MINUTES FOR THE MEETING
JUDICIARY COMMITTEE
MONTANA STATE
HOUSE OF REPRESENTATIVES

March 22, 1985

The meeting of the Judiciary Committee was called to order by Chairman Tom Hannah on Friday, March 22, 1985 at 8:00 a.m. in Room 312-3 of the State Capitol.

ROLL CALL: All members were present.

CONSIDERATION OF SENATE BILL NO. 152: Sen. Bob Brown, Senate District #2, sponsor of SB 152, testified and said the main intent of the bill is to change the presumption of the law to favor joint custody. The judge has to presume joint custody in divorce cases unless the judge finds, under the factors set forth in 40-4-212, that joint custody is not in the best interests of the minor child. Senator Brown pointed out that the reason that fathers are oftentimes delinquent in their child support payments is because in so many cases they are not awarded visitation rights. He said in the cases where there is joint custody, child support payments are paid much more often. In closing, Senator Brown said he felt the world would be a better place for both children and parents if this legislation were to pass.

PROPONENTS:

Doug Grob, a member of the Governor's Child Support Advisory Council, testified as a proponent. During most of his testimony, Mr. Grob referred to a document entitled "A Presumption of Joint Custody, Constitutionally Guaranteed." A copy of that particular document, inclusive of his specific references, was marked Exhibit A and attached hereto. He said that it is important to recognize the distinction between joint physical and joint legal custody. If a father thinks he is going to get joint legal custody he still has to do battle in order to obtain access to the child. So, to make joint legal or joint physical at the judge's discretion, you set up a double road block because the joint legal will provide the compromise to the judge between the sole custody and joint custody when, indeed, it really is not. The positive aspects of the child do not occur unless there is at least a 30%, and close to 50%, relationship of that child spending physical time with both parents. He further pointed out that the default on child support in the nation is 72% in sole custody cases. That figure dropped to 6% and 7% in joint custody cases as well as the amount of money paid being 30% higher today in joint custody than in sole custody. He said that consistently across the nation, the major amount of opposition to presumptive joint custody has come from Legal Aide. Legal Aide's caseload is 60-75% nationwide custody and divorce - 99.8% of that custody and divorce is representing women in custody and divorce.

Allan Nicholson, a local businessman who is a member of the State Board of Public Education, spoke on behalf of himself and his children in support of SB 152. He said that he is a joint custody parent and feels that joint custody does work. He said that parenting is a fundamental right; it is not licensed by the State. He also believes that court-ordered counseling in divorce/custody cases is a necessity.

Bailey Molineaux, representing the Montana Psychological Association, said that he supports the concept behind the bill. Research has shown that joint custody tends to be better for the parents and the children, however, he said he did have some concerns with regard to the language on page 2, lines 1-4 and said if there is hostility between the parents, he feels that joint custody could be harmful to the children. He feels that an amendment which would take care of that is on line 18 of subsection (4) if the word "with" were stricken and replaced with the word "without".

Maureen Cleary, a joint custody parent for the past five years, testified in support of the bill. She pointed out that her family has received counseling through the Family Teaching Center and she feels that counseling really does make a difference. She feels that joint custody is in the best interests of the children as it helps them cope with a divorce. She said that joint custody parents have to get to a point in their relationship where they can conduct their affairs in a business-like manner.

Hal Harper, representing House District #44, said that this bill is important for the growth and development of the parent as well as the growth and development of the child.

Helen Grob, representing grandparents of the state of Montana, spoke in favor of the bill. She gave a personal account of what she has experienced as a grandparent concerning her son's divorce.

Janet Lannatta, representing herself, feels that children shouldn't have to live in fear that they may lose one parent in a divorce situation. She said that it is difficult for a child to be cut off from one parent and that it is very important for the child to have time with both parents.

Rep. Rod Garcia, House District #93, strongly urged that the bill be passed.

William Leineweber and his daughter, Wendy Leineweber, both appeared and offered testimony in support of the bill. Wendy feels this bill will help in that it will allow children to spend time with both parents.

Bill Riley, a social worker in Helena, who is also a joint custody parent, spoke in favor of the bill. He said that those who have joint custody understand how it can work for both parents and children. He addressed several misconceptions regarding joint custody. Research has shown that continuity is broken when a child loses a parent. He pointed out that joint custody has been going on for several years and it is not an untested arrangement. He also pointed out that all children, no matter what their age, are affected by the loss of one parent. He said that children do not necessarily accept their step-parent more than they do their natural parent. If they are forced to accept a substitute parent they will resent it. He also said that there is not enough time spent between the child and parent in weekend visitation situations. He also remarked that joint custody can work even though both parents do not agree with the arrangement. He submitted a copy of "Joint Custody as Related to Paternal Involvement and Paternal Self-Esteem" which was marked Exhibit B and attached hereto.

Jerry O'Neil and Dave McLaughlin also spoke briefly in favor of SB 152.

OPPONENTS:

John Hollow, an attorney from Helena who practices family law, testified as an opponent. He said that if the committee elects to pass the bill, he feels that they need to deal with the issue of child support. If there is going to be joint custody, there is nothing in the child support section that deals with the amount of time to be spent with the child. The person with joint custody could be required to pay child support even though they have the child 50% of the time and make 50% of the extended family's income. Secondly, he thinks the committee needs to address what happens should one of these custodial parents move. Thirdly, Mr. Hollow feels that counseling needs to be mandated and it should be something that occurs before the presumption of joint custody arises. He opposes the bill because he feels that the studies that are cited are based on people who had foresight - those who loved their children. He feels that the judges today recognize what these people are saying but he opposes this bill because he feels that leverage would be given to people who do not truly want joint custody. But by asking for it under this presumption, they have leverage; therefore, the nurturing mother then has to give up her child because the ex-spouse demands joint custody. He feels this may be premature. You can't tell people that they are going to be parents - it is a learned art.

There being no further opponents, Senator Brown closed, saying that this is a big and growing social problem that needs to be addressed. He feels this bill is an attempt to address some of those problems.

The floor was opened to questions.

Rep. O'Hara asked Mr. Hollow if the existing arrangement between divorced parents and custody matters could be affected by this bill. Mr. Hollow said he could not answer that question but said that if the committee truly feels there is a benefit to joint custody, you should not prohibit people who don't have it presently from getting it.

In response to a question asked by Rep. Rapp-Svrcek, Dr. Molineux feels that it should be left up to the parents to work out the living arrangements and the best solution is what they decide and not what someone else decides for them. He further stated that it is best to keep the children in the same school.

Following a few more general questions, the hearing was closed on SB 152.

CONSIDERATION OF SENATE BILL NO. 392: Senator M.K. Daniels, Senate District #24, testified on behalf of SB 392. He said this bill was introduced out of the frustration of the prison staff, the Powell County Attorney's Office and others who deal with persistent felony offenders who are imprisoned in the Montana State Prison and who continue to commit heinous crimes. He said there are no present remedies because most of them are already sentenced to 100 years or more. This bill provides for the death penalty. He feels this is a purported solution to that particular problem. Most of the people he referred to are people that have no chance of being rehabilitated. Sen. Daniels brought to the committee's attention that the Powell County Attorney was unable to testify as a proponent.

OPPONENTS:

John Ortwein, representing the Montana Catholic Conference, testified in opposition to SB 392. A copy of his written testimony was submitted and marked Exhibit C which is attached hereto.

Catherine Campbell, representing the Montana Association of Churches, said that they are opposed to the death penalty. She said she doesn't believe this legislation is conducive to justice and has the potential of being unfairly imposed.

Roy Andes, an attorney practicing in Helena and representing the American Civil Liberties Union, testified in opposition to the bill. He said that the ACLU has been consistently opposed to the death penalty. He said that the ACLU has traditionally been a litigating organization. In this state, 80% of the time, the ACLU has been successful in winning their lawsuits. He said this bill is fatally flawed. He feels that the bill has three constitutional flaws offending three

different sections of the United States and Montana Constitutions. The first is the due process law. Specifically, the bill is too vague. Secondly, it does not define persistent felony offender. Finally, there is the problem with the word "may" on line 19 of the bill. There is the "must" language in the accompanying section in Title 46, chapter 18 which means there is ambiguity. Most important is the language of the constitution prohibiting cruel and unusual punishment and finally, it violates the equal protection provision of the constitution. He said that anytime someone is put to death, human respect for the institution of life diminishes. Studies repeatedly show that the death penalty does not work. If anything, the homicide rate has gone up. The U.S. Supreme Court has told us that you must have guided discretion in imposition of the death penalty -- this bill fails on that account because it uses the vague language of "may" and the undefined language of "persistent felony offender."

There being no further opponents, Senator Daniels closed and pointed out that the bill was drafted at the request of the Powell County Attorney. He feels the deterrent effect of the death penalty has never really been determined. Sen. Daniels feels there is a definit problem and he thinks this bill address that problem. The floor was opened to questions.

Rep. Darko wanted to know if there are any other states that have this particular legislation. Sen. Daniels said there may be similar laws, but he really doesn't know for sure. He said that this bill may be special legislation but he feels it is necessary.

Rep. O'Hara said that he believes everyone knows there is a problem in this area. He asked Mr. Andes if he knew of any solutions. Mr. Andes said that we have the entire body of criminal law available to us. He also said that we have the present death penalty statute which reads in the first subsection of aggravated circumstances that a deliberate homicide committed by a state prison inmate is also subject to the death penalty.

Rep. Miles asked Sen. Daniels how many people presently in prison would be eligible for the death penalty under the applications of this bill? Sen. Daniels said approximately 15 people.

Rep. Addy said that we may be adding two new offenses to those offenses which may be punished by death -- mitigated deliberate homicide and aggravated assault.

Rep. Gould asked if this would take into consideration the blow gun and shooting-the-dart-in-the-back incident. Sen. Daniels feels it would give the county attorney some leverage and also some choice.

Rep. Gould asked Mr. Andes the maximum amount of time a prisoner could be placed in solitary confinement. Mr. Andes said he did not know. Rep. Gould answered the question by saying it is a whole 10 days!

There being no further questions, the hearing closed on SB 392.

CONSIDERATION OF SENATE BILL NO. 406: Sen. J.D. Lynch, Senate District #34, chief sponsor of SB 406, said that this bill is truly a housekeeping measure that will simply make references where they were intended in regard to the Justice Department. This bill simply makes existing statute replace simple functions within the Department of Justice consistent with executive reorganization.

Larry Majerus, Department of Justice, said that the first three sections of the bill just changes the terminology. The remaining sections, up to section 14, changes specific language that exists and just cleans it up. The amended sections added the responsibility to the code commissioner to extend this bill to any bills passed relating to this section. Mr. Majerus suggested one amendment: Page 7, line 16 strike: "44-3-202,". The reason for this amendment is there was never an intent with this bill to make any substantive change. After looking at this statute, some people feel that the change could be substantive.

There being no further proponents or opponents, Sen. Lynch closed.

In response to a concern of Rep. Eudaily, Mr. Majerus said the Fire Marshal Bureau and the Forensic Science Division and others are not found in Title 61. That title only refers to the motor vehicle code. The motor vehicle code is Title 61 and the reference there is made to this title and would not affect any other operations within the department.

Rep. Brown asked if SB 406 is a code commissioner bill requested by the Department of Justice. Mr. Majerus said that the bill was drafted by the Legislative Council. The purpose of it was not to make any substantive changes in it but only to bring it in line with executive reorganization. Most departments have already done this.

Rep. Brown wanted to know if any of the repealers here refer to the forensic pathologist. Mr. Majerus said that they do. Rep. Brown further asked if this language in the bill is the same that is in the repealer or are you lowering the standards of the forensic pathologist? Mr. Majerus said that he doesn't believe they are and that it certainly wasn't their intent.

There being no further questions, the hearing was closed on SB 406.

CONSIDERATION OF SENATE BILL NO. 411: Sen. Tom Towe, Senate District #46, chief sponsor of SB 411, testified. He said this bill relates to the Montana Youth Treatment Center which is now near completion in Billings. He said the center is for the purpose of treating those children who are seriously mentally deranged. These children are presently committed to Warm Springs, and it is considered inappropriate at Warm Springs and also considered insufficient because the character of the unit in Warm Springs is such that we are not able to get medicare for payment and other federal assistance for these youth. During the last legislative session, we made it very limited -- we did not grow a great, big new institution. We did not want to put a lot of people in this institution. It was our thought and concern that in most cases, these people are much more appropriately treated in the local community in foster homes or in other facilities short of a rather secure, rather large institution. We provide that only those who could be committed to the facility in Billings are those who are seriously mentally ill. As of January, of the 25 people presently at Warm Springs who would be moved to the Billings facility, only four of those would qualify. The suggestion is to open up the criteria and not make it quite so rigid so that we do allow for evaluations so we can find out whether or not these children do meet the criteria of seriously mentally ill. He said the stricken language on page 2 is currently in the law. Senator Towe said one of the most important portions of the bill deals with the newly inserted material in subsection (3) which says that the court must first find that reasonable grounds exist to believe that the youth is suffering from a mental disorder as defined in 53-21-102. He informed the committee that the juvenile probation officers are very supportive of this bill.

Curt Chisholm, deputy director for the Department of Institutions, testified as a proponent of the bill. The bill clarifies the authority to allow the youth courts to get an evaluation service in the Montana Youth Treatment Center. They felt that in the last session this was done, but they referred the youth court to the Mental Health Act, in which it says that a youth has to be seriously mentally ill before they could get into the treatment center in the first place. What the courts need is the ability to get that evaluation. The term of the evaluation is no more than 60 days. This evaluation will be used by the courts to determine the existence and kind of serious mental disease of the youth. It has to be used by the court on the finding that there is reason to believe that there are some serious problems. Second, we are clarifying to the youth court that it has to make two findings that use only one court order to get a child into the Youth Treatment Center. Third, the bill clarifies the age limitations. The youth court must commit children prior to the age of 18. Fourth, we are disallowing any voluntary commitments. Fifth, we are allowing for the transfer of youth, that is, anyone under the age of 18, to the authority

of the adult court and they may be sent to the Montana State Hospital for either evaluation or treatment.

Kelly Moorse, director of the Mental Disabilities, Board of Visitors, spoke in favor of this bill on behalf of Jim Johnson, attorney from Warm Springs. One of the concerns they have is in regard to the admission of children under the age of 12. They are urging the department, in their promulgations, that they provide some assurance that those children under 12 are segregated from the rest of the teenage population. They also have a concern with the language which provides for the transfer of the teenager under the adult courts back to the Montana State Hospital.

Tom Cherry, representing the Montana Health Association of the state of Montana, testified. He said that his group has taken a neutral position on this bill because they have not presented any impressing evidence for immediate change -- the Billings facility has not yet been occupied. The need for flexibility to be able to use all resources that are available is appreciated. They also supported maintaining the youth evaluation program in Great Falls. He said that there are large gaps in the treatment of youths in this state. He encouraged the committee to evaluate this on a comprehensive basis. Mr. Cherry feels that the committee has to consider the following questions: 1) Is this facility designed with children 12 and under in mind? 2) Is the facility going to be large enough?

There being no further proponents or opponents, Senator Towe closed. Senator Towe feels this is not an easy question. He said that he had some real problems justifying the Center, and the bill; however, he believes that we have no choice. Again, Senator Towe pointed out that only those seriously disturbed youths will be committed to the Center. In closing, Senator Towe is convinced the bill can work, but it may not be a final solution to handling those youths who are seriously disturbed.

The floor was opened to questions.

Rep. Hannah asked if we had never built the facility in Billings and we still have these children who are being treated in Warm Springs, would this bill have been before us? Senator Towe said the bill would not have been introduced. However, Senator Towe said that it is possible, in any event, that we may have had to re-evaluate how we handle commitments to whatever institution. Rep. Hannah said that it was his understanding that the facility in Billings was just a newer and better facility for the same types of youth in the youth center so that we would transfer that type of disturbed youth from the Warm Springs facility to the Billings facility. If that is the case, why do we need a whole new commitment procedure? Senator Towe said that is not the only purpose of the bill and that presently 30 youths are being

handled out of state because they can't be handled in Billings. Senator Towe continued by saying that last year they revised a whole new procedure so that they started out with a new facility with a better kind of screening process. This legislation will allow us to take all the people who are presently in Warm Springs and move them to Billings.

Rep. Krueger wanted to know why a new facility hasn't made provisions to deal with those types of youth. Mr. Chisholm said that they are trying to parallel provisions in the law that are already in existence. He said that we want the courts to have an option.

Rep. Gould said that because of the legislation passed in 1983, we have this legislation. He asked why not have just a simple repealer of the 1983 legislation enabling us to go back to what we were originally agreed on. Senator Towe said he would oppose that because he does think they have the structured property. He feels that the amount of people should be limited at the Billings facility so that it does not become a dumping ground for all the problem youths in the state. He said that we want to make sure that those who are in Billings are there because they genuinely have mental disorders.

Rep. Keyser asked Mr. Chisholm if he will tell this group at the next session that because of the amendments placed in this bill we have to build a little addition to the Billings facility to handle the people who can't be handled with the group that you have there. Mr. Chisholm said that would certainly not happen. Mr. Chisholm felt that there was some misunderstanding among the committee members and proceeded to explain a few points. He feels that we need to allow the courts to make an adjudication based on evidence presented that these youths need involuntary treatment at a psychiatric care facility. For all the reasons mentioned above, Mr. Chisholm feels this bill is desperately needed.

Rep. Brown asked if it were possible at the Billings facility to segregate children under the age of 12 -- do you have the capability to do that? Mr. Chisholm feels like they do. What he anticipates to be a real exception to the rule, he wouldn't advocate taking anyone under 12, but if they have to take someone that age, yes, they can segregate; in fact, they must segregate. Rep. Brown asked if returning the portion of the new language on page 5 to the old language would cause any problems. Mr. Chisholm said it was changed simply to accomodate that one exception to the rule that might surface. Rep. Brown asked what would happen to the exception to the rule - one or more - if this language stayed the same? Mr. Chisholm thinks that the youth court would turn the child over to the jurisdiction of the Social Rehabilitative Services for placement in a facility even if it were out of state if it were determined that the child needed in-patient psychiatric care.

In response to a question, Senator Towe said there is no change in the law as far as voluntary procedures. The issues before the committee are three-fold: 1) Evaluations -- do you want evaluations to take place at the Youth Center in Billings? 2) Do you want someone under the age of 12? 3) If a youth is transferred to adult court for purposes of a criminal trial, should he go to Billings for evaluation or should he go to the forensic unit in Warm Springs? Senator Towe said that there were some really good arguments on both sides, but the critical part of the bill is the evaluation.

There being no further questions, the hearing was closed on SB 411.

EXECUTIVE SESSION:

ACTION ON SENATE BILL NO. 406: Rep. Brown moved that SB 406 BE CONCURRED IN, seconded by Rep. Mercer. Rep. Brown moved to amend page 7, lines 16 and 17 following "44-3-103," strike "44-3-202", also, that particular section would be stricken in the title. The motion was seconded and carried unanimously. Rep. Brown said that he also worried that the medical examiners may not have control over their own offices -- the Attorney General controls it. Rep. Keyser said that at the present time, the medical examiner basically sets the associate medical examiner's salary within his budget area. That now will no longer be set by the medical examiner but will rather be set by the Attorney General. Rep. Keyser feels that we are doing a little more than housecleaning in this bill; we are making a few changes within that particular department. Rep. Keyser said the intention when it was set up was to keep the medical examiners as independent so their decisions weren't being influenced by the Attorney General who is the chief law enforcement officer. We are now changing that around and placing that control totally under the Attorney General and away from the medical examiner.

Rep. Brown moved to amend page 7, line 17 by striking the repealer section 44-3-212 and 44-3-304 which are essentially the two sections that allow the medical examiner the control of his own office. The title would be amended accordingly. The motion was seconded by Rep. Hammond and discussion followed.

Rep. Gould is inclined to think that this should remain under the Attorney General. He brought out the fact that the medical examiner is the highest paid employee in the state of Montana.

In response to that, Rep. Brown said that none of these statutes dictate the pay -- that is pretty much dictated by someone who is qualified for the job, and qualifications are not changed here. He doesn't think by placing the control back here that it will affect the pay provision.

Rep. Brown said he would like to add the following to his amendment: Page 4, line 13 strike section 10 and strike section 11 on line 23 because they are consistent with his previous amendments. It just leaves those people under the medical examiner.

Rep. Miles said she didn't understand why Rep. Brown wants to delete these particular sections and said that she objects to striking section 11. Rep. Brown said the reason for the amendment is because the lab director reports to the medical examiner. Rep. Brown then restated his amendment to strike in the repealer section and in the title 44-3-212 and 44-3-304; strike section 10 from the bill on page 4; and in section 11 reinsert the language on line 1, page 5.

There being no further discussion, the question was called, and the motion to amend carried with Reps. Miles and O'Hara dissenting. Rep. Hammond moved that SB 406 BE CONCURRED IN AS AMENDED. The motion was seconded by Rep. Brown, and the question called. The motion carried on a voice vote with Reps. O'Hara and Miles dissenting. Rep. Clyde Smith will carry the bill on the floor.

ACTION ON SENATE BILL NO. 411: Rep. Gould moved that SB 411 BE CONCURRED IN, seconded by Rep. Montayne.

Rep. Krueger moved to amend page 3 by striking lines 4, 5, and 6. Furthermore, on page 6, lines 22 through 23, reinsert the stricken material and strike on page 6 the new language beginning on line 23 through line 2 on page 7. The motion was seconded by Rep. Brown. Rep. Krueger said he is not sure that we should be placing those types of special youth in with the same types of adult offenders. Rep. Hannah asked Rep. Krueger if he thought it would be a problem if youths couldn't be segregated in the Billings facility. Rep. Krueger feels that could be a problem, but he feels that we have a constitutional problem here as well. He feels this cannot be adopted just because of that particular problem. He feels the problem needs to be addressed as the new facility is opened. Rep. Eudaily asked if these youths couldn't be handled in Billings would the only other option be to send them out of state? Rep. Krueger said he isn't sure what the options are.

Following further discussion, the question was called, and the motion to amend failed 8-10. (See roll call vote.)

Rep. Brown moved to amend page 5, line 22 following "individuals" by striking "18 years of age and under" and inserting "who are 12 years of age or older and under 19 years of age". The motion

was seconded by Rep. Gould and further discussion was held. In response to a question by Rep. Mercer, Rep. Brown said that the reason for his amendment was because he doesn't feel that the children under 12 belong in the same category even if they are treated with the discretion of the judge in any fashion, shape or form. He feels they need to be dealt with totally separate outside all the other people who may fall in this category. Rep. Miles asked where they would be treated. Rep. Brown said the Boy's Ranch is a possibility or the court may send them out of state to another facility. He said that these would be very rare cases. Rep. Hannah informed the committee that the Boy's Ranch has a very tight security and home environment to deal with specific emotionally disturbed children. It is his view that it is an excellent facility and he feels this is an example of the kind of facility that will handle the under 12 year olds. In response to another question of Rep. Mercer, Rep. Brown said that since we set the age limit of the youth court in section 103, he thinks the language should reflect 12 and over.

The question was called on the motion to amend and it carried unanimously. (See standing committee report for complete amendments.) Rep. Hammond moved that SB 411 BE CONCURRED IN AS AMENDED. The motion was seconded by Rep. Darko and carried unanimously. Rep. Waldron will carry the bill.

ACTION ON SENATE BILL NO. 152: Rep. Gould moved that SB 152 BE CONCURRED IN. The motion was seconded by Rep. Hammond. Rep. Addy moved to amend page 2, line 18 following "may" by striking "with" through "parties". The motion was seconded by Rep. Hammond. In response to a question asked by Rep. Rapp-Svrcek, Rep. Addy doesn't feel that counseling should be made mandatory in all cases. The question was called, and the motion to amend carried unanimously. Rep. Hammond moved that SB 152 BE CONCURRED IN AS AMENDED. The motion was seconded by Rep. O'Hara.

Rep. Krueger moved a substitute motion to kill the bill. There being no second, the motion failed.

Rep. Mercer moved to amend page 2, line 7 following "that the" insert "physical custody and". The motion was seconded by Rep. Keyser and carried unanimously. Rep. Mercer further moved to amend page 2, line 8 following "be" strike "shared by" and insert "allotted between". The motion was seconded by Rep. Gould and carried unanimously. Rep. Mercer further moved to amend page 1, line 21 following "40-4-212" by striking "BY" through "EVIDENCE" on line 22. The motion was seconded by Rep. O'Hara. Rep. Mercer said that a preponderance of evidence is standard in all civil cases. He is afraid that if placed here, it suggests that the standard always has to be met. Rep. Mercer said that if that language is deleted, standard is automatic. He feels this language is sloppy drafting. Rep. Krueger said that Rep. Mercer is correct that by striking this language it will still leave it the same. The question was

called on the motion to amend, and it carried on a voice vote.

Rep. Hammond moved that SB 152 BE CONCURRED IN AS AMENDED. The motion was seconded by Rep. Keyser and further discussed.

Rep. Krueger said that by passing this bill we are basically changing the standards. Right now, we do have the "best interest" standard. We are trying to change the standard by saying that there is a presumption of joint custody. He feels the court should be able to look at the best interests of the child. He feels this is the standard that we should continue to maintain. Rep. Addy feels that in this particular field, as long as you don't state a presumption of joint custody, those stereotypes will be acting on the players of the game. He feels that by stating joint custody as a presumption you have made the process neutral. Rep. Krueger's last comment was that he feels that the hostility factor can clearly not make this a workable bill.

The question was called, and the motion carried with Rep. Krueger dissenting.

ACTION ON SENATE BILL NO. 28: It was Rep. Hannah's feeling that the committee should adopt the amendments as proposed by Senator Mazurek. A copy of those amendments are attached and marked Exhibit D. Rep. Darko moved that SB 28 BE CONCURRED IN. The motion was seconded by Rep. Hammond. It was brought out that these particular amendments are acceptable to those particular tribes to which they were sent for review. Correspondence relative to this bill was marked as a package (Exhibit E) and attached hereto.

Rep. Hammond moved that the committee adopt the proposed amendments. The motion was seconded by Rep. O'Hara and carried on a voice vote. Rep. O'Hara further moved that SB 28 BE CONCURRED IN AS AMENDED. The motion was seconded by Rep. Miles. The question was called, and the motion carried with Rep. Keyser dissenting. Rep. Hannah will carry the bill on the floor.

ACTION ON SENATE BILL NO. 392: Rep. Hammond moved that HB 392 BE NOT CONCURRED IN. The motion was seconded by Rep. Darko. Rep. Keyser moved a substitute motion that SB 392 BE CONCURRED IN. The motion was seconded by Rep. O'Hara. Rep. Rapp-Svrcek moved to amend page 1, line 13 following "prison" by striking "has been determined to be a persistent felony offender". The motion was seconded by Rep. Hammond, and it failed due to a tie vote. (See roll call vote.)

Rep. Addy moved to amend page 1, line 18 following "homicide," by striking "mitigated" through "assault,". The motion was seconded by Rep. Miles and discussed. He said this amendment would limit the number of offenses whereby a person could be sentenced to death. He further said that he has a problem with

including these two particular offenses under the death penalty provision. Rep. Addy feels that the least likely crime to repeat is that of mitigated deliberate homicide. Upon request, mitigated deliberate homicide and aggravated assault will be considered separately with regard to the above motion. The question was called as to the portion of the amendment to exclude "mitigated deliberate homicide". That part of the motion to exclude "mitigated deliberate homicide" carried 11-7. (See roll call vote.) The question was called on the motion to exclude the "aggravated assault" portion. The motion carried 10-8. (See roll call vote.)

Rep. Keyser further moved that SB 392 BE CONCURRED IN AS AMENDED. The motion was seconded by Rep. Hammond. Rep. Rapp-Svrcek is concerned that under this legislation a persistent felony offender can be put to death. Rep. Mercer said he didn't feel that was intended. The question was called and a roll call vote taken. The motion failed 7-11. Without objection, the vote was reversed, and SB 392 was given a BE NOT CONCURRED IN AS AMENDED recommendation.

ADJOURN: A motion having been made by Rep. Keyser and having been seconded, the meeting adjourned at 12:10 a.m.

Tom Hannah
REP. TOM HANNAH, Chairman

DAILY ROLL CALL

HOUSE JUDICIARY COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date 3/22/85

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	✓		

STANDING COMMITTEE REPORT

March 22 19 85

MR. Speaker:

We, your committee on Judiciary

having had under consideration Senate Bill No. 23

Third reading copy (Blue color)

EXTENDING RES. WATER RIGHTS COMPACT COMMISSION & CHANGES IN WATER ADJUDICATION

Respectfully report as follows: That Senate Bill No. 23

be amended as follows:

1. Title, line 9.
Following: "NECESSARY;"
Insert: "LIMITING THE OBJECTIONS THAT MAY BE MADE TO A COMPACT IN THE WATER COURTS;"

2. Title, line 12.
Following: "INCLUDED"
Strike: ";"

3. Title, line 13.
Following: "ORDER"
Insert: ";"

DO PASS

(continued)

Chairman.

STATE PUB. CO.
Helena, Mont.

COMMITTEE SECRETARY

4. Title, line 17.
Following: "85-2-231,"
Insert: "85-2-233,"

5. Page 6, following line 1.
Insert: "Section 4. Section 85-2-233, MCA, is amended to read:

"85-2-233. Hearing on preliminary decree. (1) Upon objection to the preliminary decree by the department, a person named in the preliminary decree, or any other person, for good cause shown, the department or such person is entitled to a hearing thereon before the water judge.

(2) If a hearing is requested, such request must be filed with the water judge within 90 days after notice of entry of the preliminary decree. The water judge may, for good cause shown, extend this time limit an additional 90 days if application for the extension is made within 90 days after notice of entry of the preliminary decree.

(3) The request for a hearing shall contain a precise statement of the findings and conclusions in the preliminary decree with which the department or person requesting the hearing disagrees. The request shall specify the paragraphs and pages containing the findings and conclusions to which objection is made. The request shall state the specific grounds and evidence on which the objections are based.

(4) Upon expiration of the time for filing objections and upon timely receipt of a request for a hearing, the water judge shall notify each party named in the preliminary decree that a hearing has been requested. The water judge shall fix a day when all parties who wish to participate in future proceedings must appear or file a statement. The water judge shall then set a date for a hearing. The water judge may conduct individual or consolidated hearings. A hearing shall be conducted as for other civil actions. At the order of the water judge a hearing may be conducted by the water master, who shall prepare a report of the hearing as provided in M.R.Civ.P., Rule 53(e).

(5) Objections to a compact negotiated and ratified under 85-2-702 or 85-2-703 shall be limited to:

(a) the authority of the state:

(i) to determine Indian or other federally reserved water rights through the procedure set forth in 85-2-702 and 85-2-703; and

(ii) to bind through such determination, for purposes of a final decree under 85-2-234, all persons whose existing rights are or may be affected by the compact; or

(b) the process by which the compact was negotiated or ratified.

Chairman.

STATE PUB. CO.
Helena, Mont.

(6) Failure to object under subsection (2) to a compact bars any subsequent cause of action based in whole or in part on those grounds for objection stated in subsection (5).

(7) If the court sustains an objection under subsection (5), it shall declare the compact void. The agency of the United States, the tribe, or the United States on behalf of the tribe party to the compact shall be permitted 6 months after the court's determination to file a statement of claim, as provided in 85-2-224, and the court shall thereafter issue a new preliminary decree in accordance with 85-2-231; provided, however, that any party to a compact declared void may appeal from such determination in accordance with those procedures applicable to 85-2-235, and the filing of a notice of appeal shall stay the period for filing a statement of claim as required under this subsection.""

Renumber: subsequent sections

6. Page 6, line 11.
Following: "decree"
Insert: "without alteration unless an objection is sustained pursuant to 85-2-233"

7. Page 9, line 14.
Following: "end"
Insert: "unless an objection to the compact is sustained under 85-2-233,"

8. Page 9, line 16.
Following: "decree"
Insert: "without alteration"

AND AS AMENDED,
BE CONCURRED IN

TOM HANNAH, Chairman.

STATE PUB. CO.
Helena, Mont.

STANDING COMMITTEE REPORT

March 22 19 85

MR. Speaker

We, your committee on Judiciary

having had under consideration Senate Bill No. 152

Third reading copy (Blue color)

PRESUMPTION IN FAVOR OF JOINT CUSTODY EQUAL RESIDENCY TIME

Respectfully report as follows: That Senate Bill No. 152

be amended as follows:

1. Page 1, line 21.
Following: "40-4-212"
Strike: "BY" through "EVIDENCE" on line 22.

2. Page 2, line 7.
Following: "that the"
Insert: "physical custody and"

3. Page 2, line 8.
Following: "be"
Strike: "shared by"
Insert: "allotted between"

4. Page 2, line 14.
Following: "may"
Strike: "with" through "parties"

~~DO PASS~~
AND AS AMENDED,
BE CONCURRED IN

REP. TOM HANNAH, Chairman.

COMMITTEE SECRETARY

STATE PUB. CO.
Helena, Mont.

STANDING COMMITTEE REPORT

March 22 19 85

MR. Speaker:

We, your committee on Judiciary

having had under consideration Senate Bill No. 392

Third reading copy (Blue color)

AUTHORIZING DEATH PENALTY FOR CERTAIN CRIMES COMMITTED BY INMATES AT MSP

Respectfully report as follows: That Senate Bill No. 392

be amended as follows:

1. Page 1, line 18.
Following: "homicide,"
Strike: "mitigated" through "assault,"

AND AS AMENDED,
BE NOT CONCURRED IN
~~DO PASS~~

REP. TOM HANNAH Chairman.

STATE PUB. CO.
Helena, Mont.

COMMITTEE SECRETARY

ROLL CALL VOTE

HOUSE COMMITTEE JUDICIARY

DATE March 22, 1985 BILL NO. SB 392 TIME 11:50

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)		✓

Marcene Lynn
Secretary

Tom Hannah
Chairman

Motion: Rep. Rapp-Svrcek moved to amend page 1, line 13 following "prison" by striking "has been determined to be a persistent felony offender". The motion was seconded by Rep. Hammond and failed due to a tie vote 9-9.

ROLL CALL VOTE

HOUSE COMMITTEE JUDICIARY

DATE March 22, 1985 BILL NO. SB 392 TIME 12:00

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)		✓

Marcene Lynn
Secretary

Tom Hannah
Chairman

Motion: Rep. Addy moved to amend page1, line 18 following "homicide," by striking "mitigated deliberate homicide". The motion was seconded by Rep. Miles and carried 11-7.

ROLL CALL VOTE

HOUSE COMMITTEE JUDICIARY

DATE March 22, 1985 BILL NO. SB 392 TIME 12:01

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)		✓

Marcene Lynn
Secretary

Tom Hannah
Chairman

Motion: Rep. Addy moved to amend page 1, line 18 following "homicide," by striking "aggravated assault". The motion was seconded by Rep. Miles and carried 10-8.

ROLL CALL VOTE

HOUSE COMMITTEE JUDICIARY

DATE March 22, 1985 BILL NO. SB 392 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)	✓	

Marcene Lynn
Secretary

Tom Hannah
Chairman

Motion: Rep. Keyser moved that SB 392 BE CONCURRED IN AS AMENDED. The motion was seconded by Rep. Hammond and failed 7-11. Without objection, the vote was reversed, and SB 392 was given a be not concurred in as amended recommendation.

STANDING COMMITTEE REPORT

March 22 19 85

MR. Speaker:

We, your committee on Judiciary

having had under consideration Senate Bill No. 406

Third reading copy (Blue color)

REVISING LAWS RELATING TO INTERNAL ORGANIZATION OF JUSTICE DEPARTMENT

Respectfully report as follows: That Senate Bill No. 406

be amended as follows:

1. Title, line 10.
Strike: "44-3-204,"

2. Title, line 12.
Following: "2-15-2004"
Strike: ","
Insert: "AND"

Strike: ", 44-2-102,"
Insert: "through"

3. Title, line 13.
Strike: "44-3-202, 44-3-212, AND 44-3-304,"

4. Page 4, following line 12.
Strike: section 10 in its entirety.

DO PASS

(continued)

Chairman.

STATE PUB. CO.
Helena, Mont.

COMMITTEE SECRETARY

Renumber subsequent subsections

5. Page 5, line 1.
Following: "examiner"
Insert: "to the state medical examiner"

6. Page 7, lines16, and 17.
Following: "44-2-102,"
Insert: "and"

Following: "44-3-103,"
Strike: "44-3-202, 44-3-212, and 44-3-304,"

AND AS AMENDED,
BE CONCURRED IN

REP. TOM HANNAH Chairman.

STATE PUB. CO.
Helena, Mont.

STANDING COMMITTEE REPORT

March 22 19 85

MR. Speaker:

We, your committee on Judiciary

having had under consideration Senate Bill No. 411

Third reading copy (Blue color)

ADMISSION AND TREATMENT OF YOUTHS TO STATE TREATMENT CENTER AND HOSPITAL

Respectfully report as follows: That Senate Bill No. 411

be amended as follows:

1. Strike ~~[illegible]~~ statement of intent in its entirety.

2. Page 5, line 22.
Following: "individuals"
Strike: "13 years of age and under"
Insert: "who are 12 years of age or older and under 19 years of age"

3. Page 6, line 15.
Following: "than"
Strike: "must be less than"
Insert: "may not be under 12 years of age or more than"

4. Page 6, line 16.
Following: "center."
Strike: "Individuals" through "53-21-502." on line 19.

~~XXXXXX~~
DO PASS
AND AS AMENDED,
BE CONCURRED IN

REP. TOM HANNAH Chairman.

STATE PUB. CO.
Helena, Mont.

COMMITTEE SECRETARY

ROLL CALL VOTE

HOUSE COMMITTEE JUDICIARY

DATE March 22, 1985 BILL NO. SB 411 TIME

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)		✓

Marcene Lynn
Secretary

Tom Hannah
Chairman

Motion: Rep. Krueger moved to amend page 3 by striking lines 4, 5 and 6. Furthermore, on page 6, lines 22 through 23, reinsert the stricken material and strike on page 6 the new language beginning on line 23 through line 2 on page 7. The motion was seconded by Rep. Brown and failed 8-10.

Exhibit A
3/22/85
SB 152

A PRESUMPTION OF JOINT CUSTODY, CONSTITUTIONALLY GUARANTEED

A Nonprofit Association concerned with the joint custody of children and related issues of divorce, including research, information dissemination and legal and counseling practices

THE JOINT CUSTODY ASSOCIATION

10606 Wilkins Avenue
Los Angeles, California 90024

James A Cook
President

June 11, 1982

1

rridden only with evidence of "harm"

Equality of basic rights

retained by joint custody

Rationale *

Joint custody: A constitutionally mandated presumption which follows as a corollary to the fundamental right of parental autonomy.

Parental autonomy as a fundamental right proceeds logically from those cases securing to individual parents the right to participate in the control of their minor children.

Each parent has this right equally prior to divorce.

The equality of rights between the parents should be retained after divorce.

Joint custody is a mechanism for retaining this equality.

- - - - - - - - - - -

The right to joint custody is fundamental.

The state may override it only if it has a compelling interest in so doing.

Contrary to common assumption, the pursuit of the "best interests of the child" cannot function as a compelling state interest in this context.

The only defensible compelling state interest is more limited in scope: prevention of harm to the child.

"...the presumption of sole custody...is that one parent alone, rather than both parents together, should have custody of the children following a divorce."

Marriage of Pergament, 28 Or. App. 459, 462, 559 P.2d 042, 943 (1977) ("When a family is split by dissolution of the marriage the child of necessity can be in custody of only one parent and the custodial parent is given the primary responsibility for rearing the child.")

EQUALITY OF PARENTS

"Yet, if the positions of the two parents are indeed equal, then neither parent alone should be presumed to have a right to sole custody. The equality of

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* All of the following material was derived solely from, and is to the credit of, Ellen Canacakos, Articles Editor and author of "Joint Custody As A Fundamental Right" published in the Arizona Law Review, Vol 23, No 2, 1981, University of Arizona Law College, Tucson Arizona 85721.

You are particularly referred to the original published article from which these quotations have been excerpted.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 1
DATE 013085

Joint Custody as Related to Paternal Involvement and Paternal Self-Esteem

Ann D'Andrea*

The mother's superior right to custody, largely upheld and unquestioned by American courts since the turn of the century, is currently being challenged. Fathers, who are only recently finding societal sanction for their role as nurturing parent, in an effort to retain their right to be effective participants in their children's lives after divorce, are contesting the assumption of mother custody in the courts with some success. They are not only seeking sole custody, but lobbying for joint-custody legislation. This challenge is reflective of the considerably societal change and expansion undergone by the construct "father" within the last thirty years. Rather than mere providers, fathers are now recognized as important contributors to their children's development (Lamb, 1979), fully capable of caring for and rearing their children, while benefiting from such activity and suffering from its absence (Greif, 1979).

Yet, while it is acknowledged that children need their fathers, within the mother-custody tradition, children of divorce are being deprived of their father's presence in their lives. Hetherington, Cox and Cox (1978), in their study of divorced families, found that visitation fathers had decreasing contact with their children over the two-year period of the study. This withdrawal on the part of the father takes its toll upon the child, for, as reported by Wallerstein and Kelly (1980), children seem to experience an acute sense of loss and grief even years after the divorce, feeling abandoned and rejected by their fathers.

Given these findings and the awareness that children need to engage in ongoing relationships with both parents even after divorce, one can conclude that any alternative custody arrangement which allows a father to remain motivated and interested in exercising his paternal role after divorce will likely benefit the child.

One such alternative is joint custody. The present study attempts to determine whether the joint-custody status facilitates paternal involvement. It was a basic assumption of this study that the visitation father's withdrawal from his child is an inevitable outcome of a model of custody which, in essence, strips a man of his paternal role. The right to participate in decisions regarding his child is denied him, as is access to his child. Since participation in decisions regarding the child's upbringing, e.g., choice of school, religion, medical attention, etc., has been integral to the father's role in our culture, loss of this right is viewed by many visitation fathers as a loss of role. If we agree with the point of view of cognitive theorists that one assumes a role and performs behaviors as a part in response to the expectations of others (Wegner & Vallacher, 1977), one can understand why a father whose family and society no longer permit or expect him to behave as a father indeed ceases to assume that role. Further, a father who cannot test his competence as a father by exercising that role will not be able to feel competent and can be expected to lose paternal self-esteem. Lowered self-esteem produces the prediction of negative outcomes, which reduces the desire to test one's competence. The inevitable result is, once again, withdrawal from and contact with the child.

It was the above-cited results and rationale, viewed within the context of the newly defined paternal role, which led to the study reported here. Thus, it was the primary objective of this investigation to determine whether a man's perception of himself as either a joint-custody father or a visitation father was related to (1) his perception of the

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*Ann D'Andrea, Ph.D. is in private practice in Los Angeles. This paper is a summary of a doctoral dissertation presented to the California School of Professional Psychology, Los Angeles in July of 1981. Special thanks are extended to dissertation committee chairman, Jeremy J. Samsky, Ph.D., and to members, Allana Elovson, Ph.D. and Bruce R. Watkins, Ph.D.

father/child relationship and (2) to his paternal self-esteem. It was believed that the joint-custody status would allow a father to perceive himself as more involved with his child, as measured by his self-perceived knowledge of and influence on his child, and as having greater paternal self-esteem than would the visitation status. Such perception would allow a father to experience a greater sense of satisfaction and would facilitate his continued participation in his children's lives.

Method

Subjects

The total sample consisted of forty-six divorced fathers whose names were obtained from (1) court records, (2) Conciliation Court referrals, (3) fathers' organizations, and (4) through friendship pyramiding. There was a high percentage of return of questionnaires (69%-79%) from each source which seems to reflect a high degree of interest across sources. There are, therefore, no a priori grounds for assuming that any one source represented a vested interest which might yield biased results.

Twenty-four subjects identified themselves as joint-custody fathers and twenty-two as visitation fathers. Of the twenty-four joint-custody fathers, thirteen affirmed that their children lived in both households a substantial amount of time, which was one of the criteria used by Benedek and Benedek (1979) to define joint custody. For purposes of this study, it was not the actual time a child spent in each household which was of importance, but rather whether a father perceived his child as living in both households a substantial amount of time (Table 1).

Subjects were white, of middle to upper-middle class background, and ranged in age from twenty-three to fifty-seven years, the average age being forty. Most had completed at least sixteen years of education with a range of eight to twenty-four years. Incomes ranged from $5,000 to $175,000, with most earning about $30,000 per year. The subjects' occupations fell into three main categories: Professional (16), managerial (13), and skilled or clerical (12).

The sample consisted of natural fathers who had been separated/divorced no less than six months. The average length of time since separation or divorce was about three years. Subjects had from one to four children ranging in age from three to eighteen years. Data were gathered only for those children between the ages of 3½ and 11½ years, that is, children who were verbal but not yet adolescents. As indicated by Greif (1979), these limits control for variables which may be attributable to normal developmental changes in the child, such as emerging adolescent interpersonal concerns.

It should be noted that T-test analyses of demographic data yielded no significant differences between joint-custody and visitation fathers (Table 2).

Table 1

"Does the Child Live in Both Households A Substantial Amount of Time"

	VISITATION (N = 22)		JOINT-CUSTODY (N = 24)	
	N	%	N	%
YES	1	4.55%	13	54.17%
NO	20	90.90%	9	37.5%
MISSING	1	4.55%	2	8.33%

Table 2

Comparison Between Joint-Custody and Visitation Fathers on Demographic Criteria

(t-tests)

	JOINT-CUSTODY (N = 13)		VISITATION (N = 14)		
	$\bar{x}$	sd	$\bar{x}$	sd	t
AGE	40.21	5.49	38.81	6.66	.699 n.s.
YEARS OF EDUCATION	16.13	2.56	16.00	4.16	.123 n.s.
INCOME (in thousands)	39.46	36.42	26.84	17.04	1.383 n.s.
TIME SEPARATED (in months)	32.58	15.33	37.91	21.01	.577 n.s.
NUMBER OF DAUGHTERS	.79	.72	.91	.99	.441 n.s.
NUMBER OF SONS	.92	.58	.91	.70	.063 n.s.
AGE OF YOUNGEST CHILD (in years)	4.58	4.19	3.67	4.51	.706 n.s.
AGE OF OLDEST CHILD (in years)	9.67	3.36	8.52	4.38	.989 n.s.

Procedure

A paper-and-pencil approach was used, each subject being asked to complete four questionnaires. Fathers whose names had been obtained from sources identified above were sent letters of introduction, requesting participation in the study. Those who responded expressing an interest in participating were mailed a questionnaire packet with a stamped return envelope included.

Instruments

A questionnaire was devised for this study to yield, in addition to demographic data, the following information:

1. Whether a man perceives his children as living in both household a substantial amount of time.

2. Whether a man is satisfied with his custody status and whether he had indeed chosen it at the time of his divorce.

3. Whether he sees his children more or less often at present than immediately after separation to determine whether there is a relationship between custody status and frequency of visitation over time.

In addition, the following three questionnaires were used with the permission of their respective creators:

1. Paternal self-esteem. A forty-item scale was devised by Alter (1978) to measure paternal, social, provider, job-competency and general self-esteem. A Kuder-Richardson reliability coefficient of .802 was obtained for the paternal self-esteem component. Content validity was established for the entire measure (Alter, 1978).

2. Perceived influence. Greif (1979) and Roman (1977, cited in Abarbanel, 1977) devised a measure which assesses a man's perception of his influence on his children before and after separation/divorce. Ten dimensions of the construct "fathering" were used:

Routine daily care and safety of the child.
Intellectual development.
Physical development.
Teaching the child how to behave.
Recreational activities.
Emotional development.
Religious development.
Moral development.
Giving the child a sense of being part of a family.
Financial decision-making affecting the child. A test-retest reliability coefficient of .93 was reported for this questionnaire.

3. Knowledge of the child. A questionnaire devised by Reis and Gold (1976) was used which yields a score for a parent's knowledge of his child's daily life, problems, development, and emotional adjustment as measured by the number of "don't know" responses to questions in the areas cited. For purposes of this study, it was not the accuracy of the "knowledge" which was assessed, but rather a father's perception of whether he knew or did not know certain things about his child. This questionnaire was filled out only for those children within the age limits of this study.

Results

Data from those joint-custody fathers who perceived their children living in both households (13) and those visitation fathers who did not so perceive (14) were submitted to multiple regression/correlation analyses in order to test the hypotheses that the joint-custody status is positively and significantly related to (1) paternal involvement as measured by self-perceived knowledge of and influence on the child at present, and (2) paternal self-esteem. Ambiguity in the phrasing of instructions led many visitation fathers to omit answering the "both houses" question, among others, which explains the small number of visitation fathers to be included in these analyses.

Paternal involvement

The hypothesis that the joint-custody status is positively and significantly related to paternal involvement as measured by self-perceived knowledge of and influence on the child was confirmed. Both the unpartialled ($F=9.289$, $p<.01$, df 2,24) and partialled effects ($F=4.830$, $p<.01$, df 4,22) of the construct "paternal involvement" attained significance.

Thus, joint-custody fathers believed they knew more about their children and had greater influence on them than did visitation fathers.

Paternal self-esteem

The hypothesis that the joint-custody status is positively and significantly related to paternal self-esteem received conditional confirmation. Only the unpartialled effect of the construct "self-esteem" attained significance ($F=3.926$, $p<.05$, df 2,24). That is, when viewed independently, paternal self-esteem scores were higher for joint-custody fathers than for visitation fathers. When partialled, however, self-esteem, though not significant, shared twenty-one percent ($R^2=.2064$) of the variance with paternal involvement which, in and of itself, attained significance ($F=3.387$, $p<.05$, df 2,24). This result indicates that, given the parameters of the measures used, the constructs "paternal involvement" and "paternal self-esteem" are not independent of one another. The theoretical implications of this finding are discussed elsewhere (D'Andrea, 1981).

Other interesting results

Data for the entire sample ($N=46$) were further analyzed by means of T-tests, simple correlations and other MRC analyses. These analyses, therefore, included those joint-custody fathers who perceived their children as living in both households a substantial amount of time and those who did not so perceive, as well as all visitation fathers.

Frequency of visits and relationship with child. Most fathers, regardless of custody status or length of time separated or divorced, perceived themselves very close to their children. When asked, however, whether they saw their children more, the same, or less at present than immediately after separation/divorce, visitation fathers reported fewer visits with their children while joint-custody fathers reported more or the same number of visits at present. There was a significant difference between the two groups ($T=2.503$, $p<.05$).

Further, frequency of visitation was found to be highly correlated with satisfaction with custody status ($r=.426$, $p<.05$, $df=31$).

Satisfaction with custody status. Joint-custody fathers were significantly more satisfied with their custody status than were visitation fathers ($T=3.909$, $p<.05$). Of the twenty-five percent of joint-custody fathers who indicated they were "very dissatisfied" with their custody status (Table 3), many also indicated they wanted more time with their children.

Satisfaction with custody status was also found to be highly related to a father's perception of having influence upon his children's lives at present ($r=.406$, $p<.05$, $df=38$).

"Both households." The data were submitted to a final MRC analysis, using as dependent variable responses to the question "Does your child live in both households a substantial amount of time?" It was found that both paternal involvement ($F=4.207$, $p<.01$, df 4,31) and paternal self-esteem ($F=4.810$, $p<.05$, df 2,33) attained significance. Thus, the perception of involvement with the child and paternal self-esteem increase when a father perceives his child as living in both households.

Discussion

This study assumed that the joint-custody status would allow a father to retain his paternal role and thus remain motivated to continue to participate in his child's life. This assumption was clearly supported by the data. Joint-custody fathers do evidence greater self-perceived involvement with their children than do visitation fathers. That is, they believe they have greater influence on their children and know more about them than do visitation fathers.

It bears repeating that these findings were based on data from those joint-custody fathers who perceived their children as living in both households a substantial amount of time. It should be stressed that the perception of some shared physical custody was found to be important to a father's degree of involvement with his child. This finding leads to the conclusion that the joint-custody award which allows a father to perceive his child as living in his home as well as that of his ex-wife contributes to a father's increased involvement with his child.

Yet, comparisons between visitation fathers and the entire sample of joint-custody fathers, i.e., those who perceived their children living in both households and those who did not, yielded significant differ-

Table 3

Satisfaction with Custody Status

	JOINT CUSTODY (N = 24)		VISITATION (N = 22)		
	$\bar{x}$ 3.58		$\bar{x}$ 1.71		$t = 3.909^*$
	sd 1.93		sd 1.10		
	N	%	N	%	
VERY SATISFIED (5)	11	45.8%			
MODERATELY SATISFIED (4)	3	12.5%	3	13.6%	
SLIGHTLY SATISFIED (3)	2	8.3%	1	4.6%	
MODERATELY DISSATISFIED (2)	2	8.3%	4	18.2%	
VERY DISSATISFIED (1)	6	25.0%	13	59.1%	
MISSING DATA			1	4.6%	

*$p < .05$, $df = 43$

ences between the two groups. These differences suggest that the joint-custody status, in and of itself, contributes to a father's continued presence in his child's life and to an enhanced perception of his situation as a divorced father. Joint-custody fathers expressed greater satisfaction with their custody status than did visitation fathers, giving support to the results reported by Greif (1979). More important and relevant, however, was the finding that frequency of visitation after separation/divorce was greater for joint-custody fathers. That is, joint-custody fathers reported they saw their children as often or more at present than they did immediately after separation or divorce while visitation fathers reported they saw their children less often. This finding supports that of Hetherington, Cox and Cox (1978) who found that the frequency of visitation on the part of a non-custodial father declined over a two-year period after separation or divorce.

If a father is an important contributor to his child's development and if his presence in his child's life is of benefit not only to his child but to himself as well, it is important to acknowledge that the joint-custody status, in and of itself, may facilitate a father's continued presence in his child's life and otherwise enhance his perception of his role.

In conclusion, the present study suggests that the joint-custody status offers fathers the impetus to feel more satisfied, more influential in their children's lives and to remain active participants in their children's upbringing, thus meeting the need of both father and child.

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EXHIBIT C
3/22/85
SB 392

Montana Catholic Conference

March 22, 1985

CHAIRMAN HANNAH AND MEMBERS OF THE HOUSE JUDICIARY COMMITTEE:

I am John Ortwein representing the Montana Catholic Confereence.

I am here today in opposition to Senate Bill 392.

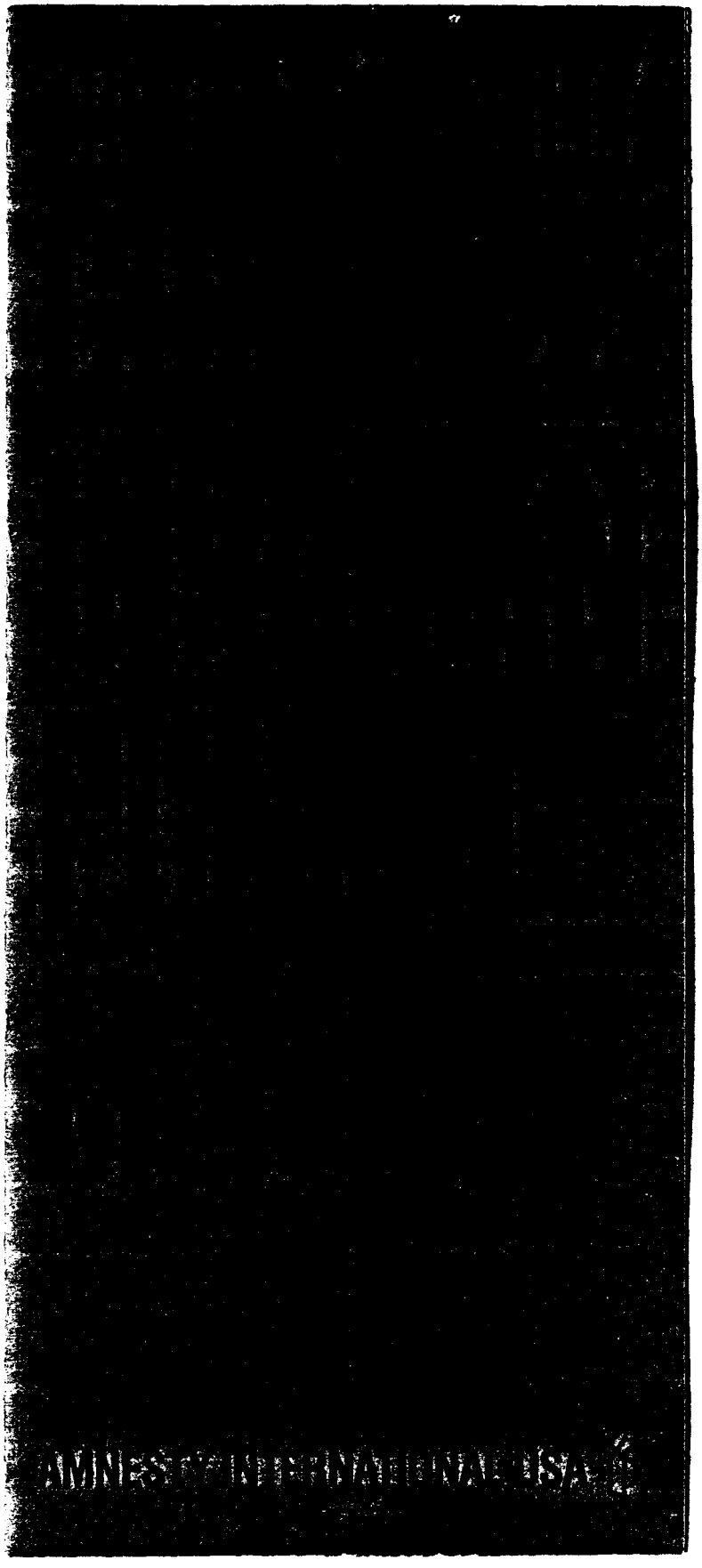
Out of a commitment to the value and dignity of human life, The Montana Catholic Conference has declared its opposition to the death penalty. In so doing, we are especially mindful of the relatives and loved ones of the victims of murder, including those who seek relief in the execution of the perpetrator, and those who have forgiven him or her. Also we are very aware of the families of the perpetrators, who also suffer the consequences of these crimes.

The imposition of the death penalty is inconsistent with our efforts to promote respect for human life, to stem the tide of violence in our society, and to embody the message of God's redemptive love. The use of the death penalty will harden and debase our lives together. It institutionalizes revenge and retribution, which are the enemies of peace. It gives official sanction to a climate of violence.

An editorial entitled, "Pornography of Death," which appeared in the April 21, 1984, edition of America magazine stated: "The hidden victim in any execution is the public conscience and its respect for the sacredness of life."

We urge a "do not pass" for Senate Bill 392.

Tel. (406) 442-5761 P.O. BOX 1708 530 N. EWING HELENA, MONTANA 59624


AMNESTY INTERNATIONAL USA

Amnesty International

P.O. Box 45 Student Union Building
Montana State University
Bozeman, Montana 59715

March 17, 1985

Hon. Tom Hannah, Chairman
Montana House Judiciary Committee
Capitol Station
Helena, MT 59620

Dear Representative Hannah:

I am writing you in regard to a piece of proposed legislation which is scheduled to be heard by the Judiciary Committee of the Montana House of Representatives on Friday morning, March 22, 1985. The bill referred to is Senate Bill 392, introduced this session of the Montana legislature by Sen. Permit Daniels, D--Deer Lodge. The bill is designed to broaden the possible use of the death penalty in the State of Montana, at the discretion of a presiding judge, for inmates of the Montana State Prison at Deer Lodge who are convicted of assault or homicide committed within the prison facility.

As a representative of the MSU Campus Action Network group of Amnesty International, I am writing to reiterate Amnesty International's opposition to imposition of the death penalty in all cases, without reservation. This position is one that is re-expressed by Amnesty in its struggle against the use of capital punishment in any and all countries of the world which still choose to make use of it. This opposition is based on a three-part position:

1) The death penalty is a violation of various articles of the United Nations' Universal Declaration of Human Rights, including the right to life, liberty, and security of person; the right not to be subjected to cruel, inhuman or degrading punishment, of which the use of the death penalty is considered to be the ultimate form.

2) The death penalty has historically been imposed inequitably on persons from various social and other backgrounds, and has never been shown to be a deterrent to crime

3) Use of the death penalty by any government gives that body the right of life and death over its citizens, and gives legal precedence for widening the scope of its use as punishment for other types of crimes, as witnessed with this legislation and the now-defunct SB 364.

Inasmuch as I am unable to be present on the day that your committee is scheduled to consider this bill, I submit this letter as

written testimony against S. 542. Amnesty International is respectfully requesting that this bill die in committee, or that committee refer it to the floor of the Montana House of Representatives with an unfavorable report, should you feel the subject matter worthy of further discussion at the debate stage.

If the Judiciary Committee were to refer the bill to the entire House with a "Do Pass" recommendation, then members of Amnesty International would find it appropriate to dedicate a larger portion of its network to speak out against the legislation. Staff members of the national office of Amnesty International-U.S.A. have been alerted to the possibility that such a bill might be introduced in the Montana legislature. If that happens, we should prepare to activate a network of people from this and possibly other countries within the nationwide groups of Amnesty International who would write letters requesting a veto if they were to reflect "backward" legislation.

Once a person is sentenced to death, the appeals process can take years and only serves to add to the congestion in the nation's courts systems. When a prisoner on death row is finally executed, the proceedings serve on an air lightened to a case of isolated brain disease. The execution utterly eliminates all opportunity to attempt rehabilitation or learn anything further from that person's life. It is a signal that society wishes to wash its hands of a problem.

Finally, I ask you to consider whether or not a bill such as S.B.542 is masking the real problem --increased violence in prisons in this country as a result of overcrowding prison populations. I feel proponents of this legislation is nothing more than an attempted stopgap measure by Senator Shiels--a glossing over of problems at Montana State Prison which are a direct result of overcrowding, problems which will be much more effectively dealt with by completion of the expansion project there.

Thanks to you and all the members of the House Judiciary Committee for their consideration and patience in this regard.

Respectfully,

Richard A. Duncan

Leonard A. Duncan
Coordinator of
Human Action Group

AMNESTY INTERNATIONAL USA

633 South Shatto Place, Room 213, Los Angeles, California 90005 (213) 388-1237

March 18, 1985

Hon. Tom Hannah, Chair
House Judiciary Committee
Montana House of Representatives
Capitol Station
Helena, Montana 59620

Dear Representative Hannah:

It is my understanding that your committee is currently considering SB 392, which would mandate the penalty of death for persons convicted of murder or assault within the Montana State Prison. I would like to record my strong opposition to this proposed bill.

The death penalty is the ultimate form of cruel and unusual punishment. It is, it must be, beneath the dignity of our government and our civilization to demonstrate our opposition to violence by putting people to death. Our judicial system is admirable, but not infallible; innocent people have been executed. As the Supreme Court has noted, death is different--it is final and irremedial; as long as our system is fallible, we cannot afford to employ so final a judgement. There is no conclusive evidence that the death penalty deters violent crime. Most violent acts are not committed in rational consideration of the likely consequences, but in fear or passion or under the influence of drugs or alcohol. It would seem likely that such acts would be even less rationally considered within a state penal institution. Finally, the system of sentencing is arbitrary and biased, a lottery with death determined less by the nature of the crime than by random aspects of trial procedure. The only elements that consistently mitigate toward death are the poverty and racial minority status of the accused.

In short, the death penalty is a convenient symbol, not an effective solution. The bill you are considering appears to represent a significant expansion of the likelihood that death will be used as punishment by the state of Montana. This would be a tragic reversal of the trend away from death exhibited by most of the world's responsible governments. The United States was founded on a respect for fundamental individual rights; we retain our moral force and strength of character only to the extent we maintain that respect for all people. And that respect depends in part on our abolition of the death penalty.

I hope and trust that you will do everything you can to prevent the extension of the use of death by the state of Montana represented by SB 392. I thank you.

Sincerely,

Jack Rendler

EXHIBIT D
3/22/85
SB 28

Proposed amendments to Senate Bill 28

1. Title, line 8.
Following: "NECESSARY;"
Insert: "LIMITING THE OBJECTIONS THAT MAY BE MADE TO A COMPACT IN THE WATER COURTS;"

2. Title, line 12.
Following: "INCLUDED"
Strike: ";"

3. Title, line 13.
Following: "DECREE"
Insert: ";"

4. Title, line 17.
Following: "85-2-231,"
Insert: "85-2-233,"

5. Page 6, following line 1.
Insert: "Section 4. Section 85-2-233, MCA, is amended to read:

"85-2-233. Hearing on preliminary decree. (1) Upon objection to the preliminary decree by the department, a person named in the preliminary decree, or any other person, for good cause shown, the department or such person is entitled to a hearing thereon before the water judge.

(2) If a hearing is requested, such request must be filed with the water judge within 90 days after notice of entry of the preliminary decree. The water judge may, for good cause shown, extend this time limit an additional 90 days if application for the extension is made within 90 days after notice of entry of the preliminary decree.

(3) The request for a hearing shall contain a precise statement of the findings and conclusions in the preliminary decree with which the department or person requesting the hearing disagrees. The request shall specify the paragraphs and pages containing the findings and conclusions to which objection is made. The request shall state the specific grounds and evidence on which the objections are based.

(4) Upon expiration of the time for filing objections and upon timely receipt of a request for a hearing, the water judge shall notify each party named in the preliminary decree that a hearing has been requested. The water judge shall fix a day when all parties who wish to participate in future proceedings must appear or file a statement. The water judge shall then set a date for a hearing. The water judge may conduct individual or consolidated hearings. A hearing shall be conducted as for other civil actions. At the order of the water judge a hearing may be conducted by the water master, who shall prepare a report of the hearing as provided in M.R.Civ.P., Rule 53(e).

(5) Objections to a compact negotiated and ratified under 85-2-702 or 85-2-703 shall be limited to:

(a) the authority of the state:

(i) to determine Indian or other federally reserved water rights through the procedure set forth in 85-2-702 and 85-2-703; and

(ii) to bind through such determination, for purposes of a final decree under 85-2-234, all persons whose existing rights are or may be affected by the compact; or

(b) the process by which the compact was negotiated or ratified.

(6) Failure to object under subsection (2) to a compact bars any subsequent cause of action based in whole or in part on those grounds for objection stated in subsection (5).

(7) If the court sustains an objection under subsection (5), it shall declare the compact void. The agency of the United States, the tribe, or the United States on behalf of the tribe party to the compact shall be permitted 6 months after the court's determination to file a statement of claim, as provided in 85-2-224, and the court shall thereafter issue a new preliminary decree in accordance with 85-2-231; provided, however, that any party to a compact declared void may appeal from such determination in accordance with those procedures applicable to 85-2-235, and the filing of a notice of appeal shall stay the period for filing a statement of claim as required under this subsection."

Renumber: subsequent sections

6. Page 6, line 10.
Following: "of"
Strike: "a"
Insert: "any"
Following: "compact"
Strike: "negotiated" through "85-2-702" on line 11
Insert: "to which no objection was sustained under 85-2-233"

7. Page 6, line 11.
Following: "decree"
Insert: "without alteration"

8. Page 8, line 10.
Following: "RIGHT"
Strike: "INCLUDING" through "85-2-702"

9. Page 9, line 4.
Following: "85-2-231"
Strike: ", and" through "decree" on line 16

RECOMMENDED STAFF CHANGES

For above amendments numbered 6 through 9, substitute the following:

6A. Page 6, line 11.
Following: "decree"
Insert: "without alteration unless an objection is sustained pursuant to 85-2-233"

7A. Page 9, line 14.
Following: "and"
Insert: "unless an objection to the compact is sustained under 85-2-233,"

8A. Page 9, line 16.
Following: "decree"
Insert: "without alteration"

EXHIBIT E
3/22/85
SB 28

THE BLACKFEET TRIBE

OF THE BLACKFEET INDIAN NATION

P. O. Box 850

BROWNING, MONTANA 59417

March 19, 1985

Representative Tom Hannah
Chairman, House Judiciary Committee
Montana House of Representatives
Capitol Station
Helena, Montana 59602

Dear Mr. Hannah:

The purpose of this letter is to briefly comment upon the proposed amendments to Senate Bill 28, which is now pending before your Committee. Let me also take this opportunity to thank you in allowing me an opportunity to comment on this important legislation.

As I understand the Attorney General's proposed amendment, private citizens of the State would be allowed an opportunity to challenge any compact negotiated pursuant to Section 85-2-702 or 85-2-703 of the Montana Water Use Act between the State and either the individual Indian Tribes or the Federal Government. It is further my understanding that citizen challenges would be limited to: 1) challenging the authority of the State to determine Indian or federally reserved water rights through negotiations; and 2) challenging State authority to bind through negotiation, individual citizens whose existing rights are or may be affected by a negotiated compact; and 3) challenging the process of compact negotiation or ratification. Failure to raise objection in a timely manner would bar any later objection on those same grounds. In the event a compact is declared void, affected parties (tribal or federal) have six (6) months to file a statement of claim, provided however, that any party to a compact declared to be void, has a right to appeal with any filing duty stayed pending the appeal outcome. Finally, it is my understanding that the amendment is intended to remedy a perceived due process problem.

I must first take the position that there exists no due process problem in connection with negotiated compacts. Supposedly, because individual state citizens are not part of the negotiations or compact, and their existing rights may be affected, they are being denied property without due process of law. I believe this theory to be incorrect for several reasons.

First, the Compact Commission, through the existing law and delegation of authority, does have the authority to bind the State and its citizens in a negotiated compact. This is what occurred in Yellowstone River Compact where the State legislature delegated the authority to the Yellowstone River Compact Commission to bind State citizens in that instance. The present situation with the general stream adjudication exists here, and in this instance there is a more compelling need to insure that the Reserved Water Rights Compact Commission has such authority. Only then can they be bargained with in sincere good faith.

Secondly, through the adoption of the Montana Constitution, the people of the State charged the legislature with settling water rights in Montana through a comprehensive general stream adjudication. Knowing the potential jurisdictional problems plaguing Indian water rights, surely negotiations was an anticipated avenue for settling such rights. By their expression in the 1972 Constitution the people of this State gave to the legislature the authority to bind them in settling Montana's water rights. In enacting the various provisions of the Montana Water Use Act, this legislature has already acknowledged its authority and responsibility with regard to State water rights. That authority should not be undermined at this stage of the game in an effort to quiet non-existant legal fears.

Another reason that there should be no amendment to the present recognition of the State's authority to bind its citizens in this matter, is that allowing such challenges would only make for increase of litigation and litigation costs which seem to escalate exponentially. Allowing challenges based upon State authority to bind its citizens only paves the way for lawyers to present various kinds of challenges intended only to delay or hinder the negotiation proceedings. The potential of undermining the authority of the Compact Commission through this kind of activity, thereby casting doubt on the entire negotiation process should not be tolerated. Included in this process is cost of litigation. Remember that avoiding the higher litigation expense is one of the primary factors favoring negotiated settlements. If these costs are to be a reality from the outset, that is before negotiation, the weight may shift from negotiating in an aborted attempt to avoid litigation costs, to an assumption that the costs are inevitable and should therefore be incurred knowingly in all out litigation.

Finally, if the Committee continues to believe a due process problem exists, then the present amendments are at least more acceptable than similar amendments offered in the Senate Judiciary Committee. As final fallback position, we would not object to the proposed amendments. I must say, however, that I sometimes wonder exactly what role the State Attorney General is supposed to play or has played in the Indian reserved rights issue. At best the role seems suspicious, at worst one of down right subversion. Perhaps it is time his role was clarified in terms everyone understands.

Once again thank you for this opporunity to present my views. Thank you.

Respectfully,

Joe J. McKay

JOE J. McKAY, Member
Blackfeet Tribal Business Council

Fredericks & Pelcyger

ATTORNEYS AT LAW
CANYON CENTER
1881 9TH STREET, SUITE 216
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(303) 443-1683

THOMAS R. ACEVEDO*
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ROBERT S. PELCYGER**
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DALE T. WHITE

TOM W. ECHOHAWK
(1952 - 1982)

OF COUNSEL
ROBERT J. GOLTEN

*ADMITTED ONLY IN VIRGINIA
**ADMITTED ONLY IN CALIFORNIA AND NEW YORK
***ADMITTED ONLY IN WISCONSIN

March 19, 1985

Marcia Rundle
Legal Counsel
Reserved Waters Rights
Compact Commission
32 South Ewing
Helena, Montana 59620

Re: Senate Bill 28 --
Montana Compact Commission

Dear Ms. Rundle:

As per your letter of March 13, 1985, to Donald Stewart, Sr., I am forwarding our comments on behalf of the Crow Tribe concerning Senate Bill 28. In general, the Tribe supports enactment of the Senate Bill and extension of the compact commisions for an additional two year period.

Our only comments and suggested amendments center upon the new section of the bill which provides for the filing of objections to a compact. As you can see by the attached sheet, we would add a new subsection (6) to the bill which would insure that any potential claim based upon a taking of private property would not affect the validity of the negotiated compact.

With the exception of this amendment, we have no objection to enactment of Senate Bill 28.

Sincerely yours,

Dale T. White

DTW/df

cc: Donald Stewart, Sr.
Representative Hannah

(5) Objections to a compact negotiated and ratified under 85-2-702 or 85-2-703 shall be limited to:

(a) the authority of the state:

(b) to determine Indian or other federally reserved water rights throught the procedure set forth in 85-2-702 and 85-2-703; and

(ii) to bind through such determination, for purposes of a final decree under 85-2-234, all persons whose existing rights are or may be affected by the compact; or

(b) the process by which the compact was negotiated or ratified.

(6) The exclusive remedy of a party who files objections to a compact negotiated and ratified under 85-2-702 or 85-2-703 based on the grounds of infringement or taking of private property shall be a claim for compensation and shall not affect the validity of the compact,

8. Failure to object under subsection (2) to a compact bars any subsequent cause of action based in whole or in part on those grounds for objection stated in subsection (5).

9. If the court sustains an objection, under subsection (5), it shall declare the compact void. The agency of the United States, the tribe, or the United States on behalf of the tribe party to the compact shall be permitted 6 months after the court's determination to file a statement of claim, as provided in 85-2-224, and the court shall thereafter issue a new preliminary decree in accordance with 85-2-231; provided, however, that any party to a compact declared void may appeal from such determination in accordance with those procedures applicable to 85-2-235, and the filing of a notice of appeal shall stay the period for filing a statement of claim as required under this subsection."

United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
BILLINGS AREA OFFICE
316 NORTH 26TH ST.
BILLINGS, MONTANA 59101

IN REPLY REFER TO:
Water Resources
Code 380

MAR 21 1985

Representative Tom Hannah
Chairman, House Judiciary Committee
Capitol Station
Helena, Montana 59620

Dear Mr. Hannah:

The Department of Interior comments on Senate Bill No. 28 made during the Senate hearings on the bill are still valid. We will not submit a statement to the House Judiciary Committee, which would just be a duplication of our comments to the Senate. The Department still strongly urges an extension of the deadline.

Thank you for the opportunity to comment on Senate Bill No. 28.

Sincerely,

Area Director

State of Montana
Office of the Governor
Helena, Montana 59620

TED SCHWINDEN
GOVERNOR

March 18, 1985

The Honorable Tom Hannah, Chairman
House Judiciary Committee
House of Representatives
State Capitol
Helena, MT 59620

Dear Representative Hannah:

We have reviewed the amendments to Senate Bill 28 drafted by members of the Compact Commission and Attorney General's Office. We find the amendments acceptable and urge the passage of Senate Bill No. 28 as amended.

Thank you for inviting our comments.

Sincerely,

Mona Jamison

MONA JAMISON
Chief Legal Counsel

DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

TED SCHWINDEN, GOVERNOR

32 SOUTH EWING

STATE OF MONTANA

(406) 444-6699

HELENA, MONTANA 59620

March 19, 1985

Representative Tom Hannah
Chairman House Judiciary Committee
Capitol Station
Helena, Montana 59620

Dear Representative Hannah:

I am writing to you in response to your March 12, 1985 letter concerning amendments to Senate Bill 28.

The proposed amendments have been reviewed by the legal staff of the Department of Natural Resources and Conservation and it is the agency position that the amendments accord due process in compliance with both state and federal constitutions. Therefore, the Department has no objection to the amendments as proposed.

It should be noted that Amendment No. 9 should read "Page 9, line 14." rather than "Page 9, line 4."

Thank you for the opportunity to respond to the proposed amendments and I trust this information will be of value to you and to the Judiciary Committee.

Sincerely,

Larry Fasbender

LARRY FASBENDER
DIRECTOR

VISITORS' REGISTER

HOUSE JUDICIARY COMMITTEE

BILL NO. SB 152 (Sen. Brown); SB 392 (Sen. Daniels); ~~SB 406 (Sen. Lynch);~~ SB 411 (Sen. Towe)

SPONSOR

DATE March 22, 1985

NAME (please print)	~~RESIDENCE~~ REPRESENTING	SUPPORT	OPPOSE
Alan Nicholson	Self	152	
Kim Kradolfer	AG	SB406	
Larry Majerus	Dept. of Justice	SB406	
John Ortwein	Mt Catholic Conf.	SB 392	✓
Dorothy Laughlin	Self	152	
Janet Iannatta	Self	152	
Jerry O'Neil	Self	152	
Helen Grob	Grandparents	152	
Wendie Henriques	Self	152	
William Leinweber	Self	152	
Mary Heinz	Grand parents	152	
Cathy Campbell	Mt Assn of Churches	[illegible]	SB392
Roy Andes	ACLU	[illegible]	392
Chip Erdmann	Self	152	
B Molineux	MT Psychological Assoc	152	
Maureen Cleary	Self	152	
Kerry Moore	Board of Visitors	411	

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.