

MINUTES

MONTANA SENATE 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Dick Pinsoneault, on March 16, 1991, at 6:45 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: Executive Action

EXECUTIVE ACTION ON HOUSE BILL 388

Motion:

Discussion:

Amendments, Discussion, and Votes:

Senator Grosfield made a motion that the amendments proposed by the Montana Association of Life Underwriters be approved.

Senator Grosfield commented that the Human Rights commission does believe that the bill, as introduced, will cover mandatory abortion.

Senator Halligan stated that, by Montana law, those employers will be subject to suit even with the amendment.

The motion made by Senator Grosfield carried 8-4, in a roll call vote (attached).

Recommendation and Vote:

Senator Yellowtail made a motion that HB 388 be TABLED.

Senator Yellowtail stated that Anne MacIntyre indicated tabling the bill would be preferable to amending it.

Senator Crippen commented that if HB 388 is tabled, the law will stand as it is.

Senator Grosfield stated this would disturb him, and said it does not seem to be very straightforward.

The motion made by Senator Yellowtail carried 10-2 in a roll call vote (attached).

EXECUTIVE ACTION ON HOUSE BILL 493

Motion:

Discussion:

Amendments, Discussion, and Votes:

Senator Pinsoneault advised the Committee that there are amendments proposed by Anne MacIntyre and by Leroy Schramm (Exhibits #1 and #2).

Senator Towe said he believes there should be other remedy, and that he favors the bill.

Senator Crippen asked Senator Towe if he were talking dual remedy.

Senator Halligan asked if the Human Rights Commission could adopt a rule to the effect that if a private attorney is hired, the Commission is out of the case, in order to alleviate duplication of effort.

Senator Towe commented that there never was exclusive remedy until 1987. He referred to section 1, page 1, concerning 12 months elapsed time, and to page 3, line 21, concerning barring from any other action.

Valencia Lane stated that Anne MacIntyre's amendments would set up distinction concerning suing employers or employees. She said that if a case went to court it would be bound by the same time limits as the Human Rights Commission.

Senator Towe said the question is whether a tort was committed against an employer or a non-employer. He stated that a non-employer would have full statute of limitation, and asked why they should be treated differently.

Senator Mazurek stated the whole reason was to work with both sides without an attorney in order to resolve issues.

Senator Crippen commented that this situation is somewhat parallel to workers' compensation administrative remedy. He stated the Committee could adopt the Schramm amendments, but he likes the bill as it is.

Senator Towe stated he believes federal remedy should be preserved.

Senator Doherty advised the Committee he knew of a woman who was fired for telling her boss she was pregnant. He said the woman filed a complaint with the Human Rights Commission, and that her child is now two months old, and the issue is still not resolved.

Senator Pinsoneault stated he is bothered by blocking access to the courts.

Senator Svrcek made a motion that HB 493 BE CONCURRED IN.

Senator Crippen made a substitute motion to adopt the Schramm amendments.

Valencia Lane explained that the amendments allow individuals to seek remedy in court, but they are bound by the same time limits. She said that, in essence, it essentially binds people from going to court.

Senator Svrcek commented that one has to choose exclusive remedy under the Schramm amendments.

Senator Crippen withdrew his motion.

The motion made by Senator Svrcek failed 3-9 in a roll call vote (attached).

Recommendation and Vote:

The vote on Senator Svrcek's motion that HB 493 BE CONCURRED IN was reversed to BE NOT CONCURRED IN.

EXECUTIVE ACTION ON HOUSE BILL 466

Motion:

Discussion:

Amendments, Discussion, and Votes:

Senator Pinsoneault stated that Senator Towe's amendments are good ones (Exhibits #3 and #4).

Senator Towe made a motion that the amendments to HB 466 be approved.

Senator Doherty asked how the amended bill would be different from what exists now. Senator Towe replied his amendments mandate.

Senator Doherty advised the Committee he talked to Dr. Frank Sietz from Bozeman, and said he believes the concerns of the Department of Institutions are valid.

Senator Crippen said he believes HB 466 is a dumb bill. He asked if a prisoner could petition the court to amend the judgment to allow parole, if a judge says there will be no parole. He commented that if this is put into statute, there will be no discretion.

Senator Crippen made a substitute motion that HB 466 DO NOT PASS. The motion failed 6-6 in a roll call vote (attached).

Recommendation and Vote:

Senator Crippen made a motion to TABLE HB 466. The motion carried 7-5 with Senator Halligan changing his vote.

EXECUTIVE ACTION ON HOUSE BILL 391

Motion:

Discussion:

Amendments, Discussion, and Votes:

Senator Mazurek made a motion that Senator Towe's amendments be approved (Exhibit #5).

Senator Towe explained that the amendments set forth that a statement is to be protected and cannot be part of a report if it

was confidentially communicated. Senator Towe further explained that it also sets up, as a separate basis, that religious canon, doctrine or practice does not require that kind of reporting or communication. He said there must be compliance on all three points or (C) would apply.

The motion made by Senator Mazurek carried unanimously.

Senator Halligan commented that he believes subsection (3) is covered under subsection (1) on page 2 of the bill.

Senator Towe replied that he believes this language makes it a little tighter than Louisiana language.

Senator Yellowtail said he shared Senator Halligan's concerns.

Recommendation and Vote:

Senator Towe made a motion that HB 391 BE CONCURRED IN AS AMENDED. The motion carried with all members voting aye except Senators Halligan, Rye, and Yellowtail, who voted no.

EXECUTIVE ACTION ON HOUSE BILL 212

Motion:

Discussion:

Amendments, Discussion, and Votes:

Senator Towe made a motion to amend the bill on page 2, following line 20, by inserting "(d) is in violation of a person's right of privacy or will not otherwise be protected by the U.S. Constitution". He said this would add slander, libel, obscenity, and clear and present danger.

Chairman Pinsoneault told the Committee that if the U.S. Constitution is bad and they want to make it like Montana's, then they should vote to open up the U.S. Constitution. He commented that in 1987, he was one of two Senators to vote to open it up.

Senator Rye stated the bill creates as many problems as it solves.

Senator Rye made a substitute motion that HB 212 DO NOT PASS.

Chairman Pinsoneault stated this would then place substantial responsibility on the person making the decision, as to what constitutes obscenity and clear and present danger.

Senator Svrcek stated he is not convinced that the bill creates more problems than it solves. He said he believes students should be given the responsibility that goes along with free speech.

Senator Rye said there is nothing in killing this bill which prevents a 15-year-old from writing whatever he or she wants and selling it. He said school papers are paid for by taxpayer dollars.

Senator Doherty stated he does not see the fears expressed. He said the Montana Constitution says that a youth has all the rights of an adult unless there is a compelling reason to restrict those rights. He stated he believes the Committee is neglecting the Montana Constitution, and that he found the school board statement about cutting down journalism programs to be appalling.

Chairman Pinsoneault replied that, as a school board member for some time, his school never had a problem with the school board. He asked who would pay if there were a suit.

Senator Towe said he believes Senator Rye has made a good point, but if the school is a center of learning, "it should not be foisted upon them the contraindication of what is part of society as a whole". He referred to statements made in the letter from the Big Sandy schools.

Recommendation and Vote:

The motion made by Senator Rye that HB 212 BE NOT CONCURRED IN, carried 7-5 in a roll call vote (attached).

EXECUTIVE ACTION ON HOUSE BILL 735

Motion:

Discussion:

Amendments, Discussion, and Votes:

Senator Towe commented that he wanted to amend the bill, but did not have exact language.

Senator Crippen advised him that there is an unwritten rule in the Committee that amendments are to be prepared by Valencia Lane so everyone can see them. He stated he is not prepared to vote on an amendment now.

Senator Towe made a motion to amend page 3, line 20, following "pay", by inserting "reason and necessity", and line 22, following "clear", by inserting "and liable for that particular damage". He

said this applies to disputes for damages when liability is not clear, and stated there is no reason not to pay when liability is clear as well as no reason not to pay work loss as it is incurred.

Senator Crippen repeated that he believes the amendment needs to be in front of the Committee.

Recommendation and Vote:

Senator Crippen made a substitute motion to TABLE HB 735. The motion failed 6-6 in a roll call vote.

EXECUTIVE ACTION ON HOUSE BILL 428

Motion:

Discussion:

Amendments, Discussion, and Votes:

Chairman Pinsoneault explained that his proposed amendments would put the bill back to its original state when it was introduced.

Senator Halligan advised the Committee that Representative Gould had said he wanted the bill killed if the amendments were not approved.

Recommendation and Vote:

Senator Yellowtail made a motion that HB 428 BE NOT CONCURRED IN. The motion carried unanimously.

EXECUTIVE ACTION ON HOUSE BILL 581

Motion:

Discussion:

Senator Towe said he was concerned with the bill, as the language would allow transfer of information to anyone in that judicial district.

Senator Pinsoneault commented that information would not be exchanged, and would only be looked at.

Senator Towe stated that in the Criminal Justice Act, this constitutes criminal justice information and is restricted to

criminal justice agencies and to those authorized by law to receive it. He said the sponsor is amending authorization to records by the district court.

Amendments, Discussion, and Votes:

Recommendation and Vote:

Senator Harp made a motion that HB 581 BE CONCURRED IN. The motion carried unanimously.

EXECUTIVE ACTION ON HOUSE BILL 653

Motion:

Discussion:

Senator Halligan commented that the Committee worked long and hard on SB 154, and said he believes that bill is a responsible balance for now. He stated that a serious look at quasi-judicial immunity is needed, possibly as an interim study.

Senator Towe advised the Committee that HB 653 has WHEREAS clauses identifying where confusion was caused in the past. He said he could understand Representative Whalen's concerns, because if existing statute is amended, the courts may be tempted to go to old cases. Senator Towe commented that this could be alleviated by replacing it with new statute. He said the bill does address the question of quasi-judicial immunity in the law in section 2, by restoring to law what the situation was for many years.

Senator Towe further stated that enforcement of the law has not generally been given immunity, and said "the fact is they should be subject to liability". He stated this should be requested by a two-thirds vote and not be "back-doored" by the Supreme Court giving immunity where it was not intended.

Senator Svrcek stated the bill throws quasi-judicial immunity out altogether. He said the Committee would spend the next two years with nothing if this bill were to pass.

Senator Grosfield asked Valencia Lane about the new sections 1 and 2, and the repealer of 2-9-111 and -112, MCA. Valencia Lane replied that Representative Whalen wants to completely repeal the existing law, as he believes it is bad.

Amendments, Discussion, and Votes:

There were none.

Recommendation and Vote:

Senator Halligan made a motion to TABLE HB 653. The motion carried with all members voting aye except Senators Yellowtail, Doherty, and Towe who voted no.

Senator Yellowtail asked that this issue be addressed during the interim. Chairman Pinsoneault replied he intends to submit a resolution for an interim study.

EXECUTIVE ACTION ON HOUSE BILL 691Motion:Discussion:Amendments, Discussion, and Votes:

Senator Towe made a motion to approve his amendments to HB 691 (Exhibit #7). The motion carried unanimously.

Senator Rye made a motion to approve Senator Pinsoneault's amendments (Exhibit #8). The motion carried unanimously.

Senator Grosfield asked about retroactive application to 1977.

Senator Towe made a motion to include committee language used in section 3 of SB 154 to cover Senator Grosfield's concerns. The motion carried with all members voting aye except Senator Crippen who voted no.

Recommendation and Vote:

Senator Towe made a motion that HB 691 BE CONCURRED IN AS AMENDED. The motion carried with all members voting aye, except Senator Grosfield who voted no.

EXECUTIVE ACTION ON HOUSE BILL 292Motion:Discussion:

Senator Halligan stated he was still concerned about certified copies for the court.

Amendments, Discussion, and Votes:

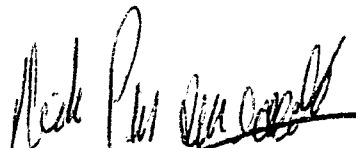
There were no amendments.

Recommendation and Vote:

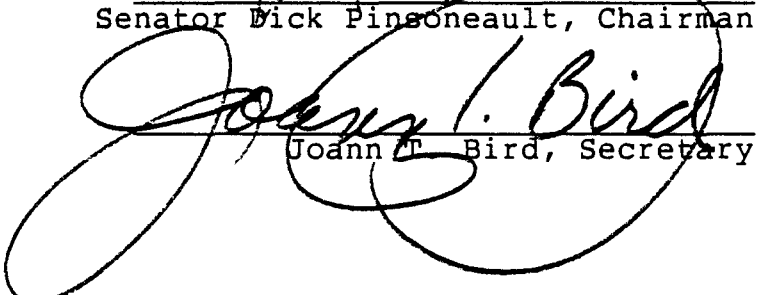
Senator Harp made a motion that HB 292 BE CONCURRED IN. The motion carried unanimously.

ADJOURNMENT

Adjournment At: 8:25 a.m.



Senator Dick Pinsoneault, Chairman



Joann E. Bird, Secretary

DP/jtb

ROLL CALL

SENATE JUDICIARY

COMMITTEE

52nd LEGISLATIVE SESSION -- 1991

Date 16 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	✓		

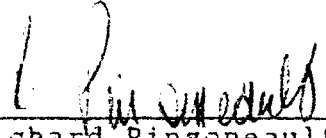
Each day attach to minutes.

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 18, 1991

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 493 (third reading copy -- blue), respectfully report that House Bill No. 493 be not concurred in.

Signed: 

Richard Pinsoneault, Chairman

LB 3/19/11

Amd. Coord.

LB 3/19

Sec. of Senate

10:15

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 16, 1991

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 391 (third reading copy -- blue), respectfully report that House Bill No. 391 be amended and as so amended be concurred in:

1. Page 2, line 16.

Following: "(2)"

Insert: "or (4)(c)"

2. Page 2, line 25.

Following: "HIS"

Strike: "SPIRITUAL PROFESSIONAL"

Following: "CAPACITY"

Insert: "as a clergyperson or priest"

3. Page 3, lines 1 through 3.

Following: "(II)" on line 1

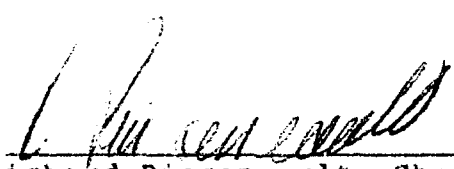
Strike: remainder of line 1 through "CONFIDENTIAL" on line 3

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

4. Page 3, line 7.

Following: line 6

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

Signed: 

Richard Pinsoneault, Chairman

3-16-91
And. Coord.

SR 3/16 11:30
Sec. of Senate

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 16, 1991

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 212 (third reading copy -- blue), respectfully report that House Bill No. 212 be not concurred in.

Signed: *Richard Pinsoneault*
Richard Pinsoneault, Chairman

for 3-14-91
Amd. Coord.

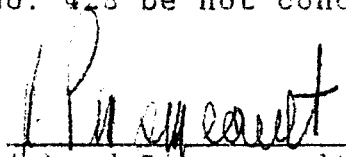
SP 2-16 9:30
Sec. of Senate

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 16, 1991

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 428 (third reading copy as amended -- blue), respectfully report that House Bill No. 428 be not concurred in.

Signed: 

Richard Pinsoneault, Chairman

 3-16-91
Cmd. Coord.

3-16 9:20
Sec. of Senate

570903SC.Sj1

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 16, 1991

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 581 (third reading copy -- blue), respectfully report that House Bill No. 581 be concurred in.

Signed: 
Richard Pinsoneault, Chairman

MA 3-16-91
And. Coord.

SP 3-16 9:00
Sec. of Senate

SENATE STANDING COMMITTEE REPORT

Page 1 of 2
March 16, 1991

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 691 (third reading copy -- blue), respectfully report that House Bill No. 691 be amended and as so amended be concurred in:

1. Title, line 5.

Following: "FOR"

Insert: "NEGLIGENT"

2. Page 2, line 8.

Following: "any"

Insert: "negligent"

Following: "omission"

Insert: ", other than an act or omission set forth in subsection (2)."

3. Page 2, line 12.

Following: "air."

Insert: "This subsection (b) does not create a separate cause of action."

4. Page 2, lines 13 through 19.

Strike: section 2 in its entirety

Insert: "NEW SECTION. Section 2. Coordination instruction. If House Bill No. 653 is passed and approved and if it repeals 2-9-111, then [section 1(4) of House Bill No. 653] is amended to read:

"(4) The immunity provided for in this section does not extend to:

(a) nonlegislative actions taken by a legislative body; or

(b) any act or omission that results in or contributes to personal injury or property damage caused by contamination or other alteration of the physical, chemical, or biological properties of surface water, ground water, soil, or air."

5. Page 3, line 1.

Following: "date"

Insert: "-- retroactive applicability"

5. Page 3, line 2.

Following: "approval"

Insert: "and applies retroactively, within the meaning of 1-2-
109, to causes of action that have not been reduced to final
judgment on or before [the effective date of this act]"

Signed: 
Richard Finsoneault, Chairman

3-16-91
And. Coord.

JP 3-16-91
Sec. of Senate

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 16, 1991

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 292 (third reading copy -- blue), respectfully report that House Bill No. 292 be concurred in.

Signed: 
Richard Pinsonneault, Chairman

per 3-16-91
And. Coord.

SR 3-16 9:30
Sec. of Senate

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date 16 Mar 91 Bill No. HB 388 Time 7 am

NAME	YES	NO
Sen. Brown	✓	
Sen. Crippen	✓	
Sen. Doherty		✓
Sen. Grosfield	✓	
Sen. Halligan		✓
Sen. Harp	✓	
Sen. Mazurek	✓	
Sen. Rye	✓	
Sen. Svrcek		✓
Sen. Towe	✓	
Sen. Yellowtail		✓
Sen. Pinsoneault	✓	

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Jody Bird
Secretary

Sen. Dick Pinsoneault
Chairman

Motion: Grosfield-amend HB 388

ROLL CALL VOTE

SENATE COMMITTEE

JUDICIARY

Date 16 Mar 91

Bill No. 10338 Time 7:01 am

NAME	YES	NO
Sen. Brown	✓	
Sen. Crippen	✓	
Sen. Doherty	✓	
Sen. Grosfield		✓
Sen. Halligan	✓	
Sen. Harp	✓	
Sen. Mazurek	✓	
Sen. Rye	✓	
Sen. Svrcek	✓	
Sen. Towe	✓	
Sen. Yellowtail	✓	
Sen. Pinsoneault		✓

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Jody Bird
Secretary

Sen. Dick Pinsoneault
Chairman

Motion:

Yellowtail - Table

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date 16 Mar 91 Bill No. H 493 Time 7:13 am

NAME	YES	NO
Sen. Brown		✓
Sen. Crippen		✓
Sen. Doherty	✓	
Sen. Grosfield		✓
Sen. Halligan		✓
Sen. Harp		✓
Sen. Mazurek		✓
Sen. Rye		✓
Sen. Svrcek	✓	
Sen. Towe	✓	
Sen. Yellowtail		✓
Sen. Pinsoneault		✓

Jody Bird
Secretary

Sen. Dick Pinsoneault
Chairman

Motion: Crippen amend
Svrcek - BCZ

ROLL CALL VOTE

SENATE COMMITTEE

JUDICIARY

Date 16 Mar 91

Bill No. HB 466 Time 7:22am

NAME	YES	NO
Sen. Brown		✓
Sen. Crippen	✓	
Sen. Doherty	✓	
Sen. Grosfield		✓
Sen. Halligan		✓
Sen. Harp		✓
Sen. Mazurek	✓	
Sen. Rye		✓
Sen. Svrcek	✓	
Sen. Towe	✓	
Sen. Yellowtail	✓	
Sen. Pinsoneault		✓
	6	6

Jody Bird
Secretary

Sen. Dick Pinsoneault
Chairman

Motion:

~~Towe moved~~
Crippen - DNP

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date 16 Mar 91 Bill No. HB 466 Time 7:25am

NAME	YES	NO
Sen. Brown		
Sen. Crippen		
Sen. Doherty		
Sen. Grosfield		
Sen. Halligan		
Sen. Harp		
Sen. Mazurek		
Sen. Rye		
Sen. Svrcek		
Sen. Towe		
Sen. Yellowtail		
Sen. Pinsoneault		

Jody Bird
Secretary

Sen. Dick Pinsoneault
Chairman

Motion: C. Crippen-Table

ROLL CALL VOTE

SENATE COMMITTEE

JUDICIARY

Date 16 Mar 91

Bill No. HB 212 Time 7:45am

NAME	YES	NO
Sen. Brown	✓	
Sen. Crippen	✓	
Sen. Doherty		✓
Sen. Grosfield	✓	
Sen. Halligan		✓
Sen. Harp	✓	
Sen. Mazurek	✓	
Sen. Rye	✓	
Sen. Svrcek		✓
Sen. Towe		✓
Sen. Yellowtail		✓
Sen. Pinsoneault	✓	

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Jody Bird
Secretary

Sen. Dick Pinsoneault
Chairman

Motion: (C) Rye - BNCA

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date 16 Mar Bill No. HB735 Time 7:55am

NAME	YES	NO
Sen. Brown		✓
Sen. Crippen	✓	
Sen. Doherty		✓
Sen. Grosfield	✓	
Sen. Halligan	✓	
Sen. Harp	✓	
Sen. Mazurek		✓
Sen. Rye	✓	
Sen. Svrcek		✓
Sen. Towe		✓
Sen. Yellowtail		✓
Sen. Pinsoneault	✓	
	6	6

Jody Bird
Secretary

Sen. Dick Pinsoneault
Chairman

Motion: Crip - DNP
+ Crip - Table

ROLL CALL VOTE

SENATE COMMITTEE

JUDICIARY

Date 16 Mar Bill No. HB 428 Time 8 am

NAME	YES	NO
Sen. Brown	✓	
Sen. Crippen	✓	
Sen. Doherty	✓	
Sen. Grosfield	✓	
Sen. Halligan	✓	
Sen. Harp	✓	
Sen. Mazurek	✓	
Sen. Rye	✓	
Sen. Svrcek	✓	
Sen. Towe	✓	
Sen. Yellowtail	✓	
Sen. Pinsoneault	✓	

Jody Bird
Secretary

Sen. Dick Pinsoneault
Chairman

Motion: (C) Yell - BNCT

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date 16 Mar Bill No. ²⁹²#B292 Time 8:25am

NAME	YES	NO
Sen. Brown	✓	
Sen. Crippen	✓	
Sen. Doherty		✓
Sen. Grosfield	✓	
Sen. Halligan		✓
Sen. Harp	✓	
Sen. Mazurek	✓	✓
Sen. Rye	✓	
Sen. Svrcek		✓
Sen. Towe	✓	
Sen. Yellowtail		✓
Sen. Pinsoneault	✓	

7 . 5

Jody Bird
Secretary

Sen. Dick Pinsoneault
Chairman

Motion: ① Harp- BCT

EX # 1
16 Mar 91
HB 493

Amendments to House Bill No. 493
First Reading Copy (white)

Prepared by Anne L. MacIntyre
March 4, 1991

1. Page 1, line 4.

Following: "ACT"

Strike: "DELETING"

Insert: "REVISING"

2. Page 1, line 7.

Following: "LAWS"

Insert: "TO CLARIFY THAT CERTAIN TORT CLAIMS ARE NOT SUBJECT TO
THE EXCLUSIVE REMEDY PROVISIONS OF THOSE LAWS"

3. Page 4.

Following: line 2

Insert: "(7) Except as provided in this section, the provisions of this chapter establish the exclusive remedy for claims arising under state law for acts constituting an alleged violation of this chapter, including claims of sexual harassment against an employer and including claims for acts that may otherwise also constitute a violation of the discrimination provisions of Article II, section 4, of the Montana Constitution or 49-1-102. No other claim or request for relief based upon such acts may be entertained by a district court under state law other than by the procedures specified in this chapter.
(8) The provisions of subsection (7) do not limit the authority of a district court to consider claims against an individual tortfeasor. Claims alleging a violation of this chapter, including sexual harassment claims, filed against an employer in its capacity as employer are subject to the remedies established by this chapter."

4. Page 6.

Following: line 19

Insert: "(7) Except as provided in this section, the provisions of this chapter establish the exclusive remedy for claims arising under state law for acts constituting an alleged violation of this chapter, including claims of sexual harassment against an employer and including claims for acts that may otherwise also constitute a violation of the discrimination provisions of Article II, section 4, of the Montana Constitution or 49-1-102. No other claim or request for relief based upon such acts may be entertained by a district court under state law other than by the procedures specified in this chapter.

(8) The provisions of subsection (7) do not limit the authority of a district court to consider tort claims against an individual tortfeasor. Claims alleging a violation of this chapter, including sexual harassment claims, filed against an employer in its capacity as employer are subject to the administrative requirements of this chapter."

Amend H.B. 493 as follows:

from Jerry Schramm

Pages 3 and 4, reinstate all the stricken language except the last nine words. Then add a new clause so that the amended subsection reads as follows:

Ex #2
15 Mar

"(7) The provisions of this chapter establish the exclusive remedy for acts constituting an alleged violation of this chapter, including acts that may otherwise also constitute a violation of the discrimination provisions of Article II, section 4, of the Montana constitution or 49-1-102. No other claim or request for relief based upon such acts may be entertained by a district court ~~other than by the procedures specified in this chapter~~ and any claim or request for relief under this chapter brought directly to a district court must be filed within the time limits specified in this chapter."

HB 49

Page 6, reinstate all the stricken language except the last nine words. Then add a new clause so that the amended subsection reads as follows:

"(7) The provisions of this chapter establish the exclusive remedy for acts constituting an alleged violation of this chapter, including acts that may otherwise also constitute a violation of the discrimination provisions of Article II, section 4, of the Montana constitution or 49-1-102. No other claim or request for relief based upon such acts may be entertained by a district court ~~other than by the procedures specified in this chapter~~ and any claim or request for relief under this chapter brought directly to a district court must be filed within the time limits specified in this chapter."

Amend the title as follows:

Page 1, line 6, strike "remedy" and insert "exclusive procedure for remedying"

This amendment makes clear that the legislature is not establishing a new common law action for discrimination with statutes of limitations and remedies different than those laid out in the Human Rights Act. However, the amendment would still allow plaintiffs to choose their forum (either the Human Rights Commission or district court), but in both cases they would be governed by the time limits and remedies specified in the Human Rights Act.

Ex #3
16 Mar 91
HB 466

Amendments to House Bill No. 466
Third Reading Copy (BLUE)

Requested by Senator Towe
For the Committee on Judiciary

Prepared by Valencia Lane
March 12, 1991

1. Title, line 6.

Following: "THAT"

Insert: "IN CERTAIN CASES"

2. Page 2, line 13.

Following: "homicide"

Insert: "in which one or more aggravating circumstances set forth
in 46-18-303 exist and none of the mitigating circumstances
set forth in 46-18-304 exist"

Cross-References

Deliberate homicide, 45-5-102.

Aggravated kidnapping, 45-5-303.

46-18-302. Evidence that may be received. In the sentencing hearing, evidence may be presented as to any matter the court considers relevant to the sentence, including but not limited to the nature and circumstances of the crime, the defendant's character, background, history, and mental and physical condition, and any other facts in aggravation or mitigation of the penalty. Any evidence the court considers to have probative force may be received regardless of its admissibility under the rules governing admission of evidence at criminal trials. Evidence admitted at the trial relating to such aggravating or mitigating circumstances shall be considered without reintroducing it at the sentencing proceeding. The state and the defendant or his counsel shall be permitted to present argument for or against sentence of death.

History: En. 95-2206.7 by Sec. 2, Ch. 338, L. 1977; R.C.M. 1947, 95-2206.7.

46-18-303. Aggravating circumstances. Aggravating circumstances are any of the following:

(1) The offense was deliberate homicide and was committed by a person serving a sentence of imprisonment in the state prison.

(2) The offense was deliberate homicide and was committed by a defendant who had been previously convicted of another deliberate homicide.

(3) The offense was deliberate homicide and was committed by means of torture.

(4) The offense was deliberate homicide and was committed by a person lying in wait or ambush.

(5) The offense was deliberate homicide and was committed as a part of a scheme or operation which, if completed, would result in the death of more than one person.

(6) The offense was deliberate homicide as defined in subsection (1)(a) of 45-5-102, and the victim was a peace officer killed while performing his duty.

(7) The offense was aggravated kidnapping which resulted in the death of the victim or the death by direct action of the defendant of a person who rescued or attempted to rescue the victim.

(8) The offense was attempted deliberate homicide, aggravated assault, or aggravated kidnapping committed while incarcerated at the state prison by a person who has been previously:

(a) convicted of the offense of deliberate homicide; or

(b) found to be a persistent felony offender pursuant to part 5 of this chapter and one of the convictions was for an offense against the person in violation of Title 45, chapter 5, for which the minimum prison term is not less than 2 years.

(9) The offense was deliberate homicide and was committed by a person during the course of committing sexual assault, sexual intercourse without consent, deviate sexual conduct, or incest, and the victim was less than 18 years of age.

History: En. 95-2206.8 by Sec. 3, Ch. 338, L. 1977; R.C.M. 1947, 95-2206.8; amd. Sec. 2, Ch. 696, L. 1985; amd. Sec. 1, Ch. 387, L. 1987; amd. Sec. 1, Ch. 81, L. 1989.

Compiler's Comments

1989 Amendment: Inserted (9) concerning deliberate homicide during course of sexual crime involving a minor.

Cross-References

Sentences for certain offenses committed in state prison, 46-18-220.

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46-18-304. Mitigating circumstances. Mitigating circumstances are any of the following:

- (1) The defendant has no significant history of prior criminal activity.
- (2) The offense was committed while the defendant was under the influence of extreme mental or emotional disturbance.
- (3) The defendant acted under extreme duress or under the substantial domination of another person.
- (4) The capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired.
- (5) The victim was a participant in the defendant's conduct or consented to the act.
- (6) The defendant was an accomplice in an offense committed by another person, and his participation was relatively minor.
- (7) The defendant, at the time of the commission of the crime, was less than 18 years of age.
- (8) Any other fact that exists in mitigation of the penalty.

History: En. 95-2206.9 by Sec. 4, Ch. 338, L. 1977; R.C.M. 1947, 95-2206.9.

46-18-305. Effect of aggravating and mitigating circumstances. In determining whether to impose a sentence of death or imprisonment, the court shall take into account the aggravating and mitigating circumstances enumerated in 46-18-303 and 46-18-304 and shall impose a sentence of death if it finds one or more of the aggravating circumstances and finds that there are no mitigating circumstances sufficiently substantial to call for leniency. If the court does not impose a sentence of death and one of the aggravating circumstances listed in 46-18-303 exists, the court may impose a sentence of imprisonment for life or for any term authorized by the statute defining the offense.

History: En. 95-2206.10 by Sec. 5, Ch. 338, L. 1977; R.C.M. 1947, 95-2206.10.

46-18-306. Specific written findings of fact. In each case in which the court imposes the death sentence, the determination of the court shall be supported by specific written findings of fact as to the existence or nonexistence of each of the circumstances set forth in 46-18-303 and 46-18-304. The written findings of fact shall be substantiated by the records of the trial and the sentencing proceeding.

History: En. 95-2206.11 by Sec. 6, Ch. 338, L. 1977; R.C.M. 1947, 95-2206.11.

46-18-307. Automatic review of sentence. The judgment of conviction and sentence of death are subject to automatic review by the supreme court of Montana as provided for in 46-18-308 through 46-18-310.

History: En. 95-2206.12 by Sec. 7, Ch. 338, L. 1977; R.C.M. 1947, 95-2206.12.

46-18-308. Time for review — consolidation with appeal. The judgment of conviction and sentence of death are subject to automatic review by the supreme court of Montana within 60 days after certification by the sentencing court of the entire record unless the time is extended by the supreme court for good cause shown. The review by the supreme court has priority over all other cases and shall be heard in accordance with rules promulgated by the supreme court. The sentence review shall be in addition

Ex #5
16 Mar
HB 391

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

Requested by Senator Towe
For the Committee on Judiciary

Prepared by Valencia Lane
March 11, 1991

1. Page 2, line 16.

Following: "(B)"

Insert: "or (4)(c)"

2. Page 2, line 25.

Following: "HIS"

Strike: "SPIRITUAL PROFESSIONAL"

Following: "CAPACITY"

Insert: "as a clergyperson or priest"

3. Page 3, lines 1 through 3.

Following: "(II)" on line 1

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

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

4. Page 3, line 7.

Following: line 6

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

Amendments to House Bill No. 691
Third Reading Copy (BLUE)

Requested by Senator Towe
For the Committee on Judiciary

Prepared by Valencia Lane
March 14, 1991

Ex #7
16 Mar 91
HB 691

1. Page 2, line 8.

Following: "omission"

Insert: ", other than an act or omission set forth in subsection
(2),"

2. Page 2, line 12.

Following: "air."

Insert: "This subsection (b) does not create a separate cause of
action."

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16 Mar
HB 691

Amendments to House Bill No. 691
Third Reading Copy (BLUE)

Requested by Senator Pinsoneault
For the Committee on Judiciary

Prepared by Valencia Lane
March 15, 1991

1. Title, line 5.
Following: "FOR"
Insert: "NEGLIGENT"

2. Page 2, line 8.
Following: "any"
Insert: "negligent"

DATE

3-16-91

1 of 2

COMMITTEE ON

Judiciary

H.B.

H.B. 741-552-471

VISITORS' REGISTER

191-303-272

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Marjuline N. Verrell	Am. Bus. Assoc.	HB 191	X	
Marjuline N. Verrell	Am. Bus. Assoc.	HB 552	X	
Merleida X Erickson	Self-Prison Fellowship	HB 272	X	
KARLEY WARNER	MONTANA ASSOC. OF CHURCHES	HB 272	X	
Bruce MacKenzie	DAUO	HB 552 HB 471	X X	
RENE PHILLIPS	NORTHWESTER U TELEPHONE	HB 303	Amend	
DAN MANDEVILLE	MONT. TEL. ASSOC.	HB 303	X	
John Alb	Mont. Defense Trial Lawyers	HB 191	X	
Don Walker	U S WEST	HB 303	Support w/ Amend	
Bob Pyper	MT Bar Assoc.	HB 552	X	
"	"	HB 241	X	
Bob Murdo	✓ ✓	HB 741	X	
✓ ✓	✓ ✓	HB 552	X	
Bob (Bert) Michelotti	✓ ✓	HB's 741 552	X	
Diane Sands	MT Women Lobby	HB 272	X	
Gareth Jacobson	Sec of State	HB 552 HB 741	X	
Steve Bahlz	MT Bar Assoc.	HB 552 HB 741	X	
Michael J Sherwood	MTLA	HB 191 HB 303	✓ ✓	
F.H. Buck Boles	MT CHAMBER	HB 741	X	
Scott Cricht	ACLU	HB 272	X	
Thomas Jue	HD 49	HB 272	X	

