MINUTES

MONTANA SENATE
53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Senator Bill Yellowtail, on February 19, 1993, at 10:01 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:	SJR 13
	SB 368
	SB 400
	SB 406
Executive Action:	SB 41
	SB 246
	SB 277
	SB 304
	SB 4
	SB 5
	SB 242
	SB 333
	SB 362
	SB 386

HEARING ON SJR 13

Opening Statement by Sponsor:
Senator Nathe, District 10, said SJR 13 is a resolution granting the Gambling Control Division of the Department of Justice greater flexibility in interpreting the Indian Gaming Regulatory Act, State Gambling Policy, and the State Gambling Laws in negotiating gaming compacts with Montana Tribal Governments.

Proponents' Testimony:
Caleb Shields, Chairman of the Fort Peck Tribal Executive Board, read from prepared testimony. (Exhibit #1)

Wayne Goss, Blackfeet Tribe, read from prepared testimony. (Exhibit #2)

Lawrence Kenmille, Vice President of the Confederated Salish and Kootenai Tribes, said legally the State of Montana has the opportunity, through existing statutes, to provide enough flexibility to negotiate. Mr. Kenmille said the problem was the State refuses to recognize that flexibility. Mr. Kenmille said the Confederated Salish and Kootenai Tribes were in support of SJR 13 even though the state already has the flexibility to negotiate. Mr. Kenmille told the Committee SJR 13 would help Indians and non-Indians alike. SJR 13 would also help the economy on the reservations.

Representative Schwinden, District 20, reiterated Mr. Shields testimony about the importance of negotiated agreements in compacts.

Representative Gervais, District 9, said if SJR 13 helps take some people off welfare it should be passed. SJR 13 would also help the economics on the reservation by requiring the state to deal in good faith with the tribes.

Deanne Sandholm, Assistant Attorney General from the Attorney General's Office, said the state has been involved in the negotiations of gambling compacts with the tribes and has taken its directions from legislative policy as it relates to gambling. Article 3, section 9, of the Constitution prohibits all forms of gambling unless it is explicitly authorized by the legislature or by initiative or referendum. Section 23-5-111 provides that the law must be strictly construed as to what that means. Ms. Sandholm said the State's position is that it cannot include forms of gambling in the compacts that are not expressly allowed by state statute. Ms. Sandholm told the Committee the state was willing to discuss a modification of conditions under which types of games could be played. It is the position of the Attorney General that a joint resolution, directing the gambling control division or the state negotiating team, to use greater flexibility in interpreting a state policy relating to gambling under the gambling laws is really not needed.

Opponents' Testimony:
Jim Morsette, Chippewa Cree Tribe, read from prepared testimony. (Exhibit #3)

Gloria Hermanson, Don't Gamble with the Future, said urging flexibility in negotiating gambling compacts with Montana Tribes helps set a tone and down the road possible may cause inadvertent precedence for gambling to expand throughout the state. Ms. Hermanson said it was important to maintain a firm, reasonable standard applicable statewide. Ms. Hermanson urged the Committee to take care to minimize unintended consequences.

Questions From Committee Members and Responses:
Senator Blaylock asked Senator Nathe why the tribes should have different gambling laws than the rest of the state. Senator Nathe said there were seven semi-sovereign nations within Montana, a sovereign state. Sovereignty was limited by the United States Constitution, and their sovereignty was limited by the actions of the United States Government because they were created under treaties signed by a United States President and ratified by the United States Senate. Therefore, there were differences. Senator Nathe said the tribes were frustrated by the term policy, which was the reason SJR 13 came about. The Indian Gambling Regulatory Act was passed by the United State Congress, which provided a mechanism for negotiations between states and tribes, to respect the sovereignty of both entities. The act also provided an escape valve of going to federal negotiators or mediators if the states and tribes could not agree. Another provision says the tribes could pursue their differences in the federal court system, which several of the tribes have done. SJR 13 was an attempt to not have to go to court, it was an attempt to recognize the sovereignty of the tribes and the sovereignty of the State of Montana.

Senator Towe told the Committee the tribes were frustrated because, under the Indian Gambling Regulatory Act, the state has no authority to regulate the stakes. If the state authorizes poker, they can not control poker on the reservation. If the state authorizes video gaming machines, the state can not regulate the amount of machines or limit the stakes. However, the state policy teams was interpreting the Act differently.

Senator Towe asked Ms. Sandholm to comment on his statement. Ms. Sandholm said within the negotiated compact, the state has the ability to agree to those provisions within the negotiated compact. Ms. Sandholm said the state directive was mandated by public policy, and it was difference in interpretation.

Senator Towe told Ms. Sandholm she was wrong.

Senator Blaylock asked Senator Nathe about the casinos. Senator

Nathe said the casinos would be controlled by the tribe. There would not be alcoholic beverages sold in the casinos, which would place them at a disadvantage compared to casinos where alcoholic beverages could be sold

Senator Crippen asked Senator Nathe about the classes of gambling. Senator Nathe told the Committee class 1 gambling was traditional indian games, which were regulated only by the tribe, class 2 gambling was bingo, and class 3 gambling was all other forms of gambling.

Senator Crippen asked Senator Nathe about the percentage of the amount of gambling done by Native Americans versus tourists. Senator Nathe said that he did not know.

Closing by Sponsor:
Senator Nathe closed.

HEARING ON SB 368

Opening Statement by Sponsor:
Senator Doherty, District 20, said SB 368 deals with partial retrocession of the Confederated Salish and Kootenai Tribes. Senate Bill 368 would provide jurisdiction for the tribes after consultation with the Governor and the Attorney General in certain criminal matters. SB 368 would also provide jurisdiction for the tribes after consultation and agreement with the Governor for civil matters. Senator Doherty said partial retrocession was a reasonable and prudent thing to do.

Proponents' Testimony:
Pat Smith, Staff Attorney for the Confederated Salish and Kootenai Tribes, said the tribes were asking to be allowed to reassume misdemeanor jurisdiction. The issue of felonies was taken out of SB 368 because a lot of concerns were expressed by counties and the state. Mr. Smith told the Committee Lake County indicated their willingness to transfer jurisdiction in the area of misdemeanors, therefore SB 368 was drafted to focus on the misdemeanor situation. Mr. Smith said the tribes want flexibility to negotiate, in the future, on jurisdiction of felonies and in civil areas.

Rep. Gervais, District 9, supported SB 368.

Jim Morsette, Chippewa Cree Tribe, supported SB 368.

Fred Mann, Confederated Salish and Kootenai Tribal Councilman, told the Committee SB 368 was an important issue and urged support. Mr. Mann said the majority of the tribal members also support SB 368.

Magel Bird, Chief Tribal Prosecutor for the Salish Tribal Kootenai Court, told the Committee according to Montana Board of Crime Control figures, the tribe would assume a 50% to 75% increase in their caseload to accommodate SB 368, which the tribe was prepared to do. The tribal court handles approximately 400 misdemeanor cases. Last year, 24 of the cases were felony type cases. The staff consists of Chief Judge, who supervises three associate judges, two prosecuting attorneys, two defense attorneys, and two lay advocates. The law enforcement department consists of eleven officers, 9 of which are post certified, meaning they are eligible for cross deputization. The jail houses 22 prisoners. The jail currently averages between five and eight prisoners a day, therefore the jail could accommodate an increase.

Ms. Bird said the tribal services were culturally relevant to their people, which was very important. 90% of the cases handled through the Salish Kootenai Tribal Courts were alcohol related. The tribe has services to best meet the needs of those people going through the system. The tribe has a strong tribal alcoholism and mental health program. The tribal court has alternate sentencing which includes house arrest and community service. The tribe has an adult probation officer who is a tribal member. Ms. Bird told the Committee tribal services better meet the needs of Indian people, than those services available through Lake County which are staffed by non-Indian people.

The tribal court provides a greater due process for the Indian people, which was an important factor. Ms. Bird said when an Indian person comes into the tribal court system, they were guaranteed the right to representation within three days. Ms. Bird said the tribe was willing to negotiate a time frame in which to assume felony jurisdiction. Ms. Bird told the Committee the tribe currently handles some felony type crimes. The tribe has class A, B, and C offenses. Class C offenses were comparable to felony crimes. A process has been established to evaluate each person coming into the system. The court looks at their criminal history, age, ability to be rehabilitated, ties to the reservation, and numerous factors before it would determine whether the tribal court jurisdiction would be appropriate. Ms. Bird said the tribe has financial resources to expand the system, if that is needed. Ms. Bird said the tribe was willing, able, competent, and professional; and it was time to give back criminal jurisdiction over the Indian people to the Salish Kootenai Tribes.

Beth Baker, Department of Justice, told the Committee it was important that the Governor would consult with all the residents of the Flathead Reservation and the local government before entering into the agreement. Ms. Baker said the Attorney General's Office was willing to go beyond the requirements of SB 368 and provide whatever assistance they could in the process.

Joseph McDonald, President of the Confederated Salish and Kootenai College, supported SB 368.

Jack Muso, Adult Probation Officer of the Confederated Salish and Kootenai Tribe, supported SB 368.

Ruth Swaney, of the Confederated Salish and Kootenai Tribe, supported SB 368.

Mike Finley, Confederated Salish and Kootenai Tribe, supported SB 368.

Rhonda Lankford, Confederated Salish and Kootenai Tribe, supported SB 368.

Opponents' Testimony:
Joe Delbers, Lake County Sheriff and Coroner, opposed SB 368.

Gerald Newgard, Lake County Commission, read from prepared testimony. (Exhibit #4)

Larry Nisrek, Lake County Commission, said his concern with SB 368 was the effectiveness of law enforcement and prosecutions. Mr. Nisrek told the Committee that partial retrocession cannot be undone. The conclusion of partial retrocession would be full retrocession. Mr. Nisrek said if SB 368 was enacted, full retrocession would occur. SB 368 creates vagueness about law enforcement.

Craig Hoppe, Montana Magistrates Association, read from a written statement from Gregory Mohr. (Exhibit #5) Mr. Hoppe submitted written testimony. (Exhibit #6)

Frank Stalk told the Committee that he lives on the reservation. Mr. Stalk told the Committee to think about how SJR 13 would affect members and nonmembers of the tribe who were married, in situations like divorce.

Questions From Committee Members and Responses:
NONE

Closing by Sponsor:
Senator Doherty told the Committee the current law of Montana for six reservations was total retrocession. SB 368 would allow for partial retrocession and would recognize the jurisdiction of the Confederated Salish and Kootenai Tribe. SB 368 would partially pull back the concurrent jurisdiction which currently exists on the reservation, with the State of Montana. Senator Doherty said an important part of SB 368 was that the Attorney General and Governor would negotiate the agreements. After consultation and negotiations, an agreement would be struck, only if all parties

agree. The tribe recognizes there are issues that need to be worked out with the Governor and the Attorney General. Senator Doherty said change was scary, but SB 368 was necessary and needed. The Confederated Salish and Kootenai Tribes have shown that they deserve to be treated in this fashion. It is time the State of Montana treated the Confederated Salish and Kootenai Tribe right and pass SB 368.

HEARING ON SB 400

Opening Statement by Sponsor:
Senator Nathe, District 10, said SB 400 would immunize conservation district supervisors from suit.

Proponents' Testimony:
Mike Volesky, Montana Association of Conservation Districts, said SB 400 was a public policy bill. Mr. Volesky said it would be good public policy to make public officials immune from suit for damages arising from the lawful discharge of their official duties. The Board of Supervisors for the conservation districts would not be immune from suit under SB 400. Mr. Volesky said people are becoming wary of serving and carrying out their duties as conservation district supervisors because of the risk of liability. Mr. Volesky said there had been no cases, but if there was, Montana would not be able to find a conservation district supervisor. Mr. Volesky said conservation district supervisors are not covered under the Tort Claims Act because conservation districts are subdivisions of the government. Mr. Volesky urged the Committee to support SB 400.

Steve Schmitz, Department of Natural Resources and Conservation, read from prepared testimony. (Exhibit #7)

Jamie Doggett, Conservation District Supervisor, supported SB 400.

Jan Holzer supported SB 400.

Bob Stephens, Montana Grain Growers Association, supported SB 400.

Opponents' Testimony:
Russell Hill, Montana Trial Lawyers Association, (MTLA) told the Committee the MTLA opposed SB 400 because the immunity extends to contracts as well as torts. Mr. Hill said conservation districts would not be able to sue their supervisors, because of sub-section 76-15-403 and 76-15-404, regarding the conservation district needing to obtain consent agreements and cooperation. Mr. Hill said it was counter productive to extend immunity, especially contract immunity, to a supervisor who was authorized

to enter into those agreements.

Questions From Committee Members and Responses:
Senator Towe suggested expanding the definition in section 2-9-101 to include conservation district supervisors. Senator Towe said the definition would automatically bring them under the coverage of the state and all the other provisions would automatically apply.

Senator Nathe agreed if they would be covered individually from lawsuits.

Senator Towe asked Mr. Hill about making conservation districts a governmental entity so they would be covered and employees would be covered under section 2-9-305. Mr. Hill said he would not object.

Senator Nathe told the Committee that conservation district supervisors are not employees, they are elected officials.

Senator Nathe asked Senator Towe about section 2-9-305 and section 2-9-101. Senator Towe said 2-9-305 was the operative section. 2-9-101 was the definition section.

Senator Towe said he would check to see if the supervisors could be covered in either section.

Closing by Sponsor:
Senator Nathe told the Committee that conservation district supervisors do need coverage.

Discussion:
Chair Yellowtail asked Senator Nathe and Senator Towe to work on SB 400.

HEARING ON SB 406

Opening Statement by Sponsor:
Senator Bartlett, District 23, told the Committee that SB 406 proposes changes in the law relating to the crime of domestic abuse and temporary restraining orders issued in domestic abuse situations. In 1981, the legislature recognized that laws did not adequately protect victims of spouse abuse and made it possible for a victim, who was not involved in a divorce or legal separation, to seek a restraining order. In 1985, the legislature established domestic abuse as a crime as well as the violation of a restraining order. Self help temporary restraining orders were authorized. Justice and District Courts were empowered to issue temporary restraining orders. In addition, the protection of restraining orders were extended to people who were cohabiting or who had in the past cohabited. The

definition of what constituted sufficient grounds for a victim to seek protection was expanded. In 1989, City Courts were added to the Justice and District Courts as locations where domestic violence restraining orders could be obtained. In 1991, the threat of bodily harm was included as a sufficient grounds for a domestic abuse victim to petition for a restraining order. Senator Bartlett said SB 406 was another step in the evolutionary process. SB 406 came out of experiences of people who work daily with the domestic abuse statutes. Their experience identified the area of the laws which were inadequate or insufficient to accomplish the state's purpose, mainly the protection of victims of domestic abuse. Section 2 of SB 406 would broaden the crime of domestic abuse, increase the penalties, and address counseling for perpetrators. Section 1 of SB 406 would broaden the class of people who may seek protection through restraining orders. Sections 3 through 5 change the language in the related criminal statutes to match the changes instituted in Sections 1 and 2.

Proponents' Testimony:
Judith Wang, Missoula City Attorney, urged the Committee to favorably consider SB 406. Ms. Wang said SB 406 allows for judges, in appropriate circumstances, to permanently enjoin the defendant from contact with the victim. SB 406 would allow for permanent injunctions, in certain circumstances, to protect victims that were very afraid. SB 406 would require proof of abuse before a restraining order was ordered. Mr. Wang said the definition of who would be eligible for a restraining order would be expanded to include all family members and those people involved in an ongoing, intimate relationship. The counseling provision in SB 406 would allow a judge to order more counseling, if after a minimum of 25 hours of counseling, the counselor felt the defendant was still violent and in need of more counseling. Ms. Wang urged the Committee to support SB 406.

Amy Pfeifer, Womens Law Section, read from prepared testimony. (Exhibit #8) Ms. Pfeifer submitted testimony from Janet Cahill. (Exhibit #9)

Diane Sands, Montana Womens Lobby, supported SB 406. Ms. Sands submitted testimony from Melody Brown. (Exhibit #10)

Carl Ipson, Police Officer in Missoula, supported SB 406.

Craig Hoppe, Montana Magistrate Association, supported SB 406.

Opponents' Testimony:
Kathleen Fleury told the Committee she had concerns about the language in SB 406. Ms. Fleury said anyone would be able to make an allegation and sign an affidavit. Ms. Fleury said many allegations are untrue and made out of vindictiveness. Ms. Fleury asked for a DO NOT PASS recommendation for SB 406.

Questions From Committee Members and Responses:
Senator Rye asked Senator Bartlett why the Clerk of Court from Yellowstone county was opposed to SB 406. Senator Bartlett said it was because of the additional workload.

Senator Franklin asked Ms. Wang to comment on the opponents testimony. Ms. Wang told the Committee that few people make frivolous complaints.

Senator Halligan asked Ms. Wang about the definition of partner. Ms. Wang said she tried to come up with a definition that the court could get some kind of grasp on. An ongoing, intimate relationship would be a relationship that continued for a period of time. Ms. Wang said the relationship could have been in the past or present.

Chair Yellowtail asked Ms. Pfeifer about the new definition of a family member. Ms. Pfeifer said a family member would include a member of a family that had an ongoing relationship with each other, for instance a mother and son, or a father and daughter.

Chair Yellowtail asked Ms. Wang about the intent of the definition of a family member. Ms. Wang said the intention was to include household members in addition to family members. For instance if an uncle was living in the home and abused his niece, he would be considered a member of the household, therefore he would be subject to the restraining order. However, if he did not live in the household, he would not be included. Ms. Lang said they wanted to expand the definition, but did not want to include all of an extended family. The definition would only include someone who lived in the household.

Senator Bartlett asked Ms. Wang if anyone was sent to prison for a parole violation because of a false accusation. Ms. Wang said no.

Closing by Sponsor:
Senator Bartlett told the Committee there were areas in the domestic violence statute that did not cover certain situations, therefore SB 406 was drafted. Senator Bartlett urged a DO PASS recommendation for SB 406.

EXECUTIVE ACTION ON SB 303

Motion/Vote:
Senator Grosfield moved to TABLE SB 303. The motion CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SB 4

Motion/Vote:

Senator Rye moved SB 4 DO NOT PASS. The motion CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SB 5

Motion/Vote:
Senator Franklin moved SB 5 DO NOT PASS. The motion CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SB 242

Motion/Vote:
Senator Blaylock moved SB 242 DO NOT PASS. The motion CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SB 41

Motion:
Senator Crippen moved to REMOVE SB 41 from the table.

Discussion:
Senator Crippen told the Committee the sponsor of SB 41, Senator Burnett, wanted an adverse committee report so he could argue the bill on the floor.

Senator Halligan told the Committee that SB 41 was a terrible bill.

Senator Crippen told the Committee he would carry the DO NOT PASS recommendation on the Floor.

Vote:
The motion to remove SB 41 from the table CARRIED UNANIMOUSLY.

Motion/Vote:
Senator Crippen moved SB 41 DO NOT PASS. The motion CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SB 246

Motion/Vote:

Senator Harp moved to TABLE SB 246. The motion CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SB 277

Motion/Vote:
Senator Halligan moved to TABLE SB 277. The motion CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SB 304

Motion/Vote:
Senator Harp moved to TABLE SB 304. The motion CARRIED with Senator Rye voting NO.

EXECUTIVE ACTION ON SB 333

Motion:
Senator Harp moved SB 333 DO PASS.

Motion:
Senator Crippen made a SUBSTITUTE motion to TABLE SB 333.

Discussion:
Senator Rye told the Committee he would like SB 333 to pass, if not, he asked for a DO NOT PASS recommendation.

Senator Crippen WITHDREW his motion to table SB 333.

Motion/Vote:
Senator Halligan made a SUBSTITUTE motion to recommend SB 333 DO NOT PASS. The motion CARRIED with Senators Rye and Harp voting NO.

EXECUTIVE ACTION ON SB 336

Discussion:
Chair Yellowtail explained amendment sb033601.avl. (Exhibit #11)

Motion/Vote:
Senator Harp moved to AMEND SB 336. The motion CARRIED UNANIMOUSLY.

Vote:

Senator Grosfield asked Ms. Lane to draft an amendment to take out the indexing in SB 336.

Senator Crippen told the Committee he would oppose SB 336.

Motion:
Senator Harp moved SB 336 DO NOT PASS.

Discussion:
Chair Yellowtail told the Committee he would rather have SB 336 Tabled.

Motion:
Senator Harp made a substitute motion to TABLE SB 336.

Discussion:
Chair Yellowtail told the Committee if SB 336 was not passed, judges salaries would remain frozen until the next biennium. The judges are only asking to be treated as other state employees, which was fair and reasonable.

Senator Crippen asked Senator Halligan about the Governor's salary. Senator Halligan said the Governor's salary was increased when the state employees salaries were increased.

Chair Yellowtail said SB 336 would be held until further information was made available concerning salary increases for elected officials

Senator Harp WITHDREW his motion to TABLE SB 336.

EXECUTIVE ACTION ON SB 386

Motion/Vote:
Senator Harp moved SB 386 DO PASS. The motion CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SB 362

Motion/Vote:
Senator Halligan moved SB 362 DO PASS. The motion CARRIED UNANIMOUSLY.

ADJOURNMENT

Adjournment: 12:48 p.m.

Wm Yellowtail
BILL YELLOWTAIL, Chair

Rebecca Court
REBECCA COURT, Secretary

BY/rc

ROLL CALL

SENATE COMMITTEE Judiciary DATE 2-19-93

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		

FC8

Attach to each day's minutes

ADVERSE

SENATE STANDING COMMITTEE REPORT

February 19, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration Senate Bill No. 4 (first reading copy -- white), respectfully report that Senate Bill No. 4 do not pass.

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

Amd. Coord.
Sec. of Senate

411338SC.SAN

ADVERSE

SENATE STANDING COMMITTEE REPORT

February 19, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration Senate Bill No. 4 (first reading copy -- white), respectfully report that Senate Bill No. 4 do not pass.

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

Amd. Coord.
Sec. of Senate

411338SC.SAN

ADVERSE

SENATE STANDING COMMITTEE REPORT

February 19, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration Senate Bill No. 5 (first reading copy -- white), respectfully report that Senate Bill No. 5 do not pass.

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

Amd. Coord.
Sec. of Senate

ADVERSE

SENATE STANDING COMMITTEE REPORT

February 19, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration Senate Bill No. 41 (first reading copy -- white), respectfully report that Senate Bill No. 41 do not pass.

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

Amd. Coord.
Sec. of Senate

411337SC.San

ADVERSE

SENATE STANDING COMMITTEE REPORT

February 19, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration Senate Bill No. 242 (first reading copy -- white), respectfully report that Senate Bill No. 242 do not pass.

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

Amd. Coord.
Sec. of Senate

ADVERSE

SENATE STANDING COMMITTEE REPORT

February 19, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration Senate Bill No. 333 (first reading copy -- white), respectfully report that Senate Bill No. 333 do not pass.

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

Amd. Coord.
Sec. of Senate

SENATE STANDING COMMITTEE REPORT

February 19, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration Senate Bill No. 362 (first reading copy -- white), respectfully report that Senate Bill No. 362 do pass.

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

AOJ Amd. Coord.
Sec. of Senate

411336SC.San

SENATE STANDING COMMITTEE REPORT

February 19, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration Senate Bill No. 386 (first reading copy -- white), respectfully report that Senate Bill No. 386 do pass.

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

Amd. Coord.
Sec. of Senate

411335SC.San

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 1
DATE 2-19-93
BILL NO. SJR13

Testimony of

Caleb Shields, Chairman

Assiniboine and Sioux Tribes
of the
Fort Peck Indian Reservation, Montana

Before the

Senate Judiciary Committee

State of Montana Legislature

Re S.J.R. 13

February 19, 1993

Chairperson and members of the Committee, I am Caleb Shields, Chairman of the Fort Peck Tribal Executive Board. I am very pleased to appear here today on behalf of the Assiniboine and Sioux Tribes of the Fort Peck Reservation to discuss legislation to require the State to enter into compacts with tribes that broaden the types of Indian gaming in Montana. We greatly appreciate the introduction of this legislation by Senator Nathe and Representative Schwinden.

The Assiniboine and Sioux Tribes have concluded a gaming compact with Montana, as well as two amendments to it during this past year. The original gaming compact authorized our Tribes to operate gambling machines and simulcast horse racing. Our main purpose in entering into this initial compact was to protect existing gaming machines already operating on our Reservation: (1) at the casino operated by the wolf Point Indian Community Organization, and (2) in a few Indian businesses, which under the compact must now become management contractors of not more than 20 machines the Tribes will own. The Tribes were not sure what other gaming we might want to permit in the future, so we agreed with the State to continue to negotiate at least once annually for the next three years to consider additional gaming operations.

As matters turned out, in 1992 alone, two unanticipated events

have occurred requiring two amendments to the compact. First, in July, the United States Attorney threatened to close the State's lottery on the Reservation unless it was included in the compact. Because the lottery proceeds support Reservation public schools, the Tribes promptly agreed with the State to amend the compact to include the lottery, although the Tribes did not necessarily agree with the United States' legal position or action.

Second, the Tribes were approached this summer by an Indian owned company that proposed to locate a casino, motel, restaurant and shopping complex on the Reservation, principally to attract Canadian and other tourists. The State agreed to a second amendment to our compact authorizing 24 hour operation of live keno and poker games, and to allow machines with a coin drop mechanism. However, we also wished to establish higher progressive jackpots, and have video slot machines, electronic pull-tab machines, blackjack and simulcast dog racing in our new casino. We learned in our negotiations on the second amendment to our compact that the State has said "no" on all these items to other tribes, and that consistency required saying "no" to us. The purpose of this bill is to change this policy.

You should enact this legislation because it is absolutely essential to promote Indian economic advancement in our State. I am sure you know that Montana's Indian reservations are the poorest parts of the State. Unemployment is often over 50 percent.

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You should enact this legislation because it is absolutely essential to promote Indian economic advancement in our State. I am sure you know that Montana's Indian reservations are the poorest parts of the State. Unemployment is often over 50 percent.

Poverty and the social dislocation it causes are everywhere.

This is as much against your interest as it is against ours. The effects of this widespread and longlasting poverty are **not** confined to Indian country. They affect every part of the State.

Intolerable through this poverty is, it may have seemed until recently that nothing could really be done about it. But that is no longer true. The pervasive cancer of Indian poverty can now be cured -- without massive expenditures of public funds or new taxes that burden other Montana citizens -- by permitting broad Indian gaming on the lands of tribes that wish to conduct it.

This has happened on other Indian reservations in other states in the past five years. The turnaround on Indian reservations in Connecticut, Wisconsin, Minnesota, New Mexico, Arizona, and California in the past few years has been startling, nothing short of a miracle. The **New York Times** reported on its first page on Sunday, January 31,that Indian gaming now brings over $6 billion a year into reservations. That is twice the size of **the entire federal Indian budget.** Those reservations have been transformed. There is even the promise of prosperity upon them.

Unemployment is very high on my Reservation,even though we have done everything we can to lower it -- including operating a tribal defense firm that is the largest single industrial employer

in Montana with over 200 jobs. Indian gaming of the kind we propose will bring hundreds of new jobs into our Reservation. Our members cannot fill every position, so Indian gaming will be an economic benefit to the entire State. These are not idle dreams or speculation. This is happening now on dozens of Indian reservations in the other states I have mentioned.

With your help, this can take place on my Reservation and others in Montana as well. We do not ask that you loosen the -- gaming laws elsewhere in the State. We ask only that you open up the compact negotiations by allowing tribes to play games that are not played elsewhere -- video slots, blackjack, higher progressives and other games we seek. You should do this for yourselves, not just for us, **because it is not in your interest that Indians remain poor.** Tribes have close interrelationships with the State of Montana. Neither you nor we can avoid that. What benefits us benefits you. If we are poor, the burdens on your government and society are greater. We need to work together to move forward together.

This interdependence and the possibility for joint gain is the primary reason the Fort Peck Tribes have taken the lead in the past ten years in working with State leaders to resolve other controversies -- by compacts concerning water rights and taxation as well as gaming. For decades, tribes and the State wrangled and litigated about jurisdiction, water rights and taxing authority.

Many cases were filed and decided in courts, particularly in the 1960s and 1970s. Our attorneys have advised us that we could win a lawsuit compelling the State to compact with us to play the broader games we want. Other tribes have done that, for example, in the Lac du Flambeau case in federal court in Wisconsin.

But lawsuits don't end poverty. Wise policy can. Our Tribes have learned to resolve these kinds of disputes by negotiations. We were the first tribes, for example, to conclude a water compact with Montana. That compact, which was ratified by the Legislature and Tribal Executive Board in 1985, quantifies our reserved water rights. It also settled litigation between the Tribes and the State, protects certain existing non-Indian uses, provides for us to market water and establishes a neutral Board to settle any disputes concerning water used by Indians -- which is recognized as within tribal jurisdiction -- and that used by non-Indians under state law and jurisdiction.

The Fort Peck Tribes have also during this past year concluded agreements with the State to share motor fuel taxes and alcoholic beverages taxes, as well as an agreement concerning the enforcement of state cigarette sales taxes to non-Indians on the Fort Peck Reservation. We appreciate the efforts of the Legislature in authorizing all of these agreements -- except the one on alcoholic beverages, which we understand will be authorized in 1993.

The present legislation follows in these footsteps by working a common solution to the most important problem we share -- Indian poverty in Montana. Because most Indian tribes are in isolated areas distant from most resident populations, as Montana itself is somewhat remote from big population centers, we need special incentives -- like games **not** allowed elsewhere in Montana -- to attract customers. My Tribes' customers, for example, will mostly be tourists, many from Canada. It is surely fair to give tribal gaming these kinds of special incentives. For a critical difference between Indian gaming and gaming elsewhere in Montana is that **all** the money tribes receive from Indian gaming must be spent for public purposes and programs. This is a requirement of the federal Indian Gaming Regulatory Act. Tribes do not and can not operate gaming for private profit. Revenues tribes receive from gaming directly reduce the burdens on federal and state governments.

This legislation can be of lasting benefit to tribes and to all Montanans. That concludes my testimony. I will happily answer any questions you may have.

Exhibit 1
2-19-93
STR-13

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 2
DATE 2-19-93
BILL NO. SJR 13

1

TESTIMONY OF BLACKFEET TRIBE ON

SENATE JOINT RESOLUTION 13

Mr. Chairman, members of the Committee, thank you for this opportunity to testify in support of Senate Joint Resolution 13 regarding Gaming Compacts.

By way of back ground, the Blackfeet Tribe has been engaged in negotiations with the State of Montana since late 1988, shortly after the U.S. Congress enacted the Indian Gaming Regulatory Act. The initial discussions were essentially a feeling-out process, where the parties got to know each other and discussed general political philosophies. Later on in 1989 and on into 1990 the negotiations became more serious and substantive, with numerous proposed compacts being exchanged and counter-exchanged. The dialogue continued on into 1991 and 1992, with little or no headway being made on a gaming compact. This process has continued through several Tribal Council and state administrations, and the result has quite often been a deep sense of frustration and futility.

The Blackfeet Tribe perceives Class III gaming as a method by which the goals of the Indian Gaming Regulatory Act can be fulfilled. Those goals are to promote tribal economic development, tribal self-sufficiency, and strong tribal government. The lack of a compact has proven to be a detriment to the fulfillment of these goals. The Committee may recall recent news articles which list Glacier County, which is primarily composed of the Blackfeet Indian

Reservation, as among the five poorest counties in the entire United States. Class III gaming, when combined with tourism attractions, can certainly help alleviate this situation of dire poverty.

I am sad and disheartened to report to the Committee that not much progress has been made on a Gaming Compact between the Blackfeet Tribe and the State of Montana. The U. S. Congress has passed several extensions of time within which to negotiate gaming compacts, and the latest extension will expire on April 23, 1993. After that date, Indian tribes in the State of Montana which do not have negotiated gaming compacts with the State of Montana will not be allowed to engage in Class III gaming. This is the Federal law which will be applied, even as Class III, Casino-style gaming continues in the State, but outside the boundaries of those reservations where there is no gaming compacts. The point is that the State's negotiation team must somehow come to grips with the fact that the Indian Gaming Regulatory Act was enacted to strengthen tribal governmental institutions, and not to provide states with a stranglehold over Indian tribes. If greater flexibility in negotiations of gaming compacts does not become a fact of governmental relations, then the only recourse available to the parties may be litigation. We all know that litigation is long, costly, and creates negative relations. In terms of flexibility, I might enlighten the Committee to the recent ruling in Arizona where a mediator appointed by a Federal judge chose

EXHIBIT 2
DATE 2-19-93
SJR 13

the gaming compacts of three (3) Indian tribes over the agreements proposed by the State of Arizona. At least one of the compacts approved by the mediator will allow the Indian tribe to operate 2,600 electronic gaming machines plus poker and blackjack tables, craps and keno. The mediator noted in his opinion that he was swayed not only by the legal agreements, but also by economic conditions on the three reservations. His specific language on this issue is as follows:

> **"For whatever reasons, neither the state nor the federal government has furnished adequate revenue to provide for the needs of these tribes in areas of health, education, economic development or governmental infra-structure," Also, the tribes...lack tax bases and natural resources to generate returns sufficient to provide those necessities."**

Given the fact that the Blackfeet Indian Reservation and Glacier County have been listed among the poorest counties in the United States, coupled with the fact that Montana probably ranks behind only Nevada and New Jersey in terms of allowable casino-style gaming, it is highly probable that federal litigation would yield a result similar to the Arizona decision. This can be avoided if greater flexibility is given to the state negotiation team to negotiate and enter into meaningful compacts with the Indian tribes in Montana. The fact is that other states with little or not casino-style gaming have entered into gaming compacts with Indian tribes which have proven to be mutually beneficial from both an economic and social perspective.

In summary, the Blackfeet Tribe firmly supports Senate Joint Resolution 13 and urges passage of this legislation. Let us work together and fulfill the goals and objectives of the Indian Gaming Regulatory Act so that Indian tribes can be self-sufficient and also be good neighbors with the State of Montana.

Thank you.

Wayne Stiffarm
Blackfeet Gaming Comm.

The Chippewa Cree Tribe of the Rocky Boy's Reservation

Phone: (406)-395-4478 or 4210 - Finance Office
(406)-395-4282 or 4321 - Business Committee

Rocky Boy Route, Box 544
Box Elder, MT 59521

A RESOLUTION

NO. 29-93

OPPOSING SENATE JOINT RESOLUTION NO. 13 OF THE MONTANA LEGISLATURE WHICH PURPORTS TO GRANT THE MONTANA GAMBLING CONTROL DIVISION GREATER FLEXIBILITY IN NEGOTIATING CLASS III TRIBAL STATE GAMING COMPACTS UNDER THE FEDERAL INDIAN GAMING ACT.

WHEREAS, the Chippewa Cree Business Committee is the governing body of the Chippewa Cree Tribe of the Rocky Boy's Reservation, by the authority of the Constitution and Bylaws of the Chippewa Cree Tribe approved the 23rd day of November, 1935 (amended April 1973), and

WHEREAS, pursuant to inherent tribal sovereignty and the Constitution and Bylaws of the Chippewa Cree Tribe, the Chippewa Cree Business Committee is charged with the duty to promote and protect the health, security and general welfare of the Chippewa Cree Tribe, and,

WHEREAS, Senate Joint Resolution No. 13 has been introduced in the Montana Legislature by Senators Dennis Nathe and Representative Dave Schwinden on behalf of the Fort Peck Tribes, and

WHEREAS, the Chippewa Cree Tribe views the instigation of Senate Joint Resolution No. 13 as another attempt on the part of the State to substantiate its negotiation position that public policy in Montana does not support negotiating with the tribes for substantial and economically viable gaming operations on Montana Reservations. Other states that have virtually the same permissive/regulatory gambling law scheme as the State of Montana have reached compacts with tribes that have proved to be economically beneficial to both the state and tribes, and

WHEREAS, public policy regarding gaming in Montana permits multi-million dollar gaming prizes and that the State sponsored gaming regularly issues prizes for tens of thousands of dollars, and

WHEREAS, Senate Joint Resolution No. 13 purports to grant the Gambling Control Division of the Montana Department of Justice greater flexibility in interpreting the Federal Indian Gaming Regulatory Act, State gambling policy and State gambling laws in forging gaming compacts with Montana Indian Tribes that will benefit all people in the State of Montana, and

WHEREAS, it is the position of the Chippewa Cree Tribe that Senate Joint Resolution No. 13 is unnecessary for the reason that the Governor and the Justice Department already have extreme flexibility under Montana's permissive/regulatory scheme of gambling laws, under the provisions of the Federal Indian Gaming Act 25 U.S.C. 2701 et. seq. and under the Federal Court case law that has developed since passage of the Federal Indian Gaming Regulatory Act, and

WHEREAS, the Department of Justice and the Governor will use the rejection of this resolution by the houses of the Legislature to bolster its failure to negotiate with the Tribes despite the adequate flexibility provided by Montana Gaming Law, the Federal Indian Gaming Regulatory Act and the case law decided pursuant to the Federal Indian Gaming Regulatory Act.

THEREFORE BE IT RESOLVED, that the Chippewa Cree Business Committee hereby opposes Senate Joint Resolution No. 13 and urges the Montana Senate Judiciary Committee to instruct the Justice Department that Montana's permissive/regulatory scheme of gambling laws, the Federal Indian Gaming Act and the Federal Court cases arising pursuant to the act already provide adequate flexibility and guidance for the Gambling Control Division to reach Tribal-State Gaming Compacts with Montana Tribal Governments.

C E R T I F I C A T I O N

I, THE UNDERSIGNED, AS SECRETARY OF THE BUSINESS COMMITTEE OF THE CHIPPEWA CREE TRIBE, HEREBY CERTIFY THAT THE BUSINESS COMMITTEE IS COMPOSED OF NINE MEMBERS OF WHOM SIX (6) MEMBERS CONSTITUTING A QUORUM WERE PRESENT AT A MEETING, DULY CALLED, NOTICED AND CONVENED THIS 17TH DAY OF FEBRUARY, 1993, AND THAT THE FOREGOING RESOLUTION WAS DULY ADOPTED AT SUCH MEETING, BY THE AFFIRMATIVE VOTE OF FIVE (5) MEMBERS FOR AND ZERO (0) MEMBERS AGAINST, AND THAT THIS RESOLUTION HAS NOT BEEN RESCINDED OR AMENDED IN any WAY.

CHAIRMAN, BUSINESS COMMITTEE

SECRETARY, BUSINESS COMMITTEE

S.B. 368, HEARING FRIDAY, FEB. 19th, 10:00 A.M.

Unfortunately, we return to Helena again to oppose this legislation. We attempted on several occasions to ask the Confederated Salish and Kootenai Tribes to meet and discuss with us a progressive evolution to what this bill is asking for. Then Attorney General Racicot even orchestrated a meeting in Helena to help us break the ice and begin a cooperative effort on these issues. We did not receive any return correspondence nor did Mr. Racicot in the interim. The County felt and still feels our proposed items for discussion could have been worked through if they would have just came to the table. They refused!!

The Board of Commissioners held a hearing last Wednesday asking for testimony from the public on retrocession. Tribal members and non-members alike offered testimony. One overwhelming concern is the public's lack of understanding on how things will work. The details can't even be answered by the attorney's involved. How can retrocession be good unless people understand what it will be and how it will work. We in Lake County live in a very integrated society which by itself makes the issue very difficult because it is rare that families do not have racial interties.

The complexity of this issue needs to have an evolution through time and trial of a cooperative agreement that can be accomplished under existing law. We feel that if the Tribes would sit down once a month with us or more, we could hash out an agreement in detail to put into effect. With that accomplished, we believe it possible to come hand and hand to this body in

support of a partial retrocession bill.

In summary, we believe we did our part in trying to get with the Tribe and they simply refused to come to the table. We believe we must come to an agreement under existing law first and get something working before codification is attempted.

We do believe also that this past two years has afforded us a cooling off and a progression towards more trust and understanding that will allow us to come together and strike up an agreement that will evolve into good things.

We ask that you oppose this bill and allow us to begin the negotiations locally. By telling us to go home and sit at the table.

RESPECTFULLY,

Mike Hutchin

Mike Hutchin. Chairman

Gerald L. Newgard

Gerald L. Newgard, Member

Dave Stipe

Dave Stipe, Member

MONTANA MAGISTRATES ASSOCIATION

February 19, 1993

Bill Yellowtail, Senator
Chairman Senate Judiciary Committee
Capitol Station
Helena, Montana 59620

Dear Senator Yellowtail:

I am sorry I cannot attend the hearing this morning as I am involved in a Commission on Courts of Limited Jurisdiction meeting. I am writing this letter in response to a letter circulated by A.C.E. (All Citizens Equal) concerning P.L. 280.

A.C.E. has never contacted me nor our lobbyist concerning P.L. 280. To my knowledge they have not contacted my board of directors on this issue. When they state as a fact that the western Vice President of the Montana Magistrates Association states "Retrocession is an effort to segregate and not integrate. It is an effort to split us apart, not bring us together." They are wrong. They took a piece out of a letter to further their position. It was taken out of context and our western Vice President Craig Hoppe will address the committee on this issue.

I am appalled that A.C.E. can blatantly print misleading information to further their agenda. I feel they should be publicly reprimanded. Our Association stands behind western Vice President Craig Hoppe's letter in its entirety.

Thank You.

Sincerely,

Gregory P. Mohr, President
Montana Magistrates Association

GPM/dnl

MONTANA MAGISTRATES ASSOCIATION

February 17, 1993

To the Members of the Senate Judiciary Committee:

Today, I was given a copy of a letter dated February 15, 1993 from All Citizens Equal (A.C.E.). It appears from the content of the letter that the Montana Magistrates Association is endorsing the position which A.C.E. espouses in this mailing to the Legislators of Montana.

I am stating now, the Montana Magistrates Association does not endorse A.C.E. or what they propose. On the fact sheet which accompanies the cover letter, there is a quote attributed to the Western Vice President of the Montana Magistrates Association. I confess, that I am and was that vice president. I am the City Judge in St. Ignatius and was at that time, a second Justice of the Peace in Lake County, covering the south end of the county. The quote was taken from a letter written to then Chairman of the Senate Judiciary Committee, Senator Dick Pinsoneault. It was written at his request as a position statement to the retrocession issue in 1991. The two sentences taken from the letter truly do not reflect the context of the letter. I have had the Lake County Commissioners fax me a copy of that letter so that you can read it in its entirety. I believe only then can you understand my position on the retrocession issue. It is attached for your perusal.

I must admit that my position has not changed since March 6, 1991. I still believe that it is only by working together and pooling the resources of the two governmental entities in Lake County that the residents of the county and of the reservation will benefit by the combined services. As it is today, there is too much duplication of services and a jockeying for turf, when there is more than enough to go around for all of us. By sharing our law enforcement personnel, coordinating our court dispositions, and to coin a phase by Senator Doherty, then we can get a handle on our "bad actors". By doing this, we will make Lake County and the Flathead Reservation a safer and a better place to live. We will be able to create meaningful sentences that change people rather than letting them rot in our jails or revolve through our courts. But it only by using all of our resources: law enforcement, judicial, human services, mental health, and drug and alcohol programs can we get a handle on our "bad actors" and give them a new script to live by. It is by doing this cooperatively, together, and for the good of all that we will make an impact that will last for generations to come, one that our children's children will prosper in.

Along these lines, I am reminded of a coyote story about the people of the Driftwood Lodge. Every year after Mother Earth warmed and sent her rains to melt the snow and nourish the lands to bring

forth its bounty, the people of the Driftwood Lodge would meet. They were a collection of many different people, but when they were brought together at this time of year, they were very strong. Their strength was such that they could change the course of the mightiest rivers, but it was only by their combined numbers that they could do this. I view the people of the Flathead Reservation and Lake County as members of such a Lodge and it is only by staying together that great things can come about. By picking us apart and setting one against the other, the strength of the Lodge is broke and we will all go down the river together.

Thank you for your time and consideration in this manner.

Sincerely,

Craig L. Hoppe

Craig L. Hoppe
St. Ignatius City Judge
Lobbyist MT Magistrates Assn

SB 400 TESTIMONY--- DNRC

SENATE BILL 400 CREATES IMMUNITY FROM SUIT FOR CONSERVATION DISTRICT SUPERVISORS. A CONSERVATION DISTRICT IS A POLITICAL SUBDIVISION OF THE STATE. SUPERVISORS ARE ELECTED OFFICIALS WHO DIRECT THE ACTIVITIES OF THEIR DISTRICT ON A VOLUNTEER BASIS. DISTRICTS PROVIDE LOCAL NATURAL RESOURCE MANAGEMENT IN A WIDE VARIETY OF AREAS INCLUDING: EROSION CONTROL, STREAMBANK PROTECTION, RANGELAND MANAGEMENT, CONSERVATION EDUCATION, WATER RESERVATIONS, IRRIGATION WATER MANAGEMENT, ETC.

THE PURPOSE OF THIS BILL, IS SIMPLY TO PUT INTO STATUTE WHAT THE SUPREME COURT HAS DECLARED WITH RESPECT TO VOLUNTARY PUBLIC OFFICIALS SERVING THE PUBLIC INTEREST AT THE GRASS-ROOTS LEVEL. THE GENERAL RULE OF LAW IS THAT IF A PUBLIC OFFICIAL, SUCH AS A DISTRICT SUPERVISOR WORKING IN PERFORMANCE OF AN OFFICIAL DUTY WHICH IS QUASI-JUDICIAL OR DISCRETIONARY IN NATURE, MAKES A MISTAKE OR ERROR IN JUDGEMENT, THE OFFICIAL WILL NOT BE HELD LIABLE FOR DAMAGES, PROVIDED THERE IS NO WILFUL OR WANTON MISCONDUCT ON THE PART OF THE OFFICIAL. AS STATED BY THE MONTANA SUPREME COURT, THE PURPOSE OF THIS RULE IS THAT THE PUBLIC INTEREST REQUIRES FULL INDEPENDENCE OF ACTION AND DECISION, UNINFLUENCED BY ANY FEAR OF APPREHENSION OF CONSEQUENCES.

IF CONSERVATION DISTRICTS ARE TO CONTINUE TO ATTRACT THE BEST PEOPLE TO SERVE AS CONSERVATION DISTRICT SUPERVISORS, THEN IS NECESSARY THAT THE LEGISLATURE UNEQUIVOCALLY STATE THAT THE PUBLIC INTEREST SERVED BY THESE LOCAL PUBLIC SERVANTS REQUIRES THAT THEY BE ABLE TO WORK IN AN ENVIRONMENT FREE OF FEAR THAT THEIR LIVELIHOODS WILL BE ADVERSELY AFFECTED WHEN THEY ACT IN WAYS THAT DO NOT AMOUNT TO WILFUL OR WANTON MISCONDUCT. SB 400 ACHIEVES THIS RESULT.

WOMEN'S LAW SECTION

STATE BAR OF MONTANA

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 8
DATE 2-19-93
BILL NO. SB406

To: Chairman Sen. Yellowtail and Senators of Senate Judiciary Committee

From: K. Amy Pfeifer, Chair, Women's Law Section, State Bar of Montana

Re: SB 406 - Expand Domestic Abuse Laws to Other Persons

Date: February 19, 1993

The Women's Law Section of the State Bar of Montana urges your support of SB 406. I speak on behalf of the Section and not the State Bar of Montana.

Our Section has a continuing interest in the protection of this state's victims of violence, particularly in the area of domestic and sexual abuse. We support Sen. Towe's stalking bill (SB 37) and believe the amendments to the domestic violence protection statutes that you have before you today will work well together with Sen. Towe's bill to strengthen the relief available to victims of violence, particularly the women and children of this state. We have worked with the Montana Coalition Against Domestic Violence to bring these amendments to your attention.

The amendments are fairly simple. First, we wish to broaden the class of individuals that may petition for a domestic violence restraining order under 40-4-121. As some of you may know, this statute, and the procedural statutes which follow it, allow victims of domestic violence to obtain forms from district, city, municipal and justice courts to petition those courts, generally pro se, for protection from their abuser. Much of the current law stems from extensive amendments to this section in 1985. The current language allows spouses, former spouses and persons who are or have cohabited within the last year to apply for relief under this section. As I am sure you are all aware, a couple does not have to have lived together to have a child in common or to be parties to an abusive relationship. That is the reason for the definition of partner: the cohabitation requirement is gone.

Family member is defined to include parents and children, including relationships created by adoption or step families. Children learn behaviors from their parents, and children go on to become abusers and victims. Teenage sons model their father's behaviors and abuse

their mothers, fathers may abuse their daughters. Without an ability to receive a restraining order under this statute, which allows them to obtain forms and relief from any court, these victims would be required to obtain relief through a civil action in district court under Title 27, the civil injunctions statutes. And even if that were not an impediment to obtaining relief, we feel that is important to recognize this behavior for what it is, domestic violence, and to treat it as domestic violence for purposes of the relief available, including counseling for abusers, and for reporting.

The broader classes of those protected are repeated in Section 2 of the bill, which is the crime of domestic abuse. Again, categorizing the offense of assault among these classes of people calls the crime what it is, domestic violence, and provides for application of the counseling requirement of this statute. Again, the crime will be reported as domestic abuse.

The second group of amendments speak to the need to focus on the behavior of the offender. Since 1989, when convicted of domestic abuse, the offender must complete at least a six month counseling course, totaling at least 25 hours. Obviously, the offender must receive a sentence that holds him subject to the jurisdiction of the court for six months in order for this to work. A problem has arisen though in that due to the demands for counseling or the offender's failing to attend all classes, the six months sentence may expire before even this minimum counseling is completed. To allow time for at least the minimum course of counseling to be completed we have suggested lengthening the maximum sentence to one year for the first or second offense. In this way an offender could be subject to the court's jurisdiction for the length of time necessary to complete the minimum counseling.

In addition to the ability to provide for a longer sentence, it is also important that a court receive recommendations from the counselor as to any necessary follow-up. The language in subsection (4) (c) on page 5, requires the counselor to make the recommendations which the court may then consider and may choose, based on those recommendations, to order additional counseling. Again, it would be important for the offender to have received a long enough sentence, whether it be deferred or suspended, to be subject to the court's jurisdiction during any period of additional counseling. These provisions are intended to further address the root of the problem, the offender's behavior, which, if not altered, will result a continuation of the cycle of violence in that family or relationship, rising demand for services of domestic violence shelters for his victims, and increased demand on AFDC and medicaid.

Counseling is also added to the list of relief a victim may obtain in a restraining order.

We urge your support of SB 406.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 9
DATE 2-19-93
BILL NO. SB406

RE: Testimony - SB 406

FROM: Janet Cahill, Director, Violence Free Crisis Line, Kalispell, MT

Management Team, Montana Coalition Against Domestic Violence

In the twelve (12) years that I have been providing services to battered women and their children, I have seen the problem of domestic violence grow at an alarming rate. In my program the number of new cases increased 75% between 1989 and 1992. We used to ask why women would stay in an abusive relationship. Now we know that it is frequently more dangerous to leave than to stay. More women are killed when attempting to leave than if they stay. Nationally, over 4,000 women each year are killed. We don't know about these deaths in Montana because they are lumped in with all other homicides.

Some women do try to leave even at great risk. They usually go to shelters for assistance. According to statistics from 16 programs who provide victim services in Montana, shelter was provided to 533 women and 3,058 children for a total of 12,043 nights in 1992. 180 women were turned away because of being overcrowded or having lack of funds to provide services. 9,404 persons sought services as a result of domestic violence.

Since 1985 domestic abuse has been a crime. We have finally held offenders accountable for their actions. But in order to prevent the everincreasing costs to society and particularly to Montana in health care, job loss, victims services, and counseling, we must continue to see that treatment services are offered and are effective. We must continue to emphasize that offenders must change their behavior. Because treatment became mandated in 1989, many programs to provide

these services became available. Professionals trained to provide services specifically directed at changing this behavior are available in most areas. However, they have become overwhelmed with the number of referrals. This results in a waiting period for offenders to enter the program. Because the courts only have jurisdiction over offenders for six months, some have not completed the program. It is highly probable that these offenders will reoffend. With an extension of the jurisdiction to one (1) year, offenders will be able to complete treatment. In addition, in 60% of the cases there is also substance abuse. The treatment provider will then have the option of recommending substance abuse treatment as well.

100% of children in homes where domestic violence occurs are affected by witnessing the abuse. The most alarming effect is modelling the violent behavior. Children as young as 2 have been observed mimicking strangling on their infant siblings. This behavior is acted out in the family as well. Adolescents become at risk for violent crimes, teenage pregnancy and substance abuse. Adolescents also model violent behavior in their relationships. Dating violence is exploding as a serious component of domestic violence. We must include other family and relationship violence in this crime. We can prevent the geometric increase of this problem by holding young offenders accountable as well and offering them an opportunity to learn alternatives to violence before they become a greater cost to society as adults.

The Montana Coalition Against Domestic Violence encourages you to support passage of this important legislation.

EXHIBIT NO. 10
DATE 2-19-93
BILL NO. SB406

TESTIMONY IN SUPPORT OF SENATE BILL 406

Dear Members of the Senate Judiciary Committee:

I want to register my support of this bill. Extension of protection to family members via a Temporary Restraining Order would have helped me in my own personal situation where my ex harassingly called my parents and other family members and friends in an attempt to make contact with me. If my Restraining Order had included my family members, he could have been found in violation of the order, even though I am not convinced that anything would have been done about it. This man has threatened to kidnap our son, and threaten my livelihood. He is [illegible] everyone in the legal system has told me that unless he actually does something, threats are meaningless and do constitute grounds for charges. I have been dismissed by Parole and Probation, Region III director, Mike Gersack, hysterical and unprofessional. As I pointed out to Mr. Gersack until one is on the ground getting their head kicked in, you can't really know how frightening the situation is.

Charges are currently pending against him for domestic abuse for the incident that caused me to leave him, but so far, the case has not proceeded beyond the actual charging. In this vein, I also support an extension of the penalty from six months to one year although, again, I am not convinced that it will make any difference in practice because when these guys are found guilty and convicted, the six months sentence is imposed with all but a certain number of days suspended. If the sentence is extended, and some kind of counseling is ordered, the extension will allow time

for completion of any ordered program and jurisdiction remains with the court until that counseling is completed.

I am discouraged and disillusioned with a system that allows a family member to beat another and it is only a misdemeanor until the perpetrator commits the crime three times, but if a stranger beats another stranger, it can be a felony the first time. This does not make sense to me. My question to the system and you as law makers is, how many people have to die or be forever disabled as Leslie Miller has been. Please do whatever it takes to stop the violence.

Sincerely,

Melody K. Brown

Melody K. Brown

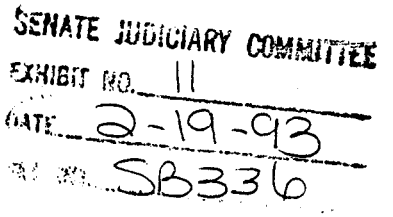
Amendments to Senate Bill No. 336
First Reading Copy

Requested by Senator Yellowtail
For the Committee on Judiciary

Prepared by Valencia Lane
February 18, 1993

1. Page 1, line 21.
   Page 1, line 24.
   Page 2, line 21.
   Page 2, line 24.
   Page 3, line 23.
   Page 4, line 1.
Strike: "percentage"
Insert: "average percent"

2. Page 1, line 22.
   Page 1, line 25.
   Page 2, line 22.
   Page 2, line 25.
   Page 3, line 24.
   Page 4, line 2.
Strike: "other"
Insert: "classified"



DATE 2-19-93

SENATE COMMITTEE ON JUDICIARY

BILLS BEING HEARD TODAY: SJR 13, SB 368, 400, 406

Name	Representing	Bill No.	Check One: Support	Check One: Oppose
CRAIG L. HOBBS	MT. MIG. ASSN & SELF	SB 368		V
Dorothy Clinkenbeard	CSKT Tribe	SB 368	X	
Bunky Hall	CSKT	SB 368	X	
CALEB SHIELDS	FT. PECK TRIBES	SJR 13	X	
Gayla Goss	CSKT	SB 368	X	
Jim Morsette	Chippewa Cree Tribe	SJR 13		V
Bob Servais	N.D.G	368	X	
WAYNE GOSS	BLACKFEET TRIBE	SJR13	X	
Bennie Francis	SoDak Gaming	SJR13	X	
Don Allen	Ft. Peck Tribes	SJR13	X	
Judith Wang	Missoula City Attorney's Office	SB406	X	
Lynnea Wang	Self	SB406	X	
Gloria Hermanson	Save Glendale with the future	SJ13		X
Deanne Sandholm	A.G.	SJR 13		
Jamie Doggett	MT Cattlewomen	SB400	X	
Mike Volesky	MT Assoc. Conservation Dist	SB400	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

F10

DATE 2-19-93

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: SJ 13 - Raine

SB368 - Doherty SB400 - Raine SB406 - Bartlett

Name	Representing	Bill No.	Check One: Support	Check One: Oppose
Larry M-SREK	LAKE Co. ATTORNEY	SB 368		X
Joe Feldmeth	Lake Co. Sheriff	368		X
Gerald L. Rengard	Lake County Commissioner	SB 368		X
Laurie McCrea	CSKT Tribes	SB of B68 SJ13	X	
Rhonda Swaney	CSKT Tribes	SB 368	X	
Ruth Swaney	CSKT Tribes	SB 368	X	
Pat Smith	"	SB 368	X	
GEORGE OCHENSKI	CSK TRIBES	SB 368	X	
JAMES WEBER	CSK TRIBES	SJR 13	X	
CATHRINE R. FLESHER	Clerk of Court	SB406		X
Rose Morigeau	CSKTribes	SB 368	X	
Mike A. Finley	CSK TRIBES	SB 368	X	
Jacque A. Morigeau	CSK TRIBES	SB 368	X	
Doris M. Coleman	"	"	✓	
Joseph F. McDonald	CSK Tribes	SB 368	✓	
Major Bird	CSK Tribes	SB 368	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

F10

DATE 2/19

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: SJR13, SB 368, 400, 406

Name	Representing	Bill No.	Check One: Support	Check One: Oppose
Dave Schulthess	Rep. Dist 20	SJ13	✓	
CC Ibsen	Missoula Police	SB406	✓	
Tootie Welker	MAPP	SB368	✓	
AL Oaks	BLFT Tribe			
Mark E. Nelson / Ronan	Self	SJ13		✓
Steve Schmitz	DNRC	SB 400	✓	
Amy Pfeifer	Women's Law Section	SB 406	✓	
Mark E. Nelson / Ronan	Self	SB368		✓
Beth Baker	Dept of Justice	SB368	✓	
Craig L. Hoppe	Mt. Magistrates Assn	SB406	X	
Denise Sands	MT. Women's Lobby	SB406	X	

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DATE 2-19-93

SENATE COMMITTEE ON JUDICIARY

BILLS BEING HEARD TODAY: SJR 13, SB 368, 400, 406

Name	Representing	Bill No.	Check One: Support	Oppose
Rep. Angela Russell	Representative House	368	✓	
Kathleen Fleury	Indian Affairs	368	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

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