

MINUTES FOR THE MEETING  
JUDICIARY COMMITTEE  
MONTANA STATE  
HOUSE OF REPRESENTATIVES

February 22, 1985

An executive session of the Judiciary Committee was called to order by Chairman Tom Hannah on Friday, February 22, 1985 at 12:00 o'clock noon in Room 312-3 of the State Capitol Building.

ROLL CALL: All members were present.

ACTION ON HOUSE BILL NO. 794: Rep. Cobb moved that HB 794 DO PASS. The motion was seconded by Rep. O'Hara.

Rep. Brown made a substitute motion that HB 794 DO NOT PASS. The motion was seconded by Rep. Rapp-Svrcek and discussed.

Rep. Cobb stated that he opposes the motion to kill the bill and would like to place a termination date in the bill.

Rep. Keyser said that since this bill has so many built-in protections, it would be a shame to not provide law enforcement with this additional tool. He admits there would probably be only 8 to 12 cases per year where this could ever be used, but he feels it is necessary for those cases.

Rep. O'Hara agrees that this would give the law enforcement people an additional tool to try to deal with some of the high-level drug problems in this state which, he feels, will increase.

Rep. Cobb moved to amend the bill on page 20, following line 2, by inserting "NEW SECTION. Section 19. Termination date. This act terminates July 1, 1987." The motion was seconded by Rep. O'Hara and carried with Reps. Keyser, Hannah, Eudaily and Montayne dissenting.

Rep. Keyser made a substitute motion that HB 794 DO PASS AS AMENDED. The motion was seconded by Rep. O'Hara.

Rep. Brown further moved a substitute motion that HB 794 DO NOT PASS AS AMENDED. The motion was seconded by Rep. Rapp-Svrcek and further discussed.

Rep. Rapp-Svrcek feels this bill will open lots of possibilities for abuse. He certainly believes that a vindictive county attorney could abuse the system. Passage of this bill also goes against the Montana Constitution, in his opinion.

The question was called, and the do not pass motion as amended failed 8-10. Without objection, the vote was reversed, and HB 794 left committee with a DO PASS AS AMENDED recommendation.

ACTION ON HOUSE BILL NO. 834: Rep. Bergene moved that HB 834 DO PASS. The motion was seconded by Rep. Hammond.

Rep. Brown moved the following amendment:

Page 3, line 24,  
Strike: "\$500"  
Insert: "\$10,000";

Page 4, line 5.  
Following: "property"  
Strike the remainder of line 5 and up to the word  
"to" on line 6;

Page 4, line 9,  
Strike: "\$3,000"  
Insert: "\$10,000";

Page 4, line 12,  
Strike: "\$750"  
Insert: "\$10,000";

Page 4, line 18,  
Strike: "\$750"  
Insert: "\$10,000";

Page 4, line 20,  
Strike: "\$1,000"  
Insert: "\$10,000"

Said motion was seconded by Rep. Rapp-Svrcek. Rep. Brown explained that he feels the limitations are absolutely too low.

Following a brief discussion, the question was called on the amendments, and the motion to adopt the amendments failed 6-12. (See roll call vote.)

Rep. Addy moved the following amendments:

Page 3, line 11.  
Following: "loss"  
Strike: ", " through "\$7,500" on line 12;

Page 3, line 24,  
Strike: "\$500"  
Insert: "\$5,000"

Page 4, line 12  
Strike: "\$750"  
Insert: "\$1,500"

Page 4, line 18  
Strike: "\$750"  
Insert: "\$1,500"

Page 4, line 20  
Strike: "\$1,000"  
Insert: "\$3,000"

Rep. Brown made a substitute motion that on page 3, line 24 the "\$500" be struck and "\$5,000" be inserted. Furthermore, on page 4, line 5 following "property" strike the remainder of lines 5 and 6. This amendment would change the remaining dollar limits by raising them to the \$5,000 figure. (See standing committee report hereby attached.)

Rep. Brown stated that his amendment would allow people who have faced bankruptcy to be able to start over again.

Rep. Hannah also feels the \$5,000 limit is very reasonable and won't make or break any of the creditors.

Rep. Mercer spoke against the amendment because he feels these limits are too high.

The question was called, and Rep. Brown's substitute motion carried 11-7. (See roll call vote.)

Rep. Miles moved to adopt the amendments passed out at the hearing which would include a new section providing for the exception for child support and spousal maintenance obligations. Furthermore, the title would be amended accordingly. The motion was seconded by Rep. Brown.

Rep. Mercer spoke against the motion stating that he feels spousal maintenance should not be included as special priority. Rep. Addy, however, feels that spousal maintenance is a high priority.

Rep. Bergene moved to delete spousal maintenance from the amendment.

Brenda Desmond, committee researcher, is not sure if it is consistent to remove spousal maintenance from the amendment. She feels Rep. Mercer's concern is taken care of in subsection 2 and Section 4 of the bill.

Based on that expertise, Rep. Bergene withdrew her motion to amend.

The question was called on Rep. Miles' motion and it passed 11-7. (See roll call vote.)

Rep. Darko further moved that HB 834 DO PASS AS AMENDED. The motion was seconded by Rep. Addy and carried with Rep. Eudaily dissenting.

ACTION ON HOUSE BILL NO. 911: Rep. Brown moved that HB 911 DO PASS. The motion was seconded by Rep. O'Hara.

Rep. Keyser moved to adopt the proposed amendments which were submitted to HB 911. (A copy of those amendments were marked Exhibit K and attached hereto.) The motion was seconded by Rep. O'Hara and discussed.

Rep. Keyser moved to replace section 4 of HB 911 with (b) of amendment #5 on the attached proposed amendments. The motion was seconded by Rep. Rapp-Svrcek.

Rep. Miles feels that the committee is just throwing things in the bill that we don't have the slightest idea of what the implications are right now which will cause more potential problems.

Rep. Brown feels that these amendments clean the bill up fairly well.

Rep. Kreuger made a substitute motion to replace section 4 with amendments #5 (c) instead of #5 (b). The motion was seconded by Rep. Brown.

Both Reps. Keyser and Rapp-Svrcek spoke against the substitute motion. Rep. Keyser feels it will allow too much leeway. The question was called on the substitute motion, and it failed on a voice vote.

The question was called on Rep. Keyser's motion to replace section 4 of H.B. 911 with (b) of amendment #5. The motion carried on a voice vote.

Rep. Keyser further moved that amendment nos. 1, 2, 3, 4, 6, and 7 of Exhibit K be adopted. The motion was seconded by Rep. Brown.

Rep. Eudaily expressed concern with amendment #3. He feels that the landowner should have some responsibility in posting notices. It doesn't provide any responsibility of the landowner to post.

Rep. Cobb said he doesn't feel that the landowner should be required to post in any way.

The question was called, and the motion carried on a voice vote.

Rep. Keyser further moved that HB 911 DO PASS AS AMENDED. The motion was seconded by Rep. Gould and carried with Reps. Miles, Mercer and Eudaily dissenting.

ACTION ON HOUSE BILL NO. 17: Rep. Hannah moved that HB 17 DO NOT PASS. The motion was seconded by Rep. Hammond. There being no discussion, the question was called, and the motion carried unanimously.

ACTION ON HOUSE BILL NO. 529: Rep. Addy moved that HB 529 DO PASS. The motion was seconded by Rep. Hammond.

Rep. Addy moved to amend on page 6, following line 22 through page 7, line 9, strike subsection (5) in its entirety and renumber subsequent subsections. The motion was seconded by Rep. Mercer. There being no discussion, the motion carried unanimously.

Rep. Addy further moved that HB 529 DO PASS AS AMENDED. The motion was seconded by Rep. Montayne. The question was called, and the motion carried unanimously.

ACTION ON HOUSE BILL NO. 918: Rep. Darko moved that HB 918 DO NOT PASS. The motion was seconded by Rep. Hammond and discussed.

Rep. Mercer made a substitute motion that HB 529 DO PASS. The motion was seconded by Rep. Keyser. Rep. Mercer further moved to amend the bill on page 1, line 11 by striking "an express"; on page 14, following "by" strike "a" and insert "statute or"; page 1, line 15, following "employment" strike "," and insert "or"; through "reasons" following "probation" strike ", or" through "reasons" on line 17; page 1, line 19, following "unless" strike "there is an express" insert "the termination violates a statute or"; following "employment" strike "that the termination violates" 1 page 1, line 23, following "employment," strike "an" and insert "a good faith". Rep. Mercer said these amendments should take care of the problems Mr. Englund had with the bill. The motion was seconded, and it carried unanimously.

Rep. Mercer further moved that HB 918 DO PASS AS AMENDED. The motion was seconded by Rep. Gould.

Rep. Kreuger moved a substitute motion for a DO NOT PASS AS AMENDED. The motion was seconded by Rep. Brown and further discussed.

Rep. Krueger feels that this is a very critical area and further feels that the issues are not being adequately addressed. He just feels it is a bad bill.

It was Rep. Darko's opinion that the committee is not spending enough time considering this important bill. It also affects the people who are being employed.

Rep. Mercer moved to delete subsection (7) in its entirety.

The motion was seconded by Rep. Montayne, and the motion carried unanimously.

Rep. Krueger moved the previous question on the DO NOT PASS AS AMENDED motion. The DO NOT PASS AS AMENDED motion failed 8-12, and without objection, the vote was reversed; therefore, HB 918 was reported out of committee with a DO PASS AS AMENDED recommendation. (See roll call vote.)

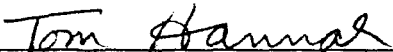
ACTION ON HOUSE BILL NO. 797: Rep. Gould moved that HB 797 DO NOT PASS. The motion was seconded by Rep. Keyser.

Rep. Kreuger made a substitute motion that HB 797 DO PASS. The motion was seconded by Rep. Brown.

Rep. O'Hara feels that by passing this bill, we are opening a big pocket to trial attorneys.

Following further discussion and opinions, the question was called on the do pass motion, and it failed 7-11. Without objection, the vote was reversed, and HB 797 left committee with a DO NOT PASS recommendation. (See roll call vote.)

ADJOURN: A motion having been moved and seconded, the meeting adjourned at 1:10 p.m.

  
Rep. TOM HANNAH, Chairman

DAILY ROLL CALL

HOUSE JUDICIARY COMMITTEE

49th LEGISLATIVE SESSION -- 1985

EXECUTIVE SESSION - 12:00 noon

Date 2/22/85

| NAME                       | PRESENT | ABSENT | EXCUSED |
|----------------------------|---------|--------|---------|
| Tom Hannah (Chairman)      | ✓       |        |         |
| Dave Brown (Vice Chairman) | ✓       |        |         |
| Kelly Addy                 | ✓       |        |         |
| Toni Bergene               | ✓       |        |         |
| John Cobb                  | ✓       |        |         |
| Paula Darko                | ✓       |        |         |
| Ralph Eudaily              | ✓       |        |         |
| Budd Gould                 | ✓       |        |         |
| Edward Grady               | ✓       |        |         |
| Joe Hammond                | ✓       |        |         |
| Kerry Keyser               | ✓       |        |         |
| Kurt Krueger               | ✓       |        |         |
| John Mercer                | ✓       |        |         |
| Joan Miles                 | ✓       |        |         |
| John Montayne              | ✓       |        |         |
| Jesse O'Hara               | ✓       |        |         |
| Bing Poff                  | ✓       |        |         |
| Paul Rapp-Svrcek           | ✓       |        |         |
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|                            |         |        |         |

# STANDING COMMITTEE REPORT

February 22

19 85

MR. SPEAKER:

We, your committee on JUDICIARY

having had under consideration HOUSE JOINT RESOLUTION SEN. No. 37

FIRST reading copy ( WHITE )  
color

**RESOLUTION TO SUPREME COURT REQUESTING REVIEW OF HEARSAY RULE**

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

be amended as follows:

1. Page 3, line 12.

Following: "children"

Insert: ", and that the Court report the results of its study  
to the 50th Legislature"

**AND AS AMENDED,**

**DO PASS**



# STANDING COMMITTEE REPORT

.....February 22..... 19 35.....

MR. SPEAKER:.....

We, your committee on.....JUDICIARY.....

having had under consideration .....HOUSE..... Bill No. 529

FIRST reading copy ( WHITE )  
color

WORKERS' COMP. REMEDIES WHEN EMPLOYER IS UNINSURED

Respectfully report as follows: That.....HOUSE..... Bill No. 529  
as amended as follows:

1. Page 6, following line 22 through page 7, line 2.  
Strike subsection (5) in its entirety.

Renumber subsequent subsection.

AND AS AMENDED,  
DO PASS

# STANDING COMMITTEE REPORT

Page 1 of 2

February 22 19 85

MR. SPEAKER.

We, your committee on JUDICIARY

having had under consideration HOUSE Bill No. 794

FIRST reading copy ( WHITE )  
color

## INTERCEPTION OF ORAL OR WIRE COMMUNICATIONS

Respectfully report as follows: That HOUSE Bill No. 794

### BE AMENDED AS FOLLOWS:

1. Title, line 6.  
Following: "COMMUNICATIONS"  
Insert: "; AND PROVIDING A TERMINATION DATE"

2. Page 3, line 17.  
Strike: "willfully"  
Insert: "purposely"

3. Page 3, line 20.  
Strike: "willfully"  
Insert: "purposely"

4. Page 4, line 4.  
Strike: "willfully"  
Insert: "purposely"

DO PASS:XX

CONTINUED

February 22

1985

5. Page 4, line 9.

Strike: "willfully"

Insert: "purposely"

6. Page 13, line 3.

Following: "dangerous;"

Insert: "and"

7. Page 18, line 3.

Following: "authorized"

Insert: "and a duplicate recording or transcript of the contents of the communication"

8. Page 20, following line 2.

Insert: "NEW SECTION. "Section 19. Termination date. This act terminates July 1, 1977."

hb794

pc2/kjp

AND AS AMENDED,  
DO PASS

# ROLL CALL VOTE

HOUSE COMMITTEE JUDICIARY

DATE February 22, 1985 BILL NO. HB 794 TIME 12:10

| NAME                       | AYE | NAY |
|----------------------------|-----|-----|
| Kelly Addy                 | ✓   |     |
| Toni Bergene               |     | ✓   |
| John Cobb                  |     | ✓   |
| Paula Darko                | ✓   |     |
| Ralph Eudaily              |     | ✓   |
| Budd Gould                 |     | ✓   |
| Edward Grady               |     | ✓   |
| Joe Hammond                | ✓   |     |
| Kerry Keyser               |     | ✓   |
| Kurt Krueger               | ✓   |     |
| John Mercer                |     | ✓   |
| Joan Miles                 | ✓   |     |
| John Montayne              |     | ✓   |
| Jesse O'Hara               |     | ✓   |
| Bing Poff                  | ✓   |     |
| Paul Rapp-Svrcek           | ✓   |     |
| Dave Brown (Vice Chairman) | ✓   |     |
| Tom Hannah (Chairman)      |     | ✓   |
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Marcene Lynn  
Secretary

Tom Hannah  
Chairman

Motion: Rep. Brown made a substitute motion that HB 794 DO NOT  
PASS AS AMENDED. The motion was seconded by Rep. Rapp-Svrcek  
and failed 8-10. Without objection, the vote was reversed, and  
HB 794 left committee with a DO PASS AS AMENDED recommendation.

# STANDING COMMITTEE REPORT

Page 1 of 2

February 22

19 85

MR. SPEAKER:

We, your committee on JUDICIARY

having had under consideration HOUSE Bill No. 834

FIRST reading copy (WHITE)  
color

EXEMPTION OF PROPERTY FROM EXECUTION ON A JUDGMENT; REVISE CURRENT  
LAW

Respectfully report as follows: That HOUSE Bill No. 834

## BE AMENDED AS FOLLOWS:

1. Title, line 6.

Following: "JUDGMENT;"

Insert: "EXCEPTING CHILD SUPPORT AND SPOUSAL MAINTENANCE OBLIGATIONS;"

2. Page 3, line 11.

Following: "less"

Strike: "," through "\$67,500" on line 12.

3. Page 3, line 24.

Strike: "\$5500"

Insert: "\$55,000"

4. Page 4, line 5.

Following: "property"

Strike: "ant" through "property" on line 5.

DOPASSYX

CONTINUED

February 22

19 85

5. Page 4, line 9.  
Strike: "\$3,000"  
Insert: "\$5,000"

6. Page 4, line 12.  
Strike: "\$750"  
Insert: "\$5,000"

7. Page 4, line 15.  
Strike: "\$750"  
Insert: "\$5,000"

8. Page 4, line 20.  
Strike: "\$1,000"  
Insert: "\$5,000"

9. Page 5, following line 4.  
Insert: "NEW SECTION. Section 9. Exception for child support and spousal maintenance obligations. The exemptions enumerated in [Sections 7 through 8] are not applicable to a child support obligation and spousal maintenance obligation."

Renumber: subsequent sections.

10. Page 5, line 9.  
Following: "through"  
Strike: "8"  
Insert: "9"

Nb834  
pc2/kip

AND AS AMENDED,  
DO PASS

# ROLL CALL VOTE

HOUSE COMMITTEE JUDICIARY

DATE 2/22/85 BILL NO. 834 TIME 12:20

| NAME                       | AYE | NAY |
|----------------------------|-----|-----|
| Kelly Addy                 |     | ✓   |
| Toni Bergene               |     | ✓   |
| John Cobb                  |     | ✓   |
| Paula Darko                |     | ✓   |
| Ralph Eudaily              |     | ✓   |
| Budd Gould                 |     | ✓   |
| Edward Grady               |     | ✓   |
| Joe Hammond                |     | ✓   |
| Kerry Keyser               | ✓   |     |
| Kurt Krueger               | ✓   |     |
| John Mercer                |     | ✓   |
| Joan Miles                 |     | ✓   |
| John Montayne              |     | ✓   |
| Jesse O'Hara               |     | ✓   |
| Bing Poff                  | ✓   |     |
| Paul Rapp-Svrcek           | ✓   |     |
| Dave Brown (Vice Chairman) | ✓   |     |
| Tom Hannah (Chairman)      | ✓   |     |
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Marcene Lynn  
Secretary

Tom Hannah  
Chairman

Motion: Rep. Brown made a motion to adopt the amendments he  
had proposed. (See minutes) The motion was seconded by Rep.  
Rapp-Svrcek, and the motion failed 6-12.

# ROLL CALL VOTE

HOUSE COMMITTEE JUDICIARY

DATE 2/22/85 BILL NO. 834 TIME 12:30

| NAME                       | AYE | NAY |
|----------------------------|-----|-----|
| Kelly Addy                 | ✓   |     |
| Toni Bergene               | ✓   |     |
| John Cobb                  |     | ✓   |
| Paula Darko                | ✓   |     |
| Ralph Eudaily              |     | ✓   |
| Budd Gould                 |     | ✓   |
| Edward Grady               |     | ✓   |
| Joe Hammond                | ✓   |     |
| Kerry Keyser               |     | ✓   |
| Kurt Krueger               | ✓   |     |
| John Mercer                |     | ✓   |
| Joan Miles                 | ✓   |     |
| John Montayne              | ✓   |     |
| Jesse O'Hara               |     | ✓   |
| Bing Poff                  | ✓   |     |
| Paul Rapp-Svrcek           | ✓   |     |
| Dave Brown (Vice Chairman) | ✓   |     |
| Tom Hannah (Chairman)      | ✓   |     |
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Marcene Lynn  
Secretary

Tom Hannah  
Chairman

Motion: Rep. Miles moved to adopt the amendments passed out at  
the hearing which would include a new section providing for the  
exception for child support and spousal maintenance obligations.  
The title of the bill would be amended accordingly. The  
motion was seconded by Rep. Brown and carried 11-7.



# STANDING COMMITTEE REPORT

February 22..... 19 25.....

page 1 of 2 (HB 911)

MR. SPEAKER:

We, your committee on JUDICIARY

having had under consideration HOUSE Bill No. 211

FIRST reading copy ( WHITE )  
color

## CRIMINAL TRESPASS POSTING REQUIREMENTS

Respectfully report as follows: That HOUSE Bill No. 211

be amended as follows:

1. Page 2, line 1, following "land."

Insert: "Such privilege may be revoked at any time by  
personal communication of notice by the landowner or other  
authorized person to the entering person."

2. Page 2, line 7.

Strike: "written"

Strike: "affixed to"

Insert: "placed on"

3. Page 2, line 8.

Following: "obscure"

Strike: "that has been marked"

Insert: "by marking it with written notice or"

DO PASS

.....(continued).....

Chairman.

page 2 of 2 (HB 911)

4. Page 2, following line 13.

Strike: subsection (3) in its entirety

Re-number: subsequent subsection

5. Page 2, line 21.

Strike: "accordance"

Insert: "substantial compliance"

6. Page 2, line 22.

Following: "(2)"

Strike: "and" through "(3)" on line 23

7. Page 2, following line 23.

Strike: "from" through "point" on line 2 of page 3

Insert: "unless explicit permission to enter is given by the landowner or his authorized agent"

8. Page 3, following line 2.

Insert: "(4) The department of fish, wildlife, and parks shall attempt to educate and inform all persons holding hunting, fishing, or trapping licenses or permits by including on any publication concerning such licenses or permits, in condensed form, the provisions of this section concerning entry on private land."

9. Page 3, following line 4.

Insert: "(6) In no event shall civil liability be imposed upon the owner or occupier of premises by reason of any privilege created by this section."

AND AS AMENDED,  
DO PASS

# STANDING COMMITTEE REPORT

February 22 19 55

page 1 of 2 (SB 919)

MR. SPEAKER:

We, your committee on JUDICIARY

having had under consideration HOUSE Bill No. 919

FIRST reading copy (WHITE color)

## REGULATE ACTIONS FOR WRONGFUL TERMINATION OF EMPLOYMENT

Respectfully report as follows: That HOUSE Bill No. 919

be amended as follows:

1. Page 1, line 11.  
Strike: "an express"

2. Page 1, line 14.  
Following: "by"  
Strike: "a"  
Insert: "statute or"

3. Page 1, line 15.  
Following: "employment"  
Strike: ", "  
Insert: "or"

4. Page 1, line 15.  
Following: "probation"  
Strike: ", or" through "reasons" on line 17.

DO PASS

(continued)

5. Page 1, line 19.

Following: "unless"

Strike: "there is an express"

Insert: "the termination violates a statute or"

Following: "employment"

Strike: "that, the termination violates"

6. Page 1, line 23.

Following: "employment,"

Strike: "an"

Insert: "a good faith"

7. Page 2, following line 8.

Strike: subsection (7) in its entirety.

AND AS AMENDED,  
DO PASS

# ROLL CALL VOTE

HOUSE COMMITTEE JUDICIARY

DATE 2/22/85 BILL NO. 918 TIME 1:00

| NAME                       | AYE | NAY |
|----------------------------|-----|-----|
| Kelly Addy                 | ✓   |     |
| Toni Bergene               |     | ✓   |
| John Cobb                  |     | ✓   |
| Paula Darko                | ✓   |     |
| Ralph Eudaily              |     | ✓   |
| Budd Gould                 |     | ✓   |
| Edward Grady               |     | ✓   |
| Joe Hammond                | ✓   |     |
| Kerry Keyser               |     | ✓   |
| Kurt Krueger               | ✓   |     |
| John Mercer                |     | ✓   |
| Joan Miles                 | ✓   |     |
| John Montayne              | ✓   |     |
| Jesse O'Hara               |     | ✓   |
| Bing Poff                  |     | ✓   |
| Paul Rapp-Svrcek           | ✓   |     |
| Dave Brown (Vice Chairman) | ✓   |     |
| Tom Hannah (Chairman)      |     | ✓   |
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Marcene Lynn  
Secretary

Tom Hannah  
Chairman

Motion: Rep. Krueger made a substitute motion for a DO NOT PASS

AS AMENDED. The motion was seconded by Rep. Brown and failed

8-12. Without objection, the vote was reversed, and HB 918

left the committee with a do pass as amended recommendation.

# STANDING COMMITTEE REPORT

February 22 19 35

MR. ~~SECRETARY~~

We, your committee on JUDICIARY

having had under consideration HOUSE Bill No. 17

FIRST reading copy ( WHITE )  
color

**ELIMINATING CIVIL REMEDY FOR TRESPASS AND NOTICE FOR CRIMINAL  
TRESPASS**

Respectfully report as follows: That HOUSE Bill No. 17

~~DO NOT PASS~~  
~~DO PASS~~

# STANDING COMMITTEE REPORT

February 22 1985

MR. SPEAKER:

We, your committee on JUDICIARY

having had under consideration HOUSE JOINT RESOLUTION Bill No. 24

FIRST reading copy ( WHITE )  
color

**SUPPORTING S.D.'S CHALLENGE TO THE FEDERALLY MANDATED LEGAL  
DRINKING AGE**

Respectfully report as follows: That HOUSE JOINT RESOLUTION Bill No. 24

DO PASS

# STANDING COMMITTEE REPORT

.....February 22..... 19 85.....

MR. SPEAKER:.....

We, your committee on .....**JUDICIARY**.....

having had under consideration .....**HOUSE**..... Bill No. **797**.....

**FIRST** reading copy ( **WHITE** )  
color

**ALLOW JOINDER OF INSURERS OF MOTOR VEHICLES IN CIVIL SUIT**

Respectfully report as follows: That.....**HOUSE**..... Bill No. **797**.....

DO NOT PASS  
XOO PASS



# ROLL CALL VOTE

HOUSE COMMITTEE JUDICIARY

DATE February 22, 1985 BILL NO. HB 797 TIME 1:05

| NAME                       | AYE | NAY |
|----------------------------|-----|-----|
| Kelly Addy                 | ✓   |     |
| Toni Bergene               |     | ✓   |
| John Cobb                  |     | ✓   |
| Paula Darko                | ✓   |     |
| Ralph Eudaily              |     | ✓   |
| Budd Gould                 |     | ✓   |
| Edward Grady               |     | ✓   |
| Joe Hammond                | ✓   |     |
| Kerry Keyser               |     | ✓   |
| Kurt Krueger               | ✓   |     |
| John Mercer                |     | ✓   |
| Joan Miles                 | ✓   |     |
| John Montayne              |     | ✓   |
| Jesse O'Hara               |     | ✓   |
| Bing Poff                  |     | ✓   |
| Paul Rapp-Svrcek           | ✓   |     |
| Dave Brown (Vice Chairman) | ✓   |     |
| Tom Hannah (Chairman)      |     | ✓   |
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|                            |     |     |

Marcene Lynn  
Secretary

Tom Hannah  
Chairman

Motion: Rep. Krueger made a substitute motion for a DO PASS.

The motion was seconded by Rep. Brown, and it failed 7-11.

Without objection, the vote was reversed, and HB 797 left

committee with a do not pass recommendation.

# STANDING COMMITTEE REPORT

February 22 19 35

**SPEAKER:**  
MR. ....

We, your committee on **JUDICIARY** .....

having had under consideration **HOUSE** ..... Bill No. **729** .....

**FIRST** ..... reading copy ( **WHITE** )  
color

**GENERALLY REVISING LAWS CONCERNING MUNICIPAL AND CITY COURTS**

Respectfully report as follows: That **HOUSE** ..... Bill No. **729** .....

**be amended as follows:**

1. Page 1, line 21.

Strike: "\$3,500"

Insert: "\$2,500"

2. Page 2, line 12.

Strike: "\$3,500"

Insert: "\$2,500"

3. Page 2, line 14.

Strike: "\$3,500"

Insert: "\$2,500"

4. Page 3, line 3.

Strike: "\$3,500"

Insert: "\$2,500"

**AND AS AMENDED,  
DO PASS**

# STANDING COMMITTEE REPORT

February 22 19 95

MR. SPEAKER:

We, your committee on JUDICIARY

having had under consideration HOUSE Bill No. 529

FIRST reading copy ( WHITE )  
color

**GENERALLY REVISING LAWS CONCERNING JUSTICES' COURTS**

Respectfully report as follows: That HOUSE Bill No. 589

DO PASS

February 20, 1985

Capitol Station  
Helena, Montana 59601

Dear Legislators,

I am the Legislative Representative from the MONTANA COLATION AGAINST DOMESTIC VIOLENCE and I am urging you to pass HB 793 (Re-defining our WARRENTLESS ARREST BILL).

When I first opened the first Shelter for Battered Women and Children in Montana (Mercy Home in May 1977), a Police Chief told me that we already had 'PROBABLE CAUSE' in Montana and a WARRENTLESS ARREST capability. What I soon found out with my clients that without a redefining of STATE LAW, law enforcement officers are reluctant to intervene in a family violence case and often underreport the offense.

Law enforcement intervention is a critical component of the justice system's effort to break the cycle of violence within the family. Research now clearly shows that when a criminal assault has been committed, arresting the offender actually contributes to reducing the reccurrence of violence.

Because Family Violence is predominantly learned behaviour and cyclical in nature, early intervention is critical in averting and preventing abuse. No one service works best for all troubled families or victims of FAMILY VIOLENCE. Many different but related responses are required to prevent THE VIOLENCE and HOMICIDES, since there are NATIONALLY more HOMICIDES committed in Family Violence than any other way, and there are more LAW ENFORCEMENT OFFICERS killed in Family Violence than other ways.

Law Enforcement intervention is a critical component of the JUSTICE SYSTEM's effort to break the CYCLE OF VIOLENCE within the Family. The MONTANA COALITION AGAINST DOMESTIC VIOLENCE feels we must provide LAW ENFORCEMENT OFFICERS with the STATUTORY authority necessary to make WARRENTLESS ARRESTS in DOMESTICE VIOLENCE CASES.

Sincerely yours,



Caryl Wickes Borchers, Executive Director  
Great Falls Mercy Home, Inc.  
Chaired State Task Force on Spouse Abuse  
April 1978- Oct. 1982  
Leg. Rep. Montana Coalition Against  
Domestic Violence

WITNESS STATEMENT

NAME Lenore F. Tahaferro BILL NO. 793  
ADDRESS 1026 9th Ave. DATE 2/22/85  
WHOM DO YOU REPRESENT? Friendship Center of Helena, Inc.  
SUPPORT ✓ OPPOSE                      AMEND                     

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

A warrantless arrest is critical to the immediate safety of the victims of domestic violence & would insure against the continuance of further & more severe harm to the victims. Please vote to pass on this bill to allow for a warrantless arrest, since this is already provided for by law, but, has not been occurring in practice related to domestic violence.

Section 2. This new section is especially important in order for the public to know and to be able to document the nature & frequency of domestic violence incidents.

2/22/85

HB 793

RE: WARRANTLESS ARREST

Dear Legislators:

I am writing on behalf of many women in Montana who have been, are, or will be victims in a battering relationship. I speak from personal experience as I married a man who was extremely violent. This letter is graphic simply because generalities don't give one a clear picture of what really goes on in a relationship where the husband is a batterer.

I came from a good christian home where as a minister, my father, along with my mother, taught my sisters and I to be kind, loving, and empathetic toward the needs of others. In contrast to my husband's childhood of physical abuse, violence on the streets, and scraping for himself, my childhood was based on love, comfort, security, and a firm hand of correction when needed. So what I went through for the next two years was totally foreign to me.

After obtaining a college degree, I returned to the city where my parents resided. While there, I met and married a man who was kind, helpful, loving, and cared for me. His flip side was that of extreme jealousy, possessiveness, uncontrollable outbursts of violence, an obsession with knives, an alcohol problem, and severe beatings, even when I was pregnant. On one occasion when I was going to leave him, he took me for a ride in our car and got a gun and said he was going to kill himself if I left him. I wonder if he planned to shoot me, too. I don't know. During another incident, as if it was premeditated, he made me pack our baby's belongings, then tied me up, gagged me, beat me, and told me he was going to kill me and leave with our baby who was 2½ months old. The list of violence goes on.

After living through a year of marriage in this hell, I left him and was separated for a month. I lived in Great Falls but went to Kalispell while my parents were on vacation. Upon our arrival back to Great Falls, my husband wanted to see the baby. I trusted him since I had had several conversations with him during our separation during which he said he had changed as the result of a religious revival in his life. So my father dropped me off at the house while he went to visit one of his elders for a short time. My husband tried to get me to leave the house with him to go for a ride, and upon my refusing, he went into a rage. He pulled a long knife from the kitchen drawer and informed me that I was going with him. I talked him into throwing the knife down and after pulling the phone cord out of the wall, he started dragging me out the door. I started to scream because I knew it was my only chance. (He had on several occasions told me he was going to take me to a remote area someday and kill me. I knew this was the day.) He threatened to knock me out if I didn't be quiet, and next tried to force me into the car. Then something snapped in him, and he quit, just like that. I ran to a neighbor that I noticed was watching the incident and told him what had happened and that my husband was going to take the baby. Upon being informed by my neighbor that my husband was a "nice" guy and wouldn't do such a thing, my husband then grabbed the baby from me and ran to the car and left. As it turned out, he went around the block, brought the baby back to me and said he couldn't separate us. He just wanted money to get out of town. A police officer arrived, and I went to a neighbor's house to call my father who came right over. Dad, who thought I should press charges, talked to the officer. The officer was very reluctant to get involved because it was a domestic situation, and said the authorities can't really do much unless I am divorced. He also indicated my husband could go to jail that night and get out on bail the next day. Then he stated it was all

Warrantless Arrest  
Page 2

over for that night and to "let a sleeping dog lie." I also didn't want to be responsible for sending him to jail because I figured if he was going to go to jail, he was going to put himself there as I didn't want him coming after me when he got out. After a few more minutes (by this time my husband had disappeared) the officer said, "Well, I'd better get back to work." What did he think he had been doing for the past 45 minutes? So when he left, we had no idea where my husband was. We were just about to leave when he came out of the park from across the street. He started coming at my dad with a look of rage in his eyes and violent intent but stopped only after my father yelled for someone to call the police.

The next day, my husband was on a plane to the city where we used to live. I divorced him, and before it was even finalized, he almost killed a guy with a hammer and was sent to prison in that state for a couple of years. He got out on parole last May and is now in California. It's only a matter of time before he victimizes someone else.

Had there been a warrantless arrest law during these incidents, the course of his violence could have been altered. The pressure of having one's husband arrested should not lie on the shoulders of the wife but on that of the officer who answers the call for help. He is the one with the authority and training to handle situations such as this, especially since my husband no longer had a weapon when the officer arrived. These batterers need to take responsibility for their own actions and be headed in the direction of extensive psychiatric counseling.

What needs to be prevented are the beatings and homicides that are so prevalent in our society. Let's put these actions on the criminal's side where they belong. It is crucial that they be ordered out of the house and placed in jail for a "24 hour cooling off period" where they can evaluate their actions and criminal behavior.

Thank you for your consideration.

Ull Linda

re: Warrantless Arrest HB 793

Dear Legislator,

' A man's home is his castle' is a popular phrase used to denote that a person's home is a place for privacy and a place where that person is the law. In a normal family household those thoughts are honorable, a person can say or do as he pleases in his own home.

Let us look at an abnormal household, where domestic violence occurs. Does a person have a right to beat, maim, rape, or kill his spouse or children?

Are the spouses and children not allowed to have protection from such brutalities?

I ask that you think about these questions and then to vote in favor of the Warrantless Arrest Bill HB 793. Thank-you.

Sincerely,



Janet



My name is Nancy and I am a past victim of spouse abuse and have the scars to show. I have also worked with battered women on a volunteer basis for a number of years and was raised in an environment where domestic violence was the norm.

I am here to advocate the passing of the Bill to take the responsibility of arrest away from the victim because I know that during the ~~immediate~~ aftermath of a violent attack, the abused is usually unable emotionally to ~~take~~ make that decision.

the victim after fears for ~~her~~ her life <sup>and that of</sup> ~~and that of~~ her family, her friends, and the police.

Tremendous emotional damage is done to a victim of abuse of any sort and maybe more so to the victim of domestic violence. The victim needs a certain amount of time to make solid judgments.

You know that people may be excused of responsibility for a crime if they were under great emotional duress;

I have been a victim of domestic violence for a large part of my life <sup>first</sup> beginning with a black eye from my father and lost with a butcher knife in my throat from ~~my~~ ex-husband. I have worked with battered women both on an individual basis and with a number of battered women's programs so I will address this from a woman's viewpoint.

I advocate the warrantless arrest in these cases because it takes further responsibility away from the victim who ~~is~~ is already under a great deal of an enormous amount of mental stress.

Making her responsible for the arrest at this time adds further to her feelings that she is responsible for the violence and the abuses. Furthermore, in the aftermath of a violent episode, the ~~woman~~ abused ~~may~~ is often emotionally unable to make a valid decision. ~~But then~~ the Criminals may be excused for crimes if great emotional duress is proven, why can't the victim be excused from responsibility for a major decision under the same conditions?

~~If both the victim~~

why can't ~~the victim be afforded some~~  
~~of this courtesy?~~

If both the victim and the abuser are removed from a volatile situation without responsibility on the victim's part, there ~~may be~~ <sup>may be</sup> ~~at~~ <sup>on the</sup> ~~least~~ <sup>victim.</sup> ~~less damage~~ recriminations and the victim may have a chance to protect her life without losing all of her possessions; ~~example~~

I can tell you that ~~the~~ victims often feel badgered and endangered by ~~the~~ people who pressure them to sign a warrant immediately. They fear that the abuser will go back and attack them <sup>more than ever</sup> ~~once~~ for daring to file charges. Survival instincts may say no as the victim may be too exhausted and hurt to care about it anymore.

Because we move, lose, or live with people who ~~physically~~ abuse us, does not make us responsible for their actions, and we need the right to protect ourselves even if it is by not signing a warrant we believe will harm us more. he will be

If we die, ~~you can~~ <sup>you can</sup> arrest the

for murder, why can't he be arrested before he kills us without our being terrified and badgered further?

I imagine, if you can, lying on a hospital bed with doctors and nurses trying to ~~see~~ you fix a knife wound ~~from a butcher knife~~ in your neck and having policeman haul you off signing a warrant against somebody you just want out of your life? I can, I did.

I believed, at that time and still do, if I had signed that warrant he would have been out on bail ~~in~~ before I got out of the hospital and either I or people I cared for would have been dead before the next nightfall.

~~I also~~ I felt if it had been ~~ever~~ signed the warrant, he would never rest until he repaid me.

February 20, 1984

Dear Legislators,

Please support the Warrentless Arrest HB #793!

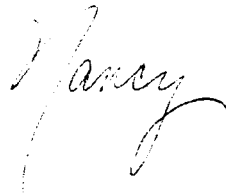
I was a victim of domestic violence! I never called the police when my spouse was taking out his frustrations on me by slamming me up against a wall, choking me, punching me in the face or stomach, or kicking me, as I knew when they (the police) came he would NOT be arrested and he would then have killed me and my children.

Had they arrested him and kept him in jail for 24 hours he would have had a long enough cooling off time that when he returned he would not have continued the violent behavior. Plus he would have begun to realize that he no longer could continue this type of behavior without serious consequences. As it was he knew no one would do anything about his behavior, therefore, it was acceptable for him to be abusive to me and my children. He never believed he had a problem and the only one who told him that he did was me, which brought about more beatings.

I firmly believe that we as a society need to make a positive statement that violence in the home is NOT acceptable. I can't think of a better way to make that statement then to arrest the person who is assaulting his spouse and place the responsibility for this crime on him rather than on the victim.

Thank you for your anticipated support!

Sincerely,

A handwritten signature in cursive script, appearing to read "Nancy", written in dark ink.

2/22/85

HB 793

# WOMEN'S LOBBYIST FUND

Box 1099  
Helena, MT 59624  
449-7917



February 22, 1985

Testimony for the Women's Lobbyist Fund by Gail Kline, before House Judiciary.

Mr. Chairman and other members of the House Judiciary Committee:

For the record my name is Gail Kline, representing the Women's Lobbyist Fund (WLF) speaking in favor of HB 793.

Chief of National Center for Disease Control, Dr. Mark Rosenberg said, "Attacks by husbands on wives result in more injuries requiring medical treatment than rapes, muggings and auto accidents combined."\*

Today, we have heard testimony from victims who escaped from violent abusive situations. Victims who have overcome their "learned helplessness."

To explain "learned helplessness" I will use an example of an experiment from the book, The Battered Woman, by Lenore E. Walker, 1979, page 46. Baby rats were placed in an experimenters hand and held until all voluntary movements ceased. They were then placed in a vat of water and some swam for 30 minutes while others sank immediately to the bottom. Other baby rats that were placed immediately in the vat of water without "learned helplessness" swam for up to 60 hours before drowning.

Similar to the baby rats, once we believe we can not control what happens to us, we operate from a belief of helplessness. This helplessness is why battered women remain in violent abusive situations.

By arresting the abuser, we allow time for the abused to start to recognize and overcome "learned helplessness" and the abuser has time for cooling off.

With the help of HB 793, we reduce the cycle of domestic violence.

WLF urges you to pass HB 793.

\*Violence Epidemiology Branch. Daily Inter Lake, November 27, 1984  
From a study on violence as a major public health problem.

# Study: Arrest deters family violence

WASHINGTON (AP) — Victims of assaults by family members are nearly twice as likely to be attacked again if the police do not arrest the attacker, according to a federally funded experimental study released Monday.

The experiment, conducted in Minneapolis in 1981-82, found that arrest, even if not followed by conviction, was a far more effective deterrent than the traditional police response of removing the attacker from the scene for eight hours or just providing advice and mediation.

James K. Stewart, director of the Justice Department's National Institute of Justice, which funded the experiment, said the results show "the police should use arrests quite frequently in typical domestic violence cases if they want to reduce assaults."

The experiment was conducted by the Police Foundation, a private, non-profit police reform group, and by the Minneapolis Police Department in misdemeanor assault cases between family members where there was no life-threatening or severe injury. The three responses — arrest, removal and advice — were used on a random basis.

In 35 percent of the cases where police did not make an arrest, victims surveyed later said there was a repeated assault within six months. But in those cases where police made an arrest, only 19 percent of the victims reported repeated violence.

The results were even more dramatic when measured by official police reports rather than follow-up interviews. In 22 percent of the households in which no arrest was made, another crime report was filed within six months. But a repeat police report was found in only 10 percent of the households where an arrest was made.

The study also found that when police officers took time to listen to the victim before making an arrest, the deterrent effect doubled. The study suggested that this procedure lets the suspect know that the victim can influence police behavior.

Like other studies of family violence, the Minneapolis experiment found that its 314 cases usually involved unmarried, minority or mixed-race couples with less-than-average education and a greater-than-average likelihood of being unemployed and having a previous police record.

Of the 136 arrests in the study, only three resulted in convictions, prompting Stewart to conclude that "arrest appears to deter violence even when the courts take no action."

Noting that this was the nation's "first controlled experiment in the use of arrest," Stewart said, "Some police departments around the country, including New York City, Houston, Dallas and Minneapolis, have already revised their policies in light of these results." Preliminary findings were released a year ago.

The study's co-authors, Police Foundation vice president Lawrence W. Sherman and sociology professor

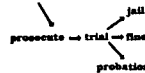
Richard A. Berk of the University of California at Santa Barbara, said that women's groups had pressed police departments in recent years to increase arrests in family violence cases. But Sherman and Berk pointed out that 22 states still bar police officers from making arrests unless they have a warrant or they actually witness the assault.

"This report shows that, at the very least, those laws need to be changed," Sherman said. "A Police Foundation survey of police departments serving more than 100,000 people found that only 10 percent currently encourage arrests in of arrest and prosecution through."

and the notable reluctance of women to come forward or, having found the courage, to see the police

## YOUR CHOICES:

- Remain at home
- Call the nearest crisis line (see front page)
- File a report with the police — don't prosecute



- Go to the hospital for medical treatment
- Talk to and/or stay with friends or relatives
- Consult your minister, priest, or rabbi

- See a lawyer — divorce, separation, annulment

- Call a helping agency (welfare, etc.) for emergency food, housing, etc.
- Seek professional counseling
- See the front section for names & phone numbers
- Please consider this: calling the police may be the best way to get out of immediate danger.

For emergency help or shelter call  
Crisis Center . . . . . 453-6511

For Alternatives to Spouse Abuse Behavior call the—  
Mental Health . . . . . 761-2100

Workshops & Counseling Available

February 1985

Dear Legislators,

This piece of testimony has been prepared to urge your support of House Bill 793 . As a volunteer counselor at a shelter for battered women and their children, I have dealt with the victims of such violence, women and children who have had to leave their homes as the only means of escape from their batterers.

However, our shelters mainly address the situation of the victim, educating her and her children about the cycle of abuse, and telling them that this is not normal behavior--it is learned behavior that must and can be "un-learned."

What is just as important, but more difficult to do, is to contact the abuser and tell him the same--that this behavior is not normal and is criminal. Under the legislation proposed in this session, such contact could be made through overnight incarceration of the offender, as well as any longer-term incarceration that could occur as a result. Currently, the length of time for which a domestic violence offender is incarcerated, is usually very short, if at all. In this proposed method of dealing with domestic violence, the seriousness of the offense would be realized, and referral could then be made to various agencies, therapists or centers that could assist the person in restructuring their behavior. Through treatment, the family situation has a better chance, and calls for police intervention may no longer be needed. What we are doing under our current, lenient laws, is enabling this behavior to continue, and subjecting our police officers to repeated visits to particular families.

In the recently published Attorney General's Task Force Report On Domestic Violence, it is recommended that legislation, such as mandatory arrest and warrantless arrest, be enacted to deal with domestic violence. One opposing opinion has been presented to our proposals--that these and similar legislation would violate family privacy. In instances of domestic violence, where the matter cannot be settled among the parties because of its high emotional content, any individual should be able to turn to the law for protection, and receive that protection.

It is not the intent of our proposed legislation, nor that of battered women shelters, to split the family. Rather, these are effective means for treating the problem of domestic violence, from the standpoint of both victim and, with revised legislation, offender as well. In these ways, we can draw society's attention to the seriousness of domestic violence, and continue to improve methods of prevention and treatment.

Your support, please.

Sincerely,  
*Cathy St. John*  
Cathy St. John



*Feb. 12/85*

# Man kills Anaconda policeman ex-wife, self in domestic dispute

ANACONDA (AP) — An Anaconda police officer investigating a domestic dispute was shot to death by an unemployed former smelter worker who then killed his ex-wife and himself, Police Chief Jim Connors said Monday.

Connors said Lt. Tim Sullivan went at 8:20 p.m. Sunday to a disturbance at the home of Ida Terkla, 43. She had reported that her ex-husband was pulling telephone wires from the side of her house, the chief said.

Sullivan entered the house, walked down the basement stairs and was shot once in the side and fell down, Connors said.

Connors said Sullivan was shot by John Terkla, the woman's ex-husband, who then shot the officer in the shoulder and in the back of the head with a .357-caliber pistol.

Terkla then killed his ex-wife, put his gun to his head and shot himself in an attempt to commit suicide, Connors said.

Officials said Mr. Terkla died about 1:29 p.m. Monday at St. James Community Hospital in Butte.

The couple's two children, who had been in the house, fled to a neighbor's house after the shooting, the chief said.

The chief said Mr. Terkla had worked at the smelter in Anaconda,

which was closed in 1980, and has been unemployed recently. He said the couple had recently been divorced.

The Montana Standard reported that Sullivan, 54, was just a few months from retirement.

It was the second fatal shooting of a Montana policeman in two months. On Dec. 6, a Missoula County sheriff's deputy was fatally shot when he stopped a man for questioning about the theft of \$11 worth of gasoline in Missoula.

Fred Van Dyken of Great Falls is to stand trial for murder on May 13 in connection with that shooting.

## Opinion and comment

### An officer died, a problem continues

Anaconda Police Officer Tim "Sox" Sullivan has fallen to one of the greatest fears of policemen — walking in on a domestic dispute, and not walking out.

The emotions involved in the battles among spouses, divorced persons and lovers are strong, sometimes overwhelming.

Policemen, called upon to serve and protect, know the inherent dangers in such situations. In his 17 years of service, Sullivan, no doubt, responded to myriad "domestics" as they are known.

The social pressures brought on by hard economic times, and the harsh realities of unemployment and divorce sometimes are not manifested as violently as when Officer Sullivan and Ida Terkla were murdered.

But, such violence is always a possibility.

No amount of potential, non-

police, community intervention can stop every domestic violence situation from erupting into murder. But, such community programs can help.

When Officer Sullivan received the call to the Terkla home last Sunday he might have been thinking about the possibility of being shot.

He might have thought only of preventing a further problem.

Whatever the case, he sacrificed his life to serve and protect.

Anaconda, other Montana cities and the Legislature should take a renewed look at the problems surrounding domestic violence.

There may well be some untried methods of early intervention. If some solutions can be found, Officer Sullivan's death, while remaining tragic, might lead to the prevention of similar deaths in the future.

February 1985

Capitol Station  
Helena, Mt. 59601

Dear Legislator,

I am writing in reference to the need for more support of battered spouse centers, and equally important, for the need of more adequate protection for women in battered situations.

In the 2½ weeks after my last battering, I lived in a state of chronic fear before I was finally able to tie up all of my loose ends and leave town. I feel that the laws at this time are inept in dealing with the rampantly growing problem of family violence.

There is no doubt in my mind that my husband would have succeeded in ending my life if my children had not awaken and heard my pleas for help. If I had pressed charges, my husband would have spent a short time in jail and then would have probably finished what he had not ended.

I had no financial means of obtaining a lawyer in order to obtain a restraining order for my husband. My children and I were forced to leave our home, town, schools and employment to be safe. There is no way I can express to you the emotional stress this has subjected our family to.

In closing, I would like to make a statement about what the battered shelters (we have stayed in Billings and Great Falls) have done for me. They have given me hope, that there is and will be a better way of life for my children and myself. They have helped me find the resources available, new directions to take, and most importantly, once again I feel like a whole person, instead of the shattered and fragmented woman I was before I finally sought help.

Sincerely,

*Melissa*

HB 799 Explanation -- Rep. J. Melvin Williams

This bill does five things to improve the administration of city and municipal courts.

First, in Section 1, the jurisdiction dollar amount in city courts is raised from \$300 to \$3500, the same as in Justice Court. This increase applies only within the areas of exclusive jurisdiction of the city court. It does not alter the type or number of activities within that exclusive jurisdiction, it only raises the dollar amounts of the jurisdiction. The \$300 is archaic.

Second, in Section 2 (page 3, line 8), the amendment simply allows city councils to create the position of clerk of city court. Currently 3-6-301 and 3-6-302 require the city clerk to perform as exofficio clerk of city court. This change is strictly permissive.

Third, Section 3 (page 4, line 4) allows city judges to perform weddings as J.P.'s, municipal judges and tribal judges are currently allowed to do.

Fourth, Section 4 allows city/municipal judges to enforce the law requiring motor vehicle operators to have their drivers license in their possession during operation.

Fifth, Section 5 extends the same authority for the liability insurance card.

Spaeth amendments to House Bill 862

(1) Amend title

1. Title, lines 5 though 7.

Following: "AN ACT"

Strike: remainder of lines 5 though 7 in  
their entirety

Insert: "ELIMINATING SHERIFF'S AND POLICEMEN FROM  
THOSE PERSONS WHO MAY SUMMON A JUROR IN CRIMINAL  
TRIALS" AMENDING SECTIONS 3-15-701 and 3-15-703,  
MCA."

(2) Strike certain lines in their entirety

1. Page 1, Line 17 through line 7, page 2 in their  
entirety

(3) Insert material

1. Page 1.

Following: line 16

Insert (2) When jurors are required for a criminal trial in any  
justice's or city court or any other court of limited  
jurisdiction, they must, upon the order of the justice  
or of the judge thereof be summoned by the constable or  
marshall or any other person of the jurisdiction so  
designated by the judge except that no employee of a law  
enforcement agency in the jurisdiction may be used.

(4) Strike and insert material

1. Page 2, line 9.

Following: "The"

Strike "officer"

Insert "person"

(5) Strike material only

1. Page 2, line 10

Following "jurors"

Strike "for a civil trial"

(6) Strike certain lines in their entirety

1. Page 2, Line 13 through line 17 in their entirety.

1. The Tenth and Twenty-First Amendments to the U.S. Constitution read, in their relevant parts:

Amendment X. The powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to the states respectively or to the people.

Amendment XXI. (2) The transportation or importation into any state, territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.

A proposed subsection (3) of the 21st Amendment would have given the federal government the right to regulate liquor use within the states. This proposal was stricken at the urging of New York's Senator Wagner, who stated in 1933 that:

If Congress gave itself power to regulate the saloon, it would have the power to regulate the place and hours of purchase as well as the age and sex of the purchasers. By striking section 3, the Congress reserved these powers to the states.

The courts have consistently upheld the rights of the states to regulate their own drinking environments as exclusive under the "core area" of the 21st Amendment.

THE 21ST AMENDMENT IS THE ONLY SPECIFIC DECLARATION OF A STATES' RIGHT FOUND ANYWHERE IN THE U.S. CONSTITUTION. IF THIS RIGHT CANNOT BE PROTECTED AGAINST USURPATION BY THE FEDERAL GOVERNMENT, NO LESS WELL-ENUMERATED STATES' RIGHT OF ANY KIND COULD BE.

2. Public Law 98-363, signed into law July 17, 1984, reads in its relevant part:

§ 158. National Minimum Drinking Age. (a)(2) The Secretary shall withhold 10 percentum of the amount required to be apportioned to any state (of federal highway funding). . . on the first day of the fiscal year succeeding the second fiscal year beginning after September 30, 1985, in which the purchase or public possession in such State of any alcoholic beverage by a person who is less than twenty-one years of age is lawful.

3. The drinking age decision faced by the Legislature this session is particularly agonizing because the federal government is, in effect, ordering Montana to take an action which has been shown statistically to increase highway fatalities among young people. In brief:

- After Montana raised its drinking age from 18 to 19 in 1979, there was an increase of 17% in the proportion of fatal nighttime traffic accidents among 15-18 year-old drivers, compared to regional experience and using drivers age 21-24 as controls.
- After South Dakota raised its drinking age for beer from 18 to 19 in 1983, there was a 59% increase in fatal nighttime traffic accidents involving 15-18 year-old drivers, using the same controls.
- The fourteen states which raised their drinking ages between 1975 and 1982 experienced median increases of 9% in the proportion of fatal <sup>nighttime</sup> crashes involving under-18 drivers and 6% increases in the proportion of fatal nighttime crashes involving 18-20 year-old

drivers compared to other states in their regions which did not raise their drinking ages during that period.\*

-- Early studies which claimed to find a decrease in fatal accidents following a drinking age increase uniformly failed to use comprehensive statistics from all states, failed to examine more than a few months' experience in most states, and are outdated (the most recent such study was completed in 1980).

4. South Dakota's Attorney General has filed suit against what it terms "federal coercion" in the drinking age case. The suit is bi-partisan; it is aimed both at the Democratic U.S. House of Representatives and the Republican Administration. The South Dakota Attorney General's Office has said it wishes no formal assistance at this time, but would appreciate state resolutions of support. I urge the Legislature to pass this resolution of support.

-- Mike Males  
528 N. F  
Livingston, MT 59047

\* "The Minimum Purchase Age for Alcohol and Young Driver Fatal Crashes -- A Long-Term View," The Journal of Legal Studies (Chicago: University of Chicago School of Law), in press, January 1986 issue. Nighttime fatal crashes are used as a substitute for alcohol-related crashes because 70% of all nighttime fatal accidents involve a drinking driver, and the measure is uniform among the states.

WITNESS STATEMENT

NAME Lorents Grosfield House BILL NO. 911  
ADDRESS MELVILLE RTE, Big Timber, MT 59011 DATE 2-22-85  
WHOM DO YOU REPRESENT? Self  
SUPPORT \_\_\_\_\_ OPPOSE X AMEND X  
PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

I am opposed to a posting provision to prevent Trespass. It should be the recreational <sup>or other</sup> user's responsibility to be certain that he is authorized to be where he is, and to be doing what he is doing, on private land.

HB 911, from a landowner's point of view, is substantially worse than our present relatively ineffective Trespass law, for the following reasons:

1. It virtually requires posting in order to:
  - a. control access; or to
  - b. protect a landowner from liability,because a lack of posting is made equivalent to "explicit permission."
2. It eliminates a landowner's protection from civil liability in all non-recreational access cases (recreational cases are covered under Title 87, for example).
3. It eliminates a landowner's ability to expel an accesser on non-posted land.
4. It has strong, cumbersome notice requirements.
5. It prohibits access on posted lands only by way of posted gates.

If the Legislature is determined to pass a new Trespass law with posting provisions, I respectfully submit that -OVER-



Something along the lines of the Utah Trespass Law be passed. This law defines notice as simply a fluorescent orange strip of paint on a post, etc. This goes a long way towards eliminating the problem of posting notices being taken down, whether by a potential violator or by the elements (wind).

I have attached a proposed amended version of HB911 that incorporates the Utah provisions as I recall them. If this approach is deemed worthy of consideration by this committee, I strongly recommend that the committee look at the actual Utah statute, for more precise wording.

## HOUSE BILL NO. 911

INTRODUCED BY Handwritten Name  
BY REQUEST OF THE HOUSE JUDICIARY COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING SPECIFIC REQUIREMENTS FOR POSTING OF LAND FOR THE PURPOSES OF THE CRIMINAL TRESPASS LAW; EXPANDING THE AUTHORITY OF WARDENS TO ENFORCE THE CRIMINAL MISCHIEF, CRIMINAL TRESPASS, AND LITTER LAWS ON PRIVATE LANDS BEING USED FOR RECREATIONAL PURPOSES; AMENDING SECTIONS 45-6-201 AND 87-1-504, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 45-6-201, MCA, is amended to read:  
"45-6-201. Definition of "enter or remain unlawfully".

(1) A person enters or remains unlawfully in or upon any vehicle, occupied structure, or premises when he is not licensed, invited, or otherwise privileged to do so. A person who enters or remains upon land does so with privilege unless notice is personally communicated to him by an authorized person or unless such notice is given by posting in a conspicuous manner. Privilege to enter or remain upon land is extended either by the explicit permission of the landowner or other authorized person or by the failure of the landowner or other authorized person to

THIS  
[LEAVE IN THE BILL]

post notice denying entry onto private land. X

(2) ~~in no event shall civil liability be imposed upon the owner or occupier of premises by reason of any privilege created by this section.~~ To be effective under this section,

the notice provided for in subsection (1) must satisfy the following requirements:

(a) ~~written~~ notice must be affixed to a post, structure, or natural object ~~that has been marked with a~~ <sup>by marking it with written notice or</sup> strip of fluorescent orange paint at least 3 feet high; and  
(b) the notice described in subsection (2)(a) must be placed at each outer gate and normal point of access to the property and at all points where any water body crossing the property intersects an outer boundary line.

~~(3) At least twice a year, once at least 15 days prior to the opening of the general fishing season and once at least 15 days prior to the opening of the general big game hunting season, the landowner or authorized person must determine that written notices are in place on each post, structure, or natural object as required by subsection (2)(b).~~

(3) If property has been posted in accordance with subsection (2) and has been inspected in accordance with subsection (3), it is considered closed to public access, from each point at which a post, structure, or natural object painted as required by subsection (2)(a) remains, unless explicit permission is given by the landowner or other authorized person. HB 911

where there is such a failure to post notice such privilege is void immediately upon communication of verbal notice by the landowner or other authorized person, and the entering person must then immediately leave the land.

~~whether or not the written notice remains affixed to the post, structure, or natural object at such point.~~

(5) For purposes of this section, "land" means land as defined in 70-15-102."

Section 2. Section 87-1-504, MCA, is amended to read:  
 "87-1-504. Protection of private property -- wardens as ex officio fire wardens. (1) It shall be the duty of wardens (state conservation officers) to enforce the provisions of 45-6-101, 45-6-203, and 75-10-212(2) on private lands where public--recreation--is--permitted being used for recreational purposes and to act as ex officio fire wardens as provided by 77-5-104.

(2) As used in this section, "recreational purposes" means recreational purposes as defined in 70-16-301."

NEW SECTION. Section 3. Effective date. This act is effective on passage and approval.

-End-

(4) The Department of Fish, Wildlife, and Parks shall print in condensed form the posting requirement in [subsection (2)(a) and (b)] on each set of regulations accompanying any recreational license; IT issues, and on each information brochure that may relate to recreational purposes using private lands.

Proposed Amendments to HB 911:

1. Page 2, line 1, following "land".

Insert: "Such privilege may be revoked at any time by personal communication of notice by the landowner or other authorized person to the entering person. [who when so notified, must immediately leave the property.]"

2. Page 2, line 7.

Strike: "written"

Strike: "affixed to"

Insert: "placed on"

3. Page 2, line 8.

Following: "object"

Strike: "that has been marked"

Insert: "by marking it with written notice or"

4. Page 2, following line 13.

Strike: subsection (3) in its entirety

Renumber: subsequent subsections

5. Page 2, line 21.

Replace section (4) with any of the following:

(a) "(4) If property has been posted in accordance with subsection (2), it is considered closed to public access unless explicit permission to enter is given by the landowner or his authorized agent.

(b) (4) If property has been posted in substantial compliance with subsection (2), it is considered closed to public access unless explicit permission to enter is given by the landowner or his authorized agent.

(c) (4) If property has been posted in accordance with subsection (2) it is considered closed to public access unless explicit permission to enter is given by the landowner or his authorized agency except that a person who in good faith relies on a lack of notice at the point he enters upon land is not considered to have unlawfully entered or remained upon the property."

(d) Delete (4).

6. Page 3, following line 2.

Insert: "(4) The department of fish, wildlife, and parks shall attempt to educate and inform all persons holding hunting, fishing, or trapping licenses or permits by including on any publication concerning such licenses or permits in condensed form the provisions of this section concerning entry on private land."

7. Page 3, following line 4.

Insert: "(6) In no event shall civil liability be imposed upon the owner or occupier of premises by reason of any privilege created by this section."

WITNESS STATEMENT

NAME K. Amy Pfefer BILL NO. HB 793  
ADDRESS 200 woodford #2 Missoula 59801 DATE 2/22/85  
WHOM DO YOU REPRESENT? Women's Law Caucus - Univ. of M School of Law  
SUPPORT ✓ OPPOSE \_\_\_\_\_ AMEND \_\_\_\_\_

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

## VISITORS' REGISTER

JUDICIARY

COMMITTEE

BILL NO. 665; 686; 793 (Keenan)  
 799; 889 (Williams); DATE February 22, 1985  
 862 (Spaeth); 911 (Hannah)  
 SPONSOR 918 (Ramirez)  
 HJR 24 (Rep. Raney); HJR 37 (Hannah)

| NAME (please print)   | RESIDENCE<br>XXXXXXXXXX<br>REPRESENTING | SUPPORT                   | OPPOSE         |
|-----------------------|---|---------------------------|----------------|
| Conrad B. Fredericks  | 55 County P/Os Inc                      |                           | 911            |
| Norm Stacey           | Self                                    |                           | 911            |
| John Madsen           | 668 - 685 - SRS                         | X                         |                |
| Norma Harris          | " " SRS                                 | X                         |                |
| D. WARREN WRIGHT      | MSA. Child & Family Resource            | 665<br>685                |                |
| Lenore Schiaferro     | Friendship Center -                     | ✓                         | 793            |
| Nancy E. Challen      | Friendship Center                       | ✓                         | 793            |
| Lorents Grosfield     | Self                                    |                           | 911            |
| W. W. Lannon          | N.L. BA; M.T.N                          | HJR-24                    | <del>911</del> |
| Glen Jensen           | Magistrates Assn.                       | 799, 889                  |                |
| MIKE MALES            | SELF LIV, MT.                           | 862 w/committee<br>HJR 24 |                |
| Bill Kline (WLF)      | Women's lobbyist Fund                   | 793                       |                |
| Bob Durkee            | Manh TAVERN - HELDEN                    | HJR 24                    |                |
| Royce Fowler          | D. SRS                                  | HJR 793                   |                |
| Janet Schmidt         | Women's Home & Victim                   | HB 793                    |                |
| Carol Wickes Borchers | West Foundation for Domestic Violence   | HB 793                    |                |
| Melinda               | W. Falls W. Executive                   | HB 793                    |                |
| Nancy Bell            | Self                                    | HB 793                    |                |
| Arny Pfeifer          | Women's Law Center                      | HB 793                    |                |

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

(next page →)

## VISITORS' REGISTER

HOUSE JUDICIARY

COMMITTEE

BILL NO. \_\_\_\_\_

DATE February 22, 1985

SPONSOR \_\_\_\_\_

| NAME (please print) | RESIDENCE                                 | SUPPORT        | OPPOSE |
|---------------------|---|----------------|--------|
| Kelly Chandler      | Women's Lobbyist Fund                     | HB 793         |        |
| Marti Adrian        | MSLA                                      | HB 793         |        |
| Ann Heleneder       | Missoula                                  | 793            |        |
| Billy Franz         | MSLA                                      | 793            |        |
| Beverly Foxcroft    | Women's Law Center MSLA                   | 793            |        |
| Margaret L. (Mama)  | Deputy County Attorney St. Helena         | HB 793         |        |
| George Allen        | St. Helena                                | 918 ✓          |        |
| Chip Ecomann        | MSBA St. Helena                           | 918 ✓          |        |
| Mary Wright         | Trout Unlimited                           | 911            |        |
| Margaret E. Davis   | HW or MT 88962 799                        | <del>918</del> |        |
| Robert W. Meads Jr. | Wooden Throne & Horses                    | 918 ✓          |        |
| Roger McPherson     | INDEPENDENT INSURANCE AGENTS ASSOC. OF MT | 918 ✓          |        |
| Elu Wink            | Am Soc. Ass'n                             | 918 ✓          |        |
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