HOUSE JOINT RESOLUTION NO. 37

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INTRODUCED BY HANNAH, D. BROWN

BY REQUEST OF THE HOUSE JUDICIARY COMMITTEE

IN THE HOUSE

February 20, 1985	Introduced and referred to Committee on Judiciary.			
February 23, 1985	Committee recommend bill do pass as amended. Report adopted.			
	Bill printed and placed on members' desks.			
February 25, 1985	Second reading, do pass.			
	Considered correctly engrossed.			
February 27, 1985	Third reading, passed.			
	Transmitted to Senate.			
IN THE SENATE				
March 5, 1985	Introduced and referred to Committee on Judiciary.			
March 22, 1985	Committee recommend bill be concurred in as amended. Report adopted.			
March 23, 1985	Second reading, concurred in.			
March 26, 1985	Third reading, concurred in.			
	Ayes, 46; Noes, 4.			

IN THE HOUSE

March 27, 1985

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April 8, 1985

Received from Senate.

Second reading, amendments concurred in.

On motion, rules suspended and bill placed on third reading this day.

Third reading, amendments concurred in.

Sent to enrolling.

Reported correctly enrolled.

LC 1902/01

HOUSE JOINT RESOLUTION NO. 37_ INTRODUCED BY Hamon Care Brown 2 BY REQUEST OF THE HOUSE JUDICIARY COMMITTEE 3 4 A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF 5 REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THAT THE 6 SUPREME COURT STUDY THE OUESTION OF USE IN A CRIMINAL 7 8 PROSECUTION OF OUT-OF-COURT STATEMENTS OF AN ALLEGED VICTIM OF THE OFFENSE OF SEXUAL ABUSE OF CHILDREN. 9

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WHEREAS, nationwide, the incidence of sexual abuse of 11 children has been increasing at an alarming rate; and 12 13 WHEREAS, in most cases, the only witnesses to sexual

14 abuse of children are the victims themselves; and

15 WHEREAS, child victims of sexual abuse very often do 16 not make good witnesses in a criminal prosecution because they may be traumatized by the incident, because they may 17 have forgotten the details of the incident, or because they 18 fear the adults participating in the prosecution; and 19

20 WHEREAS, criminal prosecutions against a person accused of sexual abuse of children may be dismissed or may be 21 22 unsuccessful if the child victim cannot or will not testify; 23 and

24 WHEREAS, when a suspected case of sexual abuse of 25 children is reported to a law enforcement or social services



Montana Legislative Council

1 agency, that agency often obtains a written or videotaped 2 statement from the alleged victim; and

3 WHEREAS, when a child victim cannot or will not 4 testify, the only evidence against the accused may be the 5 child's statement to a third party; and

6 WHEREAS, House Bill No. 69 was introduced into the 7 Forty-Ninth Legislature to resolve this problem bν 8 permitting under limited circumstances the use, in a 9 criminal prosecution for sexual abuse of children, of 10 out-of-court statements made by the victim; and

11 WHEREAS, House Bill No. 69 did not gain the approval of 12 the House of Representatives, in part because of a concern 13 that to allow this use of out-of-court statements would violate the accused's right of confrontation guaranteed by 14 15 the sixth amendment to the United States Constitution and by 16 Article II, section 24, of the Montana Constitution; and 17 WHEREAS, opponents of the bill recognized that the bill 18 was a valid attempt to resolve a difficult social problem;

19 and 20 WHEREAS, time and study should be spent on an attempt

21 to solve this problem while protecting the rights of all 22 those involved; and

23 WHEREAS, under Article VII, section 2 of the Montana 24 Constitution, the Montana Supreme Court has the authority to 25 promulgate rules of evidence for use in state courts; and

-2-INTRODUCED BILL HJR 37

LC 1902/01

WHEREAS, the Montana Supreme Court has promulgated
 rules relating to hearsay, specifically Rules 801 through
 806, Montana Rules of Evidence.

4

5 NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE 6 OF REPRESENTATIVES OF THE STATE OF MONTANA:

7 (1) That the Legislature requests the Montana Supreme 8 Court to study, with a view toward amending its rules on 9 hearsay, the evidentiary and constitutional problems created 10 by the use in limited circumstances of out-of-court 11 statements against those accused of sexual abuse of 12 children.

(2) That if the results of the Supreme Court's study
of these problems indicate that the present hearsay rules
can be amended to resolve the problems in a manner that is
constitutional, the Court be urgently requested to adopt
such amendments.

18 (3) That a copy of this resolution be forwarded by the
19 Secretary of State to the Honorable Jean Turnage, Chief
20 Justice of the Montana Supreme Court.

-End-

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49th Legislature

HJR 0037/02

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APPROVED BY COMMITTEE ON JUDICIARY

1	HOUSE JOINT RESOLUTION NO. 37	1
2	INTRODUCED BY HANNAH, D. BROWN	2
3	BY REQUEST OF THE HOUSE JUDICIARY COMMITTEE	3
4		4
5	A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF	5
6	REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THAT THE	6
7	SUPREME COURT STUDY THE QUESTION OF USE IN A CRIMINAL	7
8	PROSECUTION OF OUT-OF-COURT STATEMENTS OF AN ALLEGED VICTIM	8
9	OF THE OFFENSE OF SEXUAL ABUSE OF CHILDREN.	9
10		10
11	WHEREAS, nationwide, the incidence of sexual abuse of	11
12	children has been increasing at an alarming rate; and	12
13	WHEREAS, in most cases, the only witnesses to sexual	13
14	abuse of children are the victims themselves; and	14
15	WHEREAS, child victims of sexual abuse very often do	15
16	not make good witnesses in a criminal prosecution because	16
17	they may be traumatized by the incident, because they may	17
18	have forgotten the details of the incident, or because they	18
19	fear the adults participating in the prosecution; and	19
20	WHEREAS, criminal prosecutions against a person accused	20
21	of sexual abuse of children may be dismissed or may be	21
22	unsuccessful if the child victim cannot or will not testify;	22
23	and	23
24	WHEREAS, when a suspected case of sexual abuse of	24

children is reported to a law enforcement or social services

agency, that agency often obtains a written or videotaped statement from the alleged victim; and

WHEREAS, when a child victim cannot or will not testify, the only evidence against the accused may be the child's statement to a third party; and

WHEREAS, House Bill No. 69 was introduced into the Forty-Ninth Legislature to resolve this problem by permitting under limited circumstances the use, in a criminal prosecution for sexual abuse of children, of out-of-court statements made by the victim; and

WHEREAS, House Bill No. 69 did not gain the approval of the House of Representatives, in part because of a concern that to allow this use of out-of-court statements would violate the accused's right of confrontation guaranteed by the sixth amendment to the United States Constitution and by Article II, section 24, of the Montana Constitution; and

WHEREAS, opponents of the bill recognized that the bill was a valid attempt to resolve a difficult social problem; and

WHEREAS, time and study should be spent on an attempt to solve this problem while protecting the rights of all those involved; and

WHEREAS, under Article VII, section 2 of the Montana Constitution, the Montana Supreme Court has the authority to promulgate rules of evidence for use in state courts; and 25

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HJR 37 SECOND READING

WHEREAS, the Montana Supreme Court has promulgated
 rules relating to hearsay, specifically Rules 801 through
 806, Montana Rules of Evidence.

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NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE
OF REPRESENTATIVES OF THE STATE OF MONTANA:

7 (1) That the Legislature requests the Montana Supreme 8 Court to study, with a view toward amending its rules on 9 hearsay, the evidentiary and constitutional problems created 10 by the use in limited circumstances of out-of-court 11 statements against those accused of sexual abuse of 12 children, AND THAT THE COURT REPORT THE RESULTS OF ITS STUDY 13 TO THE SOTH LEGISLATURE.

14 (2) That if the results of the Supreme Court's study
15 of these problems indicate that the present hearsay rules
16 can be amended to resolve the problems in a manner that is
17 constitutional, the Court be urgently requested to adopt

18 such amendments.

(3) That a copy of this resolution be forwarded by the
Secretary of State to the Honorable Jean Turnage, Chief
Justice of the Montana Supreme Court.

-End-

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HJR 37

BJR 0037/02

1	HOUSE JOINT RESOLUTION NO. 37	1	agency, that agency often obtains a written or videotaped
2	INTRODUCED BY HANNAH, D. BROWN	2	statement from the alleged victim; and
3	BY REQUEST OF THE HOUSE JUDICIARY CONNITTEE	3	WHEREAS, when a child victim cannot or will not
4		. 4	testify, the only evidence against the accused may be the
5	A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF	5	child's statement to a third party; and
6	REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THAT THE	6	WHEREAS, House Bill No. 69 was introduced into the
7	SUPREME COURT STUDY THE QUESTION OF USE IN A CRIMINAL	7	Forty-Ninth Legislature to resolve this problem by
8	PROSECUTION OF OUT-OF-COURT STATEMENTS OF AN ALLEGED VICTIM	8	permitting under limited circumstances the use, in a
9	OF THE OFFENSE OF SEXUAL ABUSE OF CHILDREN.	9	criminal prosecution for sexual abuse of children, of
10		10	out-of-court statements made by the victim; and
11	WHEREAS, nationwide, the incidence of sexual abuse of	11	WHEREAS, House Bill No. 69 did not gain the approval of
12	children has been increasing at an alarming rate; and	12	the House of Representatives, in part because of a concern
13	WHEREAS, in most cases, the only witnesses to sexual	13	that to allow this use of out-of-court statements would
14	abuse of children are the victims themselves; and	14	violate the accused's right of confrontation guaranteed by
15	WHEREAS, child victims of sexual abuse very often do	15	the sixth amendment to the United States Constitution and by
16	not make good witnesses in a criminal prosecution because	16	Article II, section 24, of the Montana Constitution; and
17	they may be traumatized by the incident, because they may	17	WHEREAS, opponents of the bill recognized that the bill
18	have forgotten the details of the incident, or because they	16	was a valid attempt to resolve a difficult social problem;
19	fear the adults participating in the prosecution; and	19	and
20	WHEREAS, criminal prosecutions against a person accused	20	WHEREAS, time and study should be spent on an attempt
21	of sexual abuse of children may be dismissed or may be	21	to solve this problem while protecting the rights of all
22	unsuccessful if the child victim cannot or will not testify;	22	those involved; and
23	and	23	WHEREAS, under Article VII, section 2 of the Montana
24	WHEREAS, when a suspected case of sexual abuse of	24	Constitution, the Montana Supreme Court has the authority to
25	children is reported to a law enforcement or social services	25	promulgate rules of evidence for use in state courts; and
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HJR 37

WHEREAS, the Montana Supreme Court has promulgated
 rules relating to hearsay, specifically Rules 801 through
 806, Montana Rules of Evidence.

5 NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE 6 OF REPRESENTATIVES OF THE STATE OF MONTANA:

4

7 (1) That the Legislature requests the Montana Supreme 8 Court to study, with a view toward amending its rules on 9 hearsay, the evidentiary and constitutional problems created 10 by the use in limited circumstances of out-of-court 11 statements against those accused of sexual abuse of 12 children, AND THAT THE COURT REPORT THE RESULTS OF ITS STUDY 13 TO THE 50TH LEGISLATURE.

14 (2) That if the results of the Supreme Court's study 15 of these problems indicate that the present hearsay rules 16 can be amended to resolve the problems in a manner that is 17 constitutional, the Court be urgently requested to adopt 18 such amendments.

19 (3) That a copy of this resolution be forwarded by the
20 Secretary of State to the Honorable Jean Turnage, Chief
21 Justice of the Montana Supreme Court.

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HJR 37

STANDING COMMITTEE REPORT

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SENATE		March 22	
MR. PRESIDENT			
We, your committee on	JUDICIARY		
having had under consideration		UTION	No
thirdreading copy (blu	1e)		
(Senator Mazurek)	olor		
RESOLUTION TO SUPREME COU	IRT REQUESTING REV	IEW OF HEARSAY RULE	
Respectfully report as follows: That	HOUSE JOINT RESOL	UTION	_{No} 37
be amended as follows:			
1. Page 3, line 8. Following: line 7 Strike: "Court" Insert: "Court's Commi	ssion on Rules of	Criminal Procedure"	
2. Page 3, line 12. Following: " <u>THAT THE</u> " Strike: " <u>COURT</u> " Insert: "Commission"			
3. Page 3, line 14. Following: "of the" Strike: "Supreme Court Insert: "Commission's"	's''		
4. Page 3, line 16. Following: line 15 Strike: "can" Insert: "need to"			
5. Page 3, line 21. Following: "Court" Insert: "for delivery f	to the Commission	on Rules of Criminal	Procedure"
RRXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX		\sim	

Senator Joe Mazurek Chairman.

1 HOUSE JOINT RESOLUTION NO. 37 agency, that agency often obtains a written or videotaged 1 2 INTRODUCED BY HANNAH, D. BROWN statement from the alleged victim; and 2 3 BY REQUEST OF THE HOUSE JUDICIARY COMMITTEE 3 WHEREAS, when a child victim cannot or will not 4 testify, the only evidence against the accused may be the 4 child's statement to a third party; and 5 A JOINT RESOLUTION OF THE SENATE AND THE HOUSE 5 OF 6 REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THAT THE WHEREAS, House Bill No. 69 was introduced into the 6 SUPREME COURT STUDY THE QUESTION OF USE IN A CRIMINAL 7 7 Forty-Ninth Legislature to resolve this problem by 8 PROSECUTION OF OUT-OF-COURT STATEMENTS OF AN ALLEGED VICTIM 8 permitting under limited circumstances the use, in a 9 OF THE OFFENSE OF SEXUAL ABUSE OF CHILDREN. 9 criminal prosecution for sexual abuse of children, of 10 10 out-of-court statements made by the victim; and 11 WHEREAS, nationwide, the incidence of sexual abuse of 11 WHEREAS, House Bill No. 69 did not gain the approval of 12 children has been increasing at an alarming rate; and 12 the House of Representatives, in part because of a concern that to allow this use of out-of-court statements would 13 WHEREAS, in most cases, the only witnesses to sexual 13 violate the accused's right of confrontation guaranteed by 14 abuse of children are the victims themselves; and 14 15 WHEREAS, child victims of sexual abuse very often do 15 the sixth amendment to the United States Constitution and by not make good witnesses in a criminal prosecution because 16 16 Article II, section 24, of the Montana Constitution; and 17 WHEREAS, opponents of the bill recognized that the bill they may be traumatized by the incident, because they may 17 18 have forgotten the details of the incident, or because they 18 was a valid attempt to resolve a difficult social problem; 19 fear the adults participating in the prosecution; and 19 and 20 WHEREAS, criminal prosecutions against a person accused WHEREAS, time and study should be spent on an attempt 20 21 of sexual abuse of children may be dismissed or may be to solve this problem while protecting the rights of all 21 22 insuccessful if the child victim cannot or will not testify: 22 those involved; and 23 WHEREAS, under Article VII, section 2 of the Montana and 23 24 WHEREAS, when a suspected case of sexual abuse of 24 Constitution, the Montana Supreme Court has the authority to promulgate rules of evidence for use in state courts; and 25 children is reported to a law enforcement or social services 25

REFERENCE BILL HJR 37

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WHEREAS, the Montana Supreme Court has promulgated
 rules relating to hearsay; specifically Rules 801 through
 806, Montana Rules of Evidence.

4

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE
OF REPRESENTATIVES OF THE STATE OF MONTANA:

7 (1) That the Legislature requests the Montana Supreme 8 COURT'S COMMISSION ON RULES OF CRIMINAL PROCEDURE to 9 study, with a view toward amending its rules on hearsay, the 10 evidentiary and constitutional problems created by the use in limited circumstances of out-of-court statements against 11 those accused of sexual abuse of children, AND THAT THE 12 COURT COMMISSION REPORT THE RESULTS OF ITS STUDY TO THE 50TH 13 14 LEGISLATURE.

15 (2) That if the results of the Supreme---Court's 16 <u>COMMISSION'S</u> study of these problems indicate that the 17 present hearsay rules can <u>NEED_TO</u> be amended to resolve the 18 problems in a manner that is constitutional, the Court be 19 urgently requested to adopt such amendments.

20 (3) That a copy of this resolution be forwarded by the
21 Secretary of State to the Honorable Jean Turnage, Chief
22 Justice of the Montana Supreme Court FOR DELIVERY TO THE
23 COMMISSION ON RULES OF CRIMINAL PROCEDURE.

-End-

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