more than a slap on the hands. It is obvious that this crime is considered serious as current law is a maximum of 20 years and a fine of \$50,000. Yet, the sentencing is always suspended and the offenders are required in a treatment that last no more than 30 days. After the 30 day program is completed, usually these defenders are deemed cured and released back onto the streets where almost 40% become repeat offenders. Thirty days is not considered a very long time when the victims live with this for the rest of their lives.

Proponents' Testimony: none

Opponents' Testimony: none

Informational Testimony:

John Connor, Montana County Attorney's Association, stated he told Rep. McCulloch that I would be available this morning if there were any questions the committee had on this because I have had to provide him with some suggestions as to how to approach the problem that he considered very serious and this bill resulted from that discussion. I didn't draft the bill itself but I am responsible for providing the direction the draft took and I would be happy to give you a prosecutors perspective on this bill.

Dan Russell, Administrator - Divisions of Corrections, stated this bill has a greater impact in any bill that has become before you this session. With a mandatory prison sentence with conviction of sexual assault involving a person under 16 years of age. An average of 58 individuals were admitted each year for probation for this crime in the past 5 years. About 42% sexual assault involved victims age less than 16. You can assume you have 58 to 75 people on probation and will result in at least in 24 to 30 prison admissions per year. Those people can go to probation today and a mandatory minimum of two years and they will go to prison. It has a major impact on the prison populations.

Questions From Committee Members:

REP. MEASURE asked John Conner what would be the mandatory sentencing in a program for a treatment center? Mr. Conner stated that is true that some of these offenses are dealt with by treatment and if sent to prison it would only be available through the sexual offender treatment program in prison. I think Rep. McCulloch wanted to deal with those situations where people weren't getting prison sentences for committing sexual assaults that were very serious.

Closing by Sponsor:

REP. MCCULLOCH stated the situation that is created now is that the offenders when comes time for sentencing their whole sentence is suspended and there is not type of deterrent use. They spend 30 days in a treatment program and then releases back onto the streets and there is somewhat of a high repeat offender percentage.

I teach 6th grade and have students in my class who have been sexually assaulted by adults. These children are hurt and scared for many years and sometimes forever. Mandatory sentencing not only works as a deterrent, but sends a message to the victim and their families that these crimes are serious offenses. Society is now going to admit that these crimes do exist and we recognize the right of protection. I ask this committee to send the

message that we will not tolerate the abuse and assault on the children of our state and they will not be forgotten. If this legislative body will not protect them, who will? I urge do pass of this bill.

#### HEARING ON HB 421

#### CLARIFY CERTIFICATION AND TRAINING OF LIMITED JURISDICTION JUDGES

##### Presentation and Opening Statement by Sponsor:

REP. HOFFMAN, HOUSE DISTRICT 74, stated HB 421 gives clarification requested by the Supreme Court to clarify existing law. Primarily what it does is clarify certain requirements of lower court judges. Judges in courts with limited jurisdiction, both JP courts and Municipal courts. It clarifies the qualifications of those judges and also requires that the Supreme Court be notified of an election or appointing of a judge to a court of limited jurisdiction. The bill cross references clarification with the qualification requirements between the district court judge statutes and the justice of the peace statutes in hopes of the courts appoint a judge that is properly trained. There is no fiscal impact to this bill.

##### Proponents' Testimony:

David Hull, Helena City Attorney, stated the bill makes clarifications in current law. I would point out on page two, section four, it talks about notifying the commission of the person appointed. There is some additional language on page 6 and 7 regarding certification of the election of a judge to the state courts. There reason for that is that we found judges were getting elected or appointed and we didn't know about it and didn't have them on our list and were unable to make sure they meant certification requirements. The other language changes in the body of the bill, clarifies the rules that the Supreme Court has already put in affect and given us guide lines to insure the certification and training of the courts of limited jurisdiction. I would ask for your support of this bill.

Pat Bradly, Montana Magistrates Association, stated the MMA supports HB 421. The President of the Magistrates Association is also a member of the commission on courts of limited jurisdiction, was hoping to be here to testify. In his absence, he asked me to tell you that the commission has requested that the code commissioner review the statutes in this bill for clarification. We ask that you support this bill.

##### Opponents' Testimony:none

##### Questions From Committee Members:

REP. MEASURE asked Mr. Hull, as far as the mandatory training requirements, where did they come from, how thoroughly did you



research the judicial court and the constitution to determine whether or not you can ask to require these people to attend? Mr. Hull said there is a statute that requires training certification for courts of limited jurisdiction judges. The Supreme Court has set up, as part of their overseeing of all judges, a training program that we have administered for 5 years. There is now in place a training program of two meetings every year, certification school every four years, which would test them and make sure they meet minimum qualifications to be a judges. What we have done in affect is codify the rules that we have already been following in training.

REP. MEASURE stated that the Supreme Court has jurisdiction over all the lower courts and they promulgate these rules. What is the purpose of codifying it statutorily? Mr. Hull said since there was a statute that said the court had to have training we need to clarify the amount of the training as well as the obligation of the city or county to provide the funds for that training. REP. MEASURE asked Mr. Hull if they have asked the Supreme Court about their feeling about you stepping into their area? Mr. Hull said yes, there is no problem. We have done this as an arm to the Supreme Court.

REP. BROWN asked Mr. Hull if he could explain page 4, line 9-10. What is the implication of striking that language? Mr. Hull said this makes no substantial changes. The statute provides for the requirements for judges to be lawyers in certain classes of jurisdictions. This is some redundant language that we felt wasn't appropriate here and we removed it. REP. BROWN asked why shouldn't the requirement be that all of these judges be lawyers? Mr. Hull said there is a statute that sets forth in circumstances they do require them to be lawyers. The commission's position is after legislative decision, we would certainly leave that up to the legislature. To my understanding there is a large body of support for lay judges in courts of limited jurisdiction level.

REP. BROWN asked Mr. Hull what is the reasoning for having lay judges? Mr. Hull said the theory of courts of limited jurisdiction that these are in effect people's courts. The lay persons are equally confident with sufficient training to handle the types of cases that are presented in those courts.

Closing by Sponsor:

REP. HOFFMAN, stated he would like to thank the committee for its consideration and ask for a do pass of this bill.

HEARING ON HB 554  
REVISE INDIGENT COURT FILING

Presentation and Opening Statement by Sponsor:

REP. BENEDICT, HOUSE DISTRICT 64, stated this is a simple bill

that clarifies that in order to qualify for indigent filing or waiver of fee that applicant must support the application of financial statement and must be approved by the judge. This is being done, at present, in most jurisdictions with the various clerks of court unwilling to allow unsubstantiated indigent filing fees and/or indigent filing fees not ordered by the court. Accordingly, this bill merely requests the reality of what is being done in the present time which assures uniformity among the counties.

#### Proponents' Testimony:

**Ardelle Adams, Clerk of District Court - Glendive,** gave written testimony in favor of HB 554. EXHIBIT 11

**Tom Harrison, Montana Clerk's of the Court Association,** stated they ask for favorable consideration of this measure. It is no more complicated that what Rep. Benedict indicated. It is an attempt to clarify and to uniform what is going on in most of the jurisdictions. The problem that had arisen that brought this bill forth is a limited number of a few lawyers who executed this thing as a matter of course in the attempt to avoid fees paid to the district court. There is some type of unpleasant confrontation concerning whether or not there is an entitlement to the waiver of the fee. It obviously has some impact on about 10 different provisions, including battered spouses. It does represent a case where there are substantial increase of uses of these to avoid the filing fees and this will unquestionably tighten that up to some degree and it will make uniform the use and the need for court approval.

**Pat Bradly, Montana Magistrates Association,** stated we support this bill as it just clarifies a procedure that the judges already do now.

#### Opponents' Testimony: none

#### Questions From Committee Members:

**REP. MEASURE** stated to **Mr. Harrison** that this addresses an area where you file a person an indigent individual. As I understand it, you have to prepare an affidavit from the individual and basically a financial statement. Do you envision anything more extensive than an affidavit? **Mr. Harrison** said I would hope that those affidavits encompass the entire spectrum. Some go into the financial condition and my view is that those would be fine and there would be nothing intended more than that.

**REP. WHALEN** asked **Mr. Harrison** if he knows how these judges feel about having to review these things and issue an order? **Mr. Harrison** said I won't say that I have talked to them, but the clerk's have said to me that in the big jurisdictions the judges are involved in this process. In a practical manner, the clerks will not allow them to be filed without actual compliance with

this. Although many lawyers could show them on the books that this isn't a statutory requirement but still is enforced as if it were. Pat Bradley stated the judges are doing this already and it will not be something new to them.

REP. WHALEN asked Pat Bradley if there is some criteria a judge goes through to determine if a person is indigent? Pat Bradley said yes, it is a two page form. It inquires into their marital status, their jobs and bank accounts. We ask that they fill it out and present it to us and we have a hearing.

Closing by Sponsor:

REP. BENEDICT stated this has been a good hearing and I would ask for a do pass recommendation on this bill.

EXECUTIVE ACTION ON HB 554

Motion: REP. JOHNSON MOVED HB 554 DO PASS.

Discussion: REP. MEASURE stated this is a clerk and judges bill. The judges are trying to delegate authority to dig into an individuals financial situations through the clerks.

Motion: REP. MEASURE MADE A SUBSTITUTE MOTION HB 554 DO NOT PASS.

Discussion: REP. WHALEN said one concern I have with the bill is that under present law once you come in to file an affidavit you may go ahead and commence for a prosecutor to take action. It requires an order through the court approving the request for the waiver of fee before you can commence the action. It would probably take a couple of weeks to get a hearing on it.

REP. JOHNSON stated nothing is mandatory in this bill and this bill should be passed.

Motion/Vote: REP. NELSON MADE A SUBSTITUTE MOTION HB 554 BE TABLED. Motion carried 10 to 6 with Rep's: Johnson, Clark, Keller, Rice, Brown, and Stickney voting no.

HEARING ON HB 493

REPEAL EXCLUSIVE REMEDY PROVISIONS OF HUMAN RIGHTS LAW

Presentation and Opening Statement by Sponsor:

REP. COHEN, HOUSE DISTRICT 3, stated HB 493 is an act to delete the requirement the exclusive language of the Human Rights Commission. If you are discriminated against, off the job, you may go to the Human Rights Commission or directly to the courts to take action. However, if a discrimination or harassment occurs on the job, you are restricted to representation by the

commission. What this does is create a bottleneck.

Proponents' Testimony:

Jim Reynolds, American Civil Liberties Union of Montana, said the ACLU of Montana sees both procedural and substance in problems with the current situation. The procedural problems that we see happen when there is a delay and error in the return system. Presently, because of the provision we are being restricted of all claims of discrimination.

The problems we see is that a person being discriminated against on the job doesn't have the same rights as a person who is discriminated against on the street. The person off the job doesn't have to go through the Human Rights Commission. The person on the street has the up to two years to file a complaint. The person on the job, who may be more nervous about filing a complaint because they may lose their job, has only 180 days in which to file.

It is the American Civil Liberties Union's position that the bill before you is a good one and we support it.

Opponents' Testimony:

Ann McIntyre, Administrator, Human Rights Commission, gave written testimony opposing HB 493. EXHIBIT 12

Tom Hopgood, Montana Association of Realtors, stated we are in opposition of this bill. I would admit to some confusion of the operation of this bill and my main point of confusion is whether this bill would provide for an alternative remedy or for a accumulative remedy. If it is an accumulative remedy then the agreed person would be allowed to sue the administrative action in front of the human rights commission, get a recovery there and then if there will also any act in the District Court. I think that is unclear on the bill and should be addressed.

What is the applicable statute of limitations for an action brought in District Court? What kind of damages can you recover? These are some questions that should be addressed and I think this bill needs alot of work.

Diane Sands, Montana Women's Lobby, stated we have been strong supporters of the Human Rights Commission. We are also concerned with the victims of sexual harassments. Taking those two considerations into our deliberations on this bill, we have come to the position of having to oppose this bill because we think it, unintentionally, weaken the Human Rights Commission and its power to carry out their policy on trying to eliminate discrimination. One thing I think very important for you to know, is the Human Rights Commission is opposed to one individual remedy. For those reasons we are opposed to HB 493.

Harley Warner, Montana Association of Churches, stated we support strong, independent Human Rights Commission. We feel this bill has an inadvertent effect reducing the strength of that commission. We, therefore, oppose the bill.

Questions From Committee Members:

REP. MEASURE asked Ann McIntyre what is the present case load, what is the approximate time it takes to get through the process? Ms. McIntyre said at the end of December there was 413 cases pending. They have been experiencing filing of 400-450 complaints per year. We have nine FTE's assigned to the commission of which 3.5 are investigators. For the FY 89-90 we were averaging about 260 days to process a complaint and the average time that a open complaint has been filed in the commission is also in that neighborhood. Starting FY 90 we experience a real significant increase in the number of complaints being filed.

REP. WHALEN asked Ms. McIntyre when you get close to the end of the investigation, and the commission is going to hold a hearing or the employer has the right to sue, how many of those cases are go to District Court as opposed to hearings within the commission? Ms. McIntyre said there is a procedure for cases once filed with the commission to go to the District Court after going through the investigative process. When the commission conducts an investigation and finds no reasonable cause for the discrimination occurs, they issue a right to sue letter at that time.

REP. TOOLE asked Ms. McIntyre if there is a way of addressing this problem that is sort of in between, either passing or not passing this bill, or approaches that you think that could be done with an attempt to get at the problem? Ms. McIntyre said she is not sure what you would want to do. One of things I am concerned with is the commission did have a bill that would have lengthen the statute of limitations and that may be one way to address the problem.

Closing by Sponsor:

REP. COHEN stated this is a good bill. I agree the Human Resource Commission is not adequately funded. I hope you consider this bill and give it a do pass.

HEARING ON HB 466

REQUIRE NO PAROLE ELIGIBILITY FOR CERTAIN OFFENDERS

Presentation and Opening Statement by Sponsor:

REP. BACHINI, HOUSE DISTRICT 14, stated it is only a one page bill that does quite a bit. The title of the bill says an act to

require that a sentence for a conviction of deliberate homicide include a provision that the offender is not eligible for parole or participation in a supervised release program.

Last year during the campaign, I visited with many of my constituents and they always ask me why we allow murders out of prison. I explain to them that the present law allows that. They say it shouldn't be. I have to agree with them. When a person commits a deliberate homicide, I think he or she should spend the time that was sentenced. The meat of the bill is on page 2, line 12, that says "Whenever the district court imposes a sentence of imprisonment in the state prison for deliberate homicide, the court shall impose the restriction that the defendant is ineligible for parole and participation in the supervised release program while serving his sentence".

Proponents' Testimony:

Troy McGee, Montana Police Protective Association and Montana Chief's of Police Association, stated we support this bill. Deliberate homicide is a particular crime where a person has to have an actual thought and actual act in committing the action of he or she. This person should not be paroled or allowed to be released until they have served their sentence.

Bill Fleiner, Montana Sheriff's and Peace Officer Association, stated we rise in support of this particular piece of legislation. This issue is very near and dear to us. There was an incident that occurred in the state of Washington where a women was killed and daughter was critically wounded as a result a homicide suspect that was convicted and sentenced to one year at the state prison. He was released and went into therapy within the community which he was released and he has killed another person. This isn't the only case, this is just one that I singled out. What is occurring now is domestic abuse and crimes of passion has potential that it will be repeated. We support this bill and ask for your favorable consideration.

Opponents' Testimony:

Harley Warner, Montana Association of Churches, gave written testimony opposing HB 466. EXHIBIT 13

Dan Russell, Administrator - Division of Corrections, stated the judges now can designate offenders ineligible for parole. There are 99 inmates serving sentences for the crime cited in the Fiscal year 1990. Seventy-nine of those inmates are parole eligible. The average sentence opposed on an offender convicted of deliberate homicide, who are eligible for parole, is 79 and one-half years. We receive about 17 offenders each year convicted of deliberate homicide and a total of 15 offenders were paroled in the last 5 years. If you enact HB 466, inmates sentence report status will continue for parole. At some future date, the impact of this bill will be felt. Given that persons

convicted of this defense, that person will spend times as much time in prison as other members who were placed conservatively and an additional 3 inmates a year, eventually be 15 or more inmates. We oppose HB 466.

Questions From Committee Members:

REP. MESSMORE asked Dan Russell what the average sentence is for deliberate homicide? Mr. Russell said the sentences range from 10 years to 360 years. For those that are convicted of deliberate homicide, the average is 91.8 years. REP. MESSMORE than asked when do these people become eligible for parole? Mr. Russell said after a quarter of their sentence, less good-time.

REP. BROWN asked Mr. Russell what is the cost per person per year? Mr. Russell stated the cost per day per inmate is \$35.08.

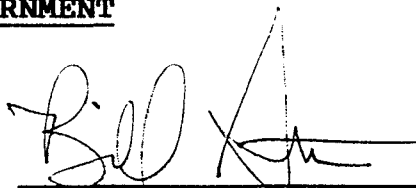
REP. TOOLE asked REP. BACHINI if he would have any objection to juries being aware of the potential implications of your deliberate homicide convictions? REP. BACHINI stated no, he would have no objection to that. The intent of this legislation is to confine these people so that it will never happen again.

Closing by Sponsor:


REP. BACHINI stated that the committee wouldn't have this legislation before you today if the courts would do their job. But, the courts are not doing their job. That is why the people of the state support a policy that a deliberate homicide offender should be confined in prison for the term of the sentence imposed on them. The intent of this legislation is to prevent the taking of another life. I could have brought with me articles describing where people have been paroled and then taken another life. I don't believe these people should be entitled to freedom. The worst act that we have in this country is to take another life. Such a person should serve his sentence. My fiscal note shows that it would cost about \$5000 a year. That is three additional inmates being held in prison. I ask that you pass this bill.

ADJOURNMENT

Adjournment: 10:43 a.m.



BILL STRIZICH, Chair



JEANNE DOMME, Secretary

HOUSE STANDING COMMITTEE REPORT

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Mr. Speaker: We, the committee on Judiciary report that House Bill 428 (first reading copy -- white) do pass .

Signed:   
Bill Strizich, Chairman



HOUSE STANDING COMMITTEE REPORT

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Mr. Speaker: We, the committee on Judiciary report that House Bill 635 (first reading copy -- white) do pass .

Signed: Bill

Bill Strizich, Chairman

# HOUSE OF REPRESENTATIVES

## JUDICIARY COMMITTEE

ROLL CALL

DATE 2-13-91

NAME	PRESENT	ABSENT	EXCUSED
REP. VIVIAN BROOKE, VICE-CHAIR	/		
REP. ARLENE BECKER	/		
REP. WILLIAM BOHARSKI			/
REP. DAVE BROWN	/		
REP. ROBERT CLARK	/		
REP. PAULA DARKO	/		
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REP. VERNON KELLER	/		
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REP. JIM RICE	/		
REP. ANGELA RUSSELL	/		
REP. JESSICA STICKNEY	/		
REP. HOWARD TOOLE	/		
REP. TIM WHALEN	/		
REP. DIANA WYATT	/		
REP. BILL STRIZICH, CHAIRMAN	/		

EXHIBIT 1  
DATE 2-13-91  
HB HB 451

HOUSE BILL 451

TESTIMONY OF THE WOMEN'S LAW SECTION OF THE STATE BAR

My name is Holly Franz. I am the President of the Women's Law Section of the State Bar. The Women's Law Section is an organization of more than 100 attorneys who are concerned about the effect of Montana's laws on women. The Women's Law Section strongly urges support of HB 451.

HB 451 is a general revision of the sexual crimes act. It is designed to conform penalties for all rapes, to eliminate spousal exceptions, to redefine force to include the threat of retaliatory action, to repeal the crime of sexual deviate conduct, and to recognize the crime of date rape. My testimony will concentrate on the repeal of the deviate sex act. Amy Pfeifer of the Women's Law Section will address the date rape provisions.

Several of the provisions in HB 451 have already been addressed by other legislation. Representative Tom Lee's HB 113 redefines force to include the threat of retaliatory action. HB 113 was passed by both the House and Senate and referred to a conference committee. Section 1 of HB 451 also redefines force.

Representative Dorothy Bradley's HB 211 conforms the penalties for heterosexual and homosexual rape. HB 211 was passed by the House and referred to the Senate Judiciary Committee. Section 3 of HB 451 also conforms these penalties.

Conform penalties: Representative Dorothy Bradley's HB 211 has already conformed the penalties for heterosexual and homosexual rape. The maximum prison term for heterosexual and homosexual rape is 10 years. If the victim is less than 16 years old and the offender is 3 or more years older, or the offender inflicts bodily injury, then the maximum prison term is 20 years.

The maximum prison penalty for incest is 10 years or 20 years if the victim is less than 16 years old and the offender is 3 or more years older, or the offender inflicts bodily injury. The crime of incest includes sexual intercourse with a family member. As the law now

stands, the maximum penalty for incestual rape is one-half of the penalty for non-incestual rape. Section 5 of HB 451 conforms these maximum penalties.

The maximum rape penalty should not differ depending upon the identity of the victim. HB 451 does not suggest that the maximum prison sentence should be imposed against all rapists or against all persons guilty of incest. The crime of incest includes, in addition to rape, the act of knowingly marrying, cohabiting with, or having sexual contact with an ancestor or descendant. In many situations the maximum penalty would not be appropriate. In those situations, however, where it is appropriate, a sentencing judge should have the discretion to sentence the offender to the maximum prison penalty regardless of the identity of the victim.

Spousal exceptions: Montana law originally did not define spousal rape or sexual assault as a crime. The 1985 legislature, in recognition of the serious problem of domestic abuse, removed the spousal exception from the rape law. Sections 2 and 4 remove the spousal exceptions from the crimes of sexual assault and indecent exposure. There are many situations when the crime of sexual assault or indecent exposure, which requires the causing of affront or alarm, could be an element of domestic abuse. In those situations, the conduct should be defined as criminal.

Threat of retaliatory action: Section 1 of HB 451 redefines force to include the threat of retaliatory action. Representative Tom Lee's HB 113 has already redefined force.

Date rape: Section 6 of HB 451 addresses the problem of date rape. Under current Montana law, if a person is raped while mentally incompetent to consent to sex, the offender is not guilty if the victim was a voluntary social companion of the offender and the alcohol was voluntarily consumed. A person is mentally incapacitated if she is temporarily incapable of appreciating or controlling her conduct due to alcohol. If an offender rapes someone in this condition, it should not matter who the victim was drinking with.

Section 6 of HB 451 also amends the rape shield law. In most situations, a victim's past sexual history is inadmissible in rape trials. Montana law does, however, allow evidence of the victim's past sexual conduct with

the offender. HB 451 would disallow such evidence. The fact that a person has consented to sex in the past is not consent to unlimited sex. Each sexual encounter should be judged on its own merit. If the statutory elements of rape, including the threat of violence or retaliatory action, are present, then a rape has occurred regardless of the victim and offender's past sexual relations.

Deviate Sex: Section 18 of HB 451 repeals the crime of deviate sexual conduct. Because Representative Dorothy Bradley's HB 211 has already incorporated nonconsensual deviate sex into the rape statute, HB 451 need only address consensual deviate sex. Deviate sex is defined to include all sexual contact or sexual relations between members of the same sex. It applies to the private sexual conduct of consenting adults.

At least 25 states, including Alaska, California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Indiana, Iowa, Maine, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Dakota, Ohio, Oregon, Pennsylvania, South Dakota, Vermont, Washington, West Virginia, Wisconsin and Wyoming, have decriminalized consensual homosexual activity. The Model Penal Code, adopted by the American Law Institute, and the American Bar Association recommend the decriminalization of consensual homosexual conduct. The Model Penal Code was the catalyst for change in many states. While most of the states acted legislatively, a number of state courts have ruled such statutes unconstitutional as a violation of the right to privacy and equal protection.

The U.S. Supreme Court ruled in 1986 that deviate sex statutes do not violate the federal right of privacy. The statute may, however, violate Montana's constitution. Montana's constitution, unlike its federal counterpart, expressly provides a right to privacy. The right to privacy typically protects private sexual acts between consenting adults. It is very likely that Montana's deviate sex act is unconstitutional under Montana's Constitution.

Montana's deviate sex act may also be unconstitutional because it criminalizes behavior based on an immutable trait. Scientific research indicates a person has little control over his or her sexual orientation and that once acquired, sexual orientation is largely impervious to change. In 1973, The American

Psychiatric Association removed homosexuality from its list of psychic disorders. The American Medical Association followed suit in 1975 by endorsing the decriminalization of homosexual conduct between consenting adults.

Due to unresolved constitutional questions, many county attorneys will not file charges under the deviate sex act. Nonetheless, the fear of felony charges has hindered county health efforts. HIV positive male homosexuals are hesitant to disclose their sexual partners because it implicates them and their partners in the commission of a felony. The deviate sex act, rather than deterring homosexuality, deters AIDS prevention and treatment.

The deviate sex act should be repealed. It is arguably unconstitutional. It criminalizes an entire class of people based on unchangeable traits. It is not enforced, and it impairs public health concerns. It is a bad law that should be repealed.

The Women's Law Section urges support of HB 451. (The opinions of the Women's Law Section are its own and do not necessarily reflect the opinion of the State Bar of Montana.)

2  
2-13-91  
481

OUT IN MONTANA, INC.

TESTIMONY IN FAVOR OF

H.B. 451

(BEFORE THE HOUSE JUDICIARY COMMITTEE, FEBRUARY 13, 1991)

MY NAME IS BILL SUMMERS. I AM PRESIDENT OF OUT IN MONTANA (OIM), THE STATEWIDE GAY AND LESBIAN ADVOCACY AND SUPPORT ORGANIZATION. THE LESBIANS AND GAY MEN OF MONTANA HAVE BEEN, SINCE THE ONSET OF THE AIDS EPIDEMIC, IN THE FOREFRONT OF THE BATTLE AGAINST THE SPREAD OF THE DEADLY HUMAN IMMUNODEFICIENCY VIRUS (HIV). GAYS HAVE BEEN INSTRUMENTAL IN THE FORMATION OF THE VARIOUS LOCAL COMMUNITY BASED ORGANIZATIONS THAT HAVE BEEN ESTABLISHED TO PROVIDE SUPPORT FOR THOSE INFECTED WITH HIV: THE YELLOWSTONE AIDS PROJECT, THE LEWIS AND CLARK COUNTY AIDS PROJECT, THE MISSOULA AIDS COALITION, THE BUTTE AIDS SUPPORT SYSTEM, AND OTHERS. OUR ORGANIZATION HAS FOR THE PAST TWO YEARS SENT A FULL-TIME HEALTH INSTRUCTOR AROUND THE STATE TO EXPLAIN TO THOSE AT GREATEST RISK FOR INFECTION, THE PROPER METHODS TO PREVENT OR LESSEN THE CHANCES OF INFECTION BY HIV AND SEXUALLY TRANSMITTED DISEASES. UNDER A GRANT FROM THE FEDERAL CENTERS FOR DISEASE CONTROL ADMINISTERED BY THE MONTANA DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES, STEVE SIMPSON, OUR HEALTHY LIFESTYLES INSTRUCTOR, HAS DISTRIBUTED WELL OVER 5,000 FREE CONDOMS, HAS CONDUCTED WORKSHOPS FOR OVER 100 GAY AND BISEXUAL MEN, AND HAS COUNSELLED YET ANOTHER 100 GAY AND BISEXUAL MEN OVER THE TELEPHONE.

WE CONSIDER EACH EDUCATIONAL CONTACT A SUCCESS. HOWEVER, I AM HERE IN SUPPORT OF H.B. 451 FOR A MOST SIGNIFICANT REASON. IN MONTANA, SEXUAL CONTACT BETWEEN TWO PEOPLE OF THE SAME GENDER IS A FELONY PUNISHABLE BY FINES AND A PRISON SENTENCE. IT IS UNDER A BLANKET OF FEAR IMPOSED BY THE DEVIATE SEXUAL BEHAVIOR STATUTE THAT WE MUST PROVIDE HEALTH INFORMATION. IN LARGE MEASURE BECAUSE OF THE FEAR INSTILLED BY THIS STATUTE, WE ARE UNABLE TO ESTABLISH CONTACT WITH THE VERY POPULATION WE WISH TO ASSIST. THE IRONY IS, OF COURSE, THAT THE SEXUAL ACTIVITY CONTINUES IN THE FACT OF THE STATUTE. THE CURRENT LAW DOES NOT PREVENT THE ACTIVITY, BUT IT DOES MAKE ESSENTIAL EDUCATION NEARLY IMPOSSIBLE.

LET ME SHARE A STORY WITH YOU TO ILLUSTRATE MY POINT. THREE YEARS AGO, OUT IN MONTANA SOUGHT TO CONDUCT A SAFER-SEX WORKSHOP FOR HELENA'S GAY MALE POPULATION. WE COULDN'T GET ANY ONE TO COME, SO WE PROMISED (1) THAT ONLY GAY MEN COULD ATTEND, (2) THAT THERE WOULD BE NO ONE CONNECTED WITH STATE OR LOCAL GOVERNMENT,

PRESNT

TO ATTEND

(4) THAT THE INSTRUCTORS WOULD BE BROUGHT FROM OUT OF TOWN, (5) THAT NO NAMES WOULD BE USED IN THE COURSE OF THE EVENING, (6) AND THAT THE WORKSHOP ITSELF WOULD BE HELD IN A PRIVATE HOME RATHER THAN A PUBLIC AREA. WITH ALL THESE PRECAUTIONS WE WERE ABLE TO GET ONLY 25 MEN. ACCORDING TO THE KINSEY STATISTICS, AT A MINIMUM THERE ARE PROBABLY CLOSE TO 1,000 HOMOSEXUAL MEN IN THE CITY OF HELENA ALONE! SUCH IS THE EFFECT OF FEAR.

I WISH I COULD PROMISE YOU THAT PASSAGE OF H.B. 451 WOULD CHANGE ALL OF THIS. I CAN'T DO THAT, BECAUSE IT WON'T. WHAT IT WILL DO, HOWEVER, IS BEGIN TO MAKE OUR JOB EASIER. BY DE-CRIMINALIZING SAME-GENDER ADULT SEXUAL CONDUCT, YOU WILL REMOVE A MAJOR BARRIER IN THE WAR AGAINST HIV INFECTION.

WE URGE YOU TO APPROVE H.B. 451 AS WRITTEN. THANK YOU.

CONSENSUAL



EXHIBIT 2  
DATE 2-13-91  
HB 451

Linda Gryczan  
PO Box 124  
Clancy, MT 59634

Mr. Chairman and members of the committee, I am Linda Gryczan speaking for the Montana Lesbian Coalition in support of House Bill 451.

Lesbians and gay men are your constituents. Though you may not identify us as such, you see us every day. We live throughout Montana. We are in the cities, we come from the smallest towns and we live on the reservations.

Most of us go to our jobs, we run our businesses, and raise our children. Our lives are different only in the rather unremarkable fact of who we love. But because of this difference, a group of otherwise law abiding citizens are felons under Montana law.

I am not asking for your approval or endorsement of my life. I am not asking for any special privileges under the law. I am simply appealing to your sense of fairness and equality. I am asking you to vote for the passage of House Bill 451.

Mr Chairman,  
Representitives,

For the record, my name is Steve Simpson and I work for Out In Montana, the statewide gay and lesbian organization. My concern is the spread of HIV infection in Montana.

I want to go on record as supporting House Bill 451 because I believe the people of Montana have the right to know how to protect themselves from this incurable illness and educators need to have legislation that will maximize their efforts to provide this information.

Having worked with hundreds of gay men and women over the last several years I know the current law prevents many people from not only seeking information about AIDS, but also seeking medical attention that could save their lives.

Every major AIDS organization in the world has stressed education as the number one way to slow the spread of AIDS, yet under the current law effective educational efforts could be construed as promoting illegal behavior. House Bill 451 would not only bring Montana law up to date with Federal standards, but would also protect our constitutional rights.

I see no disadvantages to this change in legislation, but I see literally hundreds of lives being spared the tragedy of AIDS. I would like to state once again my support of House Bill 451.

Thank you for your time.

EXHIBIT 5  
DATE 2-13-91  
HB 451

*Amy Pfeiffer*

February 13, 1991

To: House Judiciary Committee

From: Women's Law Section, State Bar of Montana

Subject: HB 451, An Act to Generally Revise the Laws Relating to Sexual Crimes

At the outset I must state that the following is the position of the Women's Law Section of the State Bar of Montana, and not necessarily that of the State Bar of Montana.

The Women's Law Section of the State Bar of Montana wholeheartedly supports HB 451. Prior to the beginning of the session, the provisions of this bill were determined by the Women's Law Section to be one of our priorities for this session.

As Holly Franz has addressed the other provisions of the bill, I am only here to testify regarding the proposed amendments to subsections (3) and (4) of MCA 45-5-511.

After reviewing the criminal law of many states relating to the issues of consent and admissibility of evidence in the prosecution of sexual intercourse without consent and sexual assault cases, the Women's Law Section believes the changes proposed to these subsections are entirely appropriate and necessary.

Of the fifteen states and the 1962 Model Penal Code examined, not one provided a voluntary social companion defense. Not one provided, as we do, that a victim, by accepting a date with the defendant, and voluntarily drinking alcohol with him, is not entitled to the protection of the criminal law when she is raped or sexually assaulted. A woman, or man, who accepts a date, or perhaps is introduced to someone at a party is not consenting to sexual intercourse or sexual contact any more than is a person who is attacked in her home by a stranger. These victims, voluntary social companions, are entitled to protection of our criminal laws; they are entitled to the removal of this provision as a defense to these crimes. Those that commit the crimes of sexual intercourse without consent, sexual assault and indecent exposure should be held accountable for their acts.

In the same way, a victim who has once consented to sexual intercourse or sexual contact with the defendant in the past has not forever waived her right to withhold consent in the future. A lack of consent for any particular act is rape, or sexual assault. It is for this reason that we propose the deletion of current subsection (4) of MCA 45-5-411. Each act/occurrence should be evaluated on whether consent was given at that time.

On behalf of the victims of these offenses, we ask for your support and urge passage of HB 451.

EXHIBIT 6  
DATE 2-13-91  
HB 451

Shawna Reinhardt  
108 Turner Hall  
Missoula, MT 59801

I was asleep in my room late one night when I awoke to an unfamiliar body on top of me. My night shirt had been discarded and I felt his filthy hands groping my body. I knew I was in trouble, but my body refused to move; I was at the mercy of the man who had entered my room. When he finally left, I was stunned.

My name is Shawna Reinhardt, and I am a junior at the University of Montana. In May of 1990, I was violated sexually while living on campus in Knowles Hall. I was one of 13 women who had been assaulted or raped by the same man who was attending the University of Montana.

It was a cruel violation of my being that has affected me terribly. I was intimidated and degraded. I withdrew from everyone I had ever cared about. A women is raped every nine minutes in this country, which means there are thousands upon thousands of women who feel similarly.

Because of overwhelming fear and shame, I told noone. Eventually the truth became evident and I became actively involved in the prevention of rape. I participated in the Ad-Hoc Rape Task Force at UM and witnessed some wonderful changes and steps towards more changes. I was asked to sit on a Presidentially appointed task force in December of 1990. We are attempting to review policy and make recommendations.

I therefore support House Bill 451. Many different organizations are addressing the growing problem of rape and sexual assault. These crimes are extremely damaging to the victim, both physically, socially and psychologically. We, as a society, have laws dealing with political terrorism. Now we must have laws dealing with a more insidious form of terrorism, rape. All women have the fear and therefore the terror of being raped. It is unfortunate that we must enact legislation to combat the serious crimes we are facing, but we must!

Help survivors and future victims by voting for House Bill 451.

EXHIBIT 7  
DATE 2-13-91  
HB 481

Aylee Hinderks  
1616 5th St. NW  
Great Falls, MT  
Feb. 12, 1991

My name is Aylee Hinderks and I am a date rape survivor. I hope that by now we all understand that rape is a devastating crime, one from which it takes an infinite amount of time from which to heal. I also hope we all understand how traumatic the rape victim's experience with police and courts can be. What we may not understand is that for the victim of date rape this experience is often much worse.

Date rape is not taken seriously by many police and prosecutors. Nearly two years ago I was raped by a boy I was dating. We reported the rape to the police and provided them with a list of witnesses who could testify that I had been suffering from rape trauma syndrome. The police took my statement. Several weeks later they requested I take a polygraph test, which I did. Then, without interviewing any of the witnesses or talking with my attacker, they closed their "investigation" and forwarded my case to the county attorney.

Repeated calls to youth court and the prosecutor's office brought only pleas for patience. They were busy, but would get to my case as soon as possible. They requested no additional investigation. Five months after the county attorney's office received my file they called me for the first time: they were dropping my case. It would be too expensive to prosecute and no one would believe me anyway.

We were so angry that a meeting was arranged to discuss what had gone wrong. The chief of police, county attorney and head of youth court services attended. They determined that the investigation needed to be completed before any decision could be made regarding prosecution.

Aylee Hinderks  
Feb. 13, 1991  
Page 2

All the witnesses were finally interviewed and the person who raped me was finally brought in for questioning, thirteen months after the rape was reported. The file was then sent back to the county attorney's office. That was in August of 1990. I have yet to hear one word from them. Our letters have gone unanswered.

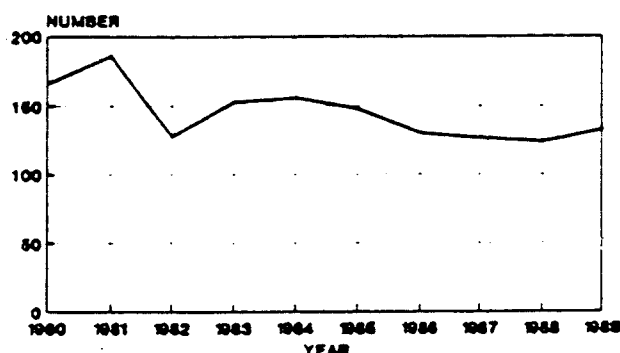
After nearly two years of this nonsense I have had nothing but false hopes. Rape and the legal system have changed my life forever. My family and the people I care about have been affected byt the rapist has not.

For myself, the lealing process is a daily battle that has been unnecessarily prolonged because even the satisfaction of justice has never been granted to me.

Today I wish to make it clear to you that when a person has been the victim of date rape they need the support and protection of the legal system, not its indifference. I believe the passage of this bill will help to impress upon law enforcement the seriousness of all crimes of sexual abuse, and for this reason I appeal to you to vote in favor of its passage.

Thank you.

## SEX CRIMES ACT - FACT SHEET

Sail  
Jameson  
8  
2-13-91  
451REPORTED FORCIBLE RAPE  
IN MONTANA  
1980-1989

## 1988-1989 COMPARISON

	1988	1989	% Diff.
No. Offenses	124	133	+7.0%
State Rate	15.4	16.5	+7.1%
National Rate	37.6		

From Crime in Montana, 1989  
Annual Report, Montana Board  
of Crime Control.

## WHAT IS RAPE?

\* A crime of violence in which the goal is to overpower, intimidate, and degrade the victim.

\* The law is the same whether the assailant is a stranger or someone known to the victim.

\* Rape is usually planned in advance: 71% of all single assailant assaults, and 90% of all gang rapes are planned. Rape does not occur because of a temporary loss of control.

\* Rape is most often committed by heterosexual men (98% of reported rapes).

\* In 80% of reported rapes the rapist is known to the victim.

The boxed statistics concern rape: the carnal knowledge of a female forcibly and against her will. Both assaults and attempts to commit rape by force are included in this definition.

Statutory rape (without force) and sexual assaults against males are classified as sexual offenses, and are not counted under the rape classification. There were 1,499 sexual offenses reported or known to the police, 316 cleared by arrest, in Montana in 1989.

According to the FBI, 1 in 3 women and 1 in 10 men will be raped sometime in their life; only 10% of rapes ever get reported to the police. This makes rape the most under-reported crime in the country.

According to the U.S. Senate Judiciary Report: rape has increased four times as fast as the overall crime rate over the last decade. U. S. rape rate is four times that of Germany, 18 times that of England and 20 times that of Japan.

A WOMAN IS RAPED EVERY 2 DAYS 22 HOURS IN THE STATE OF MONTANA.

Women's Place Rape Crisis Center in Missoula assisted over 150 rape victims in the past two years. The trauma of rape lasts a lifetime. This information prepared by Women's Place, 521 North Orange Street, Missoula, Montana.



**Bitterroot  
Psychological  
Services**

EXHIBIT 9  
DATE 2-13-91  
HB 451

February 12, 1991

To the Montana House Judiciary Committee:

I am Janet R. Allison, Ph.D., a licensed psychologist in the state of Montana. I am writing in support of H.B. 451, and specifically the elimination of the term "deviate sexual conduct" to describe sexual contact between two persons of the same sex.

For a number of years, the professions of psychology and psychiatry have recognized that homosexuality is not a mental disorder or defect, and removed homosexuality from the official Diagnostic and Statistical Manual. Instead, homosexual preference is seen as either a choice, or an inborn trait (much like left-handedness).

Increasingly, with the development of awareness of the social context on individual psychology, my profession has come to see many of the common problems of homosexual individuals as resulting from the stigma that society places on homosexuality. I hope that the legislature will remove this legal basis for stigmatizing a perfectly normal group of human beings.

Sincerely,

*Janet R. Allison, Ph.D.*  
Janet R. Allison, Ph.D.

Janet R. Allison, Ph.D.  
Licensed Clinical Psychologist

M. Joan Hesse-Homeler, Ph.D.  
Licensed Clinical Psychologist

Paul W. Moomaw, Ph.D.  
Licensed Clinical Psychologist

128 South 6th West  
Missoula, Montana  
59801  
(406) 543-8415



EXHIBIT 10  
DATE 2-13-91  
HB 451

February 11, 1991

Honorable Representative Bill Strizich, Chairman  
Judiciary Committee  
Montana House of Representatives  
Capitol  
Helena, MT 59620

Dear Representative Strizich:

I am writing in SUPPORT of HB 451 which proposes to generally revise sexual crimes including repealing the crime of sexual deviant conduct.

As a local health officer, I am charged with the control of communicable disease. Meeting this responsibility is particularly difficult in the case of AIDS which affects primarily male homosexuals - a population whose sexual activities are illegal in Montana. The current sexual deviance code criminalizing sexual contact between same sex, consenting adults creates, for those most at risk for AIDS, a dangerous disincentive to coming forward for testing and reporting sexual contacts.

Because of the lengthy, asymptomatic, yet contagious incubation period of AIDS, the epidemic is inherently rather hidden and unreachable. Montana law adds another, unnecessary barrier to controlling this epidemic.

I urge your support of HB 451.

Sincerely,


  
Ellen Leahy  
Health Officer

EXHIBIT 11

DATE 2-13-91

HB 554

## County of Dawson

Office of:  
Clerk of District Court  
Ardelle Adams

207 W. Bell  
Glendive, MT 59330

P.O. Box 1009  
Phone (406)365-3967

February 13, 1991

House Judiciary Committee  
State Capitol  
Helena MT

Dear Committee,

I'm writing in support of House Bill 554, concerning poor people not required to prepay fees. I'm Clerk of District Court for Dawson County and I support this bill because I feel if people can't afford to pay fees, they still should be able to file. But I do feel the Court should have the proper documents filed and then determine if fees should be waived.

Thank You,

*Ardelle Adams*

Ardelle Adams  
Clerk of District Court  
Dawson County  
P.O. Box 1009  
Glendive, MT 59330

Testimony of Anne L. MacIntyre  
Administrator, Human Rights Commission  
In opposition to House Bill 493  
February 13, 1991

The Human Rights Commission opposes HB493 for several reasons.

First, although the bill would eliminate the requirement that parties exhaust their administrative remedy before the Commission before bringing a discrimination complaint in the district court, the bill does not indicate what the alternative procedure or remedies would be. This concerns me particularly because I believe that one of the primary reasons the legislature established an administrative agency for processing complaints of discrimination was so that a mechanism would exist to insure that the interest of the public in eliminating discrimination would be addressed in the resolution of discrimination complaints. In my experience, individual complainants to cases are primarily interested in obtaining their own individual relief, such as damages and back pay. The Commission, when it finds discrimination, attempts to make sure that the discrimination will not recur by requiring affirmative relief in conciliation agreements and Commission orders, in addition to individual relief. If individuals can pursue their complaints directly in district court, there is no mechanism for protecting the public interest.

Further, if the Commission does not provide the exclusive remedy for addressing discrimination claims which arise under the act, then it is not at all clear that a complainant could not pursue complaints for the same alleged violation both with the Commission and in the district court. I believe that it establishes bad public policy for state law to allow complaints concerning the same violation to be pursued in two forums at the same time.

Finally, if HB493 is enacted, it will establish two separate systems of justice, one for those who can afford an attorney to pursue a complaint of discrimination and one for those who cannot. In addition to being unfair for those who cannot afford attorneys, I think such a system undermines the effectiveness of the Commission by trivalizing the Commission's work. Inevitably, if discrimination complainants are not required to file with the Commission, the more clear cut, significant complaints will be filed in court and the less clear cut complaints will be filed with the Commission. I do not believe this is a desirable result.

Montana  
Association of  
Churches



EXHIBIT 13  
DATE 2-13-91  
HB 466

MONTANA RELIGIOUS LEGISLATIVE COALITION • P.O. Box 745 • Helena, MT 59624

PHONE: (406) 442-5761

WORKING TOGETHER:

American Baptist Churches  
of the Northwest

Date Submitted: February 13, 1991

Bill Number: HB 466

Submitted by: Harley E. Warner

Christian Churches  
of Montana  
(Disciples of Christ)

Chair, members of the committee, I am Harley Warner. I am here this morning representing the Montana Association of Churches.

Episcopal Church  
Diocese of Montana

We rise in opposition to House Bill 466 as we support a sentencing system which permits judges and others within the justice system latitude and discretion in dealing with individual offenders.

Evangelical Lutheran  
Church in America  
Montana Synod

The judge traditionally is accepted as one, in a non-biased position, who knows the individual circumstances surrounding each case. There are guidelines such as the ABA standards, and the National Council on Crime and Delinquency's "Model Sentencing Act" which help the judge in making the individual decisions.

Presbyterian Church (U. S. A.)  
Glacier Presbytery

Presbyterian Church (U. S. A.)  
Yellowstone Presbytery

House Bill 466 removes some of the judge's discretion in sentencing. We are therefore opposed to the adoption of House Bill 466.

Roman Catholic Diocese  
of Great Falls - Billings

Roman Catholic Diocese  
of Helena

United Church  
of Christ  
Mt.-N. Wyo. Conf.

United Methodist Church  
Yellowstone Conference

HOUSE OF REPRESENTATIVES  
VISITOR'S REGISTER

House Judiciary

COMMITTEE

BILL NO. HB# 451

DATE 2-13-91

SPONSOR(S)

Rep. Brooke

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Tookie Welker	MAPP	X	
DAN BENNETT <sup>Gr. Falls</sup>	—	X	
Aylee Himborks	—	X	
Steve Simpson	Out In Montana, Inc.	X	
WM. C. SUMMERS	OUT IN MONTANA	X	
Amy Pfeifer	women's Law Section	X	
Diane SANDS	MT Women's Lobby	X	
Mary Beth Fredericks	Lewis & Clark City/Co. Health Dept	X	
JAY PRITZ	SHERIFF RAVALLI County		X
Constance Enzweiler	Self	X	
Holly Franz	Women's Law Section	X	
Arnell Arndt	Self	X	
Linda Johnson	NLC	X	
Robert Johnson	MPH A	X	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

Sandra L. Hile

Box 252, Clancy 59631

Scott Crichton

ACLU / MT

X  
X

HOUSE OF REPRESENTATIVES  
VISITOR'S REGISTER

House Judiciary

COMMITTEE

BILL NO. HB#631

DATE 2-13-91

SPONSOR(S) Rep. Macauloch

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Wotie Welker	MATT	X	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS  
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES  
VISITOR'S REGISTER

House Judiciary COMMITTEE BILL NO. 418# 421  
DATE 2-13-91 SPONSOR(S) Rep. Hoffman

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
David Hull Helena, MT	Commission on Courts of Limited Jurisdiction	X	
PAT BRADLEY	MT MAGISTRATES ASSN	X	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS  
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HOUSE OF REPRESENTATIVES  
VISITOR'S REGISTER

House Judiciary

COMMITTEE

BILL NO. HB# 554

DATE 2-13-91

SPONSOR(S) Rep. Benedict

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
PAT BRADLEY	NMA	Y	

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HOUSE OF REPRESENTATIVES  
VISITOR'S REGISTER

House Judiciary COMMITTEE BILL NO. HB # 493  
DATE 2-13-91 SPONSOR(S) Rep. Cohen

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
HARLEY WARNER	MONTANA ASSOCIATION OF CHURCHES		X
SCOTT CRICKET	ACLU / MT	X	
Debra Sand	MT Women's Lobby		X
Anne MacIntyre	Human Rights Comm.		X

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HOUSE OF REPRESENTATIVES  
VISITOR'S REGISTER

House Judiciary

COMMITTEE

BILL NO. HB#466

DATE 2-13-91

SPONSOR (S) Rep. Bachini

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
HARLEY WARNER	MONTANA ASSOCIATION OF CHURCHES		X
BILL FLEWER	Mont Sheriff's & Peace Officer Assoc	✓	
RICK LATER	Beaverhead Co. Sheriff	✓	
Troy McGee	Montana Police Protective Assoc.	✓	
	Montana Chiefs of Police Assoc.	✓	

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HOUSE OF REPRESENTATIVES  
VISITOR'S REGISTER

House Judiciary COMMITTEE BILL NO. \_\_\_\_\_  
DATE 2-13-91 SPONSOR(S) \_\_\_\_\_

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Lyle Nagel	Nt. St. Vol. Firefighters Assn	✓	

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