

MONTANA STATE SENATE
JUDICIARY COMMITTEE
MINUTES OF THE MEETING

March 25, 1985

The fifty-eighth meeting of the Senate Judiciary Committee was called to order at 10:08 a.m. on March 25, 1985, by Chairman Joe Mazurek in Room 325 of the Capitol Building.

ROLL CALL: All committee members were present with the exception of Senator Bruce Crippen who was excused.

CONSIDERATION OF HB 575: Representative Mike Kadas, sponsor of HB 575, testified this bill comes out of a concern over child kidnapping and that type of crime. This bill involves the case of unlawful restraint of a victim less than 16 years old and the offender who is at least three years older. It will double the penalty.

PROPOSERS: Jo Anne Peterson, Montana Education Association, presented written testimony in support of the bill (Exhibit 1).

OPPOSERS: None.

QUESTIONS FROM THE COMMITTEE: Senator Shaw asked if section 2 conflicted with section 3. Representative Kadas replied this provides an exception for those people less than 16 years old and the offender is at least three years older. That section applies only to section 3. Everything else applies to section 2.

CLOSING STATEMENT: Representative Kadas stated this is a problem that is coming to greater concern in the state.

Hearing on HB 575 was closed.

CONSIDERATION OF HB 793: Representative Nancy Keenan, sponsor of HB 793, testified this is a warrantless arrest bill. It goes into defining domestic violence and requires a report. Generally there are no records kept of such things; they are merely recorded as a disturbance. About 60% of all married women are subject to physical violence sometime during their marriage; 20% are beaten regularly; in 50% of the cases police respond to, they have been there five or more times before, and there is no record.

PROPOSERS: Representative Keenan stated the Women's Law Caucus in Missoula would like to go on record as being in support of the bill.

Marti Adrian, counselor from Missoula, testified this bill does three things: defines domestic violence as a crime, clarifies the warrantless arrest laws, and requires reporting. Despite the fact we have had warrantless arrest since 1968, there is common knowledge a law enforcement officer does not need to witness a crime in order to make an arrest. That common misperception is pervasive. They need this law because we need mechanisms for gathering statistics. They need to define the problem in the state, and these people who are victims of spousal abuse need evidence should they ever bring suit. They need to give notice to law enforcement that this is a serious problem and requires action. Caryl Wickes Borchers, legislative representative for the Montana Coalition Against Domestic Violence, presented written testimony in support of the bill (Exhibit 2). Noreen Dever, counselor from the Great Falls Mercy Home, testified clearly the seriousness of this offense was not reported. When domestic violence cannot be settled between the family members, they should be able to turn to law enforcement for help. Julie Ferguson, of Great Falls (Exhibit 3); Lenore Talioferro, staff member at the Helena Friendship Center (Exhibit 4); and Gail Kline, representing the Women's Law Caucus (Exhibit 5), presented written testimony in support of the bill.

QUESTIONS FROM THE COMMITTEE: Senator Mazurek asked if the definition included here conforms to the ones that have been in the other domestic violence bills we have seen. Representative Keenan responded she was not sure. Senator Mazurek asked if "intimate relationship" were defined anywhere in the state. Representative Keenan responded it is probably a relationship where there is not a marriage, such as a boyfriend who is living there. Senator Mazurek asked if that were covered under family or other household member. Representative Keenan replied they see that as a parent or elderly relative. Senator Yellowtail asked if the reporting requirement were used in other situations. Representative Keenan responded they are asking for a written report justifying the reason he did not make an arrest. This will help later. They are leaving some judgment to the officer, but they want some rationale. Senator Yellowtail asked if in practical terms that officer would have had the opportunity to review all of that recordkeeping before responding to the call. Representative Keenan replied no, but if it were somewhere, he could call into the dispatcher. He would probably not know the specificity of that report, but he could be told the number of times law enforcement had been called to that house. Senator Mazurek asked if she were concerned there may be a reluctance to respond to a call because they will have to write a report as to why they have not made an arrest. Ms. Borchers responded the shelter providers work closely with the law enforcement. They are not always involved before an arrest. They still have to have probable cause to believe a crime

has been committed. This should help. Great Falls is keeping these statistics on their own. They are trying to protect the police officers as well as the victims.

CLOSING STATEMENT: Representative Keenan referred to the report from the Attorney General's Task Force on Family Violence. She stated something must be done. If it's an arrest, let's do it. If it's a holding for 72 hours, let's do it. It is not worth taking a life by not doing something.

Hearing on HB 793 was closed.

CONSIDERATION OF HB 520: Representative Ed Grady, sponsor of HB 520, testified this bill addresses the very important part of water after it leaves the main body of water for appropriation purposes. We are saying that these bodies of waters are very dangerous to use by the public without getting permission and often should not be used. The public should have permission before using these bodies of water.

PROPONENTS: K. M. Kelly, on behalf of the Montana Water Development Association and Montana Irrigators, Inc., presented written testimony in support of the bill (Exhibit 6). There are a couple of suits pending in court right now for accidental drownings in an irrigation district in the eastern part of the state. Canals are full of children in the summer, but they are very dangerous. From a public safety standpoint, they would like to see the legislature prohibit the recreational use of facilities without permission. Ron Waterman, representing the Montana Stockgrowers Association, Montana Woolgrowers Association, Montana Association of State Grazing Districts, Montana Cowbellers, Montana Farmers Union, Montana Cattle Feeders Association, Montana Farm Bureau Federation, Montana Water Development Association, Women Involved in Farm Economics, Montana Grain, Montana Irrigators, Inc., Montana Dairymen, Montana Cattlemen's Association, and the Agricultural Preservation Association, testified this bill is to a degree reflective of HB 265. It to a degree duplicates, but has some broader language as well. They would encourage along those lines as a piece of legislation which may be duplicative of HB 265 and that it be put behind HB 265 as a true caboose. Conrad Fredricks, representing Sweetgrass County Preservation Association, presented written testimony in support of the bill (Exhibit 7). R. A. Ellis, Helena Valley Irrigation District, testified it is not safe for the children to play in it. The Irrigation District has had problems with people waterskiing in the canals. In the canals, they use a volatile aquatic weed killer which gives someone a rash if they swim in it. They have inverted syphons and drops which are dangerous. Jim Flynn, representing the Department of Fish, Wildlife and Parks, testified the department supported the intent of the bill but did have

problems with specific language in it. Those concerns were taken care of in the amendments in the bill before the committee. It addresses an issue that does need to be addressed. He affirmed the comments of Mr. Waterman regarding the relationship of this bill to HB 265. Mike McCone, representing the Western Environmental Trade Association, believed this bill complemented SBs 418, 421, and 424 and concurred with the amendments. Sam Hofman, of the Gallatin County Agricultural Preservation Association, supported the bill. Lorents Grosfield, of Big Timber, testified there's nothing in the supreme court decisions or the Montana Constitution that gives the public the right to use any waters under the doctrine of prior appropriation.

OPPONENTS: None.

QUESTIONS FROM THE COMMITTEE: Senator Pinsoneault asked if there were regulations for posting these waters. Mr. Flynn responded he assumed the use of these areas is a private use. As they are private property, they would need the landowners' permission or the associations' permission to use the land. The question that comes up is the recreational use of waters as defined by the supreme court. This clarifies that decision as it refers to the use of surface waters. When you get to how the landowners' permission is to be communicated to the public, that will be gotten to in HB 911. Mr. Kelly stated the irrigation districts have easements through the private property and would be responsible for posting those facilities citing the public law.

CLOSING STATEMENT: Representative Grady stated he would support the theory this bill should be held in view of HB 265's outcome.

Hearing on HB 520 was closed.

CONSIDERATION OF HB 891: Representative Kelly Addy, sponsor of HB 891, testified this bill deals with some of the procedural aspects involved in eminent domain. It is the intent of HB 891 to give the landowner who is affected by a taking for public use some additional procedural safeguards and notice. Section 1 deals with surveying the land. The Highway Department would rather not have the duty of notifying persons in possession of the land. He will leave that to the committee's discretion. There is a lesser likelihood that the land will overlap judicial districts than it will overlap counties. They are trying to assure that the impact on the private landowner will be as moderate as possible. They are not to take any larger portion of the owner's property or for any longer duration to accomplish the intended use. This gives the defendant 30 days to file a claim for just compensation. Previously they had only 10 days. Section 5 gives the original owner a meaningful right of first refusal. When the public use is no longer in

force, the takers will offer the land for sale. Once they have the highest bid, the original owner would receive notice to come up with the highest price offered. All other things being equal, that original owner or his successors will get that land back.

PROPONENTS: Terry Murphy, representing Montana Farmers Union, thought the bill addressed a couple issues important to landowners and didn't really do any damage to anybody. Jo Brunner, representing the Montana Cattlefeeders, Montana Cattlemen, and Montana Grange, presented written testimony in support of the bill (Exhibit 8). Lavina Lubinus, representing Women Involved in Farm Economics, presented written testimony in support of the bill (Exhibit 9). Lorna Frank, representing the Montana Farm Bureau, testified in support of the bill. Tom Ebzery, Attorney, Tongue River Railroad, testified he thinks this bill corrects some things they think are fair and equitable. He thinks the Highway Department makes sense. Jim Beck, Chief Counsel, Department of Highways, offered an amendment (Exhibit 10). They had some problems with the notice provision. It is easy to search the courthouse records to determine who owns the property, but if there are leases, they are not of record. It would be difficult to determine who is in possession of the land. Phil Strobe, representing the Sweetgrass County Preservation Association, testified they support this bill and the amendment. Stuart Doggett, representing the Montana Stockgrowers Association and the Association of Grazing Districts, supported the bill. Mike McCone, of the Western Environmental Trade Association, supported the bill. Russ Brown, representing the Northern Plains Resource Council, presented written testimony in support of the bill (Exhibit 11). They consider the exercise of eminent domain should not be taken lightly. The burden on that taking even as far as notification should not fall on the person in possession of the land. They feel the burden of a taking should be on the person exercising that taking, or the person exercising that power. They support the bill without the amendment. Willa Hall, of the League of Women Voters, supported the bill without the amendment.

OPPONENTS: None.

QUESTIONS FROM THE COMMITTEE: Senator Daniels asked about the rationale behind changing the venue from the county to the judicial district. Mr. Brown explained several years ago, there was concern expressed that if in fact their property crossed two county lines, the landowner might find it burdensome to appear in two separate counties. This was an attempt to narrow down the procedure so they could answer the question about the condemnation. Senator Daniels pointed out it could also be in two different judicial districts. Mr. Brown responded there is more possibility of its occurring in two different counties than in two different judicial districts. Senator Pinsoneault stated giving notice

to the people in possession would be the easiest thing to do. Mr. Peck asked how you would find out about an unrecorded lease if you had a 40-acre piece of land with no houses on it. It is not unreasonable to have the owner notify the person in possession of the land. Senator Pinsoneault suggested asking a neighbor. Mr. Beck asked what would happen if he didn't know or didn't give the right answer. At this stage of the game they are merely attempting to define a line or develop a line. At a later date, more intensive efforts are made. Senator Mazurek suggested requiring everyone who has a record lease or record interest. Mr. Brown responded they found very few instances where the owner did not know who was leasing the property. Senator Mazurek commented Mr. Beck's objection is reasonable. If he goes to the courthouse and sends notice, why should he go further than that? Maybe he should tell the owner if there is someone who has a possessory interest, they should notify the Highway Department. Mr. Brown responded he could understand the concern, but the policy question is who bears the burden--the person taking the property or the person who is having his property taken? Senator Mazurek asked how they would find that out. Mr. Brown replied they should ask the owner. Mr. Beck responded they have the problem of time. They would have to go to the landowner and get him to respond, and many times they are out of state. It puts a lot of time in front of them before they can survey. Senator Towe suggested using the telephone. He also suggested putting in some language about "unless some person cannot be found after reasonable inquiry." Mr. Beck responded he had no objection to persons with a record interest.

CLOSING STATEMENT: Representative Addy stated he thinks the question is one of administrative convenience versus the rights of a person who is an owner of private property. Perhaps an additional paragraph in the letter notice to the owner tell them they are required to let the persons in possession know as well. That is something for the committee and the Department of Highways to consider. The king can do no wrong has come to mean the king can do anything he wants instead of he has to pay for a taking.

Hearing on HB 891 was closed.

CONSIDERATION OF HB 911: Representative Tom Hannah testified this bill has been introduced at the request of the House Judiciary Committee. It came out of HBs 16 and 17. HB 17 dealt with trespass. It was unacceptable to the committee and the House floor. They needed to come up with a new bill because of the problems of amending. Several of the groups involved with stream access worked out the language presently before the Senate Judiciary Committee. The major difference in this bill and HB 17 is the burden to post is on the landowner. This is a posting bill. Posting may be removed at any time.

PROPOSERS: Ron Waterman presented written testimony in support of the bill (Exhibit 12). HB 911 basically takes the law in Montana requiring posting and takes away the requirement of conspicuous posting of fences every 200-400 feet and reduces it to normal access points or where streams cross boundaries. It also addresses the problem of landowners' having signs up and then having them vanish. It encourages the Department of Fish, Wildlife and Parks to enforce the trespass laws. A strip of paint is readily observable. This bill broadens the ability of the Fish and Game wardens to enforce trespass laws. Representative Ed Grady testified he was in full support of this bill. This bill requires a minimum amount of posting, and landowners do a lot of posting. He thinks it is the landowners' responsibility to do a minimum amount of posting. Jim Flynn, of the Department of Fish, Wildlife and Parks, testified they support HB 911. The language in section 2 on the bottom of page 3 does expand the authority for the wardens. They are aware of that additional responsibility and are willing to accept it. They could handle that for the biennium with the present staffing requirements. Sam Hofman, of Gallatin County, representing the Agricultural Preservation Association, testified they are concerned if by not posting, that gives free license to everyone coming into the place. They would like that protected. They still want that right. They think you should still have to come ask permission. Dan Heinz, representing the Montana Wildlife Federation, testified in this country, fence lines bear no relationship to landownership. Maps, even though they are the best available, still are not current. For activities such as fishing and shotgun hunting, they don't want to be subject to criminal activities. Jo Bruner, representing the Montana Cattlemen's Association, presented written testimony to the committee (Exhibit 13). Conrad Fredricks, representing the Sweetgrass County Preservation Association, testified this does not give the landowners the break with regard to trespass that HB 17 did, but it is less onerous than the current law. Regarding the question about permission to go on property, he reminded the committee about requiring permission for recreational purposes which this committee passed. That bill and this bill are complementary to each other and to the public. Norm Starr, of Melville, testified as a proponent to the bill and stated it is better than what we now have. He can't see why they should have to post, but if the bill goes through, they will have to post. We used to talk about managing game and fish, and now we talk about managing people. Because we don't know what will happen with HB 265, we need a trespass bill. Lorents Grosfield, a cattle rancher from Big Timber, presented written testimony in support of the bill (Exhibit 14). His testimony contained a few minor amendments. One addresses the size of the orange strip; one the posting of waters; and one the Fish and Game's responsibility in educating the public. Lorna Frank, representing the Montana Farm Bureau Federation, presented written testimony in support of the bill (Exhibit 15). Lavina Lubinus,

representing Women Involved in Farm Economics, presented a witness sheet in support of the bill (Exhibit 16), although she did not testify before the committee.

OPPONENTS: None.

QUESTIONS FROM THE COMMITTEE: Senator Towe asked if the three feet high referred to the length or if it referred to the height above ground. Mr. Waterman responded it was intended to be the length of the strip of paint, not the height. Senator Towe asked if there were any dimensions for width, how high off the ground, or if it were too high. Mr. Waterman replied they did not, but Mr. Grosfield suggested a surface area of 200 inches. From the perspective of the landowner, the idea will be to post something that is conspicuous, so he can alert the public to the fact the land is closed. They chose orange because it is more seeable than red. Senator Towe asked about Mr. Grosfield's amendment regarding metal posts. Mr. Waterman stated he thinks it is appropriate, because they do not have 200 inches around. The practical matter is metal fence posts alone are not used at gates. Senator Mazurek stated he thinks the amendments suggested by Mr. Grosfield are good ones and requested comments. Mr. Waterman stated there seems to be a concensus there is no problem with the amendments as proposed. Senator Mazurek questioned whether the language on page 3, subsection 6, regarding civil liability were a blanket applying to the owner and not the user. Mr. Fredricks responded that language is essentially in the current trespass law. The criminal law commission and the legislature did give privileges to enter if it is not posted, which this bill still does. The criminal law commission and the legislature said this license might from a civil liability standpoint be argued that the person is a licensee or invitee. The legislature did not want the civil aspects to be tampered with. Senator Towe asked Mr. Flynn if Mr. Grosfield's amendment regarding using the media was a problem. Mr. Flynn responded they currently have a program where they attempt to inform the persons who will be the long-term hunters and fishermen about the various laws, trespass being one of them. That effort would be expanded to include this, and they would continue to make that known. They had no problems with it.

CLOSING STATEMENT: Representative Hannah stated the direction of the bill is it requires the landowner to post.

Hearing on HB 911 was closed.

ACTION ON HB 575: Senator Daniels moved HB 575 be recommended BE CON-CURRED IN. In justice court, all you do is give him a high misdemeanor. If you want to charge him with a felony, you have to go to district court. Mr. Petesch stated no one opposed this bill, but what this does

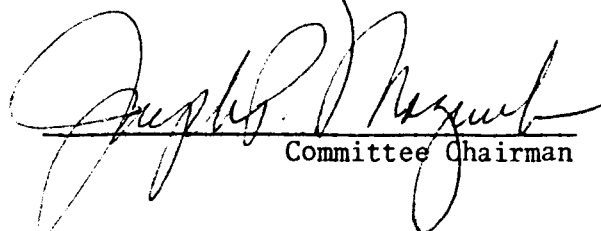
is if a merchant restrained a shoplifter beyond the 30 minutes allowed, they would be subject to this. Senator Daniels withdrew his motion. Senator Shaw asked if this would apply if he didn't let his 16-year-old son go down and get drunk. Senator Towe responded the answer to that question is that an unemancipated child can be restrained at any time by the parents and guardians. Senator Mazurek stated the concern is if someone is walking to school and entices them into a car, they may not have enough for kidnapping, but they may have enough for unlawful restraint. Senator Brown stated you sometimes read about children who have divorced parents, and the spouse who doesn't have custody will take the kids. Will that make them subject to this? Senator Mazurek responded yes. Senator Towe suggested striking the felony provision and making it just a high misdemeanor. Senator Mazurek stated if there is enough to prosecute for a felony, they will get him for kidnapping. Senator Towe moved HB 575 be amended as follows:

Page 1, line 22.
Following: "jail"
Strike: "or state prison"

The motion carried unanimously. Senator Shaw moved HB 575 be recommended BE NOT CONCURRED IN AS AMENDED. The motion carried with Senators Blaylock, Brown, Galt, Pinsoneault, and Shaw voting in favor.

ACTION ON HB 891: Senator Daniels stated he would like to amend it regarding the judicial districts. Senator Towe moved HB 891 be amended (see standing committee report for text of amendments). The motion carried unanimously. Senator Towe suggested on page 1, after line 21, before "persons," the following be inserted: ", unless such persons cannot be found upon reasonable inquiry." Senator Mazurek commented he had a real concern about what reasonable inquiry would be and how you would know if the land were released. Senator Towe stated they need to just make an inquiry. Do you own this land or are you leasing it? Senator Shaw stated he would like to speak on the language as it is in the bill. There is nothing wrong with the language on the bill. The only one that testified for something different is the Highway Department. Engineers working along the road know everyone who has the land leased. He leased a state school section, and they notified the state, and he hasn't been notified, and he is the one in possession. Senator Pinsoneault commented the Highway Department doesn't want to be inconvenienced. Senator Shaw moved HB 891 be recommended BE CONCURRED IN AS AMENDED. The motion carried unanimously.

There being no further business to come before the committee, the meeting was adjourned at 12:00 p.m.


Committee Chairman

COMMITTEE ON _____

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Cary Wickes Borchers	Mt. Coalition Against Domestic Violence	HB 793	✓	
Noelen Deuer	Great Falls Mercy Home	HB 793	✓	
Jake Ferguson	Victims of Domestic Violence	HB 793	✓	
John Kelly	Mont. Water Develop. Assn.	HB 520	✓	
Mark Adridge	Mont. Navigators, Inc.	HB 520	✓	
Tobias [unclear]	Counselor, M.S.A.	HB 793	✓	
[unclear]	MEA	HB 575	✓	
[unclear]	DOH	HB 891	✓	
Sam Hoffman	A.P.A.	HB 911 HB 520	✓	
Rex Walthman	MSGA	HB 911 HB 520	✓ ✓	
Lorna Frank	Mont. Farm Bureau	HB 891 HB 911	✓	
Comod B. Frohman	Sweet Grass Co. Pres. Assn.	HB 911 HB 520	✓	
Lenore J. Jalajero	Friendship Center Helena	HB 793	✓	
Bud Pile	Self	HB 911 HB 520	✓	
Carol Masher	Mont. Cow Belles	HB 911 HB 520	✓	
LORENTS GROSFIELD	Self	"	✓	
Russ Brown	NPRC Helena	891	✓	
Gail Kline (WLF)	Women's Lobbyist Fund	HB 793	✓	
P. A. Ellis	Self & Hatley & Valley 1004 Dis	HB 520	✓	
Don Heinz	Mont. Wildlife Fed	HB 911	✓	
Jim Flynn	DEPT FWP	HB 911 HB 520	✓	
Tom Ezygy	Tongue River Railroad	HB 891	✓	
Tom Starr	McWille Mont	HB 911 HB 520	✓	
Stuart Daggott	Mt. Stockgrowers Mt. Woodgrowers	HB 911 HB 520	✓	
Lavina Lubinus	WIFE	HB 891		
Tom Schonen	Montane Wildlife Fed.	HB 911	✓	
Mike Meane	WETA	HB 891 HB 520	X	



Montana Education Association

for children and public education

February 8, 1985

Hearing on HB 575 (Kadas) Increasing the Sentence for Unlawful Restraint

Before: House Judiciary, Tom Hannah, Chairman

Testimony by Jo Anne Peterson, Montana Education Association, in support of House Bill 575.

Mr. Chairman and members of the committee my name is Jo Anne Peterson, Legislative Intern with the Montana Education Association. I will testify in support of House Bill 575.

One of the MEA's goals this session is to support bills that would strengthen Child Protection Laws in Montana. One of the bills we are supporting is HB 575, that would increase the sentence for unlawful restraint of a child less than 16 years old.

According to a 1984 article in Junior Scholastic, strangers take away an estimated 50,000 children a year most of them are never seen again. The stranger who does the kidnapping either is never found and if they are found they usually receive light sentences. There two examples where the guilty party gets away: A Billings man charged with aggravated assault in the alleged beating death of his girl friends two year od son was released from the Yellowstone County Jail just a few days after the murder. Another case out of a recent Ann Landers article spoke about a 28 year old man and his 25 year old wife had beaten to death their two year old son. The woman was released on a 5,000 bond, the couple face a year in jail and \$1,000 fines. In some states armed robbers get 20 years in jail even if they don't hurt anybody. Do you think we have a fair criminal justice system? What if it was your kid who is kidnapped or murdered how would you react if the

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 1

DATE 032585

person who did it got a light sentence? I urge this committee to support this
legislation. Thank You.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 1

DATE 032585

BILL NO. HB 575

February 20, 1985

Capitol Station
Helena, Montana 59601

Dear Legislators,

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

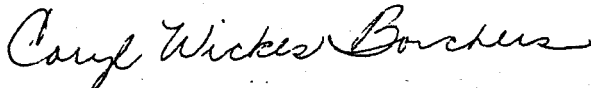
When I first opened the first Shelter for Battered Women and Children in Montana (Mercy Home in May 1977), a Police Chief told me that we already had 'PROBABLE CAUSE' in Montana and a WARRENTLESS ARREST capability. What I soon found out with my clients that without a redefining of STATE LAW, law enforcement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

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

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

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

Sincerely yours,



Caryl Wickes Borchers, Executive Director

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

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 2

DATE 032585

BILL NO. HB 793

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. 2

DATE 032585

BILL NO. HB 793

re: Warrantless Arrest HB 793

Dear Legislator,

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

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

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

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

Sincerely,



Janet

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 2
DATE 032585
BILL NO. HB 793

Great Falls, MT 59401
March 3, 1985

Janet Schmidt, Counselor
Mercy Home
Great Falls, MT 59401

Dear Janet:

I am writing in reference to the article in the Tribune this past week which described the testimony you and others have given to our State Legislature committees concerning law enforcement's procedures for handling violent husbands and the current burden victims of such abuse carry, as far as pressing charges and filing complaints against those men.

I just wanted to let you know that I support your work wholeheartedly, and wish you and your sister-agencies success in this area. I understand this situation very well. My sister lived in an abusive situation for the nine years of her marriage, and I learned from her of the awesome burden she carried, being at first afraid to press charges, for fear of further abuse.

Finally, she gained the courage to go ahead on her own, file for a protective order, sign papers to commit her husband to the State Hospital for psychiatric evaluation, file for divorce, get counseling for herself and her children, testify against the husband in court...almost all of this was done without the assistance of police or any other agency except her local Adult Abuse Center.

Tragically, it was not enough. Her husband was eventually

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 2

DATE 032585

BILLING NO. 4B 793

released from the hospital and judged not sick enough to worry about. Two weeks after release, he shot and killed my sister and their three children, aged 8, 2, and 6 months, before finally killing himself.

Your testimony will help many women out there who need someone to help them, not to blame them for not being able to get out of the abusive situation by themselves.

I am interested in knowing more about the Mercy Home, and in helping you with causes such as this one. Anyone who has lived through an abusive situation, or watched someone else go through it, knows that your work is not only important: it is a matter of life and death. Your work is appreciated.

Sincerely,



(Mrs.) Jo

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 2

DATE 032585

BILL NO. HB 793

February 20, 1984

Dear Legislators,

Please support the Warrantless Arrest HB #793!

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

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

I firmly believe that we as a society need to make a positive statement that violence in the home is NOT acceptable. I can't think of a better way to make that statement 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. 2

DATE 032585

BILL NO. HB 793

February 1985

Dear Legislators,

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

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

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

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

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

Your support, please.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 2
DATE 032585
BILL NO. HB 793

Sincerely,
Cathy St. John
Cathy St. John

RE: WARRANTLESS ARREST

Dear Legislators:

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

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

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

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

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 2

DATE 032585

BILL NO. HB 793

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

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

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

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

Thank you for your consideration.

Ull Linda

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 2

DATE 032585

BILL NO. HB 793

February 4, 1985

Dear Legislators,

Domestic violence programs and shelters are needed because they are a fundamental tool for breaking the cycle of domestic abuse.

A battered woman first and foremost needs a place to go where she'll be safe--shelters offer this. If a woman has no safe place to go, she'll very likely stay in the situation.

I lived in an abusive situation for many years, not knowing where to go, or who to turn to. You don't usually want to involve your friends and family because of the shame and fear you are going through.

When I heard about Mercy Home, it was like a light being seen at the end of a long, black tunnel. I decided next time my spouse abused me I would call them. So I did. I was able to come in with my children, made very comfortable, breathe a sigh of relief, and start for the first time to put the abuse in perspective. I was offered food, shelter, clothing and counseling without cost. This is imperative, because many women and their children come to shelters with nothing but the clothes on their backs. When a battered woman decides to flee her situation, safety for herself and her children in the only thing racing through her mind.

The counseling I received at Mercy Home was much needed. For the first time ever, someone understood what I was going through without being judgemental. They explained about abuse being learned behavior, and I realized this was learned behavior I was now subjecting my small children to.

They explained the different stages of the abuse pattern to me and I could see them applying to what had happened to me. At last I could see why I felt I had no control over the abuse incidents. If my husband was ready to abuse, nothing I could do or say would stop him. I was able to put the abuse in perspective. It wasn't my fault anymore. I could do something about my situation and eventually I was able to get out of it. I couldn't have done it without the help of the Mercy Home staff and their caring, advice and direction.

They showed me the different alternatives I could take. I chose to give my husband another chance, if he attended counseling for both the abuse and his alcoholism. I did not return to the situation until he had, indeed, signed up for them. When I did return home, what could have been the road to recovery for my spouse turned out to be "The getting back into the house game." Things improved for a short time before the counselling stopped and the abuse continued. I was back and forth a couple of times after that, staying with my mother and friends in between, going home to high hopes and so many promises that were never kept.

I returned to Mercy Home for the second and final time again as a safe place to go where I could start, little by little, rebuilding my life, my self-esteem, and the home life I knew I wanted for my children.

Today I look back to how helpless I felt, thinking "What do I do to cause my husband to treat me this way?" "Why is this happening?" It was a nightmare that happened over and over again.

Why do we need shelters and other domestic violence programs? Because these crimes touch everyone in some way. Spouse abuse can be directly related to child abuse, incest, sexual abuse and practically every other type of crime there is.

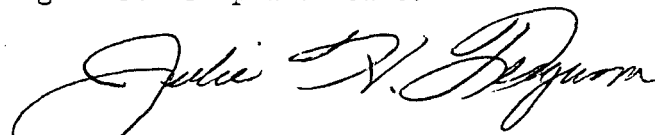
These programs and shelters give answers and solutions to problems we have only recently admitted we have. An answer to the nightmare of spouse abuse.

SENATE JUDICIARY COMMITTEE

EXH'BIT NO. 3

DATE 032585

BILL NO. HB 793



Julie H. Ferguson

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

NAME: Lenore J. Talaferro DATE: 3/15/85

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

PHONE: 443-0489

REPRESENTING WHOM? Friendship Center for Domestic Violence Victims

APPEARING ON WHICH PROPOSAL: HB 793

DO YOU: SUPPORT? AMEND? OPPOSE?

COMMENT: This bill will allow greater protection for victims from further and repeated violence. It will act as a deterrent & should reduce time & dollars to individuals & to citizens in the long range.

Most importantly, it will speed up protection for the abused who are residents in the rural & remote areas of our state.

I urge do-pass support for this bill

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY COMMITTEE

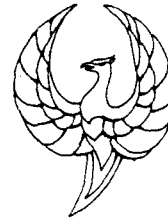
EXHIBIT NO. 4

DATE 032585

BILL NO. HB 793

WOMEN'S LOBBYIST FUND

Box 1099
Helena, MT 59624
449-7917



March 25, 1985

Testimony of the Women's Lobbyist Fund (WLF) by Gail Kline before the Senate Judiciary Committee in support of HB 793.

Mr. Chairman and other members of the Committee:

For the record my name is Gail Kline, representing the Women's Lobbyist Fund. Our membership increased at a board meeting, March 16th, by adding 11 new organizations to the existing 17 organizations who's membership was around 3,000. The WLF represents a broad spectrum of interests who's membership supports HB 793.

HB 793 is defining and adding domestic violence to existing law. It also requires a written report if an arrest is not made.

Police officers are the first representatives of government to respond to domestic violence calls. As they are taught to "fight their own battles" and "a man's home is his castle" is it then any wonder he is going to respond less than enthusiastically?

Yet, they need to respond. Not only for the safety of our citizens but also because of the cost in lives and dollars to the state. For example, a newspaper headline, "Anaconda grieves for the slain officer it loved" and recently a 50 year old Montana woman, because of domestic assault, had a severe concussion, broken jaw and broken knee cap, was told she couldn't work again. The taxpayers will be paying each year for her medical and welfare expenses. Her husband was sentenced to eight years in prison at over \$12,600 per year, at today's prices; for a total of \$100,000.

By filing a written report the policeman will have a committment to follow through and they will be recording history for domestic violence cases. Through these records homicides may even be predicted, either by the abuser or possibly the abused, who took the law into "her" own hands when the public could or would not accept some responsibility.

This legislature has taken positive steps regarding domestic violence in realizing that domestic violence is not beyond the control of our cimnal justice system. For this the (WLF) thanks you and urges you to take another step and pass HB 793.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 5
DATE 032585
BILL NO. HB 793

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

NAME: K.M. Kelly DATE: 3/25/85

ADDRESS: Helena

PHONE: 458-5861

REPRESENTING WHOM? Montana Water Development Assn.
Montana Irrigators, Inc.

APPEARING ON WHICH PROPOSAL: HB 520

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

COMMENT:

The Montana Water Development Assn. and the Montana Irrigators, Inc support HB 520 for the reason that irrigation facilities are for the most part very dangerous and public use of these canals laterals and drain canals endanger the public safety. We urge concurrence with this legislation.

K.M. Kelly

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 6
DATE 032585
BILL NO. HB 520

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

NAME: Conrad B Fredricks DATE: 3/25/85

ADDRESS: Big Timber, Montana

PHONE: 932-5440

REPRESENTING WHOM? Sweet Grass County Preservation Ass'n

APPEARING ON WHICH PROPOSAL: HB 520

DO YOU: SUPPORT? AMEND? OPPOSE?

COMMENT: This bill should be passed because, if HB 265 should be
killed, there will be nothing before the legislature to address this
important matter if this bill is not alive.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 7
DATE 032585
BILL NO. HB 520

WITNESS STATEMENT

NAME Jo Brunner BILL NO. HB 891

ADDRESS 1496 Kodiak Road, Helena, DATE 3/25/85

WHOM DO YOU REPRESENT? Montana Cattlefeeders, Cattlemen, Grange

SUPPORT X OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

Mr. Chairman, Members of the committee, for the record, my name is Jo Brunner and I represent the Montana Cattlefeeders, the Montana Cattlemen and the Montana Grange at this hearing today.

Our organizations wish to go on record as supporting the changes that HB991 offer. We approve of the thirty days written notice to the owners ~~and~~ that they may be able to better protect thier interests and allow them the time they need for that protection.

We ask you do concur with HB 891.

Mr. Chairman, Mr. Gene VanOosten of the Montana Cattlemen has further written testimony from his organization that he wishes to provide.

Thank you.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 8

DATE 032585

BILL NO. HB 891



MONTANA CATTLEMEN'S ASSOCIATION INTL

WITH A LARGE "Steak" IN MONTANA'S FUTURE

P.O. Box 1234
Helena, Montana 59624

TESTIMONY TO BE PRESENTED

ON HOUSE BILL 891

Mr. Chairman, members of the committee, H.B. 891 provides for some very helpful and very equitable changes in the laws pertaining to eminent domain. Most landowners are ill-prepared to deal immediately or effectively with a demand for an interest in their property by a public utility or governmental agency. When a fully prepared and professional condemnor approaches a farmer or rancher or other landowner who has no experience or expertise in such matters, inequities may easily occur. By providing for 30 days notice before a survey can be made, this bill allows the landowner time to study the request and obtain legal council.

Section 5 of this bill contains another important addition to the existing eminent domain law. Subsection 3 requires the condemnation commissioners to answer the three most important questions about the whole proceeding: (1) Whether the public need is real; (2) What is the least interest necessary for the purpose; (3) Whether a proper effort has been made to purchase the interest in the property.

Mr. Chairman, the Montana Cattlemen's Association applauds this revision of the eminent domain law and asks for a "do pass."

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 8
DATE 032585
BILL NO. HB 891

your Chairman and
member of the Committee

WITNESS STATEMENT

For the record my name is

NAME Lavina Lubinus BILL NO. ^{HB} 891

ADDRESS 1501 Chestnut DATE 3/25/85

WHOM DO YOU REPRESENT? Women Involved in Farm Economics

SUPPORT X OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

We would like to go on record as supporting HB 891
in its present form. Most of the changes are simply
common courtesy and common sense.

We urge your support of the legislation

Thank You

Lavina Lubinus

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 9

DATE 032585

BILL NO. HB 891

AMENDMENT TO

HB 891

Page 1, Line 21

Following: "owners"

Strike: "and"

Page 1, Line 22

Strike: "persons in possession of the land,"

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 10

DATE 032585

BILL NO. HB 891

NORTHERN PLAINS RESOURCE COUNCIL

Field Office
Box 858
Helena, MT 59624
(406) 443-4965

Main Office
419 Stapleton Building
Billings, MT 59101
(406) 248-1154

Field Office
Box 886
Glendive, MT 59330
(406) 365-2525

TO: SENATE JUDICIARY COMMITTEE
FR: Russ Brown, NPRC Staff

RE: HB 891, EMINENT DOMAIN REVISIONS

3-18-85

Dear members of Senate Judiciary Committee,

On Monday, March 25, HB 891 (Addy, Yellowtail et al.), will come before the Senate Judiciary Committee. HB 891 represents compromise, it attempts to lessen the impacts on a property owner facing condemnation, while not adding a burden to those exercising the power of eminent domain.

HB 891 amends the law in 5 places:

- * p. 1, line 20-22, provides for a 30 day notice prior to entry of land taken for public use. (Sec 1. 70-30-110)
- * p. 2, line 5&6, changes county courts to judicial district, a situation that occurs now anyway. (Sec. 2. 70-30-202)
- * p. 3, lines 10 & 11, requires that the interest sought for condemnation is the "minimum necessary interest". (Sec. 3. 70-30-2-3(6))
- * p. 4, line 13, allows a person being condemned 30 days to respond to a preliminary condemnation order with his claim of just compensation (Sec 4. 70-30-207)
- * p. 9, lines 15-18, provides the owner or successor in interest the opportunity to regain his property by matching the highest bid. (Sec. 5. 70-30-322)

This bill is a result of negotiations with the mining and utility industries, and conversations with state agencies. It passed House Natural Resources committee unanimously and got a 97-0 vote on 2nd reading.

It was/is supported by the Farm Bureau, WIFE, Farmers Union, Montana Mining Association and Northern Plains.

We will attempt to contact you prior to the hearing to answer any questions you might have. Thank you for your time and consideration.

Sincerely,


Russ Brown
NPRC Staff

cc: Senator Yellowtail
Representative Addy

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 11
DATE 032585
BILL NO. HB 891

TESTIMONY TO SENATE JUDICIARY

SUPPORTING HOUSE BILL 911

The Montana Stockgrowers Association supports passage of House Bill 911. House Bill 911 is the result of the interim study which considered impacts of the stream access problem upon private landowners. The testimony given during the hearings of the interim committee revealed that the trespass laws of the State of Montana were not working to protect private property rights. The problem lay in two areas. One was the requirement that land must be "conspicuously posted" before a member of the public could be charged with trespass. The other was that the fish and game wardens had little power to enforce trespass laws.

House Bill 911 corrects both problems. The bill is essentially a minimum posting law and allows a landowner to post land by either affixing a written notice or a strip of fluorescent orange paint at least three feet high at all outer gate and normal access points to the property and through those acts given notice to the public that the property is closed. The paint strip creates a permanent notice and is a good substitution for the requirement of conspicuous posting. It replaces the requirement under present law that signs be posted every 200 to 400 feet

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 12

DATE 032585

BILL NO. HB 911

apart and avoids the potential problem of having a sign removed by a trespasser.

House Bill 911 also broadens the powers of the fish and game wardens to enforce the trespass laws. This is needed in light of the stream access decisions since the potential for conflict between private property rights and public recreational rights will increase.

The Montana Stockgrowers Association urges passage of House Bill 911.

7325R

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 12
DATE 032585
BILL NO. HB 911



MONTANA CATTLEMEN'S ASSOCIATION INTL

WITH A LARGE "Steak" IN MONTANA'S FUTURE

P.O. Box 1234
Helena, Montana 59624

TESTIMONY CONCERNING HOUSE BILL 911

Mr. Chairman, members of the committee, H.B. 911 contains some real improvements to the trespass law, from both the landowner's and sportsmen's viewpoints. By defining exactly what constitutes effective notice, this bill clarifies the trespass issue to a great extent. Giving the landowner fluorescent orange paint as an alternative to printed "no trespassing" signs solves one of the mechanical problems involved in posting notice.

The Montana Cattlemen's Association has promoted S.B. 435 as a better alternative to H.B. 911. If we must choose between the two, we would rather have S.B. 435. We have attached a copy of our testimony on H.B. 435, in which we explain our preference for it. But, we would not want to see H.B. 911 killed under any circumstances. It represents a necessary improvement to the law. S.B. 435 deals only with recreational use of land; but, there are other uses, to which HB 911 would still apply. We find these two bills to be compatible and see no reason not to pass both of them.

Thank you.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 13

DATE 032585

BILL NO. HB 911



MONTANA CATTLEMEN'S ASSOCIATION INTL

WITH A LARGE "Steak" IN MONTANA'S FUTURE

TESTIMONY PRESENTED TO HOUSE JUDICIARY

P.O. Box 1234
Helena, Montana 59624

COMMITTEE CONCERNING SENATE BILL 435

Mr. Chairman, members of the committee, S.B. 435 represents a sensible, straight-forward solution to the presently confused situation which both landowner and sportsman find themselves in concerning permission for recreational use of private land. While the Dept. of Fish, Wildlife, and Parks does enforce a rule prohibiting big game hunting without permission, other activities require no permission unless land is heavily posted. Misunderstandings are bound to occur under the present trespass law, especially in view of recent Supreme Court decisions allowing public access to all surface water. By simply stating that permission is required in order to recreate upon another's land, S.B. 435 clears the air and lays the issue to rest.

The Montana Cattlemen's Association is aware of H.B. 911, which is another effort to resolve the problem of defining criminal trespass. We do not oppose H.B. 911. It does improve the existing law in that it states exactly where and how land must be posted. The requirements specified are not unreasonable. Yet, any posting requirements invite trouble. The recreationist is led to believe that he will be welcome or at least tolerated wherever a landowner has neglected to place proper notice around a parcel of land. Frequently, this assumption turns out to be incorrect and an unpleasant confrontation results. While, under such a law, the sportsman need not fear prosecution, the experience of telling and being told to "get off" spoils yet another landowner-sportsman relationship. We must, therefore, support S.B. 435 as the best way to approach the question of when permission is required for recreational use of private land. We find that responsible sportsmen and recreationists have no desire to use another's property without permission, regardless of the presence or absence of signs or fluorescent painted posts.

The Montana Cattlemen's Association asks for a "do pass" on this welcome addition to the trespass law. Thank you.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 13
DATE 032185
BILL NO. HB 911

TESTIMONY before the Senate Judiciary Committee, March 25, 1985, Helena, Montana, by Lorents Grosfield, cattle rancher from Big Timber, Montana.

Mr. Chairman, Members of the Committee:

I appear here today in somewhat less than wholehearted support of HB 911, but support none the less. While I believe that a user of private lands should know where he is and be responsible to be authorized to be where he is, I realize that there is a lot of resistance by some recreationists to the concept of getting permission before entering private property. If we must therefore have a posting law, I do feel that HB 911 provides landowners much better protection than present Montana law.

There are two primary reasons for this. First, under present law a landowner must "post in a conspicuous manner"; the problem here is that no one knows precisely what "conspicuous" means. HB 911 is much more specific in its posting requirement. Secondly, the provisions in HB 911 that include a strip of fluorescent orange paint⁽¹⁾ as being equivalent to a sign stating "No trespassing without permission" is much better than the present situation. Under present law, the signs are too frequently destroyed either by the wind and rain or by trespassing vandals. Also, from the point of view of improving landowner-recreationist relations I think it is appropriate that the language in HB 911 says that the fluorescent paint is equivalent to "No trespassing without permission" instead of the simpler "No trespassing", period, which is more likely to be intimidating to some recreationists.

HB 911 is an excellent companion bill to SB 435, which requires permission for any recreational use of private land. If both these bills were to pass this Legislature, landowners would be well protected against all forms of trespass, including recreational trespass. Because of the tremendous losses that have occurred in these landowner protections through things such as the stream access court decisions, it is essential that this Legislature give careful consideration to the improvement of landowner feelings to-

⁽¹⁾There was some concern expressed in the House over the size of the strip. If that concerns this committee, I would suggest the language in the Utah trespass law, as follows: "a minimum of 100 square inches of fluorescent or bright yellow paint (on exterior fenceposts, trees; or when metal fenceposts are used, the entire exterior side must be painted)". Thus, on page 2, line 13: "3 feet high, and not less than 100 square inches, except that when metal fenceposts are used, the entire exterior side must be painted; and"

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 14

DATE 032585

BILL NO. HB 911

wards recreational users through passage of much-improved trespass legislation. The "big game hunting by permission only" bill of a few sessions ago did a lot to improve relations and mutual respect between landowners and recreational users. HB 911, together with SB 435, will do much more.

You know, last hunting season, we hosted 863 hunters on our ranch, which is about the average annual number of hunters we have hosted on our ranch over each of the last ten years. In addition we have hosted well over one hundred days annually for other recreational uses such as fishing, hiking, picnicing, and camping, not to mention several hundred days of horseback riding. In other words, over the past ten years, we have hosted well over 10,000 total recreation days on our ranch, NONE of which were charged for. On the contrary, if anything, I have donated a tremendous amount of time and energy (not to mention money) toward the recreating public--- consider that if each recreation day demands only 5 minutes of my time, I have donated over 50,000 minutes or 833 hours or 104 working days or nearly one-half of an average working year to the recreating public (actually, it's rare to get off with only 5 minutes by the time I've explained where to go, where not to go, where the deer are, where the fish are, where the other hunters and fishermen are, where the "big ones" are, where the cattle are, and so on). In fact when you think about it, what I've done, and what most ranchers do, is to subsidize the recreating public to the extent of the time and expense it takes to accomodate that public.

One of the questions I have to ask myself is "Do I really want to continue to donate the tremendous amounts of time that it takes to accomodate to a hunting season?" This seems especially pertinent in light of the kind of thanks that I get as an agricultural landowner from my state's government in the form of things such as the stream access court decisions, and legislation such as HB 265 that so far seeks to go farther than the decisions themselves.

The point is that some recreational users would have you believe that unless they are granted full easements to use private lands, they have nothing. This is simply not true. It is essential to remember that, statewide, recreational access is widely available on private land when asked for--- the important ingredient is the asking or otherwise negotiating for access permission. To the landowner this is an essential private property right that is vital to efficient management. To the recreational user it is a matter of common courtesy as well as, in many cases, of law. Although there are exceptions, most people respect private property and appreciate and enjoy the privilege

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 14

DATE

032585

to use it, and they are careful. And every year I get letters of thanks from all over Montana and many other states as well--- this year one hunter wrote, "I just wanted you to know how much I appreciated being able to hunt this year on your property. Your hospitality makes me glad to live in Montana." That represents a substantially different attitude from the one that my state's government has been taking.

I urge you today to favorably consider HB 911 and to do what you can to support SB 435 as well. I am including some minor amendments to HB 911 to take care of a few small problems that I see with the language. Thankyou for your time.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 14
DATE 032185
BILL NO. HB 911

SUGGESTED AMENDMENTS TO HB 911

1. At page 2, line 14:

(b) the notice described in subsection (2)(a) must be placed at each outer gate and normal point of access to the property and ~~at all points where any~~ including on both sides of a water body crossing the property wherever such body intersects an outer boundary line.

REASONS:

1. What does "at all points" on line 16 mean?
2. Is it necessary to post ALL water bodies--- what about one that is rarely if ever used by the public? What about one that is too small to be "capable of recreational use"?

2. At page 3, line 9:

(4) THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS SHALL ATTEMPT TO EDUCATE AND INFORM ALL PERSONS HOLDING HUNTING, FISHING, OR TRAPPING LICENSES OR PERMITS BY INCLUDING ON ANY PUBLICATION CONCERNING SUCH LICENSES OR PERMITS, IN CONDENSED FORM, THE PROVISIONS OF THIS SECTION CONCERNING ENTRY ON PRIVATE LAND. The department shall use public media, as well as its own publications, in attempting to educate and inform other recreational users of these provisions.

REASONS: Obviously non-licensed recreational users (such as floaters, hikers, etc.) need to be informed as well. The state of Utah, in Section 23-20-16 of its code, states: "The division shall attempt to educate and inform all persons holding licenses, certificates or permits to hunt, trap, or fish on private property of owner's rights and sportsmen's duties. The division shall use public media, including newspapers, radio, and television, as well as other sources, to educate and inform sportsmen and promote respect for private property rights. The restriction pertaining to trespassing shall be made a part of all hunting and fishing proclamations issued by the wildlife board."

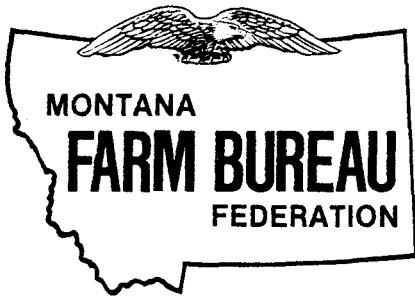
3. Regarding Section 2, page 3, I assume that the language is not meant to imply that it shall exclusively be the duty of wardens to enforce these trespass provisions, that is, to the exclusion of local police or sheriffs. Wardens are hardly equipped to handle very many complaints, especially during hunting season, at one or less than one warden per county.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 14

DATE 032585

BILL NO. HB 911



502 South 19th

Bozeman, Montana 59715
Phone (406) 587-3153

TESTIMONY BY: Lorna Frank

BILL # HB 911 DATE 3/25/85

SUPPORT XX OPPOSE _____

Mr. Chairman, members of the committee for the record my name is Lorna Frank, representing Montana Farm Bureau.

Farm Bureau delegates at the 65th. Annual meeting last December were very concerned about getting stronger trespass legislation passed which would insure that private property will be free from public use except with permission from the landowner.

Farm Bureau supports HB 911 because we feel it protects private property and urges this committee to give HB 911 a do pass recommendation.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 15

DATE 032585

BILL NO. HB 911

Lorna Frank
SIGNED

Mr Chairman and members of
the committee

WITNESS STATEMENT

For the record my name is

NAME Lavina Lubinus BILL NO. HB 911

ADDRESS 1501 Chestnut DATE 2/25/85

WHOM DO YOU REPRESENT? Women Involved in Farm Economics

SUPPORT XXX OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

We would like to go on record in support of

this bill.

By having the points of entry instead of every few feet
or the ~~owner~~ should be enough responsibility for the
land owner. Respecting the ownership of the property should
be the ~~responsibility~~ responsibility of the person who wants to enter or use
said property.

The orange is a good idea. On our place the signs
are constantly being ripped down or shot to pieces:

We urge your support of this legislation

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 16
DATE 032585
BILL NO. HB 911

STANDING COMMITTEE REPORT

March 25

19 55

MR. PRESIDENT

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

having had under consideration..... **HOUSE BILL** No. **575**

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color

(Senator Mazurek)

INCREASED PENALTY FOR CERTAIN UNLAWFUL RESTRAINTS OF A CHILD

Respectfully report as follows: That..... **HOUSE BILL** No. **575**

be amended as follows:

Page 1, line 22.

Following: "jail"

Strike: "or state prison"

AND AS AMENDED

BE NOT CONCURRED IN

~~MAZUREK~~

~~MAZUREK~~

.....
Senator Joe Mazurek

.....
Chairman.

STANDING COMMITTEE REPORT

March 25

19 85

MR. PRESIDENT

We, your committee on **JUDICIARY**

having had under consideration **HOUSE BILL** No. **391**

third reading copy (blue)
color

(Senator Yellowtail)

GENERALLY REVISE THE LAWS PERTAINING TO EMINENT DOMAIN

Respectfully report as follows: That **HOUSE BILL** No. **391**

be amended as follows:

1. Title, line 8.

Following: "70-30-110,"

Strike: "70-30-202,"

2. Page 2, lines 2 through 14.

Strike: section 2 in its entirety

Remember: subsequent sections

3. Page 3, line 12.

Following: "county"

Strike: "judicial district"

Insert: "county"

AND AS AMENDED

BE CONCURRED IN

ENCLOSURE

ENCLOSURE

Senator Joe Nazurak

Chairman.