

HOUSE BILL NO. 69

1/07 Introduced
1/07 Referred to Judiciary
1/10 Hearing
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

1 HOUSE BILL NO. 69
 2 INTRODUCED BY BRADLEY

3
 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

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.

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



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
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
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 41, chapter 3.

16 NEW SECTION. Section 4. 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
21 the invalid applications.

-End-

JUDICIARY COMMITTEE
RECOMMEND DO NOT PASS

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- 19 the presence of the jury, that the time, content, and
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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~~
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