

HOUSE BILL NO. 590

INTRODUCED BY D. FERN

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING CRIMINAL PROCEDURE LAWS RELATED TO SEXUAL OFFENSES; PROVIDING THAT CHILD VICTIMS OF SEXUAL OFFENSES MAY REFUSE TO SUBMIT TO PRETRIAL INTERVIEWS BY DEFENDANTS OR TO SET REASONABLE CONDITIONS ON THE CONDUCT OF INTERVIEWS TO WHICH CHILD VICTIMS CONSENT; AMENDING SECTION 46-24-106, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 46-24-106, MCA, is amended to read:

"46-24-106. Crime victims -- family members -- right to attend proceedings -- exceptions -- right to receive documents -- rights during interview -- pretrial interview involving child victim. (1) Except as provided in subsection (2), a victim of a criminal offense has the right to be present during any trial or hearing conducted by a court that pertains to the offense, including a court proceeding conducted under Title 41, chapter 5. A victim of a criminal offense may not be excluded from any trial or hearing based solely on the fact that the victim has been subpoenaed or required to testify as a witness in the trial or hearing.

(2) A judge may exclude a victim of a criminal offense from:

- (a) a trial or hearing upon the finding of specific facts supporting exclusion or for disruptive behavior; or
- (b) a portion of a proceeding under Title 41, chapter 5, that deals with sensitive personal matters of a youth or a youth's family and that does not directly relate to the act or alleged act committed against the victim.

(3) If a victim is excluded from a trial or hearing upon the finding of specific facts supporting exclusion, the victim must be allowed to address the court on the issue of exclusion prior to the findings.

(4) A family member of a victim may not be excluded from a trial or hearing based solely on the fact that the family member is subpoenaed or required to testify as a witness in the trial or hearing unless there is a showing that the family member can give relevant testimony as to the guilt or innocence of the defendant or that the defendant's right to a fair trial would be jeopardized if the family member is not excluded.

(5) As used in this section, "victim" means:

- (a) a person who suffers loss of property, bodily injury, or reasonable apprehension of bodily injury as

1 a result of:

2 (i) the commission of an offense;

3 (ii) the good faith effort to prevent the commission of an offense; or

4 (iii) the good faith effort to apprehend a person reasonably suspected of committing an offense; or

5 (b) a member of the immediate family of a homicide victim.

6 (6) (a) Except as provided in subsection (6)(c), a victim of a criminal offense has the right to receive,
7 upon request and at no cost to the victim, one copy of all public documents filed in the court file.

8 (b) If the victim is under 18 years of age, copies provided under subsection (6)(a) must be provided to
9 the victim's parent or guardian instead of to the minor victim.

10 (c) Subsection (6)(a) does not apply to:

11 (i) trial transcripts;

12 (ii) trial exhibits;

13 (iii) court proceedings conducted under Title 41, chapter 5; or

14 (iv) documents the prosecutor determines would adversely affect the prosecution if released.

15 (7) A victim of a criminal offense has the right, upon request, to have a victim advocate present when
16 the victim is interviewed about the offense.

17 (8) (a) In a case involving a sexual offense, as defined in 46-23-502, a child victim:

18 (i) may refuse to submit to a pretrial interview by the defendant, the defendant's attorney, or another
19 person acting on behalf of the defendant; or

20 (ii) may set reasonable conditions on the conduct of any pretrial interview to which the child victim
21 consents and may terminate the interview at any time or refuse to answer any question during the interview.

22 (B) THE COURT MAY, AFTER A HEARING AND UPON A FINDING OF SUBSTANTIAL NEED FOR THE PREPARATION OF
23 THE DEFENDANT'S CASE, ORDER THAT AN INTERVIEW BE CONDUCTED OR COMPLETED.

24 (b)(c) For the purposes of this subsection (8), "child victim" means a victim who is under 17 16 years
25 of age. The term includes a victim's immediate family member who is under 17 years of age."

26

27 NEW SECTION. Section 2. Effective date. [This act] is effective on passage and approval.

28

- END -