MINUTES

MONTANA SENATE
52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Dick Pinsoneault, on March 7, 1991, at 10:10 a.m.

ROLL CALL

Members Present:

Dick Pinsoneault, Chairman (D)
Bill Yellowtail, Vice Chairman (D)
Robert Brown (R)
Bruce Crippen (R)
Steve Doherty (D)
Lorents Grosfield (R)
Mike Halligan (D)
John Harp (R)
Joseph Mazurek (D)
David Rye (R)
Paul Svrcek (D)
Thomas Towe (D)

Members Excused: none

Staff Present: Valencia Lane (Legislative Council).

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Announcements/Discussion:

HEARING ON HOUSE BILL 275

Presentation and Opening Statement by Sponsor:

Representative Bill Strizich, District 41, said HB 275 is a housekeeping measure, adding to the penalty for fraudulently obtaining dangerous drugs, in addition to or in lieu of incarceration. He advised the Committee that the fine was overlooked before, and was brought to his attention by the Cascade County Attorney in Great Falls.

Proponents' Testimony:

There were no proponents of the bill.

Opponents' Testimony:

There were no opponents of the bill.

Questions From Committee Members:

There were no questions from the Committee.

Closing by Sponsor:

Representative Strizich made no closing comments.

EXECUTIVE ACTION ON HOUSE BILL 275

Motion:

Senator Yellowtail made a motion that HB 257 BE CONCURRED IN.

Discussion:

There was no discussion.

Amendments, Discussion, and Votes:

There were no amendments.

Recommendation and Vote:

The motion made by Senator Yellowtail carried unanimously. Senator Doherty was asked to carry HB 275.

HEARING ON HOUSE BILL 276

Presentation and Opening Statement by Sponsor:

Representative Bill Strizich, District 41, said HB 276 provides a penalty for crime called "continuing enterprise". He advised the Committee the bill is designed to deal with sophisticated criminals by creating a bad business climate for them.

Proponents' Testimony:

Larry Renman, Narcotics Division, Great Falls Police Department, said HB 276 is an organized crime statute. He explained that individual statutes exist now for individual crimes, and said the bill creates a new type of statute to cover those who make crime their career. He cited those who deal drugs for many years as an example, and said these people set up management of assets and hire enforcers, among other activities.

Mr. Renman told the Committee the bill is based on federal and Arizona statutes for continuing criminal enterprises. He said the state would probably see one or two people per year falling under this bill, as they must have continued a series of separate events. He explained that these people must be in a position of management and control of at least five individuals. Mr. Renman commented that the federal government has a problem defining class I, II, and III criminals, and that these definitions are substantially different from Montana's.

Opponents' Testimony:

There were no opponents of the bill.

Questions From Committee Members:

Senator Towe asked if "minimum sentence may not be waived or suspended" on line 10, page 2 of the bill, were really appropriate. He asked what would happen to a youth who might be part of such an organization as a delivery boy, and if a judge should not be the one to decide each circumstance as it comes up. Larry Renman replied he did not believe such a person would qualify under the provisions of the bill. He explained that language in the bill says the criminal is facing potential doubling of penalty which does not mean it is beyond a judge's discretion. Mr. Renman advised Senator Towe that language was put in basically as the statute is now.

Chairman Pinsoneault asked if the bill would apply if only four people were involved in a continuing criminal enterprise, such as in the case in Kalispell. Mr. Renman replied that if at least five people are not involved, there probably isn't a criminal organization of the nature described in the bill.

Senator Yellowtail asked if violation means conviction. Mr. Renman replied it does not. He explained that three drug sales would qualify as three violation counts.

Chairman Pinsoneault asked John Connor if he had information on mandatory sentencing concerning SB 300. John Connor replied that sentencing guidelines are sort of precedential, and said he had no experience with federal law. He commented that this language was in the Uniform Controlled Substances Act in the same form.

Closing by Sponsor:

Representative Strizich made no closing comments.

HEARING ON HOUSE BILL 311

Presentation and Opening Statement by Sponsor:

Representative David Hoffman, District 74, said HB 311 clarifies ambiguity in justice courts concerning fines. He stated that existing law allows the courts to pay money to an existing account from fines (Title 45, Chapters 9-10). Representative Hoffman explained that the bill was drafted at the request of the Montana County Attorneys Association.

Proponents' Testimony:

John Connor, Montana County Attorneys Association, told the Committee the bill was drafted because of a problem with justice court funds collected from drug offense fines. He explained that there is controversy concerning the authority to take funds and put them into the drug forfeiture account.

Mr. Connor advised the Committee that it appears the justice courts do have this authority now. He said a question was asked during the House Judiciary Committee hearing as to whether or not it would take funds away from battered spouses. Mr. Connor reported that he attempted to research this matter and found that $1100 was collected in Lewis and Clark County in 1990 and given to the drug forfeiture account. He stated 3-10-601, MCA, says the county treasurer shall distribute 50 percent of these funds to the state treasurer and 50 percent to the county general funds.

John Connor told the Committee that one percent of the 50 percent to the state treasurer goes to battered spouses, and said some counties are not collecting drug fines because of this confusion. He estimated that if $25,000 were being collected on a statewide level, $125 would go to battered spouses which, he said, is not a great deal of money. Mr. Connor commented that he believes the bill clears up this ambiguity.

Opponents' Testimony:

There were no opponents of the bill.

Questions From Committee Members:

Senator Towe asked why language in Section 2 is in the bill, "except collections by a justice court". John Connor replied that is Title 46-18-235, MCA, sentencing statute general provisions for fund distribution. He said, "46-18-231 and 232, MCA, has to do with distribution in appropriating justice courts being included under subsection (2) on page 3". Mr. Connor replied it is saying it does apply for drug fines.

Valencia Lane said she believes Senator Towe has a point and that the Committee may need to change introductory language in the

bill. Chairman Pinsoneault asked her to prepare an appropriate amendment.

Senator Grosfield asked if the second word on page 3, line 4 would take care of this problem.

Closing by Sponsor:

Representative Hoffman said he had no objection to changing ambiguous language, and asked the Committee to support the bill.

HEARING ON HOUSE BILL 555

Presentation and Opening Statement by Sponsor:

Representative David Hoffman, District 74, said HB 555 would eliminate two portions of the criminal code which were declared unconstitutional by the State of Montana. He explained these portion s pertain to burden of proof upon the defendant, and burden of proof concerning stolen property (45-6-304, MCA).

Proponents' Testimony:

John Connor, Department of Justice, told the Committee he was testifying on behalf of Beth Baker who had to appear in the 9th Circuit Court of Appeals this date (Exhibit #2). He said he would like to see this out of the law, as there are so many new prosecutors who aren't familiar with current law.

Opponents' Testimony:

There were no opponents of the bill.

Questions From Committee Members:

Senator Towe asked why the first part had t be repealed. John Connor replied that this has been incorporated into new Montana jury instruction guidelines and could cause a conflict.

Closing by Sponsor:

Representative Hoffman made no closing comments.

EXECUTIVE ACTION ON HOUSE BILL 555

Motion:

Senator Towe made a motion that HB 555 BE CONCURRED IN.

Discussion:

There was no discussion.

Amendments, Discussion, and Votes:

There were no amendments.

Recommendation and Vote:

The motion made by Senator Towe carried unanimously. Senator Svrcek was asked to carry the bill.

HEARING ON HOUSE BILL 310

Presentation and Opening Statement by Sponsor:

Representative David Hoffman, District 74, said the bill addresses loopholes defining escape, and was requested by the Department of Justice. He explained that page 2, lines 19-20 correct the problem, which became evident after the court had to let an escapee go because of current language.

Proponents' Testimony:

John Connor, Department of Justice, explained State v. Savarie in which Yellowstone County was transporting prisoners from the jail to appear on charges. He said one of them escaped, although bound with a belly chain and handcuffs, and was apprehended 90 minutes later. John Connor reported that this man was sentenced for misdemeanor escape as he had not escaped from a county jail, but while enroute.

Mr. Connor said the Supreme Court upheld the decision of the district judge in this case. He explained that escape from jail is a felony, but running away from a police officer during arrest is a misdemeanor. John Connor advised the Committee that language was added during the House hearing addressing detention while under jurisdiction of a tribe, but was stricken because of the Duro decision.

Opponents' Testimony:

There were no opponents of the bill.

Questions From Committee Members:

Chairman Pinsoneault asked what would happen where a prisoner was being transported from Lake County to Deer Lodge and had to stay overnight in another jail enroute. John Connor replied the chance of that happening would be rather remote. He said the prisoner would probably be taken to a nearby county jail which would be covered by existing law.

Senator Rye asked if escape charges would still stand, when a conviction is overturned later on. John Connor said he believed it would.

Closing by Sponsor:

Representative Hoffman made no closing comments.

EXECUTIVE ACTION ON HOUSE BILL 310

Motion:

Senator Brown made a motion that HB 310 BE CONCURRED IN.

Discussion:

There was no discussion.

Amendments, Discussion, and Votes:

There were no amendments.

Recommendation and Vote:

The motion made by Senator Brown carried unanimously. Senator Brown or Senator VanValkenburg will carry the bill.

Discussion of HB 493

Jeffrey Renz, Legal Director, American Civil Liberties Union, Montana (ACLU), told the Committee he has been a practicing attorney in Billings for 11 years. He said a history of subsection (7) of Section 509 did not exist until about four years ago when the Montana Supreme Court decided in the Drinkwater case to dismiss the woman's case because she let it go beyond 180 days and then filed in district court. He said the woman appealed this decision which the Court had made while the Legislature was in session. Mr. Renz advised the Committee that legislation was then approved in the House, becoming 509-7 (Exhibit #3). He said there are many more cases of sexual harassment than racial harassment, and under common law a neighbor has two to three years to seek remedy through a jury trial, but a secretary has 180 days and no jury.

Mr. Renz reported that emotional distress is up in the air in the Human Rights Commission (HRC). He explained that the district courts usually act within one year, while the Commission may take two or three years. He said the district court can assess punitive damages and the HRC does not.

Mr. Renz commented that racial minorities have remedy under section 1981 of federal law and also in state court, as do people

suffering age or religious discrimination (sections 1983 and 1985), but women suffering sexual harassment are treated differently.

Mr. Renz told the Committee he sees a lot of value in the HRC and its "useful investigative arm and conciliatory actions". He further stated that other remedies do not mean all cases will go to court. He said the exclusive remedy provision is already on the books, and that he did not see why women should be treated differently, especially in the employment sector. Mr. Renz stated there is a coercive power of an employer over an employee.

Anne MacIntyre, Administrator, Human Rights Commission, said it is important to recognize that this is a complicated procedural area. She stated there are a lot of remedies available, and that she did not believe the federal section should have a bearing on how state law is framed.

Ms. MacIntyre said she and Mr. Renz are not really talking about the same thing, as individual tort remedy is available for sexual assault. She stated that, typically, sexual harassment claims are not brought against individuals, but against employers. Ms. MacIntyre advised the Committee that this distinction gets lost a lot of times when this area is discussed. She said amendments she provided at the March 5, 1991 hearing show that the Commission speaks to cause of action against employers.

Ms. MacIntyre reminded the Committee that the short statute of limitations was addressed by them earlier this session, and they decided it should not be lengthened. She said the doctrine of continuing violation is recognized, i.e., if harassment continues over a period of two years and a complaint is then filed.

Ms. MacIntyre told the Committee the Commission has awarded damages for emotional distress, and said the statutes provide for this. She questioned whether the average district court could reach a discrimination verdict in one year, and advised the Committee that most complaints filed with the Commission do not proceed all the way through the process. Ms. MacIntyre explained that many of these cases are settled or dismissed.

Anne MacIntyre stated that a significant problem in HB 493 is that it does not set up a mechanism for addressing harassment complaints. She said she did not believe that people thought they could not bring suit through the courts prior to the Drinkwater case.

Chairman Pinsoneault asked how emotional distress damages are enforced. Anne MacIntyre replied the complainant can file enforceable action in district court.

Senator Svrcek asked what formal mechanism there was for addressing harassment in the workplace. Anne MacIntyre replied that her point is that it is not clear that any procedure in the bill will apply if it passes.

Senator Svrcek asked if an amendment would satisfy her concerns. Anne MacIntyre replied she has been working on an amendment for the administrative mechanism.

Senator Svrcek asked Mr. Renz to respond to Anne MacIntyre's statement that remedy is available. Jeffrey Renz replied that in Harrison v. Chance this is directly addressed. He explained that two people were sexually harassed in the workplace had left their employment two years prior to filing a complaint. Mr. Renz told the Committee the court said there was exclusive remedy in the HRC. Mr. Renz stated that by enacting HB 493 remedy is not taken from the HRC, but it would no longer be the exclusive remedy.

Senator Halligan asked if pursuing the employer and the harasser would cause duplication of action. Anne MacIntyre replied there are rare instances where action is brought against individuals. She stated that in Harrison v. Chance the employer and supervisor committed the harassment of one person. Ms. MacIntyre commented that the case was not very well plead in court.

Senator Halligan asked Mr. Renz to respond to the same question. Mr. Renz replied that if a corporate employer were a partner, he or she could be sued as a partner and employer. He said common law rules apply where an employer condoned or ignored sexual harassment. He stated that under section 1981 of federal law employers are liable for the full spectrum of damages.

Senator Towe told Anne MacIntyre he co-sponsored the human rights bill in 1974, and was not concerned about replacing existing remedy, but in adding additional recourse. He said the legislation was not intended to preclude anyone, and asked what harm there is in allowing common law remedy to continue. Anne MacIntyre replied she did not agree that common law addressed rights of employer prior to 1974. She further stated that she did not believe common law tort claims of the individual should be taken away.

Senator Towe asked Anne MacIntyre how she would address Jeffrey Renz' comment pertaining to self-employed employers. Anne MacIntyre replied that would pertain to both kinds of claims, and reiterated that she did not believe anyone should be denied tort claims.

Chairman Pinsoneault advised those present that further discussion would take place when executive action is taken on the bill.

EXECUTIVE ACTION ON HOUSE BILL 276

Motion:

Senator Doherty made a motion that HB 276 BE CONCURRED IN.

Discussion:

There was no discussion.

Amendments, Discussion, and Votes:

There were no amendments.

Recommendation and Vote:

The motion made by Senator Doherty carried unanimously. Senator Doherty was asked to carry the bill.

ADJOURNMENT

Adjournment At: 11:33 a.m.

Senator Dick Pinsoneault, Chairman

Joann T. Bird, Secretary

DP/jtb

ROLL CALL

SENATE JUDICIARY COMMITTEE

52nd LEGISLATIVE SESSION -- 1991 Date 7 Mar 91

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

Each day attach to minutes.

SENATE STANDING COMMITTEE REPORT

March 7, 1991

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 275 (third reading copy -- blue), respectfully report that House Bill No. 275 be concurred in.

Signed: L. Pinsoneault

Richard Pinsoneault, Chairman

LB 3/7/91
Amd. Coord.

SB 3/7 9:05
Sec. of Senate

SENATE STANDING COMMITTEE REPORT

March 7, 1991

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 555 (third reading copy -- blue), respectfully report that House Bill No. 555 be concurred in.

Signed: _____
Richard Pinsoneault, Chairman

91

3-7-91
Asst. Coord.

SB 3/7 13:05
Sec. of Senate

SENATE STANDING COMMITTEE REPORT

March 7, 1991

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 310 (third reading copy -- blue), respectfully report that House Bill No. 310 be concurred in.

Signed: R. Pinsoneault

Richard Pinsoneault, Chairman

3-7-91
Amd. Coord.

SB 3/7 12:05
Sec. of Senate

SENATE STANDING COMMITTEE REPORT

March 7, 1991

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 276 (third reading copy -- blue), respectfully report that House Bill No. 276 be concurred in.

Signed: _____
Richard Pinsoneault, Chairman

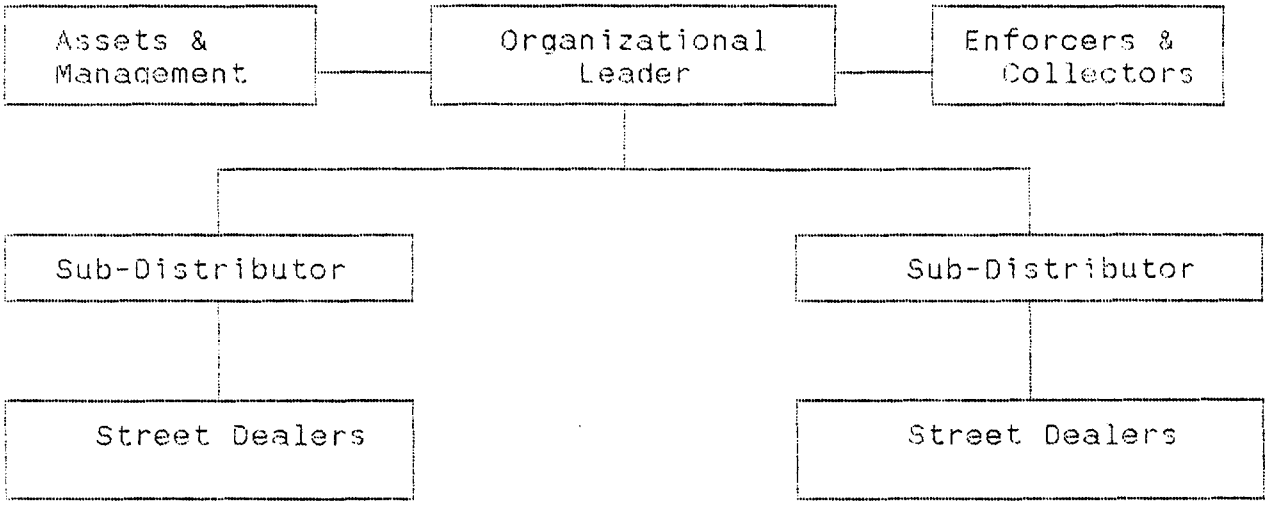
LB 3/7/91
Amd. Coord.

SR 3/7 12:05
Sec. of Senate

491143SC.SBB

Exhibit #1
7 Mar 91
HB 276

ORGANIZATIONAL STRUCTURE EXAMPLE



This simple organizational structure shows how an individual creates a formalized Narcotics Distribution Organization. The individual who creates the Criminal Enterprize first must locate at least one, and preferably several sources of supply for the drugs. These sources are usually carefully protected in their anonymity. It is not unusual to find that lower scale persons in the organization are not aware of the full name of the sources of supply.

After the reliable source is obtained, the individual must now begin to cultivate his lower structure of sub-dealers and dealers. After this preliminary network is established, he may also have to cultivate additional individuals to act as collectors of drug debts, and enforcers against those people that cannot or will not pay what the organizational leader feels is owed.

The last phase of the structure occurs after the individual has developed a steady supply of customers, and the profits from the drug sales begin to exceed what the organizational leader requires for daily operations. It is at this time that the individual begins looking for methods to conceal these ever-building assets. The individual may invest the money into property, businesses, ficticious bank accounts, Bank CD's, or any other method that he can think of. This is where he becomes involved in money laundering, which is the attempt to legitimatize the illegitimate money he is making from the distribution and sales of drugs.

As you can see from this chart, although all of the people in the organization may be guilty of the sales of drugs, it is obvious that the Sub-dealers, collectors & enforcers, money launderers and organizational leader hold positions of greater responsibility and should thus be held to a greater degree of culpability. This is the basis for this bill creating the crime of Operating a Continuing Criminal Enterprize.

EXHIBIT #2
HB 555
7 Mar 91

HOUSE BILL 555
REVISING CRIMINAL PROOF AND PRESUMPTIONS
March 7, 1991
Senate Judiciary Committee

In Sandstrom v. Montana, decided in 1979, the United States Supreme Court held that instructions to a jury in a criminal case which shift the burden of proof to a defendant on an essential element of the offense are unconstitutional. Since then, it has been uniformly held that the Due Process Clause prohibits the State from using evidentiary presumptions that have the effect of relieving the State of its burden of proving beyond a reasonable doubt every essential element of a crime.

This bill proposes to remove from our criminal code two provisions that contain unlawful presumptions. The first appears in section 45-5-201, which defines the offense of simple assault. Under subsection (1)(d), a person commits assault if he purposely or knowingly causes reasonable apprehension of bodily injury in another. In its present form, that section provides that the mental state requirement "shall be presumed" in any case in which a person knowingly points a firearm at or in the direction of another, whether or not the offender believes the firearm to be loaded. If this statute were applied literally in a criminal case, the prosecution would not have to prove the defendant's mental state if it showed that the defendant pointed a gun at the victim, and the jury would be instructed to presume that the defendant intended to cause reasonable apprehension of bodily injury.

This type of presumption violates the Supreme Court's directives in Sandstrom. The State simply cannot be relieved of its burden of proving every element of the crime beyond a

reasonable doubt. Eliminating this language will remove the potential for error in a criminal case and will diminish confusion in the preparation of jury instructions. The critical elements in an assault case under subsection (1)(d) are whether the defendant caused reasonable apprehension of bodily injury to the victim, and whether he had the purpose to cause such apprehension or the knowledge that such apprehension would result from his conduct. Proof of these elements necessarily depends on the facts and circumstances of each case, and the language surrounding the presumption is not necessary to proof of the offense.

Section 2 of the bill would repeal section 45-6-304, MCA. In essence, that section requires a defendant in a theft case to explain his possession of stolen property. In 1982, that section was expressly held unconstitutional by the Montana Supreme Court in State v. Kramp. The court held that section 45-6-304 takes away the defendant's presumption of innocence and forces him to testify by placing a burden on him either to disprove unlawful possession or to prove lawful possession.

Since the decision in Kramp, section 45-6-304 has not been used. Language from the court's decision has been used in instructions to the jury in a theft case. Last year, in State v. Ramstead, the court sustained a theft conviction where the jury was instructed in accordance with Kramp and stated: "possession of stolen property, accompanied by other incriminating circumstances, and false or unreasonable explanation by the suspect is sufficient to sustain a conviction." This is consistent with federal authority.

Ex. 2
HB 505
3-7-91

By repealing section 45-6-304, we will eliminate a constitutional defect in the law and allow trial courts the flexibility to tailor their instructions to the facts of each case. Using either a presumption or an inference can be confusing to a jury, since those terms are imprecise and may not be easily applied in a given situation. There is sufficient guidance in the case law and in the model jury instructions to instruct the jury as to its consideration of evidence without requiring the court to interfere with the jury's right to give all the evidence whatever weight the jury believes it deserves.

EXHIBIT #5
HB 493
7 Mar 91

TESTIMONY IN SUPPORT OF HB 493
JEFFREY T. RENZ
LEGAL DIRECTOR, ACLU OF MONTANA

". . . then he would touch my breast and brush his hand against my thigh. I told him to cut it out, but he continued to do it. He acted like each time it was an accident. I didn't know what to do, I was afraid I would lose my job."

". . . he would always slide his chair over next to mine so that his thigh was against mine. My chair was in the corner, so I couldn't get away. He was my boss, so I was afraid to do anything."

". . . and he always would tell me how pretty I looked and propose that I accompany him on business trips. He wanted me to drink beer with him on the job . . . I was an alcoholic. He would kiss me, and I would tell him to stop. I eventually had to go to treatment. As a result of what I learned in treatment, I quit. I had worked under those conditions for over four years. I had been afraid to quit. . . and my boss helped me to drink."

These are **typical** instances of sexual harassment by supervisory personnel in the work-place. In each case, the supervisor's actions went on for a period which exceeded the statute of limitations under the Montana Human Rights Act. In each case the victim did not act quickly because she depended upon her boss -- for her job or, in the third instance, for her booze. It is this control and quiet intimidation by an employer which makes the exclusive remedy provision of the MHRC particularly onerous in cases of sexual harassment.

The same may be said for racial harassment, although there appears to be fewer **reported** cases of racial than sexual harassment in the work place in Montana. Nevertheless, an employee who is constantly referred to as a "kike" or a "chink" or "chief" and who is constantly derogated by his supervisors because of his race is equally at their mercy. As in the case of sexual harassment, racial harassment can go on for a long time before its victim is

compelled to act -- usually after he has been driven from his job. Our society places value on an employee's staying power, and it is this, together with the boss's position of authority, control, and intimidation, that delays any action by the victim. Yet we punish those victims by limiting the amount of time in which they may act and limiting the harm for which they may obtain redress.

In contrast, if I grab my neighbor's breast or touch someone on the street in a sexual manner, he or she has more remedies than the secretary in my office:

<u>street/neighbor</u>	<u>office</u>
right to jury trial	no jury
punitive damages	no punitive damages
damages for emotional distress	still in question
2 year statute of limitations	180 days (270 in EEOC) (note effect of intimidation)
No exhaustion requirements (Approx. 1 year to verdict)	Exhaustion required (Over two years to verdict)

A sexual assault is a criminal act, so why do we treat victims who are employees differently? Why do we wink at the employer and jail the "pervert?" Why do we treat women, in particular, differently?

The victims of racial discrimination have greater remedies than the victims of sex discrimination. Housing discrimination on the basis of race is actionable under 42 U.S.C. §§1981; 1982. The §1982 plaintiff does not have to exhaust remedies; his statute of limitations is 3 years; he is entitled to a jury trial; and he may recover damages for emotional distress and punitive damages.

The victim of racial or ethnic discrimination on the job (for other than conditions of work) has greater remedies under 42 U.S.C. §1981. He does not have to exhaust administrative remedies; his statute of limitations is 3 years; he is entitled to a jury trial; and he may recover damages for emotional distress and punitive damages.

The victim of age discrimination on the job does not have to exhaust administrative remedies (he may file suit anytime 60 days after complaining to the Human Rights Commission); he has 2 years in which to file suit (3 if the discrimination was "willful"), and 300 days in which to complain to the HRC; he is entitled to a jury trial; he may recover "liquidated damages" equal to twice his compensatory damages, and some courts allow punitive damages in addition.

Members of religious groups may also have remedies under 42 U.S.C. §§1983; 1985, depending upon the nature of the discrimination and who is involved. (§1983 requires an act or omission to be undertaken "under color of any statute, ordinance, regulation, custom, or usage.") The statute of limitations, remedies, lack of exhaustion requirements, and entitlement to a jury are the same as under §1981.

It should now be apparent that permitting remedies in addition to the MHRA should have little effect on the operations of the Human Rights Commission, since many victims have extra-Commission remedies.

It should now be apparent that the so-called "exclusive

Ex. 5
HB 493
3-7-91

remedy" provisions of the Human Rights Act and especially the Governmental Code of Fair Practices -- because it encompasses state action -- create a double standard and engender a double entendre: §509(7) is not only exclusive, it also excludes: it excludes women from remedies available to nearly every other minority group.

If Mr. Schramm wants to pursue his secretary around his desk, he ought to pay a price. But this body should not subsidize it.

Respectfully submitted,

Jeffrey T. Renz

DATE 3-7-91

COMMITTEE ON Judiciary

H.B

VISITORS' REGISTER 275-276-310-311-555

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppos
[redacted]				
John Connot	MT City Atty Assn	310	✓	
John Cross	" " " "	311	✓	
John Cross	Atty General's Office	555	✓	
Larry Rennan	Great Falls Police	276	✓	
Larry Rennan	" " "	275	✓	
Bryan Lockerby	" " "	275	✓	
Bryan Lockerby	" " "	276	✓	

(Please leave prepared statement with Secretary)