

MONTANA STATE SENATE
JUDICIARY COMMITTEE
MINUTES OF THE MEETING

February 22, 1985

The thirty-seventh meeting of the Senate Judiciary Committee was called to order at 10:05 a.m. on February 22, 1985, by Chairman Joe Mazurek in Room 325 of the Capitol Building.

ROLL CALL: All committee members were present.

TABLING OF SB 439: Senator Jack Galt, sponsor of SB 439, stated that in view of the fact that the contents of this bill were taken care of in the committee's action on SB 28, and in view of the fact there were no witnesses present to testify on the bill, he moved SB 439 be TABLED. The motion carried unanimously.

CONSIDERATION OF SB 449: Senator Pat Regan, sponsor of SB 449, testified that this bill addresses the subject of domestic abuse. The bill is an attempt to accomplish three things: (1) to define domestic abuse; (2) to make it a criminal offense; and (3) to prohibit a police officer from accepting bail (making it necessary for the offender to appear before a magistrate to post bond). Senator Regan stated she would like the committee to strike section 2 from the bill.

PROPONENTS: Nancy Challren, a volunteer from the Friendship Center, appeared in support of the bill (see witness sheet and written testimony attached as Exhibit 1). Amy Pfeifer, on behalf of the Women's Law Caucus of the University of Montana School of Law, appeared in support of the bill (see witness sheet and written testimony attached as Exhibit 2). Marjorie Thomas, on behalf of the Deer Lodge County Attorney's Office, appeared in support of the bill (see witness sheet attached as Exhibit 3). Caryl Wickes Borchers, representing the Montana Coalition Against Domestic Violence, testified in support of SB 449 (see witness sheet and written testimony attached as Exhibit 4 in addition to testimony also attached as Exhibit 4A presented on behalf of others who were unable to attend the hearing). Lenore Taliaferro, a staff person at the Friendship Center in Helena, testified in support of the bill (see witness sheet attached as Exhibit 5). Betty Elias, representing Hi Lines Help for Abused Spouses, testified in support of SB 449 (see witness sheet attached as Exhibit 6). Janet Schmidt, who works in one of the shelters for battered women and children in Great Falls, presented written testimony in support of the bill (Exhibit 7). Melinda, from Great Falls, also submitted written testimony in support of the bill (Exhibit 8). Mary, from Great Falls, testified she is in favor of SB 449 as a positive

statement domestic violence is unacceptable. Marti Adrian, a counselor from Missoula, testified that her clients ask they please do something with the batterer and for the batterer. John Ortwein, representing the Montana Catholic Conference, appeared in support of the bill (see written testimony attached as Exhibit 9). Gail Kline, representing the Women's Lobbyist Fund, presented written testimony in support of the bill (Exhibit 10). Jill Kennedy, representing the Friendship Center of Helena, Inc., submitted a witness sheet in support of SB 449 (Exhibit 11).

ADDITIONAL TESTIMONY: Susan Cottingham, representing the American Civil Liberties Union, stated she appeared at the hearing on SB 449 neither as a proponent nor as an opponent, although they are in support of the goals of the women who have testified. They support sections 3 and 6 of the bill; however, they believe problems arise under the section that requires mandatory arrest. They believe we are getting into a new area where we are requiring an officer to arrest at the scene. They believe the words "probable cause" should be strengthened. Otherwise, they are supportive of the other provisions of the bill.

OPPONENTS: John Scully, representing the Sheriffs and Peace Officers Association, appeared in opposition to the bill. He testified the difficulty they have with the bill is as they confront the situation at the time, they are being directed to make an arrest of the abuser. They will have to come to the conclusion that one of the people before them has violated the terms of the code. This bill allows a good faith mistake of arresting the abuser, but it does not allow for the mistake of not arresting the abuser. They might have to arrest both of the parties to make sure everyone is safe. Mr. Scully testified that the definitions in the bill are the definitions we have in the current law for assault. He stated he doesn't think the solution thought of here will help. He asked that the committee consider the predicament you put the officer in who has to decide on the spot as to who is doing what to whom. He asked if they fail to arrest the right person, can they be held harmless.

QUESTIONS FROM THE COMMITTEE: Senator Blaylock asked Senator Regan to address Mr. Scully's point. Senator Regan responded it is an important question, but pointed out that the system in place has not worked. She stated failure to arrest simply reinforces the view that violence is okay. She believes that arrest communicates to all that a crime has taken place.

CLOSING STATEMENT: Senator Regan asked that her comments to Senator Blaylock's question be considered her closing statement.

Hearing on SB 449 was closed.

CONSIDERATION OF SB 433: Senator Bill Norman, sponsor of SB 433, introduced the bill and stated it relates to autopsies performed by forensic pathologists. He explained to the committee how after an autopsy, the information obtained is used in further proceedings (usually criminal). This bill relates to the pathologist and, more specifically, his liability-what happens if he doesn't do his job right. He, like any other physician, may do something improper and he is then liable like anyone else. This bill relates to his legal liability. A coroner can order an autopsy. The pathologist then proceeds and submits his findings. This bill relates to federal jurisdiction--places where a crime occurs on federal land. The FBI and federal government have no forensic pathologist that is available, so they ask the state to come in and do the autopsy. This bill relates to who bears the liability. Again, malpractice is not being considered. Senator Norman asked if this were a shift of responsibility from the federal government to the state. The bill as drafted was amended to clarify that this wasn't the case.

PROPONENTS: Chris Tweeten, representing the Attorney General's Office, stated they were asked to propose legislation along these lines by the medical examiners because there is no federal statute authorizing the FBI to order autopsies, but the jurisdiction of those officers to do that is unclear. What the legislature can do is extend to the medical examiner the same protection as when he acts at the direction of the coroner.

OPPONENTS: None.

QUESTIONS FROM THE COMMITTEE: Senator Towe stated he did not think the bill actually conveyed the language suggested by Senator Norman. He suggested the bill be amended as follows:

Page 1, line 15.
Following: "or"
Insert: "for performing an autopsy"

Page 1, line 25.
Following: "or"
Insert: "for performing an autopsy"

Neither Senator Norman nor Mr. Tweeten objected to this suggestion.

Hearing on SB 433 was closed. Chairman Mazurek announced SB 418, SB 421, and SB 424 would be heard together as they were on a similar subject matter.

CONSIDERATION OF SB 418, SB 421, AND SB 424: Senator Pete Story, sponsor of SB 421, stated all this bill does is give the rancher and

property owner some protection from the recreationists on the land. This bill is substantively the same as that in HB 265 because it includes ranchowner or tenant. Senator Story stated it should also include "agent." Senator Story testified the committee should pass SB 421 if it agrees with the concept in case something happens to HB 265.

Senator Paul Boylan, sponsor of SB 418, stated all this bill does is define what the ordinary high water mark is.

Senator Bob Williams, sponsor of SB 424, testified that this is a bill which defines prescriptive easement and provides that a prescriptive easement may not be acquired through recreational use of land or water. He explained that a prescriptive easement is a right to use the property of another by open, exclusive, notorious, hostile, adverse, continuous, and uninterrupted use for a period of five years. He testified that the dictionary defines prescriptive as right or title, while easement is defined as a right held by one person to make use of the land of another. Senator Williams stated that since the disposition of HB 265 is unknown at this time, it was felt prescriptive easement should be defined. He suggested that the language of the two bills should be compared to show that this bill is much simpler, clearer, and shorter. Senator Williams stated this is a simple bill, but it is important to the landowners.

PROPOSERS: Jim Flynn, representing the Department of Fish, Wildlife and Parks, presented written testimony in support of the bill (Exhibit 12). Conrad B. Fredricks, representing the Sweet Grass County Preservation Association, presented written testimony in support of all three bills and suggested that SB 421 be amended by changing the last word of line 18 from "or" to "and" (see witness sheets and written testimony attached as Exhibit 13). In addition, Mr. Flynn read a letter from the Montana Coalition for Stream Access which he asked be placed in the record (Exhibit 14). David Lackman, lobbyist for the Montana Public Health Association, testified in support of SB 418 (see witness statement and written testimony attached as Exhibit 15):

ADDITIONAL TESTIMONY: Mary Wright, representing the Montana Council of Trout Unlimited, appeared neither in favor nor in opposition to SB 418 but offered some comments (Exhibit 16).

ADDITIONAL PROPOSERS: Norm Starr, representing himself as a rancher and on behalf of the Western Environmental Trade Association, appeared in support of SB 424 (see witness sheet and written testimony attached as Exhibit 17). Jim Wilson, President of the Montana Stockgrowers Association, testified that they believe HB 265 is a vehicle to support what would probably fit the situation better as a whole than these three bills. Glen Drake, representing the American Insurance Association,

appeared in support of SB 421 and testified the climate for the insurance business in Montana is extremely poor at this time. They think SB 421 will in some degree affect not only the availability and the affordability of insurance for landowners. Ted Lucas, from Highwood, appeared in support of SB 418 and stated the definition used in the bill has been used for the past 10 years in administering the Stream Preservation Act. He believes the definition is easily understood and should be adopted. Jack Salmind, a rancher from Choteau, urged support of all three bills. Lavina Lubinus, representing Women Involved in Farm Economics, appeared in support of all three bills (see witness sheet attached as Exhibit 18). Carol Mosher, representing the Montana Cow Belles, appeared in support of all three bills (see witness sheet attached as Exhibit 19). Pat Underwood, Executive Vice President of the Montana Farm Bureau Federation, stated they support these three bills, although they believe the best vehicle is HB 265. Mike McCone, Executive Director of the Western Environmental Trade Association, testified they have been involved in the stream access issue for a long time. One of their goals is to assist and attempt to resolve the stream access issue while protecting the rights of the landowners. They feel these bills should be given favorable consideration. He believes these three bills are important to the landowners in case HB 265 does not pass. Mr. McCone took exception to the comments of the Director of the Department of Fish, Wildlife and Parks, who stated a single approach will not relieve the fears of the landowners. He believes the landowners have four issues: (1) a good definition of ordinary high water mark; (2) prescriptive easement; (3) trespass; and (4) liability. Mr. McCone advised the committee to pass these bills. He further advised that if the committee were to pass HB 265, the language in SB 418 should be implemented in HB 265--the key words being "to diminish the vegetation" versus "to deprive the soil." Phil Strobe, representing the Sweetgrass County Preservation Association, testified they support these bills although they will oppose HB 265. Lawrence Grosfield, a cattle rancher and conservation district supervisor from Big Timber, stated he seconded the testimony of the others. He stated he agrees the high water mark definition has worked well for a number of years. He concurred in the amendments suggested to SB 421 and SB 424. Ralph Ahmann, a landowner from McCloud, stated these are all badly needed bills, whether or not HB 265 is passed. He believes liability is a real problem for the landowner.

OPPONENTS: None.

QUESTIONS FROM THE COMMITTEE: Senator Galt asked Mr. Flynn why he opposed the idea of prohibiting prescriptive easement on land. Mr. Flynn responded they agree on the prohibition on water, but they do not feel it is a proper subject at this time on land as that ought to be a different subject. Senator Towe addressed Mr. Fredricks about the high

water mark bill. Senator Towe asked if it weren't difficult to deprive the soil of its vegetation, as it almost never deprives it of its vegetation completely. Mr. Fredricks pointed out the word "and" in that sentence. He also stated it is easy to see where the high water mark is on most streams, although you have problems where there is periodic flooding. He believes if you use the term "diminished," you are being vague and uncertain. Senator Towe stated his only concern is what has been done is interjecting what is even less certain and more vague by saying "depriving the soil . . . and" If the only criteria is depriving the soil of its agricultural purposes, he believes a marked diminishment of vegetation is not so bad. Mr. Fredricks stated he did not agree; the soil conservation people who have used that definition think it is fairly easy to administer. Senator Mazurek asked why such a broad definition was used in SB 424. Mr. Fredricks responded it is difficult to determine what's a water related use. Senator Story stated that if the landowner thinks you are trying to acquire an easement, he will lock the gate and not allow anyone access to the stream, yet he believes if they thought no one could acquire an easement by prescriptive use, they would be less likely to use locks.

CLOSING STATEMENT: Senator Story testified he thinks it is important that we accomplish something this legislative session before bad will sets in to make the job harder. He believes whether or not you are for the compromise bill of HB 265, the committee is better equipped to deal with it if it passes these bills on to the House. This is a hedge against one interest from getting completely obstinate and threatening the life of HB 265 if they know the same concepts are in the other body and can be passed if something happens to HB 265.

Hearing on SB 418, 421, and 424 was closed.

CONSIDERATION OF SB 453: Senator Fred VanValkenburg, sponsor of SB 453, testified this bill has been introduced with the intention of adopting the language necessary under federal law that would permit state and local law enforcement officers to engage in limited electronic surveillance. This bill is limited to instances involving hostage situations, barricaded subject situations, and terrorist situations. Senator VanValkenburg stated that although the need is not overwhelming, it is genuine and should be seriously considered as there are monthly if not weekly situations in Montana when this would be of assistance. He believes this technology would permit law enforcement officers if the law were such to monitor activity in a dwelling that would enable them to know in many instances exactly what is going on inside that house and the like. This gives them the kind of tools that are necessary to resolve those problems with an absolute minimum of harm to the individuals in the house and the offenders. They presently cannot use electronic surveillance because the federal government has preempted the

field and said only if the state adopts very stringent regulations should this be allowed. The bill embodies the requirements necessary under federal law to do this. Senator VanValkenburg testified the meat of the bill is contained in section 6 on page 9 which is the authorization to intercept wire or oral communications.

PROPOSERS: Mike McMeekin, Coordinator of the Missoula County Negotiations Team, and Greg Hintz, Undersheriff, both from Missoula County Sheriff's Department, appeared in support of SB 453 (see witness sheets and written testimony attached as Exhibit 20).

OPPOSERS: None.

QUESTIONS FROM THE COMMITTEE: Senator Pinsoneault asked if the definition on page 1, lines 10-13, took away from the federal statute. Senator VanValkenburg responded that is an introductory clause he asked the drafter to write telling the court if there is litigation over this, that is what the legislature was doing in adopting this so the litigation could not get out of hand. Senator Crippen asked Mr. Hintz what kind of electronic devices we were talking about. Mr. Hintz responded bugs and parabolic mikes. Senator Towe addressed a question to Senator VanValkenburg as to the language on the bottom of page 6. He stated it is his understanding of the present Montana law that this is a drastic departure from the existing law. He asked if Senator VanValkenburg were aware of this. Senator VanValkenburg responded he was generally aware of this. He emphasized again that this bill only applies to those very limited situations where you have a hostage, terrorists, or barricaded subjects. Senator Towe asked Mr. Petesch where the language on page 6, lines 17-25, came from. Mr. Petesch responded it is from the federal act. Senator Towe stated the language is good, but the federal law is quite different from state law, as the Hoffa case allowed one-party bugging, and that is a substantive change in law there at this point. Senator VanValkenburg stated it is not his intent to have this apply outside of those situations enumerated in the bill.

CLOSING STATEMENT: Senator VanValkenburg stated the committee should be aware there is another bill on this general subject in the House that is far broader than SB 453. He thinks this bill meets a need that exists and that there are situations because of the length of time or the potential of evidentiary use later on that we should enact this legislation, but he hopes the committee would not expand the scope of the bill beyond that which he has described as he doesn't think at this time in Montana there is a need for that.

Hearing on SB 453 was closed.

ACTION ON SB 433: Senator Daniels moved SB 433 be amended as follows:

Page 1, line 15.

Following: "or"

Insert: "for performing an autopsy"

Page 1, line 25.

Following: "or"

Insert: "for performing an autopsy"

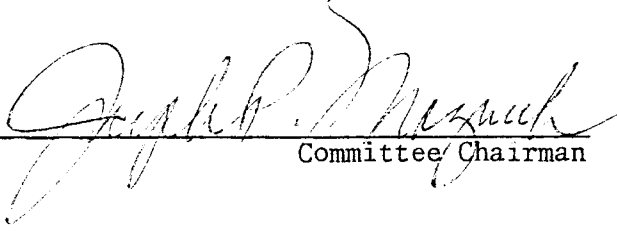
The motion carried unanimously. Senator Daniels moved SB 433 be recommended DO PASS AS AMENDED. The motion carried unanimously.

ACTION ON SB 411: Proposed amendments and a statement of intent were distributed to the committee (Exhibit 21. Mr. Petesch explained the amendments were suggested by Mr. Chisholm. Senator Towe moved adoption of the amendments and statement of intent. The motion carried unanimously. Senator Daniels stated he shared the concern of the department regarding page 6, lines 15-18. He believes children under 12 should not be thrown in indiscriminately with older kids. Mr. Petesch stated the statutory reference is to a general grant of rulemaking authority concerning admissions. The statement of intent, in No. 3, is intended to address that concern that the center would have to provide for the child's safety and security. Senator Mazurek stated what Senator Daniels has asked is should we not provide in legislation that children under 12 should be segregated. Mr. Petesch stated this section that is referenced does not address that issue at all. Senator Towe stated he has no problem in putting that in the bill. Although the facility may allow for segregation, he believes that may not be in the child's best interests because there would probably be few children there under the age of 12, and it might not be best to segregate them. Senator Towe stated he would be more inclined to say we should deal with that in the statement of intent by adding a subsection (5) which would state: "whenever proper and in the best interests of the child, segregation of persons under the age of 12 from remaining patients should be considered." Senator Daniels stated if that were in the statement of intent, he would be satisfied. Senator Towe stated it is a very secure facility, but at the same time, it is much like a college dorm in other respects. Senator Crippen advised the committee that it was his understanding the House committee on State Administration has passed a bill to allow the state to sell the facility to Yellowstone County for the SIDs on the building, so the question may be moot. Senator Towe moved adoption of his suggested amendment to the statement of intent. The motion carried

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unanimously. Senator Towe then moved SB 411 be recommended DO PASS AS AMENDED with the statement of intent included. The motion carried unanimously.

There being no further business to come before the committee, the meeting was adjourned at 12:10 p.m.


Committee Chairman

DATE

February 22, 1985

COMMITTEE ON

Judiciary

VISITORS' REGISTER

SB 418, 421, 424, 433, 439, 449, 453

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
W. Linder	A Victim	SB 419	✓	
Carol Wicks Borchers	Mont. Coalition Against Domestic Violence	SB 449	✓	
Janet Schmitt	Great Falls	SB 449	✓	
Nancy L. Biles	Victims of Great Falls Mts.	SB 449	✓	
Robert M. Lohman	self 418, 421, 424		✓	
DAVID L. ACKMAN	Int'l Public Health Assn	SB 418	✓	
MICHAEL R. McMEekin	Missoula Co. Sheriff's Dept.	SB 453	✓	
GREGORY HINTZ	" " " "	SB 453	✓	
Ann Hefermeder	Women's Law Caucus, Mnt.	449	✓	
Barbara Bennett	Women's Law Caucus, Mnt.	449	✓	
Marjorie L. O'Connell	Deputy State Attorney General	419	✓	
Chris Twetten	Attorney General	433	✓	
John Adkins	Landowners	418-419 / 435	✓	
Bill Asher	APA, PCA + MCPA	418 421 / 424	✓	
Betty Jaculy Elias	Historic Help for Abused Spouses	SB 449	✓	
George F. Taliferro	Friendship Center	SB 449	✓	
Jill Kennedy	Friendship Center of Helena	SB 449	✓	
Tommy Beidel	Friendship Center of Helena	SB 449	✓	
James E. Challen	Friendship Center & self	SB 449	✓	
Lorena Grosfield	Sweet Grass County Preservation Assn.	418-421 / 424	✓	
Pat W. DeBucco	M.T. Farm Bureau	418-421 / 424	✓	
Carol Masker	Mnt. Low Relief	418-421 / 424	✓	
Mike Mason	WETA	418-421 / 424	✓	
Laura L. Lomas	WIFE	418-421 / 424	✓	
John L. Lomas	Mt. Cath. Conf.	449	✓	

(Please leave prepared statement with Secretary)

COMMITTEE ON _____

VISITORS' REGISTER

[illegible]

(Please leave prepared statement with Secretary)

(This sheet to be used by those testifying on a bill.)

NAME: Nancy C. Challen DATE: 2-22-85

ADDRESS: 833 N. Montana - Helena

PHONE: 442-6800 (Friendship Center)

REPRESENTING WHOM? self + Friendship Center

APPEARING ON WHICH PROPOSAL: SB 449

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENT: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 1

DATE 022285

BILL NO. SB 449

My name is Nancy E. Challen, I am a volunteer at the Friendship Center of Helena and have worked with other battered women organization. I have been a victim of extreme domestic violence on a number of occasions.

I have called the police and been told not to get so excited and call them back if something serious happens. When ~~at~~ I was stabbed with a butcher knife, I was not able to call the police but they did come to the hospital to tell me it was my responsibility to sign a warrant.

I wondered then and do now why they felt they could not arrest my ex-husband without badgering me at the hospital before my ~~needs~~ ^{medical needs} ~~were taken care of~~ ^{were taken care of}.

It has taken me years to begin to rebuild my life; certainly immediately after the attack, I was not able to make an intelligent decision concerning whether or not to have my ex-husband arrested. I also felt that the police were putting responsibility for the attack on me.

But I am not here for my sake, I never intend to allow myself to be a victim of domestic violence again.

2
I am here for the women who are going through this and the area who will be and will be too emotionally traumatized to protect themselves.

You must realize a victim is emotionally upset and often terrified that anything she does pertaining to the abuse ~~arrest~~ ^{lead to} ~~may cause~~ ^{more} physical damage to herself and possibly to her family and friends. She has often been warned of this and we all know it happens.

If the responsibility of the event is on the law, then the woman may be scared from ~~severe~~ retaliation.

And it is important to separate the abuser and the victim because the violence feeds on itself until it becomes uncontrollable. the abuser himself needs time to take his emotions down. the victim needs the time to make survival judgments about her life.

If the man has just left the house and ~~she~~ the woman doesn't know at which moment he will return, she cannot make solid judgments. She either has to get out immediately with almost nothing or take the chance on being trapped again. Many women lose almost all of their

35
material possessions and sometimes
their children.

— I walked out in ~~50~~ below zero
weather with two shopping bags and three
children under 7 yrs old. Other women
have had to leave without ^{their} children.

My ex-husband ~~meant~~ meant to
decapitate me, I've always wondered,
if he had, would the police have been able
to arrest him without my taking the
responsibility.

~~There~~ An arrest is necessary for every-
one sake in most of these cases and
the abused ^{should} ~~not~~ ~~be the~~ ~~one to~~ be the
one to have to take this responsibility
immediately.

Thank you.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 1

DATE 022285

BILL NO. SB 449

(This sheet to be used by those testifying on a bill.)

NAME: K. Amy Pfeifer DATE: 2/22/85

ADDRESS: 200 Woodford #2 Missoula

PHONE: 549-7135

REPRESENTING WHOM? Women's Law Caucus, UM School of Law

APPEARING ON WHICH PROPOSAL: SB 449

DO YOU: SUPPORT? ☒ AMEND? ☐ OPPOSE? ☐

COMMENT:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 2

DATE 022285

BILL NO. SB 449

TESTIMONY FOR WOMEN'S LAW CAUCUS BY AMY PFEIFER

(untestified to portion)

Family violence occurs in the country in staggering proportions. Each year thousands of men, women and children must deal with the tragedy of family violence. Estimates from the U. S. Attorney General's Task Force on Family Violence indicate that family violence is a crime of shocking magnitude. Battery is a mager cause of injury to women in America. Nearly a third of female homicide victims are killed by their husbands or boy-friends. Almost 20 percent of all murders involve family relationships.

These intentional, purposeful acts of physical and sexual abuse by one family member against another must be defined and recognized by the criminal justice system as serious criminal offenses. A strong committment by law enforcement officials, prosecutors, and courts in responding to family violence as a crime can aid in deterring, preventing and reducing violence against family members.

The criminal justice system has responded inconsistently to acts of violence. Violence committed by a stranger is classified as an assault. If a person is apprehended after beating up a stranger, the usual result is an arrest and prosecution for assault and battery. Yet, when the family member assaults another, it is commonly viewed as a family squabble, something less than a real crime. This disparity in legal responee to assaults must be eliminated. The problem for too long has been viewed as a private matter best resolved by the parties themselves without resort to the legal system today, with increasing public awareness of the seriousness and persuasiveness of family violence, there is a growing demand for an effective response from all community agencies, particularly the criminal justice system.

An assault is a crime, regardless of the relationship of the parties. A person beaten in the home is no less a victim than the person beaten on the sidewalk in front of the house. The law should not stop at the front door of the family home.

Traditional criminal justice practice in family violence cases has been to view an assault as a family disturbance, not requiring arrest. When an arrest does occur, law enforcement offices and prosecutors may fail to acknowledge the seriousness of the offense, believing that the victim will be hesitant to cooperate. ~~(other testimony on cycle of abuse and victim's belief that the violence is her fault?)~~ Penalties imposed by the court generally do not reflect the severity of the injury or the number of the prior convictions for the same offense. This under-enforcement of the law tells victims and assailants alike that family violence is not really a serious crime, if a crime at all. It is this wide-spread perception that has contributed to the perpetration of violence within the family.

Assaults against family members are not only crimes against the individual but also crimes against the state and the community. Intervention by the criminal justice system can effectively restrain assailants and make them responsible for their violence

like any other perpetrator of crime. Arrest by law enforcement officers sends a clear signal to the assailant: abusive behavior is a serious criminal act and will not be condoned or tolerated. Prosecution policies that are not dependent upon a signed complaint from the victim reinforce that message. Counts confirm it by imposing sanctions compensurate with the crime. Such measures not only have a deterrent effect on the abuser but also provide protection for the victim.

Intervention by the criminal justice system must also recognize and be sensitive to the trauma suffered by the victim. Family violence is a crime occurring in a special context with very different causes, manifestations and effects. Reporting and successful prosecution requires victim cooperation to achieve that cooperation after the initial call by the victim, law enforcement officials, prosecutors and judges, not the victim, must proceed with the monitor the criminal justice process. This not only reinforces the notion that abuse is a serious criminal act but also provides the victim the support necessary to participate in the criminal justice process.

The response of the criminal justice system, punishing the offender and protecting the victim, is a critical element of a community effort to reduce family violence. The response must be decisive and expeditious and, most importantly, guided by the nature of the abusive act and not the relationship of the victim and abuser.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 2
DATE 022285
BILL NO. SB 449

NAME: MARJORIE L. THOMAS DATE: 2/22/85

ADDRESS: 509 Elm Anaconda, MT

PHONE: 563-2700 or 563-3838 (work)

REPRESENTING WHOM? County Attorney's Office, Anaconda
Deer Lodge City

APPEARING ON WHICH PROPOSAL: Senate Bill 449

DO YOU: SUPPORT? ✓ AMEND? OPPOSE?

COMMENT: I support this bill and especially the
mandatory arrest because this crime is never
prosecuted unless there is an arrest. In
several reasons: (1) without an arrest, the
initiator of prosecution becomes the person who
has been abused and that person will not
act because of fear of reprisal, ignorance of
how to proceed or feelings of helplessness or
that it would be useless. (2) the officer
will not make a report because he knows from
experience that the abused person will not come
forward

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 3
DATE 022285
BILL NO. SB 449

(This sheet to be used by those testifying on a bill.)

NAME: CARYL Wickes BORCHERS DATE: Feb. 21, 1985

ADDRESS: 3251 4th Avenue South, Gl. Falls, Mt.

PHONE: 761-0707

REPRESENTING WHOM? Montana Coalition Against Domestic Violence

APPEARING ON WHICH PROPOSAL: HB 449

DO YOU: SUPPORT? ✓ AMEND? OPPOSE?

COMMENT: I have written testimony to present.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 4
DATE 022285
BILL NO. SB 449

CRISIS CENTER ...453-6511

SHERIFF761-3200

POLICE 727-5266

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 4

DATE 022285

BILL NO. SB 449

CRISIS CENTER . . 453-6511

SHERIFF 761-3200

POLICE 727-5266

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 4

DATE 022285

BILL NO. SB 449

Capitol Station
Helena, Montana 59601

February 20, 1985

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 4

DATE 022285

BILL NO. SB 449

Dear Legislators,

I am the Legislative Representative from the MONTANA COALITION AGAINST DOMESTIC VIOLENCE and we are urging you to support Senate Bill 449 (REQUIRING ARREST LAW).

Before Richard Gelles, Maury Strauss, Susan Steinmetz, and Dr. Lenore Walker started to do in-depth research on FAMILY VIOLENCE and the DYNAMICS OF ABUSIVE RELATIONSHIPS, the Sociologists and Psychologists were saying to Law Enforcement who were dealing with Family Violence, "Let's just mediate and send the Abuser around the block for a walk," or the Law Enforcement would say, "we will not get involved in Domestic Problems." Later, we found through RESEARCH that in PHASE 2 of the BATTERING CYCLE-- the Abuser is in pure RAGE. A WALK AROUND THE BLOCK will not be a long enough "COOLING OFF" period. Instead, an enforced separation of the victim and assailant is often necessary to permit the passions on all sides to subside and to take the reasonable steps necessary to end the violence and prevent future abuse.

To ensure the safety of the victim and provide just and fair treatment of the assailant, the rights of both parties must be equally considered and balanced. When considering release or setting bail, judges must carefully assess the dangerousness of the abuser's behaviour and the likelihood that the violence will continue. When that probability is great, overnight incarceration of the abuser may prove to be an effective means to prevent the continuation of violence. Not only will this reasonable cooling-off period provide immediate protection for the victim, but the assailant will more likely recognize the serious criminal nature of violence within the family. Also, important service and treatment contacts and referrals can be made for both the victim (see enclosed card the Law Enforcement uses in Gt. Falls, and we are currently making up another information card.) The referral for the Abuser can be to counseling such as 'The Alternativesto Violent Behaviour Group' at the Mental Health in Gt. Falls.

I have worked with over 4,000 Abused Women and Children, and many of them have related to me such stories as the following:

-Last Saturday morning (Feb.16/85) in a small town outside of Gt. Falls, a client of mine was threatened he would kill her and he left to go get his gun out of his car. His son told him, "If you kill mom, I'll have to kill you."

This is the second time that the son has had to say this to his father.

The client told me that he threatened to "Drop the Sheriff" if she called him.

-the client who he took out on a lonely road and shot at her, missing her and hitting the car engine. Another time she ran out of the house and he fired a shot and hit the house next door. When the Police were called, they suggested she move and get out of town. She asked, "Don't I have any rights?" Why, do I have to always be the one to leave?" They also did nothing to the Abuser.

- My client who had moved to Great Falls with her three children and after she paid the rent and got settled, her husband showed up and threatened to "beat her to death." When the Police came they told her they couldn't do anything-- It was a family matter."

A lack of understanding of the nature of FAMILY VIOLENCE encourages others not directly involved to keep the cloak of SILENCE in place. The LEGISLATIVE, JUDICIAL, LAW ENFORCEMENT, and MONTANA COALITION AGAINST DOMESTIC VIOLENCE and SERVICE PROVIDERS will have to use their creative minds to 'BREAK THE CYCLE OF VIOLENCE' in MONTANA as we have before in the last 4 Legislatures. This includes EDUCATING the PUBLIC about: 1) The CRIMINAL nature of family violence; 2) The Human and Economic Costs of Family Violence; Information on local resources for victims; 4 and Methods of preventing Family Violence.

Sincerely yours,

Caryl Wickes Borchers

Caryl Wickes Borchers, Executive Director Mercy Home

CRISIS CENTER ...453-6511

SHERIFF761-3200

POLICE 727-5266

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 4

DATE 022285

BILL NO. SB 449

Study: Arrest deters family violence

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

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

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

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

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

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

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

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

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

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

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

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

A Police Foundation survey of police departments serving more than 100,000 people found that only 10 percent currently encourage arrests in

domestic assault cases. Almost none of the departments kept separate statistics on domestic assault cases. Bouza attributed the traditional reluctance to make arrests in such cases to "the absence of legislation that would enable officers to make arrests in misdemeanor cases that did not occur in their presence; the male-dominated psychology of a police world that did not relish interference in a man's castle and affairs; and the notable reluctance of conventional women to come forward or, having found the courage, to see the process of arrest and prosecution through."

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 4
DATE 022285
BILL NO. SB449

Feb. 12/85

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

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

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

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

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

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

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

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

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

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

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

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

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

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 4
DATE 022285
BILL NO. SB 449

Opinion and comment

An officer died, a problem continues

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

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

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

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

But, such violence is always a possibility.

No amount of potential, non-

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

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

He might have thought only of preventing a further problem.

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

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

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

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 4
DATE 022285
BILL NO. SB 449

February 21, 1985

Dear Legislators:

When you love someone and are so afraid of the same person your emotions are torn. I was a victim of a violent marriage. My children were victims and in many ways still are victims even though we have since fled the violent man we knew as a husband and father.

I came from a very loving and gentle background. My parents never displayed anger or so much as spoke harshly to one another. I was always loved and loving deeply was easy for me.

When I married I felt I married the most wonderful man alive. I soon learned the sweet, kind, loving man I married had another side. He became violent and angry. He pushed and shoved. He made threats often. The first real fear he instilled in me was while I was pregnant with our first child. He hit me so hard he busted my lip and bruised my mouth. I ran for the phone to call for help from his parents and he tore the phone out of the wall. He was afraid I was calling the police. Instead I was only going to call his father. Over the years many times I did call his father because I was too afraid to call the police. I knew he would only have been released right away and then what would he have done to me?

After 8½ year of fear, because I never knew what would trigger his anger, I took my children and ran for safety. He had torn up our home in a fit of rage and threatened suicide in front of the children. This was a man I didn't even know any longer. He lost control completely. Yet the fear he caused always made me even further afraid to call for help from the police. If there could have been the promise of his not coming immediately home to "really get even" I'm sure I could have made the call - but there wasn't.

After I left, my husband threatened my life and to take the children and run with them. I went to the police and all they could do was suggest I seek shelter in a home, because in civil matters it is very difficult to get involved. Everything seems to be "after the fact". I am thankful there was such a home for my children and myself to go to, but what of women who have no readily available shelter? If they call the police and their spouse is taken into custody what happens when he is released two hours later? There is a potentially violent person who is even more angry after the humiliation of being removed. If there were a 24 hour period where the abused or threatened woman could know she was safe she could make arrangements for herself and children. They need time - without it there is possibly a time bomb being released and ready to explod; and he won't blame himself for the situation but rather the wife for having put him into his embarrassing situation. Most men who abuse don't ever let others see this violent side of himself. Only his wife knows the extent of his cruelties. She needs a chance to make a choice. He needs time to cool down. If he knows he can't get away with abusing he'll stop and think first. If my husband would have realized that by abusing me he could have been held for 24 hours maybe he wouldn't have been so

SENATE JUDICIARY COMMITTEE

EXHIBIT NO.

4A

DATE

022285

BILL NO

SB 449


page 2

quick to hurt me. And if I would have known I had 24 hours to decide where to go for help maybe my children and I wouldn't have had to flee our home with only the clothes on our backs.

Please take into consideration what a help the manditory 24 hours holding time would be to women who are in a desparate and frightening situation.

Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Mary', written in dark ink.

Mary

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 4A

DATE 022285

BILL NO. SB 449

February 1985

Dear Legislators,

This piece of testimony has been prepared to urge your support of Senate Bill 449. As a volunteer counselor at a shelter for battered women and their children, I have dealt with the victims of such violence, women and children who have had to leave their homes as the only means of escape from their batterers.

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

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

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

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

Your support, please.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 4A

DATE 022285

BILL NO. SB 449

Sincerely,

Cathy St. John
Cathy St. John

February 20, 1984

Dear Legislators,

Please support the Mandatory Arrest SB #449!

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

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

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

Thank you for your anticipated support!

Sincerely,



SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 4A

DATE 022285

BILL NO. SB 449

February 1985

Dear Legislators,

A mandatory arrest law would help battered women, particularly those in cases similar to mine. Under this law, if there is evidence of abuse, law enforcement agencies would be able to arrest the offender and incarcerate for 24 hours.

I am a battered wife! Knowing that as long as the officers (if they show up) are on the premises, the batterer will settle down, but as soon as the officers leave, the batterer continues his rage on the victim. At this point, the law's hands are tied.

I have gone to the shelter several times. I was not able to return to my own home, as my (now) ex-husband continued to remain in it, running up staggering bills which I was responsible for, since I own the home. Being a woman and a mother, the stress factor has been very bad for my health, and so seeking employment to help with the bills has been impossible.

It will take several years to overcome the financial and emotional abuse I was under. The laws for protecting women and children in abusive situations should be seriously looked into. This is a crime that has been hidden for centuries, and is now coming into light. Often, the battering disappears temporarily, only to return, even worse; all battered women are aware of this. More legislation is required to provide protection from these abusers.

Thank you

Carolyn

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 4A

DATE 022285

BILL NO. SB 449

February 15, 1985

Dear Legislators:

I'm writing this letter to you to request your support in regards to the "Mandatory Arrest Law" which would provide immediate action in arresting abusers.

I recently went through a divorce which ultimately brought to light the abusive situation I had been living under for many years. To understand "my story", you must realize my ex-husband is a very egotistical, irresponsible person who is also very manipulative and domineering. This was "learned behavior".

Immediately after the divorce, my life was threatened several times and ways and through my minister, I sought help from the Mercy Home and Caryl Borchers. His next tactics included suicide threats, numerous statements involving friends and relatives and my employers and additional threats on my life.

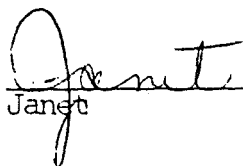
Several weeks after the divorce at approximately 2:15 A.M., I alarmingly awoke to a noise downstairs, turned on my light and was faced with him charging up the stairs carrying a loaded shotgun. During the next two hours, my phone was ripped off the wall so I could not call for help and I was sexually abused. As soon as I was free to get to my neighbors house, the police were there within minutes; by that time, of course, he was gone. Even though I told the police I would press charges, it took seven days for the arrest orders to be processed through the city courts, and by that time, he had "confessed" to what he had done, sought professional mental help for 2-3 days, and appeared in court where they "slapped his hands" and told him to leave me alone. Therefore, any charges I had pressed were dropped.

In addition to the above, it took better than three weeks to get a permanent restraining order processed and served on this person. In the meantime, I felt my life was very much in danger, and the constant fear I lived with was devastating. I try to live a good Christian life, but there's only so much a person can tolerate and I firmly believe that no person has the right to abuse another person by such actions.

I feel the worst part is behind me and each day is better than the last. My concern now is for the many abused people in our society today who do not have the strong support of family and friends, and Caryl Borchers and the rest of the Mercy Home Personnel as I did. Abused people, whether they be men, women or children, need better protection, immediate action by our law enforcement, and concerned citizens to come to their aid.

I strongly urge you to support the "Mandatory Arrest Law" and House Bill 310, "self help restraining order".

Sincerely,


Janet

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 4A

DATE 022285

BILL NO. SB 449

NAME: Lenore F. Taliaferro DATE: 2/22/85

ADDRESS: 1026 Ninth Ave., Helena, MT. 59601

PHONE: 443-0489, 442-6800 (work)

REPRESENTING WHOM? Friendship Center of Helena, Inc.

APPEARING ON WHICH PROPOSAL: SB 449

DO YOU: SUPPORT? ✓ AMEND? OPPOSE?

COMMENT: This bill's passage would accomplish
2 important ^{& urgent} purposes:

1) Provide for a few safe hours whereby the victim could gather important papers & personal possessions. Almost always, the abuser destroys those things such as birth certificates & other important necessary papers & has time to withdraw monies from joint accounts rendering the victim with no means of escape or adequate clothing.

2) Removes the victim from the ultimate violence of death when the abuser is not allowed to retaliate further by the victim's action of calling for help. Please vote "do pass" on SB 449.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 5

DATE 022285

BILL NO. SB 449

NAME: Betty Jaguillo Elias DATE: 2/22/85

ADDRESS: P.O. Box 1509, Nauru Mt 59501

PHONE: 265-1160

REPRESENTING WHOM? Ni Hui Lines Help for Abused Spouses

APPEARING ON WHICH PROPOSAL: SB 449

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENT: I feel it is very important that SB. 449
is passed. Having working with a battered group
for over a year, I can understand the need to
arrest and prosecute men who batter their
wives or girlfriends. Most of the men in the Nauru
Battered group agree that if they had been
arrested they would have sought treatment
much sooner.

I also feel it is very important to allow
police officers immunity when making an arrest
I also feel police officers need to make arrests for
their protection as well as the victim and
offenders protection.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 6
DATE 022285
BILL NO. SB 449

re: Mandatory Arrest

Dear Legislator,

I am currently working in a shelter for battered women and their children. I strongly request your adoption of the Mandatory Arrest Bill.

Through my work with battered women I have seen how detrimental the lack of arrest has been. An abused woman will often call the police for help during phase 2 of the cycle, or the 'Acute Battering Incident' phase. The victims are often too afraid to press charges against their batterers for fear of intensified beatings or threats of death from their attackers.

One of the women that I have worked with, Sandra, called the police out of desperation after being beaten by her husband. When the police arrived Sandra ran out to the driveway to meet them, and explained the beating to the officers. The officers asked the man to leave the house for a few hours, a 'cooling off period'. The man told the officers that he merely wanted the house key because he was afraid that Sandra would lock him out of the house. The officers had her give him the key, gave the man a 'slap on the wrist' and told him to leave her alone.

When the police left the man was even angrier at Sandra for calling the police then he was in the beginning. At this point the man and Sandra's 14 year old son (learned behavior) took Sandra inside the house, handcuffed her hands behind her back, and together they beat her.

Had this man been immediately arrested not only would his temper have cooled, but Sandra would have had time to escape to safety, and the police would have reinforced in the man the fact that what he did was an assault and against the law.

The Minneapolis Domestic Violence Experiment by Lawrence W. Sherman and Richard A. Berk, as written in the Police Foundation Reports was conducted to determine how police should respond to domestic violence calls. The study found that;

arrest was the most effective of three standard methods police use to reduce domestic violence.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 7

DATE 022285


BILL NO. SB 449

re: Mandatory Arrest

The other police methods - attempting to counsel both parties or sending assailants away from home for several hours - were found to be considerably less effective in deterring future violence in the cases examined.

I urge you to accept the Mandatory Arrest Bill and to place the punishment of an assault on the batterer, not the victim.

Sincerely,



Janet

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 7

DATE 022285

BILL NO. SB 449

RE: MANDATORY ARREST

Dear Legislators:

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

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

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

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

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 8

DATE 022285

FILE NO. SB 449

Mandatory Arrest
Page 2

"Well, I'd better get back to work." What did he think he had been doing for the past 45 minutes? So when he left, we had no idea where my husband was. We were just about to leave when he came out of the park from across the street. He started coming at my dad with a look of rage in his eyes but stopped only after my father yelled for someone to call the police.

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

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

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

Thank you for your consideration.

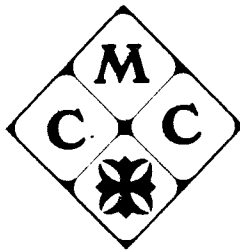
Melinda

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 8

DATE 022285

BILL NO. SB 449



Montana Catholic Conference

February 22, 1985

CHAIRMAN MAZUREK AND MEMBERS OF THE SENATE JUDICIARY COMMITTEE:

I am John Ortwein representing the Montana Catholic Conference. The Montana Catholic Conference is the liaison between the the two Catholic Dioceses of Montana in matters of public concern.

I am here today as a supporter of Senate Bill 449.

As line 13 on page ~~of~~ 1 of the proposed bill states, one of every two women in the United States will be abused during her lifetime. That translates to an abusive situation occurring every 18 seconds somewhere in the United States. A study conducted by the United States Catholic Conference entitled: Violence in the Family; A National Concern/A Church Concern, shows that a disproportionately large number of attacks by husbands seem to occur when the wife is pregnant, thus posing a grave threat to the life of the unborn child.

Research by Dr. Lenore Walker indicates a definite cycle composed of three phases in most domestic violent situations. The first one is the tension-building stage; the second is the explosion; and the third is the calm, loving, respite stage. Therefore, it seems logical to us that an arrest should be made at any time for the offense of domestic violence.

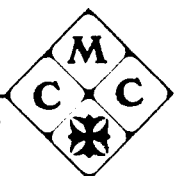
The Montana Catholic Conference urges your support of Senate Bill 449.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 9

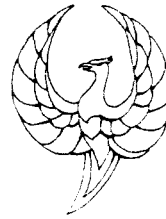
DATE 022285

BILL NO. SB 449



WOMEN'S LOBBYIST FUND

Box 1099
Helena, MT 59624
449-7917



February 22, 1985

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

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

For the record my name is Gail Kline, representing the Women's Lobbyist Fund (WLF) speaking in favor of SB 449.

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

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

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

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

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

With the help of SB 449, we reduce the cycle of domestic violence.

WLF urges you to pass SB 449.

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

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 10

DATE 022285

BILL NO. SB 449

NAME: Jill Kennedy DATE: 2-22-85

ADDRESS: 4245 Conger Dr.

PHONE: 442-3297

REPRESENTING WHOM? Friendship Center of Helena, Inc

APPEARING ON WHICH PROPOSAL: SB 449

DO YOU: SUPPORT? ☒ AMEND? ☐ OPPOSE? ☐

COMMENT: I strongly support the passage
of SB 449. I believe, among other
things, that arrest of the abuser is
definitely a deterrent to recurrent
episodes of domestic abuse.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 11

DATE 022285

BILL NO. SB 449

SB 418, SB 421, SB 424

Testimony presented by Jim Flynn, Department of Fish, Wildlife & Parks

February 22, 1985

Each of the subjects covered in these three pieces of legislation has been the subject of much discussion over the past year. Most recently, that discussion has centered around legislation which is now before this body in the form of HB 265.

Much time, effort and compromise have gone into that legislation, and we commend it to this body as the preferred mechanism for addressing the concerns that have resulted in Senate bills 418, 421 and 424.

With respect to SB 418, we concur with the basic definition as laid out in this measure. The basic concept is the same as embodied in HB 265.

With respect to SB 421, again we concur with the bill and agree that landowner liability should be limited. This basic concept is embodied in HB 265.

With respect to SB 424, while we agree with the premise that no prescriptive easement should be acquired through the recreational use of water, the addition of land is an addition to which we cannot agree.

We would again recommend the language in HB 265 on this subject for your consideration.

Mr. Chairman, it is unusual for the situation which we have before this committee today. Those of us who appear before this committee do so not in opposition to the measures up for consideration, since we agree with the concepts contained in each bill.

At the same time, we are concerned with the singular approach each portrays and we must express that concern.

The overall subject of stream access is difficult, complex and highly emotional. We feel the people of Montana, and particularly those who have worked closely on this issue, are to be commended for arriving at a truly comprehensive bill to address the many facets of the issue.

A single bill covering a single subject is not going to relieve the anxieties which exist nor is it going to establish the proper guidelines for all members of the public as they begin to deal on a day-to-day basis with the results of the Supreme Court decisions of last year.

We urge the committee to consider the need for a comprehensive approach and the wisdom of such an approach.

We are confident that such consideration will result in a piece of legislation that will serve all the public well and which will address the many uncertainties which now exist.

(This sheet to be used by those testifying on a bill.)

NAME: Conrad B. Fredricks DATE: 2/22/85

ADDRESS: Big Timber

PHONE: 932-5440

REPRESENTING WHOM? Sweet Grass County Preservation Assn

APPEARING ON WHICH PROPOSAL: SB 418

DO YOU: SUPPORT? X AMEND? OPPOSE?

COMMENT: See prepared statement

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 13
DATE 022285
BILL NO. SB 418

(This sheet to be used by those testifying on a bill.)

NAME: Conrad B Fredricks DATE: 2/22/88

ADDRESS: Big Timber

PHONE: 932-5440

REPRESENTING WHOM? Sweet Grass County Preservation Ass'n

APPEARING ON WHICH PROPOSAL: SB 421

DO YOU: SUPPORT? X AMEND? X OPPOSE?

COMMENT:
Amend by changing last word of line 18 from "or" to "and"

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 13

DATE 022285

BILL NO. SB 421

~~_____~~

NAME: Conrad B Fredricks DATE: 2/22/85

ADDRESS: Big Timber

PHONE: 932-5440

REPRESENTING WHOM? Sweet Grass County Preservation Ass'n

APPEARING ON WHICH PROPOSAL: SB 424

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENT: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 13

022285

SB 424

TESTIMONY REGARDING SB 418

Submitted by: Conrad B. Fredricks, Big Timber, Montana.

Senate Bill No. 418 is a bill which defines "ordinary high-water mark" for the purpose of defining the public's right to make recreational use of the waters of the state given by the Supreme Court of Montana in the Curran and Hildreth decisions.

The Supreme Court of Montana, in stating the principle that the public had the right to use the surface waters of the state for recreational purposes within the ordinary high-water mark, did not define what it meant by "ordinary high-water mark".

In order to avoid continuing litigation over the uncertainty created by this lack of definition by the Supreme Court, it was the feeling of most persons concerned with the public's recreational use of the waters of the state that it was imperative that the Legislature define "ordinary high-water mark".

The definition contained in the first sentence of Senate Bill No. 418 is the one used by Soil Conservation District Supervisors for years in administering "The Natural Streambed and Land Preservation Act of 1975" (Title 75, Chapter 7, Part 1, M.C.A.).

This definition is one that is easy to administer and which follows the plain-English meaning of "ordinary high-water mark". It is readily visible, is capable of clear delineation, and corresponds to what any reasonable person would consider to be the "ordinary" high-water mark, as opposed to an "extraordinary" high-water mark.

The only other definition of "ordinary high-water mark" which is currently before the Legislature is one which is contained in House Bill No. 265, which has passed the House.

The definition in House Bill No. 265 which corresponds to the first sentence of Senate Bill No. 418 is as follows:

"Ordinary high-water mark" means the line that water impresses upon land by covering it for sufficient periods to cause physical characteristics that distinguish the area below the line from the area above it. Characteristics of the area below the line include, when appropriate, but are not limited to diminished terrestrial vegetation or lack of agricultural crop value." (Emphasis supplied.)

As is readily apparent, the HB265 definition differs greatly from the SB418 definition and is much more difficult to

administer. In my opinion, the HB265 definition, because of its vagueness, will lead to the litigation which a definition of "ordinary high-water mark" should be designed to avoid.

The words "diminished terrestrial vegetation" are vague and uncertain. How "diminished"? Fifty percent less vegetation? Twenty five percent less vegetation? Five percent less vegetation? Ten blades of grass per square inch as opposed to eleven blades of grass per square inch? How does one tell how much grass in a pasture is "diminished" by grazing of livestock and how much is "diminished" by water? I believe that it is readily apparent that this definition is so vague as to not really be a definition at all.

The use of the words "agricultural crop value" also leads to uncertainty and confusion. What is meant by "crop"? Is native grass, used for pasture of livestock, a "crop"? If "crop" only includes vegetation which is planted and cultivated, does that mean that soil surveys and horticultural studies will have to be made to determine whether the land has value for planting, say, corn or sugar beets, and whether water has caused a lack of that value? Also, if the land is not suitable for planting corn, sugar beets or other cultivated crops, does that mean that it is automatically between the high-water mark, if near a stream and inundated by water occasionally?

It appears that it would be much more desirable to have the certainty of definition and ease of administration of the definition set forth in Senate Bill No. 418, rather than the vagueness, uncertainty and potential source of litigation of the definition in House Bill No. 265.

The last sentence of Senate Bill No. 418 is to make it clear that flood plains and flood channels, when dry, do not lie between the "ordinary high-water marks", for recreational purposes.

A similar provision in House Bill No. 265 excludes flood plains from the "ordinary high-water mark", but does not deal with dry flood channels.

It is respectfully submitted that this bill should be recommended by this Committee to the Senate with a "do pass" recommendation.

It may be that the definition of "ordinary high-water mark" contained in House Bill No. 265, discussed above, could be amended when the House Bill is considered by the Senate. However, this will probably occur after the transmittal deadline for transmitting Senate Bills to the House. If Senate Bill No. 214 is not passed by the Senate and

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 13
D 022285
ENCL. SB 418

transmitted to the House, then, if, by some chance, House Bill No. 265 should be killed in the Senate, there would be no definition of "ordinary high-water mark" before the Legislature. As stated before, everyone seems to agree that some definition of "ordinary high-water mark" is desirable this Legislative Session to eliminate the uncertainty left by the Supreme Court.

It is respectfully submitted that the definition contained in Senate Bill No. 214 is the only definition which does, in fact, eliminate uncertainty and has the best chance of eliminating future litigation over this point.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 13
DATE 022285
BILL NO. SB 418

MONTANA COALITION FOR STREAM ACCESS

JANUARY 26, 1985

Dear Coalition Member,

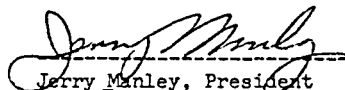
We want to give you an update on our Supreme Court decisions of last spring. The landowners have met on numerous occasions and put together several bills. In December, members of sportsmens groups met with landowners to discuss a bill which would be acceptable by both sportsmen and landowners. After numerous meetings between the two groups plus the Dept. of Fish, Wildlife and Parks, all parties agreed on a stream access bill that we feel strongly will follow the guidelines of the Supreme Court decisions. The bill is HB-265 which has been introduced by Marks and Ream. HB-265 is presently in the judiciary committee.


On Tuesday, January 22, 1985 there was a public hearing on three Stream Access bills in the Supreme Court chambers in Helena. Ron Waterman, Attorney for 13 various landowner organizations such as the Stockgrowers, Woolgrowers, Farm Bureau and Cattlemen, testified strongly in favor of HB-265. Jim Goetz, our attorney testified in favor of HB-265 along with Mary Wright, attorney, and representing T.U., Jim McDermid, Canoe Clubs, Dan Heinz of the Wildlife Federation, Jim Flynn of the Fish, Wildlife and Parks and many more from both sides. The little opposition there was, came from the landowners side.

We are asking you to write your legislature in Helena or call 444-4800 to support HB-265-AS DRAFTED-NO AMENDMENTS. Please do this immediately--we need your help--remember support HB-265-AS DRAFTED-NO AMENDMENTS.

WE ARE ASKING FOR financial help also as we still are retaining Jim Goetz, plus legislative costs. We still are sending "Coalition for Stream Access Pins" with donations of \$10.00 or more.

If you have any questions call Jerry Manley @ 723-8497 or Tom Bugni @ 723-4753. If HB-265 passes we will send you an outline of what the bill says so you will know your rights and the landowners rights.


Jerry Manley, President


Tom Bugni, Vice Pres/Sec-Treas.

Please send checks to:

Tom Bugni
Coalition for Stream Access
3460 St. Ann. St.
Butte, MT. 59701

URGENT NOTICE:

Since the seeling of this letter, one very bad amendment limiting big game hunting on all streams has been added to A.B. 265. We feel that this deviates from the two Supreme Court rulings allowing the public recreational easement on surface waters to the high water mark, irregardless of ownership.

Representative Brown & Kruger are introducing a compromise amendment on the House floor which would allow big game hunting with bow and arrow, black powder and shot guns. If the bill includes this amendment, we have an excellent bill.

Please, please, please watch H.B. 265 as it goes into the Senate - if the bill does not allow big game hunting - Kill the bill in the Senate. Contact your Senators on H.B. 265. Express your concerns. Phone 444-4800 or (bill status - 1-860-332-3499.)

P.S. We don't need a bad bill - we have the Supreme Court rulings on our side.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 14

DATE 022285

CR 410 471 4x1

WITNESS STATEMENT

Name DAVID LACKMAN Committee On (S) Judiciary
Address 1400 Winne Avenue, Helena 59601 Date Feb. 22, 1985 (Friday)
(Lobbyist)
Representing Montana Public Health Association Support X Yes
Bill No. SB 418 (Boylan & Others) Defining Oppose _____
" Ordinary high-water mark" Amend _____
10:00 A.M. - old court room

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. This legislation comes within our environmental concerns. Although HB 265 is consistent with them, we find the definition of "ordinary high-water" mark contained therein rather difficult to interpret in many cases. Also, it doesn't seem to afford adequate protection for the landowner.
2. On the basis of my experience with the Bitterroot River in Ravalli and Missoula counties, the definition in X SB 418 is more workable. I am particularly partial to the phrase in the bill "means the line that water has impressed on soil by covering it for sufficient periods of time to deprive the soil of its vegetation and to destroy its value for agricultural purposes."
- 3.

I am certain that the above applies to situations other than the Bitterroot River. I am citing only that with which I am familiar. Where the river spreads out in the Corvallis area and further north, the definition in HB 265 would be most difficult to apply.

4. examples: asparagus etc.

(SEE MEMORANDUM ATTACHED)

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

Re: SB 418

TO: Coordinating Committee for House Bills 265 (An Act generally defining laws relating to recreational use of state waters; and 498 (Stream Access IV)

FROM: David Lackman, Lobbyist, Montana Public Health Association

February 13, 1985

HB 265 is a good bill; and should satisfy the requirements of recreationists. However, in fairness to landowners, the definition of "Ordinary high-water mark" in HB 498 is better than the one in HB 265.

Therefore, we suggest deletion from HB 265 of the following: Section 1, page 2, line 25 (6), beginning "Ordinary high-water mark" means; and page 3, lines 1, 2, 3, 4, 5, 6. Then substitute from HB 498 , beginning on line 18, page 1, Section 1, line 22 (2) to wit: "Ordinary high-water mark" means the line that water has impressed on soil by covering it for sufficient periods of time to deprive the soil of its vegetation and to destroy its value for agricultural purpose. Flood plains or flood channels are not considered to be within the ordinary high- water mark for the purpose of determining recreational use, except when they carry sufficient water for fishing or floating."

(HB 265 passed second reading in the House on Tuesday, Feb. 12 !)

→ This is now in SB 418 (Boylan & others)
Defining "ordinary high-water mark"
Hearing 10:00 A.M. Friday 2/22/85;
Senate Judiciary - old Court room.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 15

022285

SB 418

TESTIMONY ON S.B. 418

MONTANA COUNCIL, TROUT UNLIMITED

FEBRUARY 22, 1985

Mr. Chairman, members of the Committee:

My name is Mary Wright, and I represent the Montana Council of Trout Unlimited. Trout Unlimited is a national fishing conservation organization with over 330 chapters in the United States, including ten chapters and one affiliated organization in Montana.

Our testimony today is neither in favor of or in opposition to S.B. 418, but we would like to offer some comments. Our organization participated in the process of developing the proposal on stream access that is now embodied in H.B. 265, which passed the House on Tuesday. As the bill passed the House, it is, we believe, a reasonable, fair and balanced treatment of the issues raised by the Montana Supreme Court in its Curran and Hildreth decisions handed down last year, as well as the issues considered by Interim Subcommittee No. 2.

One of the provisions of H.B. 265 is a definition of "ordinary high-water mark" found in section 1 of that bill. It differs somewhat in substance from the definition set forth in S.B. 418. We believe that the most appropriate forum for addressing the differences between the two definitions would be in the Senate's deliberations on H.B. 265. We therefore request that the Committee wait until H.B. 265 is discussed here to consider this issue.

Thank you for the opportunity to testify here today.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 16
DATE 022285
BILL NO. SB 418

TESTIMONY ON S.B. 421

MONTANA COUNCIL, TROUT UNLIMITED

FEBRUARY 22, 1985

Mr. Chairman and members of the Committee:

My name is Mary Wright, and I represent the Montana Council of Trout Unlimited. Trout Unlimited is a national fishing conservation organization with over 330 chapters in the United States, including ten chapters and one affiliated organization in Montana.

Our testimony today is neither in favor of or in opposition to S.B. 421, but we would like to offer some comments. Our organization participated in the process of developing the proposal on stream access that is now embodied in H.B. 265, which passed the House last Tuesday. As the bill passed the House, it is, we believe, a reasonable, fair, and balanced treatment of the issues raised by the Montana Supreme Court in its Curran and Hildreth decisions handed down last year, as well as the issues considered by Interim Subcommittee No. 2.

One of the provisions of H.B. 265 is a restriction on landowner liability found in section 4. It differs somewhat in substance from S.B. 421. We believe that the most appropriate forum for addressing the differences between the two provisions would be in the Senate's deliberations on H.B. 265. We therefore request that the Senate wait until H.B. 265 is discussed here to consider this issue.

Thank you very much for the opportunity to testify here today.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 16
DATE 022285
BILL NO. SB 421

TESTIMONY ON S.B. 424

MONTANA COUNCIL, TROUT UNLIMITED

FEBRUARY 22, 1985

Mr. Chairman and members of the Committee:

My name is Mary Wright, and I represent the Montana Council of Trout Unlimited. Trout Unlimited is a national fishing conservation organization with over 330 chapters in the United States, including ten chapters and one affiliated organization in Montana.

Our testimony today is neither in favor of or in opposition to S.B. 424, but we would like to offer some comments. Our organization participated in the process of developing the proposal on stream access that is now embodied in H.B. 265, which passed the House last Tuesday. As the bill passed the House, it is, we believe, a reasonable, fair, and balanced treatment of the issues raised by the Montana Supreme Court in its Curran and Hildreth decisions handed down last year, as well as the issues considered by Interim Subcommittee No. 2.

One of the provisions of H.B. 265 deals with prescriptive easements in the context of recreational use found in section 5. It differs somewhat in substance from S.B. 421. We believe that the most appropriate forum for addressing the differences between the two provisions would be in the Senate's deliberations on H.B. 265. We therefore request that the Senate wait until H.B. 265 is discussed here to consider this issue.

Thank you very much for the opportunity to testify here today.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 16
DATE 022285
BILL NO. SB 424

(This sheet to be used by those testifying on a bill.)

NAME:

Norm Stars

DATE:

Feb. 22-8

ADDRESS:

Melville Mont

PHONE:

537-4483

REPRESENTING WHOM?

Self as a rancher + W E T F

APPEARING ON WHICH PROPOSAL:

#24

DO YOU:

SUPPORT?

✓

AMEND?

OPPOSE?

COMMENT:

Feel this bill is imp. in case
265 fails - pass to the house

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO.

17

DATE

022285

BILL NO.

SB 424

TESTIMONY ON S.B. 424

MONTANA COUNCIL, TROUT UNLIMITED

FEBRUARY 22, 1985

Mr. Chairman and members of the Committee:

My name is Mary Wright, and I represent the Montana Council of Trout Unlimited. Trout Unlimited is a national fishing conservation organization with over 330 chapters in the United States, including ten chapters and one affiliated organization in Montana.

Our testimony today is neither in favor of or in opposition to S.B. 424, but we would like to offer some comments. Our organization participated in the process of developing the proposal on stream access that is now embodied in H.B. 265, which passed the House last Tuesday. As the bill passed the House, it is, we believe, a reasonable, fair, and balanced treatment of the issues raised by the Montana Supreme Court in its Curran and Hildreth decisions handed down last year, as well as the issues considered by Interim Subcommittee No. 2.

One of the provisions of H.B. 265 deals with prescriptive easements in the context of recreational use found in section 5. It differs somewhat in substance from S.B. 421. We believe that the most appropriate forum for addressing the differences between the two provisions would be in the Senate's deliberations on H.B. 265. We therefore request that the Senate wait until H.B. 265 is discussed here to consider this issue.

Thank you very much for the opportunity to testify here today.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 16
DATE 022285
BILL NO. SB 424

(This sheet to be used by those testifying on a bill.)

NAME: Norm Stars DATE: Feb. 22-85

ADDRESS: Melville Mont

PHONE: 537-4483

REPRESENTING WHOM? Self as a rancher + WETA

APPEARING ON WHICH PROPOSAL: 424

DO YOU: SUPPORT? ✓ AMEND? OPPOSE?

COMMENT: Feel this bill is impth. in case
265 fails - pass to the house

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 17

DATE 022285

BILL NO. SB 424

TESTIMONY ON SENATE BILL NO. 424

Senate Bill 424 is designed to meet a problem which might exist because of the Supreme Court's decisions allowing persons to use the beds and the banks of streams, as well as surface waters, for recreational purposes, even though the bed and banks of the stream are owned by a private landowner.

Some concern was generated by the Supreme Court decisions that use of the public of the privately-owned bed and banks of a stream might give rise to a prescriptive easement in the public to use this privately-owned land forever.

Senate Bill 424 is designed to make it clear that a prescriptive easement to use privately-owned lands cannot be acquired, under any circumstances, through use of either land or water for recreational purposes.

The provisions of Senate Bill 424 are very straightforward and cannot be misinterpreted.

House Bill 265, which has passed the House, also tries to deal with the problem of potential prescriptive easements.

One of the problems with the provisions of House Bill 265 is that it only relates to a prescriptive easement through recreational use of surface waters, including the beds and banks up to the ordinary high-water mark. It does not provide that recreational use of lands which are privately owned, other than recreational use of surface waters, cannot give rise to a prescriptive easement. It is possible, and, perhaps, probable that some person might be using lands for recreational purposes, which the landowner might consider to be covered under the use of surface waters, and then, after the 5 year period for acquiring a prescriptive easement had passed, successfully claim, or try to claim, before a court that the use really wasn't connected with use of surface waters and that the person could continue this recreational use forever.

It would seem a lot better to make it clear that no recreational use of privately-owned lands creates a prescriptive easement, without the problem of trying to determine whether or not the use is connected to recreational use of surface waters, including the bed and banks thereof.

There is a provision of House Bill 265 which could be included in Senate Bill 424. This could be included by

amending Senate Bill 424, on page 1, line 16, to insert, at the end of the sentence, before the period, the words "or for the purpose of crossing the land to reach surface waters".

It is important that Senate Bill 424 pass the Senate and be transmitted to the House, in the event that House Bill 265 should be killed in the Senate and would thus be unavailable as a means of addressing this important prescriptive easement problem.

Norman K. Starr
Big Timber, Montana

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 17
DATE 022285
BILL NO. SB 424

(This sheet to be used by those testifying on a bill.)

NAME: Ladina Lubinus DATE: 2-22-

ADDRESS: 1501 Chestnut Helena

PHONE: 442-8723

REPRESENTING WHOM? WIFE

APPEARING ON WHICH PROPOSAL: SB 424-SB 421-SB 418

DO YOU: SUPPORT? ✓ AMEND? OPPOSE?

COMMENT: Mr Chairman & Members of the committee.

the concept of
we can and do support these 3 bills. We
feel they have been covered in HB 265 but feel that
careful consideration should be given to each of them

Thank You

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 18

DATE 022285

BILL NO. SBS 418, 421, 424

NAME: Carol Mosher DATE: Feb. 22, 1985

ADDRESS: Augusta, Mt.

PHONE: 562-3315

REPRESENTING WHOM? Montana Low Belles

APPEARING ON WHICH PROPOSAL: SB 424 SB 418 SB 421

DO YOU: SUPPORT? ☒ AMEND? ☐ OPPOSE? ☐

COMMENT: The definitions given in these three
bills is very good and should be carefully
considered by the committee. I support the
careful evaluation
and/or incorporation of these concepts.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 19

DATE 022285

BILL NO. SBs 418, 421, 424

(This sheet to be used by those testifying on a bill.)

NAME: MICHAEL R. McMECKIN DATE: 22 FEBRUARY, 1985

ADDRESS: 246 ST. JOHNS, LOLO, MT. 59847

PHONE: (406) 223-0471 (HOME) (406) 721-5700, EXT. 330 (WORK)

REPRESENTING WHOM? MISSOULA COUNTY SHERIFF'S DEPARTMENT

APPEARING ON WHICH PROPOSAL: SB 453

DO YOU: SUPPORT? ✓✓✓ AMEND? OPPOSE?

COMMENT: PLEASE REFER TO ACCOMPANYING ORAL AND WRITTEN
TESTIMONY IN EXPLANATION AND SUPPORT OF THIS BILL.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 20

DI 022285

BILL NO. SB 453

(This sheet to be used by those testifying on a bill.)

NAME: T. Gregory Hintz DATE: 2/22/85

ADDRESS: 201 W. Pine, Missoula, MT.

PHONE: 721-5700 X 306

REPRESENTING WHOM? MISSOULA COUNTY Sheriff Dept.

APPEARING ON WHICH PROPOSAL: SB 453

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENT:

Because of the number of increasing Hostage/
Barricade incidents and potential threats of
Terrorism in Montana by armed groups seeking
political recognition (Klans Brotherhood) This Bill
is needed to allow law enforcement the necessary
tools to handle these situations.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 20
DATE 022285
BILL NO. SB 453

MISSOULA COUNTY

DANIEL L. MAGONE
SHERIFF

OFFICE OF THE SHERIFF
COUNTY COURTHOUSE
MISSOULA, MONTANA 59802
(406) 721-5700

T. GREGORY HINTZ
UNDERSHERIFF

TESTIMONY IN SUPPORT OF SENATE BILL NUMBER 453

(In Supplement To Oral Testimony)

PRESENTED TO: THE SENATE JUDICIARY COMMITTEE
JOSEPH P. MAZUREK, CHAIRMAN

PRESENTED BY: T. GREGORY HINTZ, UNDERSHERIFF
(S.W.A.T. COMMANDER)

MICHAEL R. McMEEKIN, DEPUTY
(COORDINATOR, MISSOULA NEGOTIATIONS TEAM)

DATE : FRIDAY, 22 FEBRUARY, 1985

SENATE JUDICIARY COMMITTEE
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WHEN LAW ENFORCEMENT OFFICERS ARE CALLED TO RESPOND TO A BARRICADED SUBJECT OR HOSTAGE INCIDENT, IT IS ALWAYS PRESUMED THERE EXISTS AN IMMEDIATE AND DIRECT THREAT TO HUMAN LIFE. THAT THREAT IS PRESUMED TO CONTINUE UNTIL THE SITUATION IS RESOLVED. FOR THIS REASON, SPECIAL TEAMS ARE TRAINED AND EQUIPPED SOLELY TO HANDLE SUCH SITUATIONS. THE THREATS MAY INVOLVE HOSTAGES, GENERAL PUBLIC IN THE VICINITY, RESPONDING LAW ENFORCEMENT OFFICERS AND THE OFFENDERS THEMSELVES.

THE STATED OBJECTIVE OF LAW ENFORCEMENT IN SUCH AN INCIDENT IS TO RESOLVE IT WITHOUT INJURY OR LOSS OF LIFE IF AT ALL POSSIBLE. IN ORDER TO BETTER ENABLE US TO ACHIEVE THIS OBJECTIVE, IT IS IMPORTANT TO KNOW WHAT IS BEING SAID AND DONE BY THE SUBJECTS INVOLVED. CRITICAL NEGOTIATION AND TACTICAL DECISIONS PIVOT ON AVAILABLE DATA REGARDING PHYSICAL CONDITION OF HOSTAGES, NUMBER AND IDENTITY OF OFFENDERS, LOCATION OF HOSTAGES AND OFFENDERS WITHIN A BUILDING, ACTIONS TAKEN BY OFFENDERS AS OPPOSED TO WHAT IS BEING TOLD THE NEGOTIATORS AND MINUTE-BY-MINUTE CHANGES IN THE EMOTIONAL STATUS OF BOTH OFFENDERS AND HOSTAGES. TECHNOLOGY HAS ADVANCED TO THE POINT IT IS POSSIBLE TO SAFELY MONITOR AND RECORD THE NECESSARY INFORMATION DURING SUCH AN INCIDENT. ALL THAT REMAINS IN MONTANA IS STATUTORY AUTHORITY TO DO SO.

FEW SITUATIONS COULD BE CONSIDERED MORE INTRUSIVE UPON MEMBERS OF THE PUBLIC THAN BEING TAKEN HOSTAGE OR SUBJECTED TO SNIPER FIRE BY A BARRICADED SUBJECT. VICTIMS OF SUCH SITUATIONS OFTEN SUFFER PROLONGED EMOTIONAL TRAUMA EVEN IF THEY HAVE ESCAPED ACTUAL PHYSICAL INJURY. WHATEVER WE AS LAW ENFORCEMENT CAN DO TO PREVENT SUCH TRAUMA, OR BRING AN INCIDENT TO A TIMELY CONCLUSION, WOULD CERTAINLY BE LESS INTRUSIVE THAN ANY PRIVACY THE OFFENDER MAY EXPECT IN HIS COMMUNICATIONS.

18 USC 2510-2520, AFTER WHICH THIS BILL IS PATTERNED, IS THE PREVAILING LAW. TWO PRIMARY CONCERNS VOICED BY CONGRESS WHEN THE LAW WAS ENACTED WERE BALANCING THE PUBLIC NEED AGAINST INTRUSION INTO PRIVATE COMMUNICATIONS AND UTILIZATION OF SUCH INTRUSIVE METHODS IF MORE ROUTINE INVESTIGATIVE PROCEDURES APPEAR TOO DANGEROUS. THE MONTANA LEGISLATURE HAS HISTORICALLY BEEN RELUCTANT TO AUTHORIZE GOVERNMENT INTERCEPTION OF PRIVATE ORAL AND WIRE COMMUNICATIONS. WE CERTAINLY DO NOT DISAGREE WITH THAT STANCE. OUR REQUEST IS CONSIDERABLY MORE RESTRICTIVE THAN THAT ENACTED BY THE CONGRESS.

WIRETAP LAWS GENERALLY (18 USC 2510, ET SEQ.) FOCUS UPON THE GATHERING OF EVIDENCE IN A CRIMINAL INVESTIGATION. AS SPECIFIED IN SECTION 6 OF THIS BILL, OUR REQUEST IS DIRECTED TOWARD THE GATHERING OF INFORMATION NECESSARY TO PRESERVE HUMAN LIFE. HOWEVER, BOTH THE MONTANA CONSTITUTION AND SUPREME COURT RECOGNIZE FURTHER USE OF INFORMATION LAWFULLY OBTAINED UNDER JUDICIAL AUTHORITY.

PROPOSED AMENDMENT TO SB 411:

1. Page 5, line 23.

Following: "41-5-523."

Insert: "The center is a mental health facility as defined in 53-21-102(6)."

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 21

DATE 022285

FILE NO. SB 411

STATEMENT OF INTENT

SENATE BILL NO. 411

A statement of intent is needed for this bill because section 3 grants rulemaking authority to the department of institutions.

The rules should address the following:

- (1) the need of the child for intensive inpatient mental health treatment in a psychiatric hospital setting;
- (2) the ability of the center to provide the needed treatment;
- (3) the ability of the center to provide for the child's safety and security; and
- (4) the unavailability of other treatment options.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 21
022285
BILL NO. SB 411

STANDING COMMITTEE REPORT

February 22 19 85

MR. PRESIDENT

JUDICIARY

We, your committee on.....

having had under consideration..... SENATE BILL No. 411

first reading copy (white)
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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. Page 5, line 23.

Following: "41-S-523."

Insert: "The center is a mental health facility as defined in 53-21-102(6)."

AND AS AMENDED

DO PASS

DO NOT PASS

STATEMENT OF INTENT
ADOPTED AND ATTACHED

Senator Joe Mazurek

Chairman.

MR PRESIDENT,

RE, YOUR COMMITTEE ON JUDICIARY, HAVING HAD UNDER CONSIDERATION
SENATE BILL NO. 411, ATTACH THE FOLLOWING STATEMENT OF INTENT:

STATEMENT OF INTENT

SENATE BILL NO. 411

A statement of intent is needed for this bill because section 3
grants rulemaking authority to the department of institutions.

The rules should address the following:

- (1) the need of the child for intensive inpatient mental health
treatment in a psychiatric hospital setting;
- (2) the ability of the center to provide the needed treatment;
- (3) the ability of the center to provide for the child's safety
and security;
- (4) the unavailability of other treatment options; and
- (5) whenever proper and in the best interests of the child,
segregation of persons under the age of 12 from remaining patients
should be considered.

STANDING COMMITTEE REPORT

February 22

19. 35

MR. PRESIDENT

JUDICIARY

We, your committee on

SENATE BILL

433

having had under consideration

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LIMIT LIABILITY OF MEDICAL EXAMINERS PERFORMING AUTOPSIES FOR FBI.

SENATE BILL

433

Respectfully report as follows: That

No.

be amended as follows:

1. Page 1, line 15.

Following: "or"

Insert: "for performing an autopsy"

2. Page 1, line 25.

Following: "or"

Insert: "for performing an autopsy"

AND AS AMENDED

DO PASS

NOT TO PASS

Senator Joe Mazurek

Chairman.