HOUSE BILL NO. 69

- 1/07 Introduced
- 1/07 Referred to Judiciary
- 1/10 Hearing
- 1/10 Healing 1/25 Adverse Committee Report 1/25 Objection to Adverse Committee Report 1/29 2nd Reading Pass As Amended 1/31 3rd Reading Do Not Pass

- 1/31 Bill Killed

LC 0392/01

HOUSE BILL NO. 69 1 BRADLEY 2 INTRODUCED BY 7 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO CREATE AN 5 EVIDENTIARY EXCEPTION FOR THE ADMISSION OF STATEMENTS OF 6 CERTAIN VICTIMS OF ABUSE OR SEXUAL CONTACT WHO ARE MINORS; 7 TO ALLOW FOR THE VIDEOTAPING OF THE TESTIMONY OF SUCH 8 VICTIMS; AND AMENDING SECTION 46-15-401, MCA." 9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: 10 11 NEW SECTION. Section 1. Statement of minor -- hearsay 12 exception. (1) An out-of-court statement made by a minor, 10 13 years old or under, describing any act of sexual contact 14 performed with or on the minor or any abusive act performed 15 on the minor, not otherwise admissible by a statute or court rule, is admissible in evidence in criminal proceedings or 16 proceedings under [Title 41, chapter 3] if: 17 18 (a) the court finds, in a hearing conducted outside the presence of the jury, that the time, content, and 19 circumstances of the statement provide sufficient safequards 20 21 of reliability; and 22 (b) the minor either: 23 (i) testifies at the proceedings; or 24 (ii) is unavailable as a witness, but there is corroborative evidence of the act that is the subject of the 25

Montana Legislative Council

statement.

2 (2) If a statement is admitted pursuant to this 3 section, the court shall instruct the jury that it is for 4 the jury to determine the weight and credit to be given to 5 the statement and that in making the determination, it shall 6 consider the age and maturity of the minor, the nature of 7 the statement, the circumstances under which the statement 8 was made, and any other relevant factor.

9 (3) The proponent of a statement referred to in 10 subsection (1) must give the adverse party reasonable notice 11 of his intention to offer the statement and the particulars 12 of the statement.

13 (4) Unavailability under subsection (1)(b)(ii) may be
14 based on recommendations from persons described in
15 46-15-401(2)(b) that requiring the minor to testify would
16 cause the minor emotional trauma.

17 Section 2. Section 46-15-401, MCA, is amended to read: 18 "46-15-401. When videotaped testimony admissible. 19 (1) For any prosecution commenced under 45-5-502(3), 20 45-5-503, 45-5-505, or 45-5-613 45-5-507, or any proceeding 21 under Title 41, chapter 3, the testimony of the victim, at 22 the request of such victim and with the concurrence of the 23 prosecuting attorney, may be recorded by means of videotape 24 for presentation at trial. The testimony so recorded may be 25 presented at trial and shall be received into evidence. The

> -2- INTRODUCED BILL HB69

LC 0392/01

1 victim need not be physically present in the courtroom when 2 the videotape is admitted into evidence. 3 (2) (a) When the victim referred to in subsection (1) 4 is a minor 10 years of age or under, the prosecutor or petitioner may request that the victim's testimony be 5 6 recorded by means of videotape for presentation at trial. 7 (b) The request may be based on recommendations that 8 requiring the minor to testify would cause emotional trauma 9 to the minor. The recommendations must come from the 10 victim's therapist or any other person having direct contact 11 with the victim, whose recommendations are based on specific behavioral indicators exhibited by the child." 12 13 NEW SECTION. Section 3. Codification instruction. Section 1 is intended to be codified as an integral part of 14 Title 46 and as an integral part of Title 41, chapter 3. 15 16 NEW SECTION. Section 4. Severability. If a part of 17 this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is 18 19 invalid in one or more of its applications, the part remains 20 in effect in all valid applications that are severable from 21 the invalid applications.

-End-

-3-

49th Legislature

HB 0069/02

JUDICIARY COMMITTEE Recommend do not pass

1	HOUSE BILL NO. 69
2	INTRODUCED BY BRADLEY, NATHE, KADAS
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4	A BILL FOR AN ACT ENTITLED: "AN ACT TO CREATE AN
5	EVIDENTIARY EXCEPTION FOR THE ADMISSION OF STATEMENTS OF
6	CERTAIN VICTIMS OF ABUSE OR SEXUAL CONTACT WHO ARE MINORS;
7	TO ALLOW FOR THE VIDEOTAPING OF THE TESTIMONY OF SUCH
8	VICTIMS; AND AMENDING SECTION 46-15-401, MCA."
9	
10	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
11	NEW SECTION. Section 1. Statement of minor hearsay
12	exception. (1) An out-of-court statement made by a minor, 10
13	years old or under, describing any act of sexual contact
14	performed with or on the minor or any abusive act performed
15	on the minor, not otherwise admissible by a statute or court
16	rule, is admissible in evidence in criminal proceedings or
17	proceedings under [Title 41, chapter 3] if:
18	(a) the court finds, in a hearing conducted outside
19	the presence of the jury, that the time, content, and
20	circumstances of the statement provide sufficient safeguards
21	of reliability; and
22	(b) the minor either:
23	(i) testifies at the proceedings; or
24	(ii) is unavailable as a witness, but there is

25 corroborative evidence of the act that is the subject of the



HB 0069/02

1 statement.

2 (2) If a statement is admitted pursuant to this 3 section, the court shall instruct the jury that it is for 4 the jury to determine the weight and credit to be given to 5 the statement and that in making the determination, it shall 6 consider the age and maturity of the minor, the nature of 7 the statement, the circumstances under which the statement 8 was made, and any other relevant factor.

9 (3) The proponent of a statement referred to in 10 subsection (1) must give the adverse party reasonable notice 11 of his intention to offer the statement and the particulars 12 of the statement.

(4) Unavailability under subsection (1)(b)(ii) may be
based on recommendations from persons described in
46-15-401(2)(b) that requiring the minor to testify would
cause the minor emotional trauma.

Section 2. Section 46-15-401, MCA, is amended to read: 17 "46-15-401. When videotaped testimony admissible. 18 (1) For any prosecution commenced under 45-5-502(3), 19 45-5-503, 45-5-505, or 45-5-613 45-5-507, or any proceeding 20 under Title 41, chapter 3, the testimony of the victim, at 21 22 the request of such victim and with the concurrence of the prosecuting attorney, may be recorded by means of videotape 23 for presentation at trial. The testimony so recorded may be 24 25 presented at trial and shall be received into evidence. The

-2-

HB 69 SECOND READING

HB 0069/02

1 victim need not be physically present in the courtroom when the videotape is admitted into evidence. 2 3 (2) (a) When the victim referred to in subsection (1) 4 is a minor 10 years of age or under, the prosecutor or 5 petitioner may request that the victim's testimony be 6 recorded by means of videotape for presentation at trial. 7 (b) The request may be based on recommendations that requiring the minor to testify would cause emotional trauma 8 9 to the minor. The recommendations must come from the 10 victim's therapist or any other person having direct contact 11 with the victim, whose recommendations are based on specific 12 behavioral indicators exhibited by the child." NEW SECTION. Section 3. Codification 13 instruction. Section 1 is intended to be codified as an integral part of 14 Title 46 and as an integral part of Title 41, chapter 3. 15 16 NEW SECTION. Section 4. Severability. If a part of 17 this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is 18 invalid in one or more of its applications, the part remains 19 in effect in all valid applications that are severable from 20 the invalid applications. 21

-End-

-3-

HB 0069/03

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HB 0069/03

HOUSE BILL N	D. 69	
INTRODUCED BY BRADLEY	NATHE.	KADAS

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO CREATE AN 5 EVIDENTIARY EXCEPTION FOR THE ADMISSION OF STATEMENTS OF 6 CERTAIN VICTIMS OF ABUSE OR SEXUAL CONTACT WHO ARE MINORS; 7 TO--Abbow--FOR--THE--VIDEOTAPING--OF--THE--TESTIMONY-OF-SUCH 8 VICTIMS;-AND-AMENDING-SECTION-46-15-4017-MCA."

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10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Statement of minor -- hearsay exception. (1) An out-of-court statement made by a minor, 1D years old or under, describing any act of sexual contact performed with or on the minor or any abusive act performed on the minor, not otherwise admissible by a statute or court rule, is admissible in evidence in criminal proceedings or proceedings-under-{Title-417-chapter-3} if:

(a) the court finds, in a hearing conducted outside
the presence of the jury, that the time, content, and
circumstances of the statement provide sufficient safeguards

21 of reliability; and

(b) the minor either:

(i) testifies at the proceedings; or

24 (ii) is unavailable <u>OR DISQUALIFIED</u> as a witness <u>AT THE</u>
 25 TIME OF THE TRIAL7-but-there-is-corroborative-evidence-of

Montana Legislative Counci

the-act-that-is-the-subject-of-the-statement.

2 (2) If a statement is admitted pursuant to this 3 section, the court shall instruct the jury that it is for 4 the jury to determine the weight and credit to be given to 5 the statement and that in making the determination, it shall 6 consider the age and maturity of the minor, the nature of 7 the statement, the circumstances under which the statement 8 was made, and any other relevant factor.

9 (3) The proponent of a statement referred to in 10 subsection (1) must give the adverse party reasonable notice 11 of his intention to offer the statement and the particulars 12 of the statement.

13 (4)--Unavailability--under-subsection-(1)(b)(ii)-may-be 14 based--on--recommendations---from---persons---described---in 15 46-15-401(2)(b)--that--requiring--the-minor-to-testify-would 16 cause-the-minor-emotional-traumar

17 Section-2:--Section-46-15-4017-MEA7-is-amended-to-read:

18 #46-15-401---When--videotaped---testimony---admissible. 19 <u>(1)</u>--Por---any---prosecution--commenced--under--45-5-502(3), 20 45-5-5037-45-5-5057-or-45-5-613 <u>45-5-5077</u> or-any--proceeding 21 <u>under--Title--417-chapter-37</u> the-testimony-of-the-victim7-at 22 the-request-of-such-victim-and-with-the-concurrence--of--the

23 prosecuting--attorney--may-be-recorded-by-means-of-videotape

24 for-presentation-at-trial--The-testimony-so-recorded-may--be

25 presented--at-trial-and-shall-be-received-into-evidence--The

-2-

HB 69

HB 49

HB 0069/03

victim-need-not-be-physically-present-in-the-courtroom--when 1 2 the-videotape-is-admitted-into-evidence-3 t2)--ta}-When--the-victim-referred-to-in-subsection-ti} 4 is-a-minor-10-years-of--age--or--under;--the--prosecutor--or 5 petitioner--may--request--that--the--victimis--testimony--be 6 recorded-by-means-of-videotape-for-presentation-at-trial. 7 (b)--The-request-may-be-based-on--recommendations--that 8 requiring--the-minor-to-testify-would-cause-emotional-trauma 9 to--the--minor---The--recommendations--must--come--from--the 10 victim's-therapist-or-any-other-person-having-direct-contact 11 with-the-victim;-whose-recommendations-are-based-on-specific 12 behavioral-indicators-exhibited-by-the-child-" 13 NEW-SECTION---Section-3---Codification----instruction-14 Section-1-is-intended-to-be-codified-as-an-integral-part--of 15 Title-46-and-as-an-integral-part-of-Title-417-chapter-3-16 NEW SECTION. Section 2. Severability. If a part of 17 this act is invalid, all valid parts that are severable from 18 the invalid part remain in effect. If a part of this act is 19 invalid in one or more of its applications, the part remains 20 in effect in all valid applications that are severable from the invalid applications. 21

-End-

-3-

HB 39