MINUTES

MONTANA SENATE
53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Senator Bill Yellowtail, on January 25, 1993, at 10:08 a.m.

ROLL CALL

Members Present:
Sen. Bill Yellowtail, Chair (D)
Sen. Steve Doherty, Vice Chair (D)
Sen. Sue Bartlett (D)
Sen. Chet Blaylock (D)
Sen. Bob Brown (R)
Sen. Bruce Crippen (R)
Sen. Eve Franklin (D)
Sen. Lorents Grosfield (R)
Sen. Mike Halligan (D)
Sen. John Harp (R)
Sen. David Rye (R)
Sen. Tom Towe (D)

Members Excused: NONE

Members Absent: NONE

Staff Present: Valencia Lane, Legislative Council
Rebecca Court, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing:	NONE
Executive Action:	SB 117
	SB 37
	SB 78
	SB 55
	SB 129
	SB 153
	SB 146

EXECUTIVE ACTION ON SENATE BILL 146

Motion: Senator Harp MOVED TO AMEND SB 146, page 55, line 4, 13 and 17, page 56 line 4. The amendment would strike the word

"foreign".

Discussion: Ms. Lane explained this amendment would remove all references to "foreign" in the bill.

Vote: The motion to amend CARRIED UNANIMOUSLY.

Motion/Vote: Senator Harp MOVED SB 146 AS AMENDED DO PASS. Motion CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SENATE BILL 117

Motion: Senator Halligan MOVED TO AMEND SENATE BILL 117. (exhibit 1)

Discussion: Senator Halligan said he had talked to Senator Grosfield, and Representative Ryan, and others, as well as some of the people from the court to be sure they could continue mediation. He explained his process in working out the amendments.

Senator Towe commented on the language in section 2 describing abuse and asked what was meant by authorize or permit continuation of mediated negotiations. He asked Senator Halligan if that meant they could authorize, but not continue it. He asked if the key was continuation or what the meaning was.

Senator Halligan said the people who brought the idea to him, were adamant there be no sexual abuse and not any deviation at all. This was their "tempered" language. He said he was not completely comfortable with it but would let Representative Howard Toole work on it in the House. If the Court did not authorize continuation of mediation because probable cause had not been proved in a child abuse or neglect proceeding, the Court would initiate it.

Senator Towe asked if Senator Halligan was suggesting that there was any basis for not authorizing the mediation, but this only comes into play in connection with continuing it. Senator Halligan said no, this is not the best language, but the Court could say "I think there is reason to suspect that there is physical or emotional abuse. The key is that both parties would want mediation. If one party objected, then no."

Senator Towe said that is tempered somewhat by the language in the preceding section where it says only if one of the parties desire the mediation the court could order. It then would mean if one parties does not agree with it, they can not go forward. If both parties agree they can get mediation started but will not be able to force continuation of it.

Senator Halligan said in the existing statute when teacher or a parent's doctor sees a child in a setting their standard is "reason to suspect" and we are using that standard now. If a little less than probable cause is there, if a child was

intimidated by an abuser, this would cause problems.

Vote: The MOTION TO AMEND SB 117 CARRIED UNANIMOUSLY.

Motion: Senator Halligan MOVED TO AMEND SB 117 on page 4, line 21 and 22 to strike the "minimum of 40 hours of certified mediation training".

Discussion: Senator Halligan said he would like the House to fix this area, he believed it was too strict. There are a lot of existing personnel in Courts now to help with mediation that do not have 40 hours of certified mediation training, and this language would prohibit them from continuing.

Chair Yellowtail repeated the motion and said this would strike lines 21 and 22 in their entirety and will assume the House will come back with something that will address that issue.

Senator Halligan said he recognized that rural communities need that access and rural Judges could look at this and see what is the most applicable to them. He pointed out that many did not have the time or the money to go take the training and there were many people who have the ability to the mediation, such as licensed counselors and people with a BA. He said this can be removed for now and if something needs to be added we can do so.

Vote: The MOTION TO AMEND SENATE BILL 117 CARRIED with Senator Crippen voting NO.

Motion: Senator Halligan MOVED SENATE BILL 117, AS AMENDED, DO PASS.

Discussion: Senator Towe said he had a question on the amendments and asked Senator Halligan to comment on section 4, page 3, where we are changing "may" to "shall". He asked why we were making it mandatory that a mediator's recommendation be submitted to Court.

Senator Halligan said when we look at both section 4 and section 5 we see that if there was an agreement if both parties go to Court and there was a recommendation, it should be available to the Court.

Vote: Motion to Do Pass SB 117 AS AMENDED, CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SENATE BILL 78

Discussion: Ms. Lane, Legislative Council Staff Person, handed out proposed amendments, (exhibit 2) and said they were requested by John Conner, Attorney General's Office. Originally the wording in this bill did not quite make sense and they requested these amendments. She explained the changes made by the amendments.

Senator Towe said this would allow the City Attorney to come in and perhaps the County Attorney. By striking the word "or" and inserting "and" they both get notice and can decide which should prosecute.

Motion/Vote: Senator Towe MOVED TO AMEND SB 78. The motion CARRIED UNANIMOUSLY.

Motion/Vote: Senator Halligan MOVED SB 78 DO PASS AS AMENDED. The motion CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SENATE BILL 55

Discussion: Ms. Lane said there is an amendment that was requested by Rae Childs who stated that Senator Towe had okayed the amendment. Ms. Childs passed out the amendment. (Exhibit #3) She said this would change the penalty from a minimum of $1,000 up to $1,200.

Chair Yellowtail said this bill was closely related to Senate Bill 153 and the two went together.

Senator Brown asked if this amendment could be inserted in Senate Bill 153 and was told that was the intent of the amendment.

Motion: Senator Towe MOVED TO AMEND SENATE BILL 55. (Exhibit # 3).

Discussion: Senator Towe said Rae Childs asked him if he would present this amendment and she pointed out that we at least ought to make the penalty the same as the cost to get insurance and then there might be fewer people who would hesitate in getting the insurance. Senator Towe said the average insurance costs about $1,000.

Vote: The motion to AMEND SENATE BILL 55 CARRIED UNANIMOUSLY.

Discussion: Senator Towe said he believed this bill should be discussed in conjunction with Senate Bill 153. The committee worked on SB 153 for a long time and had some good ideas. The concept of SB 153 is to take away the license plates. With the license plates gone it makes it easier for the police to pick up a car which is not registered.. The concept of SB 55 is to pick up the car itself. There is some feeling that something is needed here one way or another, and maybe the two can be fitted together. One preliminary matter which needs to be addressed is "who is the offender." SB 153 retains the notion, which is present law, that the offender is the person who is driving the car. Senator Towe said in Senate Bill 55 he changes that concept. The person who owns the car is responsible for getting insurance and SB 55 would make the offender the person who failed to get insurance, namely the owner of the car. The reason is, if you are driving someones car you do not go in and check on the

insurance. If you are allowing your car to be driven by someone else, that is your concern and if it is not insured, you should not let it be used.

Motion : Senator Harp MOVED SB 55 DO NOT PASS.

Discussion: Senator Harp said he believed SB 55 had valid points, but did not like the idea of the seizure of the vehicle.

Senator Halligan asked Senator Towe how he would handle joint ownership where there is a husband who may be an alcoholic. The vehicle may be subject to seizure and the wife is penalized. Senator Towe said "an owner" does not make a difference as to the degree of ownership. Any owner can be liable and he suspects the prosecution would normally charge the operator and the owner with only one half the fine and not bother the other spouse. He believed that was the only way to get the job done.

Senator Towe said he recognized the concern of those who worked hard on SB 153. He thinks there are some problems with SB 55, but there is a lot of merit to it. He said he would like to know what the attitude of the committee is on seizure. SB 55 came as a constituents request, if there are problems with it he would accept it, but was not convinced at this point that SB 153 would work and get the job done. He believed there may be some things from both bills that would make it better. He urged that SB 55 not be killed at this point in time.

Senator Crippen said he believed it was correct that the owner has the responsibility. The seizure can occur in the current form we have in SB 55. This could raise some problems in storage, improper seizure liability and a problem with joint ownership. The seizure has the ability of eliminating the liability of the one who drives the car. He believed SB 153, with some modifications, would suffice.

Senator Doherty said he believed the problems the law enforcement community have with seizure are there. They do worry about hauling the auto away, storage and liability questions and believes there would be a real valid purpose in watching your car being towed away where there is no way to get it back for some time. He did believe, however, that the practical problems out weigh the benefits.

Senator Towe said he did not think it was a big problem in having the car towed away since it is done now after an accident. If there is no support for the bill, he suggested action on the motion.

Senator Rye said he supports SB 55. He believed that anyone who loans his car to somebody who has already had at least two DUI's, is showing lack of judgement. He believed the bill has a valid idea in making the owner and not driving the car is an offender.

Motion: Senator Halligan MOVED a SUBSTITUTE MOTION that SENATE BILL 55 BE TABLED.

Discussion: Senator Crippen asked if it is the intention of the Committee to table SB 153 and come back to it at a later date. Senator Halligan answered yes.

Senator Towe said he liked the decision to table SB 55 because if SB 153 had some problems, SB 55 would still be available.

Vote: The substitute motion to TABLE PASSED UNANIMOUSLY.

EXECUTIVE ACTION ON SENATE BILL 153

Discussion: Senator Brown said he believed the committee would want to put the $1,000-$1200 concept in this bill.

Motion: Senator Doherty MOVED TO AMEND SENATE BILL 153. The motion would amend page 10, line 14, subsection 2 for the fines to first offense $1,000, on line 14, second offense $1200 on line 16 and third offense $1500 on line 19.

Discussion: Senator Doherty said he did this with some trepidation because, while we want the fines higher than the insurance, he was concerned about imposing fines because if people cannot afford the insurance he did not know how they would be able to afford the fines. He said this was some of the "lumps" you would have to take if you drive without insurance.

Senator Bartlett asked if anyone on the committee knew what the fines for DUI might be and Senator Halligan said up to $500 the first time. Standard fines are about $250 or $300. The standard for the second offense is about $350 and it goes up from there. His concern with the $1,000 or $1200, while he knew Rae Childs was trying to get the fine higher than the insurance, we also have to consider the rest of the criminal code.

Ms. Lane said the penalty for DUI, in PER SE, is not less than $500 or more than $1,000 for the third offense, the second is $300 to $500 and the first is $100 to $500.

Senator Towe said the point is that the fine will be at least as costly as getting insurance. The theory is that you may not get picked up more than one time during the year, and it is worth the risk since it is only a $250 fine. It is cheaper to take the risk, pay the fine, and not worry about it.

Senator Doherty mentioned that Senator Halligan said there should be some consistency. He did not believe there was any testimony on the cost of insurance.

Senator Bartlett said she did not understand the concern about making the fine equivalent to the cost of insurance. Driving

without insurance did not seem to be as grievous offense as driving under the influence. This probably goes along with Senator Halligan's concern about some consistency in fine provisions.

Senator Grosfield said he would agree with Senator Bartlett. This bill will take discretion of the Judge away by saying it will be $250 the first time around. He felt this was steep for the first time and thought the third offense should probably be stiff. In some ways we will be dealing with the person who forgot to pay his insurance and the way he gets reminded is when he gets his ticket. Senator Grosfield felt the amount was too much.

Motion: Senator Doherty made a SUBSTITUTE MOTION. The first offense would be $250, the second offense $500 and the third $1,000.

Discussion: Senator Halligan said he would like to bring in others, the insurance people, etc. to come in with testimony and put evidence on the record. If they wanted to do this we would have the information, if they wanted to leave the testimony the way it is, they could.

Senator Doherty WITHDREW SUBSTITUTE MOTION TO AMEND SENATE BILL 153.

Senator Towe said he did not like the idea of leaving everything to the House. He did not feel there was that much of a problem in determining insurance since we all get it. Senator Towe said if anyone has had to get insurance with a young person in the family, $1,000 is pretty standard. $250 is what we have now and it does not do much good. He believed the fine should be moved up to $500, $750 and $1,000 at least.

Senator Halligan said the practical matter is that the Court will look at the financial status of the defendant and say that person cannot afford it and will get the $500 fine with a portion suspended.

Motion: Senator Towe moved to amend the fines on line 14, $500, on line 16, $750 and line 19 $1,000.

Discussion: Senator Blaylock asked about Senator Towe's statement that the $250 fine does not do much good. He asked if there was any evidence presented to the committee that these people who are not reacting to the $250 because they do not have the money, or willfully disobeying the law.

Senator Towe said he did not know that there was any testimony about that either way. In some instances it is true they do not have the money and can not get the insurance. The idea is that they should not be driving if that were the case. Maybe we ought to drive home the point that the priorities are, if you drive you

have to have gasoline and you have to have insurance. If we put in $500, at least the Judge has discretion up to that $500, and he believed that is the minimum that should be in this bill.

Senator Crippen said he would agree with Senator Towe. From the other standpoint, if your car is hit and you do not have collision insurance, someone ran into you and the damage was $1,000 or more and $250 fine would not be much. He said there should be something to deter people from driving with no insurance. He said if insurance which was non-cancelable, were paid for a year in advance before you could buy your license, it would solve the problem. Senator Crippen said that is not being done so as a result, the laws should be made tough.

Vote: The MOTION TO AMEND by Senator Towe PASSED with Senators Grosfield, Rye and Yellowtail voting NO.

Discussion: Senator Doherty asked if this meant a $500 fine and not less. This was correct, but the Judge could suspend it.

Motion: Senator Doherty MOVED SB 153 DO PASS AS AMENDED.

Discussion: Senator Grosfield said he had some amendments and Senator Doherty WITHDREW HIS MOTION.

Motion: Senator Grosfield MOVED TO AMEND SENATE BILL 153 to add language on the offender. (The suggested amendment was not given to the Secretary)

Discussion: Senator Grosfield said his concern is with the concept of the offender and whether or not he is the owner of the car that the plates are being confiscated, on and the confusion that will arise where you almost have to deny someone had permission to use the car etc. The proposed amendments would also eliminate the county jail. He did not believe any Judge would sentence anybody for ten days and did not know why it is in the bill. These amendments would eliminate the jail sentence for the first and second conviction, but leaves it for the third which gives a jail sentence for from 10 to 30 days since the standard is generally for 30 days. The other two amendments 4. and 5. get at the problem of when the defense says you take license plates for the vehicle operated at the time of the offense, or unless the vehicle was not registered to the defendant. You get into the question of someone wanting to borrow the car and if they do not know it is not insured, etc. and the whole thing seems awkward. In this bill we are coming down on the people who do not have insurance, and we should. He believed a strong message was being sent out and the language is rather troublesome and awkward

Senator Towe said he agreed with Senator Grosfield.

Senator Grosfield said he could understand the confusion. If there is an offender and he owns the car, on the third time if he

is the driver, it would suspend his ability to get a license on this vehicle or on any other vehicle. If you are dealing with a small businessman, he might have several vehicles he will not be able to license.

Senator Towe said he was not sure that was exactly correct. Is your intention that if he has offended with the same vehicle, there is no question, but what if he is suspended with a different vehicle that he also owns. He asked what the intent would be here.

Senator Grosfield said he had not thought of that possibility. He believed it should be treated the same way. Senator Towe said then if the driver of an owned vehicle was suspended three times that would be okay. If he understood the bill correctly, you don't go out and take his registration on the other vehicles, but he can not get a new registration, so he is stuck until his registration expires since he cannot get it renewed before that time.

Senator Grosfield said that did concern him and goes back to the wife who is a co-owner. He did not address that in the amendment, but it was a concern.

Senator Doherty suggested the committee DEFER ACTION ON SB 153 and get Peter Funk to come over and work on this to get some amendments to bring back to the committee. He did not believe the committee or the AG office would be able to get at some of the major problems with some of the proposed amendments. He said he would like to make them come up with the work needed to get this bill out.

Senator Doherty said he would call the AG office and get Peter Funk over here to work on the amendments.

Chair Yellowtail asked Senator Grosfield, Towe and Doherty to work as a subcommittee to straighten out the policy questions involved with this and bring it back to the committee.

Senator Towe said he would like to ask two things as guidance for that subcommittee. One, is there any support for the concept he had raised in SB 55 of making the owner the offender. If there is support for that concept we should deal with it, if not we should know. Chair Yellowtail asked if there was a general feeling on the issue and said he for one would support that concept. Senator Rye said he would also support it.

Senator Blaylock said there were times when someone takes the vehicle without permission and Senator Towe said that is provided for in both cases, if it is done without permission it is not an offense.

Senator Yellowtail said the subcommittee should look into that concept. Senator Towe said the second thing he would like to ask

the committee, is there support for amending the concept of seizure of the vehicle. Senator Franklin said she did not believe that addressed Senator Halligan's issue. Senator Franklin said there is really no structure or protocol in place to deal with seizure and may be more than the Department can respond to at this time.

Senator Towe said he would like to ask the Department and if they have some further things, we should know about. If there is no interest in adding this in, he would not want to take up the Committee and Department's time on it.

Senator Doherty said he would resist any effort to work on seizure because the committee went through that very thoroughly and worked out the best way to do it was to grab the plates.

Senator Yellowtail said in view of the outcome of the last bill that concept was dead on the table. He suggested that not be included in Senate Bill 153. He said with the subcommittee having that direction to begin with, Senator Doherty WITHDRAWS HIS MOTION TO AMEND for the present time and we will continue discussion on this bill.

EXECUTIVE ACTION ON SENATE BILL 37

Discussion: Senator Towe said there was a subcommittee to work on this composed of himself, Senator Franklin, Senator Halligan. They met with John Conner, Ms. Lane and Amy Pfifer and went over all of the suggestions. He said they had come up with good amendments and believed they had made a much better bill in the process.

Motion: Senator Towe MOVED TO AMEND SB 37. (Exhibit #5)

Discussion: Senator Towe explained the amendments. They proposed to eliminate all of the exclusions and exemptions. The problem with doing any exemptions and exclusions, even with constitutionally protected activity like legitimate law enforcement investigations, is that as soon as you include some, by negative implication, you exclude others, and that is not a good idea. He said the committee had also included a statement of intent and read part of it to the committee. The next major item was that they took out the first warning in lines 11, 12 and 13 and the subcommittee put in the words "knowingly" and "repeatedly" on page 1, line 18. He said all the other four elements are there, but the theory in taking out the warning was reinserted in a new subsection on page 2, lines 16 through 19. He said in some cases it may not be appropriate to give a warning, and you do not have to prove a warning in those cases.

Senator Towe said the next amendment was to take where they took out the words "alarming or annoying". He said they brought in the language from the DUI law in order to prove a prior conviction, so if someone had a prior conviction of stalking in

another state, that triggers the felony and the higher penalty. They then put in a temporary restraining order language that is presently in the family law section. They brought that in and added stalking to it and made it clear you do not have to be a family member to get a temporary restraining order. In section three there is a requirement that whenever a person is admitted bail, the prosecuting attorney or the Judge in the absence of the former, must notify the victim or the parent or guardian of the victim if the victim is a minor. They accepted the suggestion made in the committee hearing that the schedule of bail not be allowed to include stalking as one of the schedules of items for bails. There was one other amendment that the effective date should be on passage and approval, not 30 days later. He said the remainder of the amendments are just cleaning up language.

Senator Crippen asked about constitutionally protected rights. He said the constitutional aspect has been taken out of the body of the bill and has been put into the statement of intent. Ms. Lane said she believed it was a good change and this particular issue did come up in subcommittee and John Conner had particularly strong feelings on it. He believed that any right that is a constitutional right is going to be protected under common law and by the constitution. Ms. Lane said it occurred to her at the end of the testimony that it seemed the people who were coming in and asking to be put on the list of exemptions had good intentions, but the reality was that they were asking to be allowed to stalk. Mr. Conner said taking them out of the bill leaves them under the umbrella of protection under common law and their constitutional rights would be protected by the constitution. Mr. Conner's main concern was that if you start a laundry list, the principle of construction would be that if the Legislature specifically put three or four classes if people on the laundry list, anyone not included would therefore be excluded.

Senator Crippen said his concern is taking the constitutional activity off the bill itself and placing it in the statement of intent. Senator Crippen said you do not have statutory law, it goes under common law with the intent. Ms. Lane said he was correct. The umbrella protection in the constitution would be there whether a statement of intent was attached to the bill or not. She suggested if there were problems with the word "chill", perhaps a better word could be used.

Chair Yellowtail asked Senator Crippen if he would like to argue for a section of the bill that would express purpose and Senator Crippen said no, he understood that common law would protect constitutional rights, regardless of what was in the bill. He said he wanted to make sure privacy could be maintained in protected activities, as well as Worker's Compensation activity investigation and private law enforcement activity.

Senator Doherty asked about the statement of intent, specifically the sentence that restraining orders are often difficult to

obtain and are often inadequate to deter a stalker from committing an act of violence. He said this bill makes stalking an act of violence, and if we are going to make that punishable, we are talking about committing a further or additional act of violence. He was not sure if it is the intent of the Legislature to give law enforcement personnel recourse before an act takes place. If the appropriate thing to do is to not list in the body of the bill those specific constitutional rights which we are not attempting to infringe upon, why is it any less appropriate or inappropriate to list them in the statement of intent.

Senator Towe said as far as the restraining order is concerned, the subcommittee did feel it might be helpful to outline exactly what they had in mind in terms of when a restraining order would be available under the new amendment to the Family Law Code. It is the intent of the Legislature to criminalize and punish the activities of people who repeatedly watch, etc. As far as making it a violence crime, yes, it may be that we are making an additional crime, whether it was or was not a violent crime, is beside the point. "Following" can be a non-violent crime, but it can have emotional impact on the person who is stalked. He said for that reason, it can not be put into words of violence and non-violence because it may be a non-violent crime, but believed it should still be criminalized.

Senator Towe said the negative implication is eliminated if we put it in the statement of intent and that is not the case if it is put into the bill. He said he was concerned about a laundry list that could be in this bill before it goes through the process and becomes law. Senator Towe said as Ms. Lane pointed out, every exemption is a license to stalk and that is not what we intend here.

Senator Doherty said he was arguing against the laundry list. Senator Towe asked if he felt it should even be in the statement of intent and Senator Doherty said no. We are not attempting to "chill" constitutionally protected rights. He asked if we do not have a full exercise to the right to demonstrate, or the full right to assemble etc. By doing that, we are invoking evil that we are attempting to avoid.

Senator Towe said he assumed this language was added in the hope of placating some of the people who felt their right to demonstrate, assemble, picket and their freedom of speech might be impaired. He said he was concerned about this issue as well as the legitimate journalists who are concerned about this issue. He did believe it best to handle this amendment first. There is another proposal to add to the lawful activity some statement about investigations and journalists, and activities in collections of lawful debts. Now the banks and credit unions are concerned that their attempt to collect a debt will be considered harassment. Senator Towe pointed out that the laundry list could go on and on.

Senator Rye said it seemed the statement of intent takes care of that problem. He said it did a good job of eliminating the laundry list while still protecting rights of those basic constituencies. He said if he could bypass specific wording for journalists or right-to-lifers, Senator Towe had made an equal sacrifice in bypassing organized labor activities. We have all had to give a bit, and the statement of intent makes it clear what the Legislature wants to do. It is a good addition to the bill, and should be left as is. It touches on almost every concern placed by every individual who might have had possible objection to this bill.

Senator Grosfield told the Committee he like the bill and asked a couple of questions. His first was in regard to people who "repeatedly watch" over us, and he asked why we have "watch" in there. He said we are talking about intimidating behavior, following, threatening, harassing, purposefully, knowingly etc., and "watch" does not seem to be the right word.

Senator Towe responded by saying "watch" was the real basis of the offense that Dori Papich explained happened to her daughter Stacy. The guy sat in his car within view of the playground and watched them all day long. That was all he did, then he would follow them home and watch them going home and also in their house. He told Senator Grosfield his point may be well taken that "following" is more offensive than "watching". Watching is a concern these folks have had and perhaps it should be taken out of the statement of intent. He said it is not in the bill itself, and perhaps it should be out of the statement of intent.

Senator Grosfield said his second question is on page 2 under amendment 11. Under subsection 5, you are saying "after the accused person has been given actual notice". He asked what would constitute "actual notice". Senator Towe said "actual notice" would be the written or spoken words to the stalker.

Senator Grosfield said he understood that part, but taking it a step further, if you have the little girl there and she yells at the guy to leave her alone. He asked if that would be "notice". Senator Towe said he believed that would be questionable. From the County Attorney's standpoint, he would hope the County Attorney would give a better job of "actual notice". If that is all they have to go on and it is a real serious matter, it is conceivable they might say that was "notice", but questionable. Senator Grosfield said he was thinking about no witnesses, etc. and how something like that could be proved.

Senator Grosfield said on page 5, (3) it reads "the prosecuting attorney, or court".."shall immediately notify". He asked if that means they have to actually see the person, send them a letter, or how do we know that notice has been received. Senator Towe said the prosecuting attorney will probably take the steps that are necessary, whether by phoning the individual, contacting

someone he knows will get to the individual, or in the absence of the prosecuting attorney, the Judge will do so. It may mean simply putting something in the mail, but he felt that was not sufficient because they want it immediately done. The obvious situation is, with the little girl, the guy can pick up the stalker and he makes bail, we want the mother to know immediately that he will be out and can stalk again.

Senator Grosfield said perhaps there should be something about mail in the amendment. He pointed out how undependable mail was and said he did not believe it could be considered immediate notice.

Senator Doherty said in that same section, we are talking about bail, so at this point the victim is not a victim, the victim is an alleged victim.

Chair Yellowtail asked if there would be any reason why the term "alleged" could not be added. This was agreed to by the committee.

Senator Bartlett said a person has to appear before a Judge before bail can be offered. She asked if, at that point, for the judge to deny bail, saying the situation is such that there may be danger to the victim.

Senator Halligan said the Court would have made a determination of this person's conduct and if the behavior was of such a nature as to be dangerous to the victim, the bail would have been set so high they would not have been able to get out that easily. Constitutionally you cannot prevent a person from making bail. He said in setting bail the court will look at the prosecuting attorney's statement about any imminent danger to the victim.

Senator Bartlett asked, if it was within the Judge's discretion, could the Judge conclude that bail is not warranted in a certain set of circumstances. She asked if at any point, that was an option for the Judge. Senator Halligan answered yes, it is, not in the long term, but can be in the short term. He could say come back in 48 hours and we will discuss it again, but when you start denying bail there are some real constitutional rights involved.

Senator Towe said this was one of the things the subcommittee had looked at and said in Indiana, Illinois and two or three other states, they have attempted to deny bail in their stalking law as an act of discretion. That is exactly where they have run into constitutional problems. He said the subcommittee did not want to get their bill all tangled up in constitutional issues, and for that reason, avoided doing that. By calling attention to the fact that their is an alleged victim, you are calling the Court's attention to the fact that this is a serious matter. The Court can weigh all the factors and decide to put a very heavy bail,

and may be able to use its discretion to solve the problem that way without crossing the constitutional protection involved.

Senator Bartlett said, to make this clear, if the perpetrator were to violate a restraining order and be picked up in an ongoing stalking situation, or if the restraining order was issued originally because of a stalking situation, this bail schedule would then apply because he would have to go before a Judge.

Vote: The MOTION TO ADOPT THE AMENDMENTS (exhibit 5) PASSED with Senator Doherty voting NO.

Senator Doherty said he would like the record to show that he believes the additional language in the statement of intent, identifies the rights that we are not attempting to infringe. is a grave mistake and may bring the constitutionality of the whole act into question. He believed that if the Legislature is not attempting to infringe on any constitutional protected rights, it is enough to say that.

Senator Towe said he had some language he had promised to bring up, and did not want it in the previous motion because it was a separate issue. He believed it might have some merit, but may help get the bill passed. In the statement of intent we just drafted, it contains the sentence "further, it is the intent of the Legislature that the intent does not apply to an otherwise lawful activity" and his amendment would say ", including, but not limited to, legitimate investigation by law enforcement, licensed private investigators, legitimate journalists and collection of lawful debts".

Motion: Senator Towe MOVED to AMEND the statement of intent as stated in the paragraph above.

Discussion: Senator Towe said it is, in effect, putting a laundry statement back in the statement of intent. He said it is not in the body of the bill, but having it in the statement of intent gives people the assurance that it does not apply to them.

Senator Halligan said we are falling into the quick sand of trying to articulate the angels on the head of a pin, and it will not work.

Vote: The MOTION FAILED with Senator Towe, Senator Crippen and Senator Rye voting YES.

Motion/Vote: Senator Towe MOVED SB 37 DO PASS AS AMENDED. The motion CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SENATE BILL 140

Discussion: Chair Yellowtail said there are some amendments and asked Mr. Melby to explain the amendments requested by the

Montana Horse Council.

Pat Melby, Montana Horse Council, said the amendments are mostly the same as those distributed during the hearing on the bill. They have a couple that were offered in response to testimony at the hearing. At the request of the Chair he gave the substantive parts of the amendments to refresh the memory of the committee.

Mr. Melby said amendment #3 is an important amendment and in his conversation with Howard Toole after the hearing, he had tried to point out they were not trying to immunize horse people from negligence. Mr. Toole had asked why it did not say so in the bill, and in looking back at the bill Mr. Melby could see the language they had offered in the draft had not been included. He said amendment #3 does that. Mr. Melby went to amendment #11 which is different than the amendment he offered before. He said this again, is language that was left out in the drafting and was pointed out by Mr. Hill, Montana Trial Lawyers Association. He felt it also answered Senator Towe's concern that we are not absolving a participant from negligence from liability.

Mr. Melby referred to amendment #14, on line 11 the words "the participant's ability" (Exhibit #6, page 2). He said this means the professional has to determine the participants ability to safely manage the particular equine. The next amendment Mr. Melby referred to was amendment #15. He said previously they were deleting the section that required a 2/3 vote because they did not want the bill to live or die on a 2/3 vote because there are several entities involved. That is why they offered the language in amendment #15.

Chair Yellowtail said there is a severability clause then, and said they might have to redo that section.

Ms. Lane said the horse people did come to her before the hearing and she had worked with them in preparing some of the amendments, but they had some changes and she has not checked those.

Chair Yellowtail asked if we act on this bill, if this amendment was correct. Ms. Lane said no, she would want to take a look at this and would want the committee's permission that if they adopt these amendments, that they get the permission to make any technical amendments with Mr. Melby before she put out the report. She said they are attempting to do something akin to a coordination instruction, and they often coordinate between two different bills. She said she had never seen a coordination in one bill coordinating with those requirements and would like to go through it with them.

Mr. Melby said he believed they were hoping there was some gray area instead of just black, where either governmental entities are included under this and you have to have a 2/3 vote or they are not included and you do not need a 2/3 vote. He said they were trying to find a compromise that notified people there were

governmental entities involved in this and it would take a 2/3 vote for them to be affected by that. He said the understanding in dealing with the original drafter was just black or white, you either had it or you did not and we do not want the bill to die on a 2/3 vote, so we tried to accommodate the public entities in the process.

Ms. Lane said the drafter had a point. If you put governmental entities in and limit their liability, then it would be black or white, either you make it a 2/3 vote or you do not. If that is a concern, perhaps you want to take the governmental entities out of this because this is a bill basically drafted for a profit industry. She said she said she would have to look at the coordination instructions, which at the very least, would have to be reworded.

Mr. Melby said one last thing in fairness to Mr. Hill and the Trial Lawyers, he has one amendment he has urged on the horse people. He said they do not want this amendment, but he would bring it up and you can ask him to explain it. On page 4, line 4, he has proposed deleting the words "an integral" and substituting "a necessary". He said they tried to find some language they could agree on, and it finally comes to the substance, the very essence of this bill. A necessary problem could be prevented. An integral event is something that is all wrapped up in the whole activity of riding horses. Mr. Hill had proposed that amendment and it is the only one the horse people have not done that he would like to have.

Chair Yellowtail said he understood Senator Doherty has an amendment that accomplishes that same thing. He said the amendment we have before us will require work. He believed Ms. Lane understands the general intention of what is proposed, and asked if the committee is comfortable with that.

Senator Blaylock said he would propose that Ms. Lane be given some leeway to go ahead, look this over and consult with people on it. It would then be brought back to the Chair to approve it.

Senator Towe asked if Senator Blaylock was saying we should act without specific language and Senator Blaylock said he would feel comfortable that we go ahead and do that.

Senator Towe said this bill is too important to do that. There are some real problems, and we have to work this out to make sure we are all satisfied with it.

Senator Doherty said from his understanding in trying to piece together the different amendments, the amendments the Trial Lawyers have proposed and those the horse people have proposed are almost the same with the exception of the one with the word integral versus necessary. He believed if they did have some time they could get everything together in one piece and figure out which ones we agree on. He said he believed they needed a

little more time on this.

Chair Yellowtail said he was very concerned about this and would like to ask Senator Doherty if he would work with all the parties here to at least lay before the committee some comprehensible set of amendments. He said Ms. Lane is under a drafting deadline and we will probably have to wait until she has finished. He asked Senator Doherty and the people involved to work together and get ready what they could, and committee action would be held to a later date for final action.

EXECUTIVE ACTION ON SENATE BILL 129

Motion/Vote: Senator Halligan MOVED SENATE BILL 129 DO PASS. The motion PASSED unanimously.

ADJOURNMENT

Adjournment: 12:01 p.m.

BILL YELLOWTAIL, Chair

REBECCA COURT, Secretary

BY/rc

ROLL CALL

SENATE COMMITTEE Judiciary DATE 1-25-93

NAME	PRESENT	ABSENT	EXCUSED
Senator Yellowtail	X		
Senator Doherty	X		
Senator Brown	X		
Senator Crippen	X		
Senator Grosfield	X		
Senator Halligan	X		
Senator Harp	X		
Senator Towe	X		
Senator Bartlett	X		
Senator Franklin	X		
Senator Blaylock	X		
Senator Rye	X		

F08

Attach to each day's minutes

SENATE STANDING COMMITTEE REPORT

January 26, 1993

MR. PRESIDENT:
We, your committee on Judiciary having had under consideration Senate Bill No. 37 (first reading copy -- white), respectfully report that Senate Bill No. 37 be amended as follows and as so amended do pass.

Signed: Wm Yellowtail
Senator William "Bill" Yellowtail, Chair

That such amendments read:

1. Title, line 5.
Following: "ORDERS;"
Insert: "REQUIRING NOTIFICATION OF VICTIMS WHEN ACCUSED STALKERS ARE RELEASED ON BAIL; EXEMPTING THE OFFENSE OF STALKING FROM BAIL SCHEDULES; AMENDING SECTIONS 40-4-121, 46-9-108, AND 46-9-302, MCA;"
Following: "AN"
Insert: "IMMEDIATE"

2. Page 1, line 7.
Following: line 6
Insert: "
STATEMENT OF INTENT

The legislature finds that there are not adequate provisions in existing state law to protect stalking victims. Civil restraining orders are often difficult to obtain and alone are often inadequate to deter a stalker from committing an act of violence. It is the intent of the legislature to criminalize and punish the activities of people who repeatedly watch, follow, harass, or threaten someone when such activity causes the victim substantial emotional distress or reasonable apprehension of bodily injury or death. It is the intent of the legislature to give law enforcement personnel recourse before an attack takes place. Further, it is the intent of the legislature that the offense not apply to an otherwise lawful activity. In particular, the legislature does not want to place a chill on constitutionally protected rights, such as the right to demonstrate, to assemble, and to picket or on the full exercise of freedom of speech and freedom of the press."

3. Page 1, lines 10 through 13.
Following: "if" on line 10
Strike: remainder of line 10 through "request," on line 13
Insert: "the person purposely or knowingly"

AOV Amd. Coord.
___ Sec. of Senate

4. Page 1, line 14.
Strike: "the stalked"
Insert: "another"

5. Page 1, line 15.
Following: "by"
Insert: "repeatedly"

6. Page 1, line 16.
Strike: "knowingly and repeatedly"

7. Page 1, line 18.
Strike: "knowingly and repeatedly"
Following: "threatening,"
Insert: "or"

8. Page 1, line 19.
Strike: ", alarming, or annoying"

9. Page 1, lines 22 through 24.
Strike: subsection (2) in its entirety
Renumber: subsequent subsections

10. Page 2, line 13.
Following: "granted"
Insert: ", as set forth in 40-4-121,"

11. Page 2, lines 16 through 19.
Strike: subsection (5) in its entirety
Insert: "(4) For the purpose of determining the number of convictions under this section, "conviction" means:

(a) a conviction, as defined in 45-2-101, in this state;

(b) a conviction for a violation of a statute similar to this section in another state; or

(c) a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state or another state for a violation of a statute similar to this section, which forfeiture has not been vacated.

(5) Attempts by the accused person to contact or follow the stalked person after the accused person has been given actual notice that the stalked person does not want to be contacted or followed constitutes prima facie evidence that the accused person purposely or knowingly followed, harassed, threatened, or intimidated the stalked person.

Section 2. Section 40-4-121, MCA, is amended to read:

"**40-4-121. Temporary order or temporary injunction.** (1) In a proceeding for dissolution of marriage or for legal separation or in a proceeding for disposition of property or for maintenance or support following dissolution of the marriage by a court which lacked personal jurisdiction over the absent spouse, either party may move for temporary maintenance or temporary support of a child of the marriage entitled to support. The motion shall be accompanied by an affidavit setting forth the factual basis for the motion and the amounts requested.

(2) As a part of a motion for temporary maintenance or support or by independent motion accompanied by affidavit, either party may request the court to issue a temporary injunction for any of the following relief:

(a) restraining any person from transferring, encumbering, concealing, or otherwise disposing of any property except in the usual course of business or for the necessities of life and, if so restrained, requiring him to notify the moving party of any proposed extraordinary expenditures made after the order is issued;

(b) enjoining a party from molesting or disturbing the peace of the other party or of any child or from stalking, as defined in [section 1];

(c) excluding a party from the family home or from the home of the other party upon a showing that physical or emotional harm would otherwise result;

(d) enjoining a party from removing a child from the jurisdiction of the court; and

(e) providing other injunctive relief proper in the circumstances.

(3) A person may seek the relief provided for in subsection (2) of this section without filing a petition under this part for a dissolution of marriage or legal separation by filing a verified petition:

(a) (i) alleging physical abuse, harm, or bodily injury against the petitioner by a family or household member or the threat of physical abuse, harm, or bodily injury against the petitioner by a family or household member that causes the petitioner to reasonably believe that the offender has the present ability to execute the threat; ~~and~~ or

(ii) alleging a violation of [section 1]; and

(b) requesting relief under Title 27, chapter 19, part 3. Any preliminary injunction entered under this subsection must be for a fixed period of time, not to exceed 1 year, and may be modified as provided in Title 27, chapter 19, part 4, and 40-4-208, as appropriate. Persons who may request relief under this subsection include spouses, former spouses, ~~and~~ persons cohabiting or who have cohabited with the other party within 1

year immediately preceding the filing of the petition, and persons alleging a violation of [section 1].

(4) The court may issue a temporary restraining order for a period not to exceed 20 days without requiring notice to the other party only if it finds on the basis of the moving affidavit or other evidence that irreparable injury will result to the moving party if no order is issued until the time for responding has elapsed.

(5) A response may be filed within 20 days after service of notice of motion or at the time specified in the temporary restraining order.

(6) On the basis of the showing made and in conformity with 40-4-203 and 40-4-204, the court may issue a temporary injunction and an order for temporary maintenance or support in amounts and on terms just and proper in the circumstance.

(7) A temporary order or temporary injunction:

(a) does not prejudice the rights of the parties or the child which are to be adjudicated at subsequent hearings in the proceeding;

(b) may be revoked or modified before final decree on a showing by affidavit of the facts necessary to revocation or modification of a final decree under 40-4-208;

(c) terminates upon order of the court or when a final decree is entered or when a petition for dissolution or legal separation is voluntarily dismissed; and

(d) when issued under this section must conspicuously bear the following: "Violation of this order is a criminal offense under 45-5-626 or [section 1]."

(8) When the petitioner has fled the parties' residence, notice of petitioner's new residence must be withheld except by order of the court for good cause shown."

Section 3. Section 46-9-108, MCA, is amended to read:

"**46-9-108. Conditions upon defendant's release -- notice to victim of stalker's release.** (1) The court may impose any condition that will reasonably ensure the appearance of the defendant as required or that will ensure the safety of any person or the community, including but not limited to the following conditions:

(a) the defendant may not commit an offense during the period of release;

(b) the defendant shall remain in the custody of a designated person who agrees to supervise the defendant and report any violation of a release condition to the court, if the designated person is reasonably able to assure the court that the defendant will appear as required and will not pose a danger to the safety of any person or the community;

(c) the defendant shall maintain employment or, if

unemployed, actively seek employment;

(d) the defendant shall abide by specified restrictions on the defendant's personal associations, place of abode, and travel;

(e) the defendant shall avoid all contact with an alleged victim of the crime and any potential witness who may testify concerning the offense;

(f) the defendant shall report on a regular basis to a designated agency or individual, pretrial services agency, or other appropriate individual;

(g) the defendant shall comply with a specified curfew;

(h) the defendant may not possess a firearm, destructive device, or other dangerous weapon;

(i) the defendant may not use or possess alcohol, or any dangerous drug or other controlled substance without a legal prescription;

(j) the defendant shall furnish bail in accordance with 46-9-401; or

(k) the defendant shall return to custody for specified hours following release from employment, schooling, or other approved purposes.

(2) The court may not impose an unreasonable condition that results in pretrial detention of the defendant and shall subject the defendant to the least restrictive condition or combination of conditions that will ensure the defendant's appearance and provide for protection of any person or the community. At any time, the court may, upon a reasonable basis, amend the order to impose additional or different conditions of release upon its own motion or upon the motion of either party.

(3) Whenever a person accused of a violation of [section 1] is admitted to bail, the prosecuting attorney, or the court in the absence of the prosecuting attorney, shall immediately notify the alleged victim or, if the alleged victim is a minor, the alleged victim's parent or guardian of the accused's release."

Section 4. Section 46-9-302, MCA, is amended to read:

"**46-9-302. Bail schedule -- acceptance by peace officer.** (1) A judge may establish and post a schedule of bail for offenses over which the judge has original jurisdiction. A person may not be released on bail without first appearing before the judge when the offense is domestic abuse ~~or~~, any assault against a family member or a household member, or stalking, as defined in [section 1].

(2) A peace officer may accept bail on behalf of a judge:

(a) in accordance with the bail schedule established under subsection (1); or

(b) whenever the warrant of arrest specifies the amount of bail.

(3) Whenever a peace officer accepts bail, the officer shall give a signed receipt to the offender setting forth the bail received. The peace officer shall then deliver the bail to the judge before whom the offender is to appear, and the judge shall give a receipt to the peace officer for the bail delivered.""
Renumber: subsequent sections

12. Page 2, line 25.
Following: "effective"
Strike: "30 days after"
Insert: "on"

-END-

SENATE STANDING COMMITTEE REPORT

January 25, 1993

MR. PRESIDENT:
We, your committee on Judiciary having had under consideration Senate Bill No. 78 (first reading copy -- white), respectfully report that Senate Bill No. 78 be amended as follows and as so amended do pass.

Signed: Wm Yellowtail
Senator William "Bill" Yellowtail, Chair

That such amendments read:

1. Title, line 7.
Following: "ATTORNEY"
Strike: "SHALL"
Insert: "MAY"

2. Title, line 8.
Following: "REVOCATION"
Strike: "OCCURRED IN A CITY"
Insert: "RESULTED IN A CITY OR MUNICIPAL CHARGE"

3. Page 1, line 25.
Strike: "or"
Insert: "and"

4. Page 2, line 1.
Following: "revocation"
Strike: "occurred in a city"
Insert: "resulted in a charge filed in a city or municipal court"

5. Page 2, line 2.
Following: "or city attorney"
Strike: "shall"
Insert: "may"

-END-

m- Amd. Coord.
___ Sec. of Senate

SENATE STANDING COMMITTEE REPORT

January 26, 1993

MR. PRESIDENT:
We, your committee on Judiciary having had under consideration Senate Bill No. 117 (first reading copy -- white), respectfully report that Senate Bill No. 117 be amended as follows and as so amended do pass.

Signed: Wm Yellowtail
Senator William "Bill" Yellowtail, Chair

That such amendments read:

1. Page 1, lines 16 and 17.
Following: "to" on line 16
Strike: remainder of line 16 through line 17
Insert: "a"

2. Page 1, line 18.
Following: "proceeding"
Insert: "under this chapter"

3. Page 1, line 19.
Following: "request"
Insert: "the court to order"

4. Page 1, line 19.
Strike: "The"
Insert: "If the parties agree to mediation, the"

5. Page 1, line 23.
Following: "not"
Strike: "order mediation"
Insert: "authorize or permit continuation of mediated negotiations"

6. Page 1, line 24.
Strike: "determines that there is probable cause to believe"
Insert: "has reason to suspect"

7. Page 1, line 25.
Following: "physically"
Insert: ","
Strike: "or"

8. Page 2, line 1.
Following: "sexually"
Insert: ", or emotionally"

9. Page 2, line 14.
Following: "visitation,"
Insert: "maintenance,"

10. Page 3, line 1.
Following: "mediation"
Insert: "or when the court orders mediation, whichever is later,"

11. Page 3, lines 13 and 14.
Strike: "may recommend"
Insert: "shall submit the mediator's recommendation"
Following: "court" on line 13
Strike: remainder of line 13 through "taken" on line 14

12. Page 3, lines 15 and 16.
Following: "controversy" on line 15
Strike: remainder of line 15 through "issues" on line 16

13. Page 3, line 16.
Following: "issues."
Strike: remainder of line 16

14. Page 4, line 9.
Strike: "professional"
Following: "staff"
Insert: "or contracted staff"

15. Page 4, line 17.
Following: ";"
Insert: "and"

16. Page 4, line 18.
Following: "(3)"
Insert: "if applicable,"

17. Page 4, line 20.
Following: "research"
Strike: "; and"
Insert: "."

18. Page 4, lines 21 and 22.
Strike: subsection (4) in its entirety

-END-

SENATE STANDING COMMITTEE REPORT

January 25, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration Senate Bill No. 129 (first reading copy -- white), respectfully report that Senate Bill No. 129 do pass.

Signed: Wm Yellowtail
Senator William "Bill" Yellowtail, Chair

m- Amd. Coord.
___ Sec. of Senate

191325SC.Sma

SENATE STANDING COMMITTEE REPORT

January 25, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration Senate Bill No. 146 (first reading copy -- white), respectfully report that Senate Bill No. 146 be amended as follows and as so amended do pass.

Signed: Wm Yellowtail
Senator William "Bill" Yellowtail, Chair

That such amendments read:

1. Page 55, lines 4, 13, and 17.
   Page 56, line 4.
Strike: "foreign"

-END-

M- Amd. Coord.
___ Sec. of Senate

191334SC.Sma

Amendments to Senate Bill No. 117
First Reading Copy

For the Committee on Judiciary

Prepared by Valencia Lane
January 25, 1993

1. Page 1, lines 16 and 17.
Following: "to" on line 16
Strike: remainder of line 16 through line 17
Insert: "a"

2. Page 1, line 18.
Following: "proceeding"
Insert: "under this chapter"

3. Page 1, line 19.
Following: "request"
Insert: "the court to order"

4. Page 1, line 19.
Strike: "The"
Insert: "If the parties agree to mediation, the"

5. Page 1, line 23.
Following: "not"
Strike: "order mediation"
Insert: "authorize or permit continuation of mediated negotiations"

6. Page 1, line 24.
Strike: "determines that there is probable cause to believe"
Insert: "has reason to suspect"

7. Page 1, line 25.
Following: "physically"
Insert: ","
Strike: "or"

8. Page 2, line 1.
Following: "sexually"
Insert: ", or emotionally"

9. Page 2, line 14.
Following: "visitation,"
Insert: "maintenance,"

10. Page 3, line 1.
Following: "mediation"
Insert: "or when the court orders mediation, whichever is later,"

11. Page 3, lines 13 and 14.
Strike: "may recommend"
Insert: "shall submit the mediator's recommendation"

Following: "court" on line 13
Strike: remainder of line 13 through "taken" on line 14

12. Page 3, lines 15 and 16.
Following: "controversy" on line 15
Strike: remainder of line 15 through "issues" on line 16

13. Page 3, line 16.
Following: "issues."
Strike: remainder of line 16

14. Page 4, line 9.
Strike: "professional"
Following: "staff"
Insert: "or contracted staff"

15. Page 4, line 17.
Following: ";"
Insert: "and"

16. Page 4, line 18.
Following: "(3)"
Insert: "if applicable,"

17. Page 4, line 20.
Following: "research"
Strike: "; and"
Insert: "."

18. Page 4, lines 21 and 22.
Strike: subsection (4) in its entirety

(2)

Amendments to Senate Bill No. 78
First Reading Copy (white)

For the Committee on Judiciary

Prepared by Valencia Lane
January 19, 1993

1. Title, line 7.
Following: "ATTORNEY"
Strike: "SHALL"
Insert: "MAY"

2. Title, line 8.
Following: "REVOCATION"
Strike: "OCCURRED IN A CITY"
Insert: "RESULTED IN A CITY OR MUNICIPAL CHARGE"

3. Page 1, line 25.
Strike: "or"
Insert: "and"

4. Page 2, line 1.
Following: "revocation"
Strike: "occurred in a city"
Insert: "resulted in a charge filed in a city or municipal court"

5. Page 2, line 2.
Following: "or city attorney"
Strike: "shall"
Insert: "may"

5

Amendments to Senate Bill No. 55
First Reading Copy (white)

Requested by Senator Towe
For the Committee on Judiciary

Prepared by Valencia Lane
January 21, 1993

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 3
DATE 1-25-93
BILL NO. SB55

1. Page 1, line 25.
Strike: "$250"
Insert: "$1,000"

2. Page 2, line 1.
Strike: "$500"
Insert: "$1,200"

(4)

Amendments to Senate Bill No. 153
First Reading Copy (white)

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 4
DATE 1-25-93
BILL NO. SB153

Requested by Senator Grosfield
For the Committee on Judiciary

Prepared by Valencia Lane
January 19, 1993

1. Page 10, lines 14 through 16.
Following: "~~$500~~" on line 14
Strike: remainder of line 14 through "both" on line 16

2. Page 10, lines 17 and 18.
Following: "$350" on line 16
Strike: line 17 through "both" on line 18

3. Page 10, line 20.
Strike: "10"
Insert: "30"

4. Page 10, line 25 through page 11, line 2.
Following: "offender" on page 10, line 25
Strike: remainder of line 25 through "registered" on page 11, line 2

5. Page 11, line 13.
Following: "offender"
Insert: ", if the offender is the owner of the vehicle involved in the second or subsequent violation or if the offender was in the vehicle involved in the second or subsequent violation at the time of the offense,"

Amendments to Senate Bill No. 37
First Reading Copy (white)

Requested by Subcommittee (Towe, Franklin, Halligan)
For the Committee on Judiciary

Prepared by Valencia Lane
January 19, 1993

1. Title, line 5.
Following: "ORDERS;"
Insert: "REQUIRING NOTIFICATION OF VICTIMS WHEN ACCUSED STALKERS ARE RELEASED ON BAIL; EXEMPTING THE OFFENSE OF STALKING FROM BAIL SCHEDULES; AMENDING SECTIONS 40-4-121, 46-9-108, AND 46-9-302, MCA;"
Following: "AN"
Insert: "IMMEDIATE"

2. Page 1, line 7.
Following: line 6
Insert: "

STATEMENT OF INTENT

The legislature finds that there are not adequate provisions in existing state law to protect stalking victims. Civil restraining orders are often difficult to obtain and alone are often inadequate to deter a stalker from committing an act of violence. It is the intent of the legislature to criminalize and punish the activities of people who repeatedly watch, follow, harass, or threaten someone when such activity causes the victim substantial emotional distress or reasonable apprehension of bodily injury or death. It is the intent of the legislature to give law enforcement personnel recourse before an attack takes place. Further, it is the intent of the legislature that the offense not apply to an otherwise lawful activity. In particular, the legislature does not want to place a chill on constitutionally protected rights, such as the right to demonstrate, to assemble, and to picket or on the full exercise of freedom of speech and freedom of the press."

3. Page 1, lines 10 through 13.
Following: "if" on line 10
Strike: remainder of line 10 through "request," on line 13
Insert: "the person purposely or knowingly"

4. Page 1, line 14.
Strike: "the stalked"
Insert: "another"

5. Page 1, line 15.
Following: "by"
Insert: "repeatedly"

6. Page 1, line 16.
Strike: "knowingly and repeatedly"

7. Page 1, line 18.
Strike: "knowingly and repeatedly"
Following: "threatening,"
Insert: "or"

8. Page 1, line 19.
Strike: ", alarming, or annoying"

9. Page 1, lines 22 through 24.
Strike: subsection (2) in its entirety
Renumber: subsequent subsections

10. Page 2, line 13.
Following: "granted"
Insert: ", as set forth in 40-4-121,"

11. Page 2, lines 16 through 19.
Strike: subsection (5) in its entirety
Insert: "(4) For the purpose of determining the number of convictions under this section, "conviction" means:

(a) a conviction, as defined in 45-2-101, in this state;

(b) a conviction for a violation of a statute similar to this section in another state; or

(c) a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state or another state for a violation of a statute similar to this section, which forfeiture has not been vacated.

(5) Attempts by the accused person to contact or follow the stalked person after the accused person has been given actual notice that the stalked person does not want to be contacted or followed constitutes prima facie evidence that the accused person purposely or knowingly followed, harassed, threatened, or intimidated the stalked person.

Section 2. Section 40-4-121, MCA, is amended to read:

"**40-4-121. Temporary order or temporary injunction.** (1) In a proceeding for dissolution of marriage or for legal separation or in a proceeding for disposition of property or for maintenance or support following dissolution of the marriage by a court which lacked personal jurisdiction over the absent spouse, either party may move for temporary maintenance or temporary support of a child of the marriage entitled to support. The motion shall be accompanied by an affidavit setting forth the factual basis for the motion and the amounts requested.

(2) As a part of a motion for temporary maintenance or support or by independent motion accompanied by affidavit, either party may request the court to issue a temporary injunction for any of the following relief:

(a) restraining any person from transferring, encumbering, concealing, or otherwise disposing of any property except in the usual course of business or for the necessities of life and, if so restrained, requiring him to notify the moving party of any

proposed extraordinary expenditures made after the order is issued;

(b) enjoining a party from molesting or disturbing the peace of the other party or of any child or from stalking, as defined in [section 1];

(c) excluding a party from the family home or from the home of the other party upon a showing that physical or emotional harm would otherwise result;

(d) enjoining a party from removing a child from the jurisdiction of the court; and

(e) providing other injunctive relief proper in the circumstances.

(3) A person may seek the relief provided for in subsection (2) of this section without filing a petition under this part for a dissolution of marriage or legal separation by filing a verified petition:

(a) (i) alleging physical abuse, harm, or bodily injury against the petitioner by a family or household member or the threat of physical abuse, harm, or bodily injury against the petitioner by a family or household member that causes the petitioner to reasonably believe that the offender has the present ability to execute the threat; ~~and~~ or

(ii) alleging a violation of [section 1]; and

(b) requesting relief under Title 27, chapter 19, part 3. Any preliminary injunction entered under this subsection must be for a fixed period of time, not to exceed 1 year, and may be modified as provided in Title 27, chapter 19, part 4, and 40-4-208, as appropriate. Persons who may request relief under this subsection include spouses, former spouses, ~~and~~ persons cohabiting or who have cohabited with the other party within 1 year immediately preceding the filing of the petition, and persons alleging a violation of [section 1].

(4) The court may issue a temporary restraining order for a period not to exceed 20 days without requiring notice to the other party only if it finds on the basis of the moving affidavit or other evidence that irreparable injury will result to the moving party if no order is issued until the time for responding has elapsed.

(5) A response may be filed within 20 days after service of notice of motion or at the time specified in the temporary restraining order.

(6) On the basis of the showing made and in conformity with 40-4-203 and 40-4-204, the court may issue a temporary injunction and an order for temporary maintenance or support in amounts and on terms just and proper in the circumstance.

(7) A temporary order or temporary injunction:

(a) does not prejudice the rights of the parties or the child which are to be adjudicated at subsequent hearings in the proceeding;

(b) may be revoked or modified before final decree on a showing by affidavit of the facts necessary to revocation or modification of a final decree under 40-4-208;

(c) terminates upon order of the court or when a final decree is entered or when a petition for dissolution or legal separation is voluntarily dismissed; and

(d) when issued under this section must conspicuously bear the following: "Violation of this order is a criminal offense under 45-5-626 or [section 1]."

(8) When the petitioner has fled the parties' residence, notice of petitioner's new residence must be withheld except by order of the court for good cause shown."

{*Internal References to 40-4-121:*
x3-10-301 *x27-19-201* *x27-19-316* *x40-4-122*
x40-4-123 (2) *x40-4-124 (3)* *x40-4-125* *x45-5-626*}

Section 3. Section 46-9-108, MCA, is amended to read:

"**46-9-108. Conditions upon defendant's release -- notice to victim of stalker's release.** (1) The court may impose any condition that will reasonably ensure the appearance of the defendant as required or that will ensure the safety of any person or the community, including but not limited to the following conditions:

(a) the defendant may not commit an offense during the period of release;

(b) the defendant shall remain in the custody of a designated person who agrees to supervise the defendant and report any violation of a release condition to the court, if the designated person is reasonably able to assure the court that the defendant will appear as required and will not pose a danger to the safety of any person or the community;

(c) the defendant shall maintain employment or, if unemployed, actively seek employment;

(d) the defendant shall abide by specified restrictions on the defendant's personal associations, place of abode, and travel;

(e) the defendant shall avoid all contact with an alleged victim of the crime and any potential witness who may testify concerning the offense;

(f) the defendant shall report on a regular basis to a designated agency or individual, pretrial services agency, or other appropriate individual;

(g) the defendant shall comply with a specified curfew;

(h) the defendant may not possess a firearm, destructive device, or other dangerous weapon;

(i) the defendant may not use or possess alcohol, or any dangerous drug or other controlled substance without a legal prescription;

(j) the defendant shall furnish bail in accordance with 46-9-401; or

(k) the defendant shall return to custody for specified hours following release from employment, schooling, or other approved purposes.

(2) The court may not impose an unreasonable condition that results in pretrial detention of the defendant and shall subject the defendant to the least restrictive condition or combination of conditions that will ensure the defendant's appearance and provide for protection of any person or the community. At any time, the court may, upon a reasonable basis, amend the order to impose additional or different conditions of release upon its own

motion or upon the motion of either party.

(3) Whenever a person accused of a violation of [section 1] is admitted to bail, the prosecuting attorney, or the court in the absence of the prosecuting attorney, shall immediately notify the victim or, if the victim is a minor, the victim's parent or guardian of the accused's release."

{*Internal References to 46-9-108: None.*}

Section 4. Section 46-9-302, MCA, is amended to read:

"**46-9-302. Bail schedule -- acceptance by peace officer.** (1) A judge may establish and post a schedule of bail for offenses over which the judge has original jurisdiction. A person may not be released on bail without first appearing before the judge when the offense is domestic abuse ~~or~~, any assault against a family member or a household member, or stalking, as defined in [section 1].

(2) A peace officer may accept bail on behalf of a judge:

(a) in accordance with the bail schedule established under subsection (1); or

(b) whenever the warrant of arrest specifies the amount of bail.

(3) Whenever a peace officer accepts bail, the officer shall give a signed receipt to the offender setting forth the bail received. The peace officer shall then deliver the bail to the judge before whom the offender is to appear, and the judge shall give a receipt to the peace officer for the bail delivered.""

{*Internal References to 46-9-302: None.*}

Renumber: subsequent sections

12. Page 2, line 25.
Following: "effective"
Strike: "30 days after"
Insert: "on"

EXHIBIT 5
1-25-93
SB 37

REQUIRING NOTIFICATION OF VICTIMS WHEN ACCUSED STALKERS ARE RELEASED ON BAIL; EXEMPTING THE OFFENSE OF STALKING FROM BAIL SCHEDULES; AMENDING SECTIONS 40-4-121, 46-9-108, AND 46-9-302, MCA;

EXHIBIT 5
DATE 1-25-93
SB 37

SENATE BILL NO. 37

INTRODUCED BY TOWE

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE OFFENSE OF STALKING; PROVIDING FOR RESTRAINING ORDERS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

STATEMENT OF INTENT

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

NEW SECTION. **Section 1.** **Stalking -- exemption -- penalty.** (1) A person commits the offense of stalking if ~~it is possible to communicate a request to the person to stop and if the person, after being asked to stop by the stalked person or someone acting at the stalked person's request,~~ the person purposely or knowingly causes ~~the stalked~~ another person substantial emotional distress or reasonable apprehension of bodily injury or death by repeatedly:

(a) ~~knowingly and repeatedly~~ following the stalked person; or

(b) ~~knowingly and repeatedly~~ harassing, threatening, or intimidating~~, alarming, or annoying~~ the stalked person, in person or by phone, by mail, or by other action, device, or method.

~~(2) This section does not apply to constitutionally protected activity, legitimate law enforcement investigations, or organized labor activities.~~

(2) ~~(1)~~ For the first offense, a person convicted of stalking shall be imprisoned in the county jail for a term not to exceed 1 year or fined an amount not to exceed $1,000, or both. For a second or subsequent offense or for a first offense against a victim who was under the protection of a restraining order directed at the offender, the offender shall be imprisoned in the state prison for a term not to exceed 5 years or fined an amount not to exceed $10,000, or both. A person convicted of stalking may be sentenced to pay all medical, counseling, and other costs incurred by or on behalf of the victim as a result of the offense.

(3) ~~(2)~~ Upon presentation of credible evidence of violation of this section, an order may be granted, as set forth in 40-4-121, restraining a person from engaging in the activity described in subsection (1). INSERT: (4) (5)

~~(5) For purposes of this section, "emotional distress"~~ means mental or emotional suffering ~~or irritation~~ caused by fear, worry, ~~anxiety~~, nervousness, shock, anger, or ~~insomnia.~~

Section 2: amend 40-4-121
Section 3: amend 46-9-108
Section 4: amend 46-9-302

NEW SECTION. **Section ~~2~~ 5. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 45, chapter 5, and the provisions of Title 45 apply to [section 1].

NEW SECTION. **Section ~~3~~ 6. Effective date.** [This act] is effective ~~30 days after~~ on passage and approval.

-End-

Montana Legislative Council

SB 37
INTRODUCED BILL

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 6
DATE 1-25-93
BILL NO. SB 140

MONTANA HORSE COUNCIL
PROPOSED AMENDMENTS TO SENATE BILL NO. 140
FIRST READING COPY (WHITE)

1. Title, lines 4 and 5.
Following: "AN ACT"
Strike: remainder of line 4 through "FOR" on line 5
Insert: "DEFINING THE LEGAL RESPONSIBILITY OF PARTICIPANTS IN EQUINE ACTIVITIES,"

2. Title, line 6.
Strike: "REPEALING SECTION 27-1-733, MCA;"

3. Page 1, lines 20 through 24.
Following: "that"
Strike: the remainder of line 20 through 24 in their entirety
Insert: "an equine activity sponsor or equine professional who is negligent and causes foreseeable injury to a participant bears responsibility for that injury in accordance with other applicable law."

4. Page 2, line 4.
Following: "unmounted"
Insert: "or to otherwise participate in an equine activity

5. Page 2, lines 7 through 9.
Following: "activity"
Strike: remainder of line 7 through "equine" on line 9

6. Page 3, line 2.
Following: "equine;"
Strike: "and"

7. Page 3, line 5.
Following: "sponsor"
Strike: "."
Insert: "; and
(f) providing veterinary or farrier services."

8. Page 3, line 7.
Following: "partnership,"
Strike: "or"
Following: "corporation,"
Insert: "or other entity,"

9. Page 3, line 11.
Following: "riding clubs;"
Strike: "schools - and college-sponsored"
Insert: "riding"

10. Page 4, line 20.
Following: "in"
Strike: "subsections (2) and"
Insert: "subsection"

11. Page 4, line 23.
Following: "activity"
Insert: "resulting from risks inherent in equine activities"

12. Page 4, line 24 through page 5, line 1.
Following: "(2)"
Strike: The remainder of page 4, line 24 through page 5, line 1 in their entirety
Insert: "An equine participant shall act in a safe and responsible manner at all times to avoid injury to the participant and others and to be aware of the inherent risks of the sport."

13. Page 5, line 8.
Following: "inspect"
Strike: "and"
Insert" "or"

~~14. Page 4, line 11.~~
~~Following: "activity"~~ and
~~Insert: "the participant's ability"~~

15. Page 5, line 25 through page 6, line 20.
Strike: Sections 4, 5, and 6 in their entirety
Insert: "NEW SECTION. Section 4. Mule and Horse Racing. This Act does not apply to mule or horse racing as regulated in title 23, chapter 4.
NEW SECTION. Section 5. Applicability to governmental entities. Article II, section 18, of the Montana Constitution requires a vote of two-thirds of the members of each house to limit the liability of a governmental entity. Unless this act receives a two-thirds vote of each house, it is not applicable to the equine activities of a governmental entity to the extent that the liability of the governmental entity is limited by this act."
Renumber: subsequent sections

DATE 1-25-93

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: Executive Session

Name	Representing	Bill No.	Check One Support	Oppose
Kim Hanson	Art Bank			
Lloyd Halvorson	Kevin			
Cal Childs	Helena			
Larry Nordell	Helena			

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

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