

MINUTES

MONTANA SENATE 53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Senator Bill Yellowtail, on March 10, 1993, at 10:06 a.m.

ROLL CALL

Members Present:

Sen. Bill Yellowtail, Chair (D)
Sen. Steve Doherty, Vice Chair (D)
Sen. Sue Bartlett (D)
Sen. Chet Blaylock (D)
Sen. Bob Brown (R)
Sen. Bruce Crippen (R)
Sen. Eve Franklin (D)
Sen. Lorents Grosfield (R)
Sen. Mike Halligan (D)
Sen. John Harp (R)
Sen. David Rye (R)
Sen. Tom Towe (D)

Members Excused: Sen. Brown, Sen. Crippen, Sen. Harp

Members Absent: NONE

Staff Present: Valencia Lane, Legislative Council
Rebecca Court, Committee Secretary

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

Committee Business Summary:

Hearing: HB 562
HB 573
HB 521
Executive Action: HB 521
HB 555
HB 234

HEARING ON HB 573

Opening Statement by Sponsor:

Representative Kadas, District 55, said HB 573 was worked out between the Montana Peoples Action and the Montana Landlords Association regarding tenant landlord relations. Section 1 defines case of emergency. Section 2 changes the requirement

that a receipt of notice must be by a certificate of mailing. Section 3 states that when a landlord accepts rent or deposit, it would mean that the person is able to take possession of that particular property. Section 4, is a new section which sets up the circumstances when a person sublets an apartment. Section 5, deals with the situation when a tenant changes the lock on an apartment and does not give the landlord a key. Rep. Kadas said the landlord has to have access in cases of emergency. Section 5 requires that if the tenant does change the lock they would have to give the landlord a key. The landlord would have access to the apartment under very limited restrictions. Section 6 states that a tenant could operate a small business in their rental within rules that are set forth by the landlord. Section 7, deals with rules and regulations. Section 8 states that a tenant could file a notice to terminate the rental agreement if a problem, such as an infestation of rats, has not been taken care of by the landlord. Also, if the tenant decides to take care of the problem they would have find someone qualified to make the repairs. Section 9 clarifies that the landlord can use the other sections for terminating the 30 day notice provision on evictions. Section 10 deals with the situation when a tenant changes a lock and does not give the landlord a key.

Proponents' Testimony:

Melissa Case, Montana People's Action, told the Committee that the Montana People's Action and the Montana Landlord Association reached agreements on all the issues. Ms. Case urged support for HB 573.

Greg Van Horssen, Income Property Managers Association, Montana Landlords Association, Montana Association of Realtors, said HB 573 represents a compromise reached between property managers and renters. Mr. Van Horssen strongly urged support for HB 573.

Opponents' Testimony:

Walter Jackovich read from prepared testimony. (Exhibit #1)

Questions From Committee Members and Responses:

Senator Grosfield asked Mr. Van Horssen about page 9, lines 6 through 12. Mr. Van Horssen said there was concern raised by the opponent that a business may interfere with the rights of other residents in a multifamily unit or a mobile home park. The language on line 10 through 12 provides that if a business would have to be operated within the reasonable rules of the landlord. Mr. Van Horssen said most property managers have Rules that take into consideration the rights of other residents. If a business interferes with the neighbors, the business would not be allowed to operate.

Senator Grosfield asked Mr. Van Horssen about page 9, subsection 3. Mr. Van Horssen said there is a concern that managers of

mobile home parks may be treating individuals differently with respect to interpretation of the rules. The language is meant to address rules that apply to the landlord and tenant relationship. Mr. Van Horssen said concern has been raised that there has been an arbitrary enforcement of the rules.

Senator Grosfield asked Rep. Kadas about page 11, lines 14 through 16. Rep. Kadas said depending on the problem would determine who would do the repairs.

Senator Rye asked Mr. Jackovich why he is opposed to tenant running a businesses in their home. Mr. Jackovich said if the landlord told a person they could not run the business, the tenant could take the landlord to court. Mr. Jackovich said he provides for a place of housing not business.

Senator Rye asked Mr. Jackovich about his opposition to small businesses in a rental. Mr. Jackovich told the Committee that all tenants share expenses, such as outside facilities and parking. Mr. Jackovich said parking is a big problem. If a business is started in a home then traffic would be coming in that would cause undo hardship for those people who are paying rent on that particular parking lot. A business would also increase the cost of utilities and more wear and tear on the facility.

Senator Blaylock asked Mr. Jackovich about page 5, lines 13 through 16. Mr. Jackovich said the section needs to be clarified so that any one method of notification would be necessary for notice. For example, if a person delivers the notice in person then it would not be necessary to mail the notice.

Senator Blaylock asked Rep. Kadas about changing section 2. Rep. Kadas said that the concern is already met in HB 573. A landlord can deliver the notice by hand, or by mail. The inserted language is only operative if the notice is delivered by mail.

Senator Grosfield asked Rep. Kadas about the language "the landlord may not unreasonable withhold consent" on page 9. Rep. Kadas said the court would define unreasonable. Reasonable is a standard which is widely used in the Landlord/Tenant Act.

Senator Bartlett asked Ms. Case about the certificate of mailing. Ms. Case said they are referring to certified mail. Ms. Case said instead of the landlord handing notice to the tenant the postal service would get a signature to assure that the tenant had received the notice.

Senator Bartlett said that may be the intent, but is not how HB 573 was drafted. Chair Yellowtail agreed. Chair Yellowtail said on line 9, HB 573 makes a distinction between the certificate of mailing and certified mail.

Chair Yellowtail asked Ms. Case the meaning of certificate of

mailing. Ms. Case said certified mail was the intention, not certificate of mailing.

Senator Bartlett asked Ms. Case if certificate of mailing should be struck and insert certified return receipt. Ms. Case said yes.

Chair Yellowtail said HB 573 replaces the old language that said registered mail with this new term certificate of mailing. Mr. Van Horssen said certified mailing is something that happens through the postal service and the postal service keeps track of those records. Mr. Van Horssen suggested that the language, certificate of mailing, offers the landlord or tenant an opportunity to circumvent the certified mailing requirement by signing a document stating that they personally sent the notice on a particular date to a particular person.

Closing by Sponsor:

Representative Kadas closed. Rep. Kadas told the Committee he would look into the issue of the certificate of mailing if the Committee so desired.

HEARING ON HB 521

Opening Statement by Sponsor:

Representative Davis, District 53, said HB 521 is a simple bill. Rep. Davis said HB 521 inserts the word "sexual." Rep. Davis said sexual abuse is defined on page 3, line 14, sub 10. "Sexual abuse means the commission of sexual assault, sexual intercourse without consent, indecent exposure, deviate sexual conduct, or incest, as described in Title 45, chapter 5, part 5." Rep. Davis told the Committee the reason for HB 521 is because of a case of a 19 year old who was being sexually abused by her father. The mother brought it to court, but was unable to remove the woman from the situation because she was an adult. Thus, this is the reason for clarifying HB 521 to include sexual abuse.

Proponents' Testimony:

Tom Harrison, Montana Sheriffs and Peace Officers Association, said circumstances that lead to HB 521 are precisely as Rep. Davis indicated. A developmentally disabled adult living in the home was being sexually abused by her father. Because she was an adult there were no grounds for the separation of that person from those circumstances. Fortunately, the situation resolved itself with the mother leaving that home with the daughter. The Department of Social and Rehabilitation Services and the County Attorneys both recommend the change in HB 521. Mr. Harrison urged support for HB 521.

Harley Warner, Montana Association of Churches urged support for HB 521.

Opponents' Testimony:

NONE

Questions From Committee Members and Responses:

Senator Grosfield asked John Conner, Montana County Attorney's Association, why sexual abuse should be defined. Mr. Connor said abuse, as it is now defined in the law, does not include sexual abuse, therefore sexual abuse needs to be defined.

Closing by Sponsor:

Representative Davis closed.

EXECUTIVE ACTION ON HB 521

Motion/Vote:

Senator Blaylock moved HB 521 BE CONCURRED IN. The motion CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON HB 234

Motion/Vote:

Senator Blaylock moved HB 234 BE CONCURRED IN. The motion CARRIED UNANIMOUSLY.

HEARING ON HB 562

Opening Statement by Sponsor:

Representative Jim Rice, District 43, said HB 562 would expand the crime of sexual abuse of children to include possession of child pornography by making the act a misdemeanor and expands the definition of child pornography. Rep. Rice told the Committee about a group called Enough is Enough. Enough is Enough is an organization of women whose goal is to enact legislation making it illegal in all 50 states to possess child pornography. Montana is one of seven states that does not include the possession of child pornography as a crime. Rep. Rice said HB 562 would assist prosecutors to be able to introduce the crime into evidence for prosecution. Rep. Rice said allowing possession of child pornography to be a crime, prosecutors can charge the person with possession and allows them to introduce the evidence seized in the case. This would give prosecutors an opportunity to have better cases against those accused of child molesting. HB 562 expands the definition from sexual contact to sexual conduct. Rep. Rice said if it is a crime to possess child pornography it would enable law enforcement the ability to seize that and take them out of circulation. Rep. Rice submitted a

letter from Father Jerry Lowney. (Exhibit #2)

Proponents' Testimony:

John Connor, Montana County Attorneys Association, told the Committee that Montana is one of seven states that does not have a criminal penalty possessing materials that show children engaged in sexual acts. The majority of those states that do have a criminal penalty for possessing child pornography make it a misdemeanor, as does HB 562. People who sexually abuse children most often possess child pornography material. Making the possession of this material a crime, a prosecutor can present that material as evidence in the course of prosecution in conjunction with the felony offense. Mr. Connor said offenders need intensive long term supervision and treatment and not incarceration. Sending an offender to prison for a couple of years does not do the offender or society any good because when the offender gets out they would offend again if they did not receive treatment. Mr. Connor told the Committee that there was some concern about a person's first amendment rights about taking possession of obscene material. Mr. Connor told the Committee that there are two United States Supreme Court cases that hold that possessing child pornographic material is not a protective first amendment right. The difference between adult obscene material and child pornography is that the adults are consenting. Every state recognizes the act of sexual depiction between children as illegal. The Montana County Attorney's Association feels there is strong public policy reasons for this legislation and urges support for HB 562.

Harley Warner, Montana Association of Churches, said making possession of child pornographic material illegal may discourage the production of the material which would help protect children. Mr. Warner said the Montana Association of Churches is in support of decreasing the population at the state prison, but feels it is more important to protect the children of Montana. Mr. Warner rose in support of HB 562.

Sharon Hoff, Montana Catholic Conference, rose in support of HB 562. Exploiting children is wrong. Ms. Hoff told the Committee that children are an important part of our society and deserve to be protected.

Dallas Erickson read from prepared testimony. (Exhibit #3)

Steve White supports HB 562.

Gail Hellander read from prepared testimony. (Exhibit #4)

Wilma Wortman, Enough is Enough, told the Committee that Enough is Enough is a campaign to spark women to take action against pornography. The campaign has the support of women across the nation, including Barbara Bush, Hillary Clinton, and Tipper Gore. The immediate goal of the campaign is to strengthen child

pornography laws in states where there are no laws, or laws that are poorly written providing little or no protection. Montana is one of seven such states. A study of child molesters in prison show that 77% of those who molested boys and 87% of those who molested girls were regular users of child pornography. The typical child molester abuses over 360 children in their lifetime. One out of every three girls and one out of seven boys in the United States will be sexually abused before they reach 18 years of age. Sexually transmitted diseases strike more children each year than polio did in the 11 years of the polio epidemic. Therefore, HB 562 is a public health and safety issue. Ms. Wortman said it is the charge of government to protect its citizens. Child pornography is a visual record of a child being sexually abused. Children in Montana need and deserve protection from exploitation of pornographers and molestation by pedophiles. HB 562 would help provide that protection. Ms. Wortman urged support for HB 562.

Kathleen Homer read from prepared testimony. (Exhibit #5)

Amy Nord, a high school student, urged support for HB 562.

Opponents' Testimony:

NONE

Questions From Committee Members and Responses:

Senator Bartlett asked Mr. Connor about sexual conduct. Mr. Connor said the definition of sexual contact is "any touching of the sexual or other intimate parts of a person of another for the purpose of arousing or gratifying the desire on part of the sexual desire of the party." The intent of changing the wording to sexual conduct is to make the definition more specific which is necessary to avoid a constitutional challenge to the bill on the grounds that it is not specific enough.

Senator Bartlett asked Mr. Connor about if anything would be lost if "contact" was left out. Mr. Connor said no.

Senator Towe asked Mr. Connor about introducing evidence of child abuse. Mr. Connor said if there is probable cause to believe that a child is in a sexual abuse situation, law enforcement officers would obtain a search warrant that would allow them to search the premises of the prospective defendant. The search warrant would include language that based upon the officers training, experience, and knowledge they know that there is a consistent pattern of people who commit those kinds of offenses by possessing child pornography. If the court felt the warrant application contained sufficient probable cause to issue a warrant, the officer would obtain the information and the defendant would be charged with sexual abuse as well as possession of child pornography material.

Senator Towe asked Mr. Connor about bringing in evidence of pornographic material when prosecuting for sexual abuse. Mr. Connor said the material is not unrelated to the child abuse case, which is why the information is brought forth. Mr. Connor said it is not uncommon to prosecute felonies and misdemeanors at the same time. The statute on criminal procedure allows a prosecutor to do that if there is a connection between the offenses.

Senator Rye said that federal law prohibits interstate shipment of child pornography, but Montana does not outlaw child pornography if it was produced in the state. Mr. Connor agreed.

Senator Grosfield asked Mr. Connor about the word "child" in HB 562. Mr. Connor said a child is defined in the law as anyone under the age of 18.

Chair Yellowtail asked Mr. Connor about sub B. Mr. Connor said the younger the victim, the more serious the offense. Mr. Connor said there may be a serious question whether the defendant knew that the person involved was under the age of 18. Page 2, subsection 2(a) covers people between 16 and 18.

Chair Yellowtail asked Mr. Connor about the word "minor" on page 6, line 2. Mr. Connor said a minor and a child are defined as being anyone under the age of 18 in other statutes.

Chair Yellowtail asked Mr. Connor if the intention is that minor and child be defined as anyone under the age of 18. Mr. Connor said yes.

Senator Grosfield asked Mr. Connor about the lewd representation of the upper torso. Mr. Connor said that should be included in the definition of sexual conduct.

Closing by Sponsor:

Representative Rice welcomed suggestions to improve HB 562. Rep. Rice told the Committee that the Montana Sheriffs and Peace Officers Association support HB 562.

EXECUTIVE ACTION ON HB 555

Discussion:

Valencia explained the amendments. (Exhibit #6)

Motion/Vote:


Senator Blaylock moved to amend HB 555. The motion CARRIED UNANIMOUSLY.

Motion/Vote:

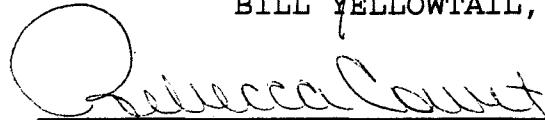
Senator Blaylock moved HB 555 BE CONCURRED IN AS AMENDED. The motion CARRIED UNANIMOUSLY.

ADJOURNMENT

Adjournment: 11:32 a.m.



BILL YELLOWTAIL, Chair



REBECCA COURT, Secretary

BY/rc

ROLL CALL

SENATE COMMITTEE

Judiciary

DATE

3-10-92

NAME	PRESENT	ABSENT	EXCUSED
Senator Yellowtail	X		
Senator Doherty	X		
Senator Brown			X
Senator Crippen			X
Senator Grosfield	X		
Senator Halligan	X		
Senator Harp			X
Senator Towe	X		
Senator Bartlett	X		
Senator Franklin	X		
Senator Blaylock	X		
Senator Rye	X		

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 10, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 234 (first reading copy -- blue), respectfully report that House Bill No. 234 be concurred in.

Signed: Wm Yellowtail
Senator William "Bill" Yellowtail, Chair

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 10, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 521 (first reading copy -- blue), respectfully report that House Bill No. 521 be concurred in.

Signed: Wm Yellowtail
Senator William "Bill" Yellowtail, Chair

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 10, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 555 (first reading copy -- blue), respectfully report that House Bill No. 555 be amended as follows and as so amended be concurred in.

Signed: Wm Yellowtail
Senator William "Bill" Yellowtail, Chair

That such amendments read:

1. Title, line 8.

Following: "~~CERTIFICATIONS,~~"

Insert: "REQUIRING GOVERNMENTAL ENTITIES TO PAY FOR
CERTIFICATIONS;"

2. Title, line 13.

Following: "~~25-10-405,~~"

Insert: ", 25-10-405,"

3. Page 6.

Following: line 9

Insert: "Section 2. Section 25-10-405, MCA, is amended to read:

"25-10-405. Governmental entities not required to prepay fees -- exceptions. The state, a county, a municipality, or any subdivision thereof or any officer when prosecuting or defending an action on behalf of the state, a county, a municipality, or a subdivision thereof is not required to pay or deposit any fee or amount to or with any officer during the prosecution or defense of an action, except the fee under 25-1-201(1)(p) for filing a motion for substitution of a judge and all fees for photocopies, postage and handling, certifications, authentications, and record searches.""

Renumber: subsequent sections

-END-

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 1

DATE 3-10-93

BILL NO. HB 573

RE: HB 573

In case I'm unavailable when this bill is heard in the Senate, I would appreciate it if you would address these adjustments for me and present them to the committee members.

Section 2 - Page 5 - 70-24-108

Clarify that any one method of notification is all that is necessary for notice i.e., deliver notice in person then not necessary to mail etc.

Page 6 - Paragraph (2)

If a landlord accepts rent or a deposit. ---- Should read full rent or full deposit before this consent can be transmitted. Also that a bounced check for any reason also nullifies this consent or tenant landlord relationship.

Section 6 - Page 9 - 70-24-321 Para (g) Line 6 thru 12

There should be a distinction here between single family dwellings and multifamily dwellings (apartments). Such as PHA, HUD and condominium type housing units.

The HUD units as ours specify that NO business may be operated within the community. Business attracts customers and could place undue burdens on the other residents by increased traffic, excess wear and tear, greater utility costs, liability, etc. Must have exemption for these types of housing facilities.

Section 8 - Page 11 - Para (b) lines 13 thru 16

Clarification needed here as to amount and extent of remedy may be undertaken. Could cause financial hardship on owner. Very tricky grounds here. Need monetary limits and type of repairs.

THANK YOU!
Walter F. Jackovich

Walter F. Jackovich
3400 Hill Avenue
Butte, Montana 59701
Ph. 406-494-3400

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 2

DATE 3-10-93

BILL NO. HB 562

Fr. Jerry Lowney, PhD
Sociology Department
Carroll College
Helena, Mt., 59625
March 10, 1993

TO: JUDICIARY COMMITTEE, MONTANA STATE SENATE

RE: CHILD PORNOGRAPHY

Members of the Committee,

Unfortunately, I am unable to be present to testify in person before your committee as I did before the House committee.

I wish to support Representative Jim Rice's Bill regarding child pornography. I support the bill as you may suspect as a Catholic priest. In my role as the chairman of the Social Justice Committee of the Priests' Council for the Diocese of Helena I have supported legislation regarding children, particularly the revision of Montana's Child Labor Laws. Thus, I support any legislation that reduces the abuse and exploitation of children.

Moreover, as a sociologist I have strong comments regarding this bill.

One of my major fields in sociology is that of deviant behavior, including criminology and delinquency. I have co-authored a major text, Deviant Reality: Alternative World Views, and published several articles in this field.

In sociology there are many arguments regarding the dysfunctions of criminalizing deviant activity classified as "victimless crimes", i.e. when the activity involves only "consenting adults". All such libertarian arguments collapse, however, when the activity is "non-consenting" or involves persons other than adults, i.e. children.

In 1980 I joined a group of American sociologists to study the criminal justice of Denmark. At that time, Denmark had passed the most liberal laws dealing with victimless crimes, such as prostitution and pornography. In our work in Denmark, I and the other American sociologists were appalled at the child pornography displayed in stores. We felt this was truly exploitation of children. Before long, the Danish government reversed itself as regards child pornography. They banned the photography of children engaged in sexual activity.

The problem of the Danish child pornography did not stop with the government's ban. The United States and other countries have been besieged with material displaying children that had been photographed before the change in Danish law. The raids last weekend (including a raid in Missoula) involved such Danish material reproduced and distributed via computers.

Such materials stimulate a person who is vulnerable to becoming a pedophile. The depiction of such material holds a child forth as a sex object. The behavior displayed and the enticement is then "learned" by the person.

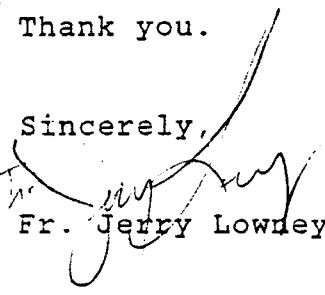
The material may not effect the sexual orientation of the person, but it may effect the object of such orientation.

There are other law enforcement arguments to support this legislation. I am sure that they will be presented by other proponents.

I urge the committee to recommend that this bill do pass.

Thank you.

Sincerely,


Fr. Jerry Lowney



Montana Citizens for Decency through Law, Inc.

P.O. Box 4071 • Missoula, Montana 59806 • (406) 777-5025 or (406) 777-5862 Fax: (406) 777-5150

Dallas Erickson
President

Terry V. Crooks
Vice-president

Wilford (Jr.) Johnson
Secretary Treasurer

March 10, 1993

The Honorable Bill Yellowtail
Senate Judiciary Committee
Capital Station
Helena MT 598620

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 3

DATE 3-10-93

BILL NO. HB562

Reference: Testimony before Senate Judiciary Committee in
Support of HB562 Sexual Exploitation of Children.

Dear Chairman Yellowtail,

I am here to testify for HB562, a bill that would strengthen the laws in Montana against the sexual exploitation of children. I testify as president of Montana Citizens for Decency through Law and as a father of nine children.

The present Montana Law called Sexual Abuse Of Children (45-5-625 with definition of "sexual contact" at 45-2-101 [60]) is very limited in its protection of children against those who would exploit them for sexual purposes. Under the present law the following activities, on video or photographs, would be legal to distribute:

- * Children involved in sexual conduct of any type with animals
- * Children masturbating
- * Lewd exhibition of children's genital's, pubic or rectal area's
- * Children simulating sex
- * Sadomasochistic abuse involving children
- * Children defecating or urinating for the purpose of sexual stimulation of the viewer

Under the present law it is legal to possess any type of child pornography if intent to sell can not be proven. It therefore is legal for a pedophile to possess the photo's of himself molesting children if the identity of the children could not be made and intent to sell could not be proven.

In 1982, the Supreme Court in New York v. Ferber 458 U.S. 747 (1982), legally distinguished child pornography from obscenity. The court in Ferber focused on the harm to the

victim rather than the effects of the material on the audience. In essence, child pornography became "obscene per se" because of the harm its production and distribution has upon the child victim. The court concluded that if the material depicted children in lewd sexual conduct, the material was subject to regulation. The bill that you have before you reflects the Ferber principles.

To some degree the market of child pornography has changed in the last decade or so. Today the child pornography market primarily consists of clandestine activities that result in materials being sold and traded among individuals through private communications. These transaction may involve no money, thereby eliminating the commercial motivation for much of the production and distribution of child pornography. This is not to say, however, that there are not individuals who participate in the distribution of child pornography purely for the monetary gain they may realize. In 1982, in another state, Catherine Wilson was prosecuted and convicted for distributing child pornography. At the time of her arrest she had a mailing list of 5000 names.

In Montana there is not a major problem with child pornography but as you will note from the enclosed newspaper clippings there have been times when charges could have been made if there had been a good law. The U.S. Attorney has handled two or three cases of child pornography but I believe that they happened in areas of Federal jurisdiction. Last week, however, there was a nationwide crackdown on computer perverts who were trafficking in child pornography. According to the newspaper article that I have attached, a location in Missoula was searched as part of the investigation.

One of the most vivid memories of my law enforcement years was of photo's taken by a father as he sexually molested his 12 month old daughter in front of his other children and then photographed them in sexually suggestive positions. He was charged with the molestation but if it had been a situation where the children could not have been identified then he would have gotten away with the crime.

You may say, there isn't a problem in Montana so why bother with this law? Who is going to sacrifice their children to make it a problem? Will you?

Some may say that there is a federal law against this material so why do we need a state law? Why don't we do away with all our laws. Should we have to rely on the Federal Government for the protection of our children?

Although the ACLU is opposed to the production of child pornography, they support the free flow and display of child pornography once it has been produced. I believe that 99% of Montanans are totally opposed to it and I hope that your actions will reflect their desires.

Sincerely



Dallas D. Erickson

Pornography poses an even greater threat to the child victim than does sexual abuse or prostitution. Because the child's actions are reduced to a recording, the pornography may haunt him in future years, long after the original misdeed took place. A child who has posed for the camera must go through life knowing that the recording is circulating within the mass distribution system for child pornography.

(Shouvlin, "Preventing the sexual Exploitation of Children: A Model Act," 17 Wake Forest L. Rev. 535, 545 (1981))

Children involved in pornography can be psychologically scarred and suffer emotional distress for life. They may see themselves as objects to be sold rather than people who are important.

(U.S. General Accounting Office, SEXUAL EXPLOITATION OF CHILDREN - A PROBLEM OF UNKNOWN MAGNITUDE iii (1982))

EXHIBIT 3

DATE 3-10-93

HB 562

Feds raid 'computer perverts'

Child-porn warrants issued in 15 states

MIAMI (AP) — Federal agents raided 40 locations around the nation Thursday in the first crackdown on a worldwide computerized child porn ring, the U.S. Customs said.

The raids in 15 states from Florida to Washington may also lead to discovery of domestic pornographic "bulletin boards," said William Rosenblatt, chief of the U.S. Customs Service in Miami.

"It's not only the largest operation in U.S. history, I want you to know it's the first," he said. "It involves the high-tech exchange of child pornography — basically what we have here is a bunch of computer perverts."

Computer transmissions are quickly taking over from traditional magazine formats among pedophiles, he said.

No arrests were made immediately, but if possession is verified, suspects can be charged with federal counts that could put them in prison for 15 to 20 years, he said.

Missoula location among the targets

U.S. Customs agents and a Missoula police officer raided a Missoula location Thursday as part of a federal investigation into a worldwide, computerized child-pornography ring.

Almost nothing was known publicly Thursday about the Missoula search. The U.S. Customs office in Great Falls refused to release any information, and Missoula police Sgt. Bill Wicks, who acted as local liaison for the Missoula operation, said he had been sworn to secrecy by Customs agents.

A search warrant for the Missoula location was on file in U.S. District Court in Missoula, but the warrant has been sealed on the request of the government.

— Michael Moore, Missoulian

In Florida, warrants were served in Boca Raton, Maitland and Williston, Customs said.

The yearlong investigation, named "Operation Longarm," began with a child porn sting on a Miami man in March 1992.

That uncovered the existence of a mem

(See PERVERTS, Page A-8)

Missoulian 3-5-93

FILED 3

3-10-93

HB 562

Perverts

(continued)

bers-only. Denmark-based computer bulletin boards named Bamse, Screwdriver and Vestbjerg. They charge about \$80 a year to transmit photos by phone, Rosenblatt said.

The quality of the international computer transmissions by phone line was so good, recipients could make copies of the pornographic pictures on color printers in the United States with no loss in quality, he said.

Subscribers received a computer directory of photos — often in broken English — with titles like "India family love incest," or "Young girl play with dildo," and "Young Nippon girl standing nude." They then ordered the

photos, which were sent by computer modem.

"They range anywhere from what we call child erotica to explicit sexual activity involving the exploitation of minor children," Rosenblatt said. "Generally pedophiles want children that range from the age of 5 to 12."

Police in Denmark raided the three bulletin boards, arresting two men and finding about 6,000 customers listed. The names of about 100 U.S. residents were passed on to U.S. Customs, which narrowed the list down to the 40 raided Thursday.

State and local police accompanied customs agents on the raids to look for computer porn rings, and because past experience has shown a connection between such rings and child sexual abuse.

"Fifteen to 25 percent of the recipients of pedophile information are also convicted child mo-

lesters," Rosenblatt said. "These are human time bombs, ticking, waiting to go off."

Customs first became aware of computer-porn rings in the mid-1980s, but the improvement of technology in the last two years

has allowed them to spread rapidly around the world, Rosenblatt said.

To set up such an operation, computer owners now need only \$4,000 to \$5,000, although some have spent up to \$40,000.

ROUNDUP

Suspect denies sex charges

■ **MISSOULA** — A Lolo man accused of drugging a teenage boy and then having sex with him pleaded innocent Monday to charges of deviate sexual conduct, sexual assault, criminal endangerment and unlawful restraint.

David Rowland Gibson was arrested in early July after a 14-year-old Lolo boy told a Missoula County sheriff's detective that Gibson had injected him with some kind of drug, possibly LSD. The sexual acts allegedly occurred between June 1 and June 30, although the victim is unsure of the exact dates.

A subsequent search of Gibson's mobile home yielded pornographic magazines and other items of sexual paraphernalia.

Gibson's attorney, public defender Larry Mansch, asked District Judge Douglas Harkin to reduce Gibson's bail, saying that the teen had burglarized Gibson's home and may have fabricated the allegations. Deputy Missoula County Attorney Fred Van Valkenburg said medical evidence suggests the boy was subjected to homosexual sex.

Harkin kept bail at \$5,000.

— Michael Moore, Missoulian

Man charged with sexual assault

■ **MISSOULA** — A Missoula man was charged Friday with felony sexual assault for allegedly performing oral sex on a year-old boy. Shawn Steele, 22, 2227 River Road, allegedly committed the act Dec. 20. An arrest warrant was issued for Steele on Dec. 30, but he didn't make his initial court Justice Court appearance until Friday. According to court documents, the act took place at Steele's home after the child's mother had bathed the boy, then given him to Steele to put to bed. Later that night, the child was taken to the hospital with genital injuries, court records state. A neighbor of Steele's told Missoula County sheriff's Capt Larry Weatherman that the boy's mother previously had shown her magazines with pictures of children performing sexual acts. The mother told the neighbor the magazines belonged to Steele, records state. Weatherman searched Steele's home Dec. 27 and found several pornographic magazines. Justice of the Peace David Clark allowed Steele to remain free on his own recognition.

Missoula man charged with rape

■ **MISSOULA** — A Missoula man was charged Friday with raping 6-year-old twin sisters in June.

Jack H. Swearingen, 27, allegedly forced the girls to take their clothes off and pose for pictures, and also sexually assaulted them.

Swearingen was arrested Thursday after police learned that the girls, who spent the summer with their father in Tacoma, Wash., told their father they had been assaulted by a man named Jack. Detectives spoke with the girl's mother, who confirmed she had a friend named Jack Swearingen.

Police searched Swearingen's Charlo Street house Thursday night and said they found pictures of the naked girls along with pornographic magazines and videos.

Justice of the Peace David Clark set bail at \$25,000.

Michael Moore, Missoulian

MONTANA ROUNDUP

Lolo man pleads to sex crime

■ **MISSOULA** — A Lolo man has pleaded guilty to sexually assaulting a 14-year-old boy last summer.

David Rowland Gibson agreed to plead guilty Tuesday to one felony count of sexual assault and one misdemeanor count of unlawful restraint, according to Deputy Missoula County Attorney Fred Van Valkenburg. Charges of deviate sexual conduct and criminal endangerment were dismissed, Van Valkenburg said.

Gibson's trial had been scheduled to begin Tuesday. Gibson was arrested in early July after the Lolo boy told a Missoula sheriff's detective that Gibson had injected him with a drug that made him pass out.

B-2—Missoulian, Friday, February 21, 1992

the CHURCH of
JESUS CHRIST
of LATTER-DAY
SAINTS

STEVENSVILLE MONTANA STAKE

Senator Bill Yellowtail, Chairman
Senate Judiciary Committee
Capital Station
Helena, Montana 59620

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 4

DATE 3-10-93

BILL NO. HBS62

Dear Senator Yellowtail,

As the President of the Primary Organization of the Stevensville Montana Stake of the Church of Jesus Christ of Latter-day Saints, I speak for the 5,000 Primary children in the State of Montana. The Primary Organization is composed of children beginning at 1½ years of age.

I urge you to pass HB 562 on the Sexual Exploitation of Children. Please pass this bill to protect our innocent children from those who would exploit them for sexual purposes, and help to eliminate the chance of destroying our future adults and leaders.

Thank you for your attention to this matter.

Sincerely,

Gail M. Hellander

Gail M. Hellander
600 Main Street
Stevensville, Montana 59870
(406) 777-5605

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 5

DATE 3-10-93

BILL NO. HB562

169 Edens Lane
Florence, Mt. 59632
March 10, 1993

The Honorable Bill Yellowtail
Chairman, Senate Judiciary Committee
Capital Station, Helena, Mt. 59620

Dear Chairman Yellowtail,

Five years ago the Boy Scouts of America identified five unacceptables in our society, which they have pledged to take a stand against. Those unacceptables are child abuse, drug abuse, illiteracy, hunger and unemployment.

As part of their attack on child abuse they developed a training program to help leaders identify signs of child abuse, as well as some of the characteristics and typical behaviors of child abusers. They also instituted policies to deny child abusers access to leadership positions in B.S.A., thereby preventing access to our youth. As a volunteer serving as Cub Scout Roundtable Commissioner and Day Camp Director, it became my responsibility to conduct this training and help implement these new policies in the Bitterroot District of the Montana Council. I still continue to conduct that training. As a result of this training I have developed an increasing awareness of the insidious threat child abuse poses to the youth of our nation. I have, therefore, asked it part of my personal agenda to take a stand on the issues of child abuse.

One of those issues is child pornography. There is a connection between child abuse, as well as other types of abuse, and pornography. It is an undisputed fact that child pornography is a staple of pedophiles. Pedophiles are habitual abusers, who literally can victimize hundreds of children in their lifetimes. They use pornography to manipulate their victims and break down childrens' natural resistance. Pedophiles are generally patient in their process of seduction, because they are interested in long term abusive relationships.

Statistically, one in three girls and one in seven boys will be sexually abused before the age of eighteen. (Law enforcement officials generally believe that the number of boys is much higher, but that boys tend to report less frequently than girls.) I personally find both of these statistics to be extremely alarming and unacceptable. As a society we need to protect our children!

Even more alarming than the statistics is the reality of this problem. The devastation caused in the lives of victims and their families is almost incomprehensible. I am personally acquainted with nine victims of child abuse. Some of these victims are long time friends or children of friends. Each

of these individuals and their families have suffered incredibly as a result of their abuse. Each one has undergone and continues to undergo extensive therapy, but not one of them is completely cured at this time.

As I stated before, we know there is a link between pornography and child abuse, as well as other types of abuse. Pornography has no redeeming qualities! It has no worthwhile purpose! It is an evil in our society that we should obliterate as aggressively as we would cut out a cancerous growth invading a child's body, or an adult's for that matter!

Child pornography is totally unacceptable. There should be no question about that. I, therefore, support House Bill 562, and all of the Youth Protection guidelines put out by the Boy Scouts of America are in alignment with my position.

Yours truly,

Kathleen J. Holmer

Kathleen J. Holmer
Cub Scout Day Camp Director
Bitterroot District
Montana Council, B.S.A.

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 10, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 555 (first reading copy -- blue), respectfully report that House Bill No. 555 be amended as follows and as so amended be concurred in.

Signed: Wm Yellowtail
Senator William "Bill" Yellowtail, Chair

That such amendments read:

1. Title, line 8.

Following: "~~CERTIFICATIONS,~~"

Insert: "REQUIRING GOVERNMENTAL ENTITIES TO PAY FOR
CERTIFICATIONS;"

2. Title, line 13.

Following: "~~25-10-405,~~"

Insert: ", 25-10-405,"

3. Page 6.

Following: line 9

Insert: "Section 2. Section 25-10-405, MCA, is amended to read:

"25-10-405. Governmental entities not required to prepay fees -- exceptions. The state, a county, a municipality, or any subdivision thereof or any officer when prosecuting or defending an action on behalf of the state, a county, a municipality, or a subdivision thereof is not required to pay or deposit any fee or amount to or with any officer during the prosecution or defense of an action, except the fee under 25-1-201(1)(p) for filing a motion for substitution of a judge and all fees for photocopies, postage and handling, certifications, authentications, and record searches.""

Renumber: subsequent sections

-END-

EXHIBIT 6
DATE 3-10-93
#3 555

m - Amd. Coord.
m Sec. of Senate

Lynch
Senator Carrying Bill

541201SC.Sma

DATE 3-10-93

SENATE COMMITTEE ON JUDICIARY

BILLS BEING HEARD TODAY: HB 521, 562, 573

Name	Representing	Bill No.	Check One	
			Support	Oppose
John Connor	MT County Atty Assn	HB562	X	
Harley WARNER	ASSOC OF CHURCHES	HB 521 HB 562	X X	
Melissa Case	Montana Peoples Action	HB 573	X	
Walter A. Leckovic	SELF	HB 573		X
Tootie Welker	MAPP	HB 573	X	
Craig Young	MLTC	HB 573	X	
Lauree Koutnik	Christian Coalition of MT	HB 521 562/521	X	
SHARON Hoff	MT CATH. Conf	HB 521 HB 562	X	
Steve Wain	SELF	521 562	X	
John Ellison	Self	562	X	
Jenny Erickson	Self	562	X	
Kathleen J. Holmstrom	Myself	562	X	
Gail Hellander	Primary Organization - LDS Church	562	X	
Dallas Erickson	Montana Citizens Co-Operation	562	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY