

HOUSE JOINT RESOLUTION NO. 37
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 concurrred in as amended. Report adopted.
March 23, 1985	Second reading, concurrred in.
March 26, 1985	Third reading, concurrred in. Ayes, 46; Noes, 4. Returned to House with amendments.

IN THE HOUSE

March 27, 1985

Received from Senate.

April 8, 1985

Second reading, amendments
concurrent in.

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

Third reading, amendments
concurrent in.

Sent to enrolling.

Reported correctly enrolled.

1 HOUSE JOINT RESOLUTION NO. 37
 2 INTRODUCTION BY Harold Lee Brown
 3 BY REQUEST OF THE HOUSE JUDICIARY COMMITTEE

4
 5 A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF
 6 REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THAT THE
 7 SUPREME COURT STUDY THE QUESTION OF USE IN A CRIMINAL
 8 PROSECUTION OF OUT-OF-COURT STATEMENTS OF AN ALLEGED VICTIM
 9 OF THE OFFENSE OF SEXUAL ABUSE OF CHILDREN.

10
 11 WHEREAS, nationwide, the incidence of sexual abuse of
 12 children has been increasing at an alarming rate; and

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
 17 they may be traumatized by the incident, because they may
 18 have forgotten the details of the incident, or because they
 19 fear the adults participating in the prosecution; and

20 WHEREAS, criminal prosecutions against a person accused
 21 of sexual abuse of children may be dismissed or may be
 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

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 by
 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
 14 violate the accused's right of confrontation guaranteed by
 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



1 WHEREAS, the Montana Supreme Court has promulgated
2 rules relating to hearsay, specifically Rules 801 through
3 806, 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.

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

APPROVED BY COMMITTEE
ON JUDICIARY

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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
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19 (3) That a copy of this resolution be forwarded by the
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-End-

STANDING COMMITTEE REPORT

SENATE

March 22 19 85

MR. PRESIDENT

We, your committee on JUDICIARY
having had under consideration HOUSE JOINT RESOLUTION No. 37
third reading copy (blue)
color
(Senator Mazurek)

RESOLUTION TO SUPREME COURT REQUESTING REVIEW OF HEARSAY RULE

Respectfully report as follows: That HOUSE JOINT RESOLUTION No. 37

be amended as follows:

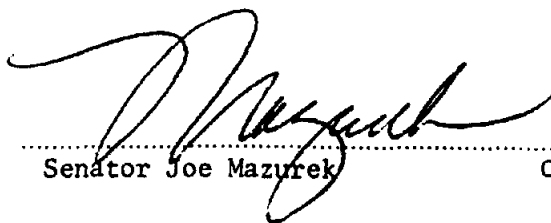
1. Page 3, line 8.
Following: line 7
Strike: "Court"
Insert: "Court's Commission on Rules of Criminal Procedure"
2. Page 3, line 12.
Following: "THAT THE"
Strike: "COURT"
Insert: "Commission"
3. Page 3, line 14.
Following: "of the"
Strike: "Supreme Court's"
Insert: "Commission's"
4. Page 3, line 16.
Following: line 15
Strike: "can"
Insert: "need to"
5. Page 3, line 21.
Following: "Court"
Insert: "for delivery to the Commission on Rules of Criminal Procedure"

~~XXXXXX~~

AND AS AMENDED

~~XXXXXX~~

BE CONCURRED IN



Senator Joe Mazurek

Chairman.

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REFERENCE BILL

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13 ~~COMMISSION~~ COMMISSION REPORT THE RESULTS OF ITS STUDY TO THE 50TH
14 LEGISLATURE.

15 (2) That if the results of the ~~Supreme---Court's~~
16 COMMISSION'S study of these problems indicate that the
17 present hearsay rules can NEED TO 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-