

## **MINUTES**

### **MONTANA HOUSE OF REPRESENTATIVES 53rd LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON JUDICIARY**

**Call to Order:** By CHAIRMAN RUSSELL FAGG, on March 17, 1993, at 8:00 a.m.

#### **ROLL CALL**

##### **Members Present:**

Rep. Russ Fagg, Chairman (R)  
Rep. Randy Vogel, Vice Chairman (R)  
Rep. Dave Brown, Vice Chairman (D)  
Rep. Ellen Bergman (R)  
Rep. Jody Bird (D)  
Rep. Vivian Brooke (D)  
Rep. Bob Clark (R)  
Rep. Duane Grimes (R)  
Rep. Scott McCulloch (D)  
Rep. Jim Rice (R)  
Rep. Angela Russell (D)  
Rep. Tim Sayles (R)  
Rep. Liz Smith (R)  
Rep. Bill Tash (R)  
Rep. Howard Toole (D)  
Rep. Tim Whalen (D)  
Rep. Diana Wyatt (D)

**Members Excused:** None

**Members Absent:** Rep. Karyl Winslow (R)

**Staff Present:** John MacMaster, Legislative Council  
Beth Miksche, Committee Secretary

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

##### **Committee Business Summary:**

Hearing: SB 406, SB 323, SB 179, SB 264, SB 344  
Executive Action: SB 37

#### **HEARING ON SB 406**

##### **Opening Statement by Sponsor:**

SEN. SUE BARTLETT, Senate District 23, Helena, said that SB 406 expands the temporary restraining order laws and the criminal laws that protect persons against domestic abuse.

She said that Section 1 extends restraining orders to a broader

class of people, i.e. family members, those who have had dating or intimate relationships and cohabitation; in current law, temporary restraining orders are only available to individuals who have been married or who are cohabiting or have cohabited. Section 1 would make it clear that a person receiving a restraining order may also be restrained, but only if that person is found to use abusive behavior. It provides a definition for bodily injury similar to other criminal statutes. Section 2 deals with the provisions of domestic abuse.

**Proponents' Testimony:**

Judy Wang, Assistant City Attorney, City of Missoula, submitted written testimony. EXHIBITS 1, 1A through 1E and 2

Janet Cahill, Montana Coalition Against Domestic Violence, said that domestic violence has increased 75 percent and that over 4,000 women are helped annually nationwide. Some women choose not to leave a violent situation because it's more frightening for them to leave the relationship than stay. All children are affected by their parents' violent behavior, some as young as two years old.

Amy Pfeifer, Chairman, Women's Law Section, State Bar of Montana, presented written testimony. EXHIBIT 3

Craig Hoppe, Montana Magistrates Association (MMA), said the MMA supports this bill but doesn't believe that six months jurisdiction is adequate treatment time for the abuser.

**Opponents' Testimony:** None

**Questions From Committee Members and Responses:**

REP. TASH asked Ms. Pfeifer why domestic abuse laws aren't applicable to assault law and whether, if the perpetrator is charged under the assault laws, he is expected to go through domestic counseling. Ms. Pfeifer said in many cases they are. One of the reasons for this bill is to treat the parties involved under the domestic violence statute to stop the cycle of abuse in the family relationship. Regular assault doesn't have the minimum counseling requirement, whereas in domestic violence there is a minimum counseling requirement.

REP. TOOLE referred to page 5, lines 4-7 and said the ramification of temporary orders has been changed; by deleting the words "before final decree," this bill is allowing modification of temporary orders by affidavit on a permanent basis. Affidavit procedure is a lot different from most hearings, and he asked Ms. Pfeifer what the intent is. Ms. Pfeifer said the intent is to file an affidavit and follow up

with a hearing. Part of the problem is that current language doesn't cover a temporary restraining order (TRO) as covered in Department of Family Services (DFS) statutes. The language needs to be cleaned up to cover marriage and divorce situations.

REP. RICE referred to page 4, subsection 9, and asked Ms. Wang if that provision ties into the provision of domestic abuse statute as described in subsection (3)(a). Ms. Wang said many TROs don't hold domestic abuse charges; generally, they're grounds for domestic abuse charges. She said it's possible a TRO could have been used in the past.

Closing by Sponsor: None

#### HEARING ON SB 323

#### Opening Statement by Sponsor:

SEN. B. F. CHRISTIAENS, Senate District 18, Great Falls, addressed several new areas in the bill. On page 2, line 14, the word "youthful" was struck in the Senate Judiciary Committee, and on line 18, instead of 5 years, it should read 1 year. Also, page 2, lines 21-23 have been deleted from bill.

This bill is a new idea in Montana corrections. There are "boot camps" already in existence in other states; the state of Wyoming has had boot camp operations for the past two years, and the successes of that program are just coming forward. Probably about 72 percent who have gone through boot camp have remained out of prison for over one year; nationwide, the average of people leaving prisons is at about an 85 percent recidivism.

This Shock Incarceration center would be located at the Swan River Forest Camp and would have a great deal of emphasis on discipline, physical exercise, building up self-esteem. Young first-time incarcerated individuals would be sentenced there. They would later be reviewed and sent to a Pre-Release Center before being paroled back out into the communities. SEN. CHRISTIAENS showed a tape on the boot camp in Wyoming to give the committee a better understanding of the camp and its intent.

#### Proponents' Testimony:

Jim Pomroy, Department of Corrections and Human Services (DCHS), added that the boot camp would be a 120-day program. In talking to staffs of boot camps around the country, one of the things that Mr. Pomroy feels is lacking is the follow-up of boot camp experience. People go through a very rigid structured program, and they do feel good about themselves; then they're dropped back onto the streets and into the neighborhoods from which they came. Following boot camp, DCHS would like to send inmates to the Pre-

Release program for approximately 60 days. DCHS does not want to create a 6-month or 8-month pre-release program; the department intends to get these people rehabilitated in the most effective and efficient way possible.

Generally, when someone successfully completes a boot camp program, the staff contacts the judge and petitions for reduction of sentence. The remainder of the sentence stands on a provision status under supervision of the parole officer. EXHIBITS 4 and 5

Opponents' Testimony: None

Questions From Committee Members and Responses:

REP. TASH asked Mr. Pomroy what the purpose of boot camp is, besides establishing discipline. He also asked whether this new procedure could be perceived as a violation of civil rights. Mr. Pomroy said it should not violate their civil rights due to the fact that boot camps are operational now. Organizations such as ACLU have expressed concern, but they realize that participants choose this program voluntarily after understanding what is expected of them before they are given the opportunity to transfer. He doesn't believe there will be a legal problem from any civil rights organization.

REP. SMITH asked Mr. Pomroy if DCHS plans to employ more shock incarceration programs, doing away with incarceration. Mr. Pomroy said that the state prison system is offering the opportunity to parole many people who would not be able to participate in the boot camp and implement new programs at Montana State Prison. Increased community programs are being planned.

REP. BIRD asked Mr. Pomroy the results for people who have gone through the boot camp. Mr. Pomroy said the probation follow-up has only been in effect for two years. To date, recidivism rates around the country do not approach the standard level. Because of the physical requirements of the program, the age groups attending boot camp will be 25 to 35 years of age; the low-end age would be 19. REP. BIRD asked if a minor, a 14-year old for example, would be eligible for this program. Mr. Pomroy could only give his opinion that it would be reasonable that anyone committed to the Montana State Prison system would be eligible for this program, including someone as young as 14; but that is very rare. Generally, someone that age who was sent to Montana State Prison would have been sentenced for a heinous crime that would affect participation in this program.

REP. WYATT asked why the word "shock incarceration" was chosen. SEN. CHRISTIANS said that shock incarceration is used because it is a short-term situation. For a person who comes in without military background, the first few days can be tough, but it gets

their attention. With the regimented program, people start seeing differences physically as well as mentally. He made it very clear that the people who enter this program have the choice of the boot camp program or prison. In the near future at the boot camp, there will be rehabilitation programs including education and drug-dependency counseling which most offenders need. In the beginning, however, these offenders need a very structured life before going to the outside.

REP. BROWN asked Mr. Pomroy how the Montana State Prison system will fund the extra \$500,000 a year, whether it would be just cut backs in Swan River, i.e., personnel and buildings. Mr. Pomroy said it's all of those things. The intended staff of 27 has been reduced to 18. There will also be fewer inmates.

REP. RUSSELL, like REP. WYATT, is concerned with the term "shock" and asked Mr. Pomroy if he had any problems changing the name to boot camp. Mr. Pomroy did not have a problem changing the name to boot camp.

REP. RUSSELL stated that 14-year-olds are too young to go through this program with these men and asked SEN. CHRISTIAENS to comment. He agreed with Mr. Pomroy that a 14-year-old sent to Montana State Prison would be there for a heinous crime. That individual would be considered a dangerous offender and would need a much stricter environment. However, there are demonstration projects being planned for juveniles.

REP. BROOKE asked SEN. CHRISTIAENS if the Swan River program will apply to women. SEN. CHRISTIAENS said that at the moment, he doesn't believe it does because it's difficult to have a coed vocational program in this particular boot camp. There may be a plan for such a program down the road.

#### Closing by Sponsor:

SEN. CHRISTIAENS believes this program is needed to address first-time offenders. When the state prison system continues to do the same thing year after year with the same negative results, there needs to be a new direction. This program offers a positive change to the state prison system and its offenders.

#### HEARING ON SB 179

#### Opening Statement by Sponsor:

SEN. B. F. CHRISTIAENS, Senate District 18, Great Falls, said this bill allows private, for-profit Montana corporations to contract and operate community-based Pre-Release Centers (PRC). Currently, PRCs in the state, with the exception of the state-operated women's program in Billings and the program in Missoula, are private, non-profit. This session, the state is looking at

an expansion of community corrections. This new concept will allow the state to contract with corporations.

SEN. CHRISTIAENS said that the statement of intent added in the Senate Judiciary Committee is illegal. SEN. CHRISTIAENS asked Mr. MacMaster to change the language or have it stricken because, apparently, it is illegal to mandate that for-profit corporations have a collective bargaining agreement in place.

There will be opposition from laborers that for-profit organizations do not pay a competitive wage. SEN. CHRISTIAENS told the committee that non-profit organizations in Montana haven't been paying as much or more than state programs. He said that he is no longer director of the Great Falls PRC, and the Board will hire his replacement at between \$32,000 and \$37,000, more than what SEN. CHRISTIAENS made when he left as director.

#### Proponents' Testimony:

Jim Pomroy, Department of Corrections and Human Services (DCHS), told the committee that DCHS, in lieu of expansion, has increased the proportion of offenders in facilities located in community programs. To date, the department's correction population projections have been quite accurate, and there is no evidence to suggest that the size of the correctional population will decrease in the near future. This bill may encourage potential service providers to offer services to the department. The bill also makes competition more possible within the contract of services. Given the department's intention to expand community programs as much as possible, any interest in developing additional services will assist the department's efforts. Finally, profit-oriented corporations may be able to initiate service programs more quickly than non-profit organizations.

#### Opponents' Testimony:

Terry Minow, Montana Federation of State Employees, presented written testimony. EXHIBIT 6

#### Questions From Committee Members and Responses:

REP. BROWN asked Mr. Pomroy to explain how for-profit corporations can make money in this area when that isn't working now. Mr. Pomroy said there are a number of plans involved. At the present time, there is very little incentive for non-profit organizations to seek other sources of revenue, such as federal boarders or collection of funds from inmates. While non-profits are able to do some of that, their budgets are dependent on DCHS approval; when non-profits collect federal dollars for federal boarders, DCHS wants its cost per day reduced. There's very little incentive to bring that income into Montana.

REP. BROWN said that, when the legislature passed SEN. WATERMAN'S SB 193 and SB 194, it appeared to him that the legislature was going to allow fees to revert to the halfway homes as a direct offset to save state money. He asked Mr. Pomroy what the difference is between this bill and SBs 193 and 194. Mr. Pomroy said he was not familiar with those bills.

Closing by Sponsor:

SEN. CHRISTIAENS said the state needs additional community corrections in order to fulfill the obligations of the department. The state must provide the necessary services to inmates to get them into a successful community setting.

HEARING ON SB 264

Opening Statement by Sponsor:

SEN. FRED VAN VALKENBURG, Senate District 30, Missoula, said that SB 264 would eliminate the requirement that local jail administrators notify certain persons of the release of people from jail. The bill would not change the situation with respect to notification of law enforcement or victims of violent crime when people are released from the state prison, state hospital or other state institutions. In those instances, the releasing authorities generally know well in advance when a release or parole date has been established or when a discharge or release date has been established. It's fairly easy under those circumstances to provide that kind of release.

The language included in REP. DAVE BROWN'S 1991 bill was also applicable to local jails. Local jails deal with individuals who, on a daily basis, are being released by posting bond, etc. The magistrate has released them on their own recognizance or lowered bail, so they can post bond immediately. Under those circumstances, it is extremely difficult for local law enforcement officials to provide the type of release that the statute now requires.

Prosecutors and law enforcement people always attempt to notify victims that people are being released from jail. However, this requirement creates the potential of liability on the part of local government if it fails to comply with these notices. In the event of damage and if notice had not been provided, there is the potential of a lawsuit against the local county or police.

Proponents' Testimony:

J. Michael O'Hara, Missoula County Sheriff. Mr. O'Hara supports SB 264 and was available for questioning.

Opponents' Testimony: None

Questions From Committee Members and Responses: None

Closing by Sponsor: None

HEARING ON SB 344

Opening Statement by Sponsor:

SEN. MIGNON WATERMAN, Senate District 22, Helena, said that SB 344 clarifies when pre-sentence investigations occur. There has been confusion in the past about whether or not pre-sentence evaluations are always required for use. Judges will still be able to specify evaluations whenever they believe it will help them make an appropriate determination.

Proponents' Testimony:

Mike Ferriter, Chief, Community Corrections Bureau, said this is not the department's first attempt to revise and clarify this statute. In 1989 the department requested revisions in order to specify who was qualified to perform sex offender evaluations and who would pay for them. As a result of the 1989 and 1991 revisions, the language and the intent of 46-18-111 has become very skewed. SB 344 simply brings back some of the original language specifically addressing sex offenses, the need for evaluation of sex offenders, and the payment responsibility for these evaluations.

Opponents' Testimony: None

Questions From Committee Members and Responses: None

Closing by Sponsor: None

EXECUTIVE ACTION ON SB 37

Motion/Vote: REP. WYATT MOVED SB 37 BE RECONSIDERED.

Discussion:

REP. WHALEN asked REP. WYATT on what basis the bill should be reconsidered. REP. WYATT said that many articles have appeared in the Great Falls Tribune and The Missoulian calling for the House Judiciary Committee to reconsider this bill due to the



murder of Dr. Dunn, the Florida physician who performed abortions. She asked the committee to reconsider also because too many people take the law into their own hands.

REP. WHALEN asked what the death of Dr. Dunn had to do with the committee's action on this bill. REP. WYATT said the point, in general, of the stalking bill is to stop behavior before tragedy occurs. She hopes this legislation protects people from being abused, murdered or offended before those things can happen, so long as those protections do not breach constitutionally protected authority. REP. WHALEN didn't see the connection between the stalking bill and that act of murder. He said that the state of Florida has had a stalking bill for two years, and it didn't protect Dr. Dunn from being murdered.

REP. BROOKE doesn't think the state of Montana is far from the point of having an incident like the one in Florida. She reiterated REP. WYATT's statements, that this bill is an interim measure, a deterrent, a warning to abuse, assaults, murders and more physically destructive damage to people and their property. She emphasized that Montana has a reputation for acts of violence in this area. She urged the committee's vote of reconsideration.

Further testimony in support of SB 37 had been sent by SEN. MAX BAUCUS, United States Senate, Washington, D.C., EXHIBIT 7, and Janet Cahill, Director, Violence Free Crisis Line, Kalispell, EXHIBIT 8.

REP. GRIMES supported the motion to reconsider. He reiterated that it is not the committee's intention that this bill should cause harm or destruction to anybody or anything.

REP. SAYLES stated the committee has gotten away from the intent of the bill. This bill has to do with stalking. He said the committee has forgotten this bill was drafted because a juvenile was stalked for a year. He urged the committee to pass the bill as it is written and discontinue the discussion.

REP. TOOLE said that if Montana needs a stalking law, then it should be defined adequately. Constitutionally protected activities are not to be included.

**Vote:** SB 37 BE RECONSIDERED. Motion carried 15-3, with REPS. BERGMAN, CLARK and WHALEN voting no.

**Motion/Vote:** REP. RICE offered an amendment to strike an amendment passed by the committee March 12. That amendment is the sentence in the statement of intent on page 2, lines 2 and 3. Motion carried unanimously.

**Motion:** REP. RICE offered an amendment to insert on page 2, line 5, after "picket": ", to peacefully protest, to distribute literature, and to lawfully communicate with persons in public places,"

**Discussion:**

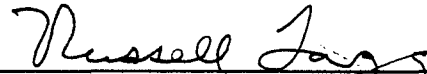
REP. RICE offered this amendment because he believes the bill needs clarification that the legislature is not trying to infringe on constitutionally protected rights.

**Vote:** REP. RICE'S amendment to peacefully protest carries 11-7 with REPS. BIRD, BROOKE, MCCULLOCH, RUSSELL, SAYLES, TOOLE and WYATT voting no.


**Motion/Vote:** REP. CLARK MOVED SB 37 BE CONCURRED IN AS AMENDED. Motion carried unanimously.

**ADJOURNMENT**

Adjournment: 12:00 p.m.



REP. RUSSELL FAGG, Chairman



BETH MIKSCHKE, Secretary

RF/bcm

## HOUSE OF REPRESENTATIVES

Judiciary

COMMITTEE

ROLL CALL

DATE

3-17-93

NAME	PRESENT	ABSENT	EXCUSED
Rep. Russ Fagg, Chairman	✓		
Rep. Randy Vogel, Vice-Chair	✓		
Rep. Dave Brown, Vice-Chair	✓		
Rep. Jodi Bird	✓		
Rep. Ellen Bergman	✓		
Rep. Vivian Brooke	✓		
Rep. Bob Clark	✓		
Rep. Duane Grimes	✓		
Rep. Scott McCulloch	✓		
Rep. Jim Rice	✓		
Rep. Angela Russell	✓		
Rep. Tim Savles	✓		
Rep. Liz Smith	✓		
Rep. Bill Tash	✓		
Rep. Howard Toole	✓		
Rep. Tim Whalen	✓		
Rep. Karyl Winslow		✓	
Rep. Diana Wyatt	✓		

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## HOUSE OF REPRESENTATIVES

Judiciary

COMMITTEE

## ROLL CALL VOTE

DATE 3-17-93 BILL NO. SB 37 NUMBER 18MOTION: SB 37 Be concurred in as amended  
carried unanimously 18-0

NAME	AYE	NO
Rep. Russ Fagg, Chairman	✓	
Rep. Randy Vogel, Vice-Chair	✓	
Rep. Dave Brown, Vice-Chair	✓	
Rep. Jodi Bird	✓	
Rep. Ellen Bergman	✓	
Rep. Vivian Brooke	✓	
Rep. Bob Clark	✓	
Rep. Duane Grimes	✓	
Rep. Scott McCulloch	✓	
Rep. Jim Rice	✓	
Rep. Angela Russell	✓	
Rep. Tim Sayles	✓	
Rep. Liz Smith	✓	
Rep. Bill Tash	✓	
Rep. Howard Toole	✓	
Rep. Tim Whalen	✓	
Rep. Karyl Winslow	✓	
Rep. Diana Wyatt	✓	

## HOUSE OF REPRESENTATIVES

Judiciary

COMMITTEE

## ROLL CALL VOTE

DATE 3-17-93 BILL NO. SB 37 NUMBER 18MOTION: Rep. Rice's Amendment carried 11-7

NAME	AYE	NO
Rep. Russ Fagg, Chairman	✓	
Rep. Randy Vogel, Vice-Chair	✓	
Rep. Dave Brown, Vice-Chair	✓	
Rep. Jodi Bird		✓
Rep. Ellen Bergman	✓	
Rep. Vivian Brooke	✓	✓
Rep. Bob Clark	✓	
Rep. Duane Grimes	✓	
Rep. Scott McCulloch		✓
Rep. Jim Rice	✓	
Rep. Angela Russell		✓
Rep. Tim Sayles		✓
Rep. Liz Smith	✓	
Rep. Bill Tash	✓	
Rep. Howard Toole		✓
Rep. Tim Whalen	✓	
Rep. Karyl Winslow	✓	
Rep. Diana Wyatt		✓
	11	7

TESTIMONY OF JUDY WANG  
ASSISTANT CITY ATTORNEY, CITY OF MISSOULA

Date: March 17, 1993

Forum: House Judiciary Committee

Topic: Senate Bill 406

INTRODUCTION

Domestic violence occurs between family members and in partner relationships. The stronger, more controlling person in the relationship preys upon the weaker person with physical abuse and/or emotional terrorism. The abuser has easy access to the victim because of many bonds including finances, emotions and legal relationships. Domestic violence laws are enacted primarily for victim protection. The secondary purpose of domestic violence laws is to treat and punish abusers.

Montana's laws concerning domestic violence need to be amended to provide family and partner violence victims protection under these statutes. Additionally, the amendments in Senate Bill 406 provide an opportunity for better intervention with abusers. Better intervention may decrease the likelihood that the abuser will re-offend.

TEMPORARY RESTRAINING ORDERS

Three general changes are proposed to amend the temporary restraining order statute. First, the definition of persons who are eligible to apply for a restraining order is amended to include presently excluded partners and family members. Secondly, changes

are proposed in regards to how long an abuser may be restrained by a temporary restraining order and who may be restrained by the order. An amendment is proposed which will allow judges to grant permanent restraining orders if the facts warrant such an order. Finally, the proposed changes will allow a judge to direct a party before the judge on a temporary restraining order to complete alcohol or other counseling if that is appropriate.

#### PERSONS ELIGIBLE

Under the TRO statute as it is presently enacted, the only persons eligible for temporary restraining order protections are spouses, former spouses, persons "cohabitating" or persons who have "cohabitated" within the last year. Thus, a mother, injured by a violent son, cannot obtain a temporary restraining order to exclude him from the household. A daughter, an incest victim by her stepfather, cannot seek protection under Montana's temporary restraining order laws as they are presently drafted. A woman who has parented children with her partner, but never set up one household with him, is not eligible for temporary restraining order protections even though he has injured her. Clearly, all three examples demonstrate victims who need protection from their abusers. Under the present definitions, however, none of those three persons may seek temporary restraining orders.

The proposed definitions add family members and partners as persons eligible for these protections. If the proposals are adopted the victims in the above circumstances could apply for temporary restraining orders.

EXHIBIT # 1  
DATE 3-17-93  
1 SB-406

#### MUTUAL TRO'S

Under the laws as they are presently drafted, many judges regularly issue "mutual" restraining orders. These judges order the victim to follow the same conditions and restrictions as are placed on the abuser. The problem with a "mutual" restraining order is that generally the victim has not been violent and does not present any danger to the abuser. Once the restraining order has been made "mutual" the victim is criminally culpable for TRO violations. The victim, who has not been violent, is placed under the same restrictions as the abuser. That simply isn't fair.

Under Senate Bill 406 judges could order that restraining orders are mutual in effect only under certain circumstances. The judge must find as fact that both the petitioner and the respondent were violent or made serious threats of violence. If the judge finds as fact that both parties were violent or threatened violence, the judge may make the restraining order mutual in effect.

#### DURATION OF TRO

Senate Bill 406 clarifies who may renew a restraining order and provides that a judge may order the restraining order to be in effect permanently, should the facts call for a permanent restraining order.

Under the present statutory framework, only persons who have been married to their abuser may return to the court for a second one year restraining order. A victim who lived with her abuser but had not married him may only seek a one year restraining order



under current Montana law. At the end of that year, even if there were many violations of the TRO during the one year time span, she or he cannot return for an additional temporary restraining order. As the amendments are proposed, all victims who are eligible for a temporary restraining order may return for an additional restraining order after the initial restraining order has expired.

If the judge finds as fact that the violence is so severe that a permanent injunction is necessary, the judge may order that the injunction remain in effect permanently. While it may not appear to be an imposition to require the petitioner to return on a yearly basis to obtain another restraining order, that may not be the case. Frequently victims who seek restraining orders are terrified of their abuser. Often the threats and the abuse escalate if the victim seeks any kind of help at all. Threats may include "if you ever get a restraining order I'll kill you." A temporary restraining order hearing, by definition, requires the victim to confront his or her abuser. It is a stressful situation, time consuming and actually subjects the victim to potentially more violence. Under the amendments, one temporary restraining order hearing would be all that is required to enjoin an incredibly violent person from harassing their victim permanently.

This revision eliminates a problem that occurred in Missoula County within the last year. In the course of granting a divorce, some district court judges have ordered an abusive spouse to permanently stay away from their victim. Unfortunately, there isn't clear statutory authority for the impact of such an order.

EXHIBIT #1  
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A divorce decree violation does not carry criminal penalties which follow a violation of a temporary restraining order. Thus, the only remedy for violation of a permanent divorce decree injunction is contempt of court. Peace officers are not ordered to prefer to arrest when investigating a divorce decree violation case. The proposed modifications to the temporary restraining order statute eliminate those problems.

#### COUNSELING

Frequently a person who seeks a temporary restraining order does not also press criminal charges. Often one party in a TRO has severe problems which counseling may help. Under the temporary restraining order statute as modified by Senate Bill 406, judges could order a party to a temporary restraining order to complete counseling.

#### DOMESTIC ABUSE STATUTE

Four basic changes to the domestic abuse statute are proposed in Senate Bill 406. The definitions of victims protected are changed to include more family members and partners as eligible for protections. Secondly, the offense category of negligent injury with a weapon is added, to make the domestic abuse statute more consistent with the assault statute. The proposal provides for potentially enhanced penalties, up to one year maximum incarceration for first and second time offenders and a minimum incarceration of 10 days for a third offense domestic abuser. Finally the amendments address the problem presented by an abuser with severe emotional and/or chemical dependency problems that

cannot be resolved within 25 hours of counseling.

#### PERSONS ELIGIBLE

Under the temporary restraining order statute and the domestic abuse law as they are currently enacted, persons eligible for the protections offered by those laws are defined differently. Thus, an adult daughter who is abused by her father could have domestic abuse charges pressed against her father but would not be eligible for the protections provided under Montana's temporary restraining order statute. The proposed amendment provides identical family member and partner definitions in the TRO and domestic abuse statutes. The definitions, as proposed, will include family members of the household and persons who have been involved in an ongoing dating or intimate relationship. Under the new definitions, previously excluded victims, such as women who have had children with their abuser but have not set up a common household with the abuser, will now be covered by the protections offered under these laws.

#### NEGLIGENT INJURY WITH A WEAPON

Montana's assault statute, Mont. Code Ann. § 45-5-201 (1991), prohibits negligently injuring another with a weapon. That offense subsection is not presently included in Montana's domestic abuse statute. Thus, negligently injuring a stranger with a weapon is an offense. If you negligently injured a family member or partner with a weapon that assault would not be a domestic abuse. That is a nonsensical distinction. Because of the inconsistency between the assault and domestic abuse statute, Senate Bill 406 includes

negligent injury with a weapon as an offense to Montana's domestic abuse law.

#### PENALTIES

The proposal changes the maximum and minimum penalties for first and third time domestic abuse offenders.

Under the present law, the maximum sentence that can be given to a first or second time offender is six months incarceration. Frequently, these offenders are sentenced to six months incarceration, the incarceration suspended provided that the abuser follow a number of conditions. The conditions must include at least 25 hours of domestic violence counseling. In some locations in Montana there is a long waiting period before counseling can be started. Many abusers are resistant to counseling and delay enrollment in counseling for a number of months. With a maximum suspended sentence time period of six months, frequently the abuser does not fully complete the required counseling. The amendment is designed to allow the court to maintain jurisdiction over the abuser for up to one year.

The amendments define a minimum sentence of incarceration upon a third offense conviction. Once an abuser has been convicted on three domestic abuse charges, ten days incarceration is proposed as the minimum incarceration.

#### COUNSELING

Often during counseling, the abuser's counselor learns that the abuser has significant emotional problems. Many abusers have severe violence problems which require far more than twenty five

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hours of counseling to treat. Other abusers have alcohol problems and/or severe substance abuse issues. This proposal provides for a referral back to the court if the abuser's counselor determines that an abuser has mental health issues that require additional counseling beyond the minimum twenty-five hours. As the statute is currently enacted, an abuser with additional problems simply has those problems unaddressed.

#### CONCLUSION

A large number of family members and partner victims are not protected by Montana's current domestic abuse laws. These laws need to be revised so that family member and partner victims are eligible for these protections. The proposed revisions will provide courts with a stronger tools to enforce needed counseling and appropriate restrictions on abusers.

EXHIBIT # 1A  
DATE 3-17-93  
BB 406

February 17, 1993

Dear Ms. Bartlett,

I am writing in support of Senate Bill 406. I hope that my story will help.

I was once in a romantic relationship with a man. We had been dating for a couple of years, but had never lived together. We broke up and would get back together off and on during these two years. It was a very rocky relationship.

The last break up we had I would not let him back into my life. One morning, about a month after we had quit dating, he called me and wanted to come over to talk, which he frequently did. I always thought it was better to let him talk out whatever he needed to rather than to make him angry. I told him I would be home all day.

In a half-hour he was there. I was still in bed. The back door was unlocked because it was still early and my kids had stayed the night with some friends, and I wanted them to be able to just come in the house when they got home. He walked right in. He came into my bedroom, and asked me where I had been the night before. I told him that I had gone out with some friends. He then accused me of sleeping around with other men. I told him I wasn't seeing anyone, but even if I were it wasn't any of his business because we were broke up. At this point we were standing face to face arguing. I saw him make a fist and swing back to hit me. My thoughts were that he really didn't mean to do this to me. He knocked me down, I got back up, trying to reason with him. He did it again, I got back up, and this went on three or four more times. Finally, I figured that if I just stayed down he wouldn't hit me again. That's when he started kicking me in the stomach and chest. I will never forget the humiliation and pain that I felt. He finally left and on his way out he was destroying any object that he could get his hands on. I called a friend and she came right over. At this point I wanted to forget everything.

He still wouldn't stay out of my life. He would call up my oldest son, then thirteen years old. He would talk to him and make plans to go fishing. I would tell him to leave us alone, to no avail. Two or three days later I ended up going to the police and pressing charges. The bruises were still very much there.

The trial would end up being six months later. During the time I was waiting for it I would receive hang up phone calls, notes, and other signs that he would leave just to let me know that he had been around there. He would follow me to work, follow my friends around, follow me any time I was in my car. He would borrow vehicles from other people to follow me in. He would call my work, and once he even yelled obscenities at me at a restaurant. Whenever I would see him I would call the police. I would not be in their records, there was no restraining order against him on me because we were never married or lived together. According to the police it was not domestic abuse. There was not much they could do for me unless he attacked me again. Basically, he could follow me around, torment me and I had to live with it.

We finally came to the trial date. He was found guilty of the assault. Although I wasn't the first woman he abused, I was the first one who had pressed charges. His punishment was a one year deferred sentence.

Enduring the humiliation of the assault, and feeling helpless is something that I hope I never have to live through again. All I gotten was beaten, followed and tormented. I do not wish it upon anybody to go through anything like that. To feel so completely powerless is not freedom. I hope that Senate Bill 406 passes.

Thank you for listening to my story. I hope that if nothing more my experience helps protect the victims. I am withholding my name for fear that he may find out about this letter and he may start all over again

Sincerely,

A handwritten signature in dark ink, appearing to be the initials 'D.F.' with a stylized flourish.

D.F.

Joseph Scalia III, M.Ed., CCMHC  
300 N. Willson Ave., Ste. 3000  
Bozeman, Montana 59715

EXHIBIT 1B  
DATE 3-17-93  
SB 406

Psychotherapy  
Bozeman Medical Arts Center  
(406) 586-0870

March 12, 1993

Regarding: Senate Bill 406  
House Judiciary Committee Hearing

Dear Committee Members,

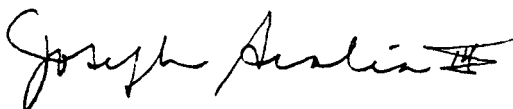
As a practicing psychotherapist for the past fourteen years and as therapist for the past three-plus years leading groups for men court-ordered to domestic violence counseling and also bringing the experience of treating these men in more individualized and non-time-limited therapy, I have considerable background out of which to comment on certain aspects of SB 406.

From a clinical perspective, the existing mandated 25 hours of treatment is quite inadequate. In fact, my opinion is specific and clear regarding what is needed clinically. Ideally, these services would only be provided by the most experienced and poised licensed mental health professionals. Comprehensive personality assessments would be conducted and treatment recommendations would only then be made. Typically, when treatment would be recommended, quite long-term treatment would be needed. The imparting of cognitive components to the patient is relatively easy and uncomplicated. However, addressing and altering the deep personality attributes which complicate the patient's implementing the cognitive -- it is herein that we find the need for a much more depth-oriented and extensive treatment than existing laws allow for.

While I would see the licensed therapist being allowed the clinical autonomy to determine treatment length as prognostically more favorable, SB 406's provision for the therapist to have the referring court consider his recommendation for some additional treatment after the completion of the first 25 hours -- that would certainly be a considerable improvement over the present situation. The provision that the therapist could also recommend chemical dependency treatment when needed would also be an improvement. Any change in the law which would allow the licensed clinician greater determination of the course of treatment would make for improved prognoses for batterers and their intimate others.

Thank you for your consideration of these matters.

Respectfully,



Joseph Scalia III, M.Ed., CCMHC  
Licensed Professional Counselor



EXHIBIT # 1C  
DATE 3-17-93  
BB 406

FORUM: HOUSE JUDICIARY COMMITTEE  
TOPIC: SENATE BILL 406  
DATE: MARCH 17, 1993

In my position as the Crime Victims Advocate in Missoula County, I estimate that 75% of my work deals with victims of domestic violence. It has been my experience that the statute as presently written is, in many cases, inadequate in providing the abused victim the protection needed.

I have two areas of specific concern. One is the need for the definition of family member to be changed as proposed in Senate Bill 406. Very often I deal with victims in an abusive dating relationship with most of the conditions necessary to obtain a temporary restraining order present. The missing qualification is usually found in the "living together" clause. The problem is, their lives are no less in danger than the lives of those who do live in the same household, and yet, very little can be offered to them in the way of protection.

My second area of concern has to do with the present number of hours required for the abuser to attend anger control counseling. It is most often impossible for an abusive person to make any long term behavioral changes in 25 weeks, and it is misleading for the victims of violence to believe that upon completion of the classes the behavior has been eliminated.

Based on my observations over the 2 1/2 years in my present position, I feel it is imperative for Senate Bill 406 to be passed and to include the changes as written.

Ann Archibald

Ann Archibald  
Crime Victims Advocate



EXHIBIT 1-D  
DATE 3-17-93  
SB 406

1130 West Broadway  
Missoula, MT 59802  
(406) 543-6691

March 15, 1993

House Judicial Committee:

The YWCA Domestic Violence Assistance Center of Missoula fully supports SB 406. From our experiences with battered women and children, we believe the state of Montana needs to do all it can to protect victims of domestic violence. The following statistics show how immense the problem of domestic violence is: At least 1.8 million women will be battered this year. (FBI) Battering is the single major cause of death to women. More women enter emergency rooms for injuries as the result of battering than auto accidents, muggings and rapes combined. (Surgeon General, 1984).

We believe that SB 406 is an important step in protecting domestic violence victims against violent crime. We encourage each of you to support SB 406. Thank you.

Sincerely,

*Keeley Titus*

Keeley Titus

*Kelly Slattery-Robinson*

Kelly Slattery-Robinson

*Anita Coryell*

Anita Coryell

March 16, 1992

To: House Judiciary Committee  
RE: Domestic Abuse

EXHIBIT 1E  
DATE 3-17-93  
SB 406

For the longest time, I've struggled through the system, determined to exercise my right, as a human being, to live in peace and in safety. Not just for myself, ~~but for myself~~, but for my children as well.

During this struggle I have found that, yes, we do have a system, but somewhere along the way, we lost what this "system" was designed to provide for each man, woman, and child. I have found there is no justice. And justice is what I and my children have a right to expect as victims of a world we didn't create.

We can't change what's happened in the past. But the present and the future are another story. Everything has a beginning. Everything has an ending. Now is the time to stop victimizing the victims and start granting justice where justice is deserved and should be expected by us all.

For almost a year, I was beaten, sodomized, and brutally raped 3-4 times a week. I was threatened that if I left, he would find me. I believed he would kill me when he did, and several times he came close.

Have you ~~ever~~ <sup>ever</sup> heard the sound of your own neck beginning to snap? Have you ever felt the intense pain and pressure and Throbbing of your swollen & bruised head after it has been pounded

3  
6

mercilessly on a hardwood floor, hearing the "thud", feeling the blunt driving force of another's hands hurtling your cries, pleas, feelings, your heart and your soul through space and time.

And in that space and time, I was praying, desperately hoping that someone, somehow, somewhere would step in. Someone, somehow, somewhere would find a way to make it alright. Someone never came, somehow no one heard my screams, somewhere, somewhere we lost justice.

For some twisted, unknown reason, he was never punished. Oh, maybe 2 days in jail, served at his convenience, and a little counseling here and there. But I was sentenced to life with a chemical imbalance in my brain, to migraine headaches, to a back and hip so badly injured, I am no longer able to run, without extreme pain. But worst of all, I was sentenced to a life of bad dreams, horrible nightmares and a sense of distrust so strong that sometimes I wondered if life was worth living at all.

And do you know what the stinger in the whole thing was? I was unable to obtain a divorce from this animal for 4 years. And if I wanted to remain somewhat protected, I had to show up in court, with all facts presented and known for quite sometime, to be ordered to be humiliated again.

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HOUSE STANDING COMMITTEE REPORT

March 18, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that Senate Bill 37 (third reading copy -- blue) be concurred in as amended.

Signed: \_\_\_\_\_  
Russ Fagg, Chair

And, that such amendments read:

Carried by: Rep. S. Rice

1. Page 2, line 5.

Strike: "AND"

Following: "PICKET"

Insert: ", to peacefully protest, to distribute literature, and  
to lawfully communicate with persons in public places,"

2. Page 2.

Following: line 25

Insert: "(2) This section does not apply to a constitutionally  
protected activity."

Renumber: subsequent subsections

3. Page 9, lines 15 and 16.

Strike: "prosecuting" on line 15 through "or the" on line 16

Strike: "in the absence of the prosecuting attorney," on line 16

4. Page 9, line 17.

Strike: "immediately"

Insert: ", as soon as possible under the circumstances, make one  
and if necessary more reasonable attempts, by means that  
include but are not limited to certified mail, to "

Committee Vote:  
Yes LC, No X.

611118SC.Hss

March 12, 1993  
Missoula, Montana

House Judiciary Committee  
RE: Senate Bill 406  
State of Montana

Dear Committee Members:

It is with feelings of intense sadness prompted by immobilizing fear that I need to address you today. Several years ago I considered myself a fun-loving, easy-going, life-giving, competent professional person. Today I live the challenging life of a single parent with two young children, working full time, thankful that my children and I have survived an abusive relationship with my ex. My energies are often low, my daily routine is a process of prioritizing needs, standing of course with the two greatest gifts I will have ever received, my sweet little ones. There are times when I can hardly bear the knowledge, the awareness that my children have been subjected to the atrocious, out of control / out of mind behavior of their father, that their sweet innocence has been robbed in their infancy, yet one day, my son of four years at the time said to me - "Mom, I think I know what's wrong with Dad... I think he has an "owner" in his brain, that's why he hurt you... maybe it would help if he would talk about it and get it out of his brain... then maybe he would feel better and not hurt you."

So what is my purpose, my intent here? I could tell some stories that would horrify and shock even the boldest. I know no need to shock and horrify. But if I can help convince you that sometimes even strong, self-assured persons arrive unaware in situations that are potentially or actually lethal, and that there are some things that can be done to prevent fatalities or physical or emotional disabilities, then I do feel the need to speak.

Domestic Violence is a dark, deep, ugly, secretive, insidious, cancerous, of our emotional fabric that lures its victims with glittering dreams and skill and devours its prey repeatedly and insatiably. I often asked myself - how

could I have been so stupid to have fallen for his crazy plays? Easy. A few basic character ingredients are necessary. I trusted. I believed. I forgave. I did all the things that my family, my religion, my society said I should do - and I nearly died for it. I nearly died believing the words. "I'll never do it again... you mean every thing to me... I couldn't live with myself knowing that I'd ever hurt you again... Please forgive me... let's start over..." How could a man regarded by his professional peers as "dedicated, hard-working, kind, sensitive, humorous" turn into such a monster on the homefront? Who is this man of dual personality - so easy to love, so easy to fear?

I believe that my son, at his tender age understands the core of this complicated issue as well as any of us. I believe that there is an internal "owie" in need of intentional care and support - before the symptoms or behavior can ever be changed. And given that fact, I believe that I must do what ever is possible to protect my children and myself until that need is satisfied.

Respectfully I present my request to hear my plan to pass unequivocally Senate Bill 406. In fact, I believe this is just a very small step in the right direction of offering both increased safety for the victims of domestic violence and more help for those who model this perpetrating behavior.

I strongly support Senate Bill 406 in extending jurisdiction of the court for first time offenders up to one year. I feel that offenders need to be dealt with seriously and dramatically, that offenders need a very clear message - that their behavior is entirely inappropriate and will not be tolerated by our society or our court system. The counseling presently ordered by our judiciary is a good start - but unfortunately it is only that. How can we expect behavior that has ~~likely~~ possibly been a lifelong pattern be changed in a mere 25 hours? And, I would like to see the option of a permanent restraining order become a reality. If a person has been physically harmed, or threatened with the same - why continue to follow a potentially lethal crisis to sit unattended? And why should victims again sit again, and again need to beg the courts for protection for themselves and/or their children? My experience thus far has been that the removal of the restraining order only tends to incite further anger over again both my offender and his family who protects him.

I feel that it is ~~crucial~~ that the message ring loud and clear that violence toward family members is not ok. Just because "it's family". There should be no closed doors, no closed ears when it comes to a call for help from women (or men) and children who are victims of physical, emotional or mental abuse within the home. Responding appropriately to domestic violence is an ethical imperative: awareness incurs responsibility.

Please listen with openness, with sensitivity to the testimony presented today. Please hear what Judy Wang is telling you - Judy has been a God-send to my self, my children and our community due to her active awareness of domestic violence issues, her support of women and children in crisis, the seemingly endless energy she injects into community consciousness-raising, education and support of our law enforcement who on a moments notice put their lives on the line to protect, to preserve our basic freedoms. Judy Wang has tremendous respect from those who work with her, as well as the many persons touched by her, because Judy genuinely cares about the causes she invests in.

I would like to close with a few lines from some of my own journaling after a near lethal assault from my ex (who was not arrested in my best interest by the responding officer). My fear was of course that he might be successful on next encounter. Starting with a well known verse... and if I die before I wake... will someone please lobby to improve the domestic violence laws in this country so that women and children need not fear dying at the hands of those who supposedly love them... It's a whole lot nicer to be heard to say it myself. Please help me to keep it that way.

# WOMEN'S LAW SECTION

STATE BAR OF MONTANA

To: Chairman Rep. Russell Fagg and members of House 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: March 17, 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 believe the amendments to the domestic violence protection statutes that you have before you today will work 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.

**IMPACT STATEMENT**  
Department of Corrections and Human Services

DATE: February 5, 1993  
TO: Mickey Gamble  
FROM: Jim Pomroy  
BILL NUMBER: LC0919/01 SB 323

Would the above referenced bill impact the Department fiscally or programmatically?

X Yes \_\_\_\_\_ No

If the above referenced bill impacts the Department, please review the potential impact below:

INTENT: To contribute to the successful downsizing of the prison population by creating statutory authorization for the establishment of shock incarceration programs, known as "correctional boot camps". Boot camps are diversionary in nature, intended to interrupt criminal thinking at an early date, instill discipline and self-respect, and teach positive habits and living skills.

IMPACT: Positive. Shock incarceration statutes universally provide for the modification (reduction) of the prison sentence. This, of course reduces cost in the long term for those who are successfully diverted from further incarceration. Although the sentence modification generally results in a suspension of sentence and placement on probation for the term of sentence, probationary costs represent a considerable reduction from the costs of incarceration.

Relationship to Division Goals: Positive to the degree that successful diversion occurs.

Division Comment: Although there has been mention of "sunsetting" this legislation, it may be wise for the Department to promote the idea and consider our first effort to be a pilot program, the results of which should be reported to the fifty-fourth session of the Legislature.

Prepared by: Jim Pomroy

Legal Comment:

TESTIMONY RECOMMENDED: X Yes \_\_\_\_\_ No

PROPOSED TESTIMONY: SB# 323, which provides for the operation of shock incarceration programs, referred to as "correctional boot camps" is the result of several actions on the part of the Department of Corrections and Human Services to better manage and control the population of incarcerated offenders. A major change represented by this bill is found in the provision allowing the district court to retain jurisdiction in selected cases and reduce sentences in those cases, when the offender successfully completes the boot camp experience. This, of course, provides another alternative to the sentencing judges who are often frustrated by the paucity of sentencing options available to them, which at this time are limited to some type of probation or imprisonment.

At the Request of the Department, and with the cooperation of Senator Christiaens, the bill is written as broadly as we believe reasonable. For instance, many states limit shock incarceration to offenders under twenty-five years of age while others have no age limitations at all. Due to the physical demands of such programs we believe that an upper age limit of thirty-five is appropriate.

Many of you may have viewed the videotape provided to Senator Christiaens. If, however, you have not had that opportunity, I will be happy to arrange a viewing for those interested in order that you may have somewhat of a "first hand" look at the operation of one such program.

In anticipation of the approval of SB 323 and necessary funding, the Department is tentatively planning to convert the Swan River Forest Camp to a Shock Incarceration facility during the next biennium. ~~It is our intent to operate the facility as a pilot program to be evaluated by both the Department and the Legislature to determine if continued operation is warranted.~~

*Amendment*

*Videotape*

---

DIRECTOR

**IMPACT STATEMENT**  
Department of Corrections and Human Services

DATE: January 22, 1993  
TO: Mickey Gamble  
FROM: Ted Clack  
BILL NUMBER: SB179

Would the above referenced bill impact the Department fiscally or programmatically?

X Yes        No

If the above referenced bill impacts the Department, please review the potential impact below:

INTENT: SB179 would authorize the Department to contract with private profit and non-profit corporations to provide correctional pre-release services.

*END*  
IMPACT: Positive. This bill may encourage potential service providers to offer pre-release services to the Department. The bill also makes competition more possible within the contracted service delivery sector. Given the Department's intention to expand community based correctional services as much as possible, any impetus to develop additional services will assist the Department's efforts. Finally, profit oriented corporations may be able to initiate service programs more quickly than non-profit corporations, which tend to have fewer development resources.

Relationship to Division Goals: Positive. The effect of the bill should be to enhance the development of less restrictive program resources.

Division Comment: The Department should support this bill.

Prepared by: Ted Clack

Legal Comment:

TESTIMONY RECOMMENDED: X Yes        No

*1st*  
PROPOSED TESTIMONY: The Department of Corrections and Human Services intends to increase the proportion of offenders committed to its supervision who are located in community programs. That expansion will be pursued in lieu of expansion of more expensive institutional programs and resources. Those expansions will be

made in response to projected increases in demand for correctional programs. To date, the Department's correctional population projections have been quite accurate. There is no evidence to suggest that the size of the correctional population will decrease in the near future. Any action that will increase the availability of community based correctional services will benefit this department and the state.

---

DIRECTOR

JIM McGARVEY  
President

EXHIBIT 6  
DATE 3-17-93  
SB 179

STATEMENT OF MICHAEL DAHLEM ON SB 179  
March 23, 1993

On behalf of the Montana Federation of State Employees, I want to reiterate our union's opposition to SB 179 for all of the reasons previously stated by Terry Minow.

Recently, I have been informed of legal concerns over provisions in the bill's statement of intent. I want to state that, in my opinion, such concerns are ill-founded. The statement of intent attached to SB 179 simply directs the Department of Corrections and Human Services to condition any contract for the operation of a pre-release center on the willingness of the private corporation to maintain the same level of employee pay and benefits and to honor the other terms of any existing collective bargaining agreement. If the private corporation is unwilling to assume this basic responsibility, why should the Department be willing to contract with it?

There is no conflict between the provisions of the statement of intent and federal labor law. The National Labor Relations Board has held that a successorship clause which requires an employer to condition a sale of its business on the purchaser's adoption of a union contract does not violate Section 8(e) of the National Labor Relations Act. Liquid Carbonic Corp., 277 NLRB 851, 121 LRRM 1116 (1985); Mine Workers (Lone Star Steel Co.), 231 NLRB 573, 96 LRRM 1083 (1977), enforced on this point, 639 F.2d 545, 104 LRRM 3144 (10th Cir. 1980), cert. denied, 450 US 911, 106 LRRM 2513 (1981). In addition, it is well established that a successor who assumes or adopts a labor contract is bound by it. Inland Container Corp., 275 NLRB 378, 119 LRRM 1089 (1985).

Should committee members have any questions about this matter, please feel free to contact me at 442-2123.

Michael Dahlem  
Michael Dahlem, Esq.  
Staff Director  
Montana Federation of State  
Employees, MFT, AFT, AFL-CIO

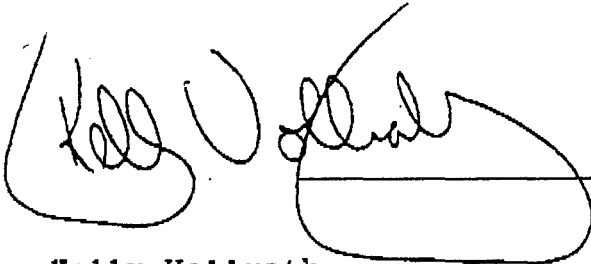
March 16, 1993  
2909 3rd Ave. No.  
Great Falls, MT. 59401

Mr. Russell Fagg, Chair  
House Judiciary Committee  
Fax # 444-4105

Dear Mr. Fagg:

Please accept and distribute to the members of the House  
Judiciary Committee the following fax that I received this  
morning from Senator Max Baucus, supporting the passage of  
Senate Bill 37 with no exemptions. Thank you.

Sincerely,

A handwritten signature in dark ink, appearing to read "Kelly Vollrath", is written over a horizontal line. The signature is stylized with large, sweeping loops.

Kelly Vollrath

# United States Senate

WASHINGTON, DC 20510-2602

March 16, 1993

Mr. Kelly Vollrath  
2909 Third Avenue North  
Great Falls, Montana 59401

Dear Kelly:

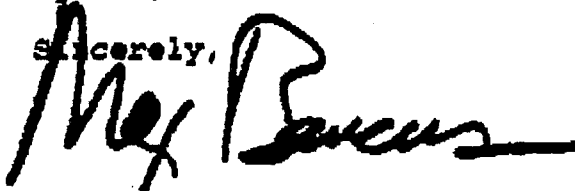
Thank you for getting in touch with my office concerning the anti-stalking legislation that is currently before the Montana State Legislature. I appreciate your bringing this matter to my attention.

I share your deep concern for people who have been victims of stalking in our state, and across the country. I also agree that we need to have strong legislation in place that makes stalking a punishable crime. Such legislation will not only help deter stalking in our state, but it will also protect people from unwelcome harassment or from being the victim of a senseless violent crime. Therefore, like you, I support this anti-stalking legislation that is currently being debated in the Montana State House of Representatives Judiciary Committee -- without any exemptions or amendments. I firmly believe that adding exemptions will only weaken the effectiveness of this important bill.

Again, thank you for contacting me about this matter and I hope you will not hesitate to let me know if I can be of further assistance.

With best personal regards, I am

Sincerely,



MSB/dwf



Beth Miksche  
House Judiciary Committee

Janet Cahill, Director, Violence Free Crisis Line Kalispell,  
Montana  
Montana Coalition Against Domestic Violence

Testimony SB 37

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In the twelve (12) years that I have been providing services to  
re women and their children, I have seen the problem of domestic  
nce grow at an alarming rate. In my program the number of new  
increased 75% between 1989 and 1992. We used to ask why women  
stay in an abusive in an abusive relationship. Now we know that  
requently more dangerous to leave than to stay. More women are  
d when attempting to leave the relationship than if they stay.  
nally, over 4,000 women each year are killed. We don't know how  
deaths in Montana are Domestic Violence related because they are  
d in with all other homicides. However, when we hear of a woman  
killed by estranged husband or boyfriend, it is probable their  
omestic violence in their relationship.  
Some women do try to leave even at great risk. They usually go to  
for assistance. According to statistics from 18 programs who  
de victim services in Montana, shelter was provided to 5,551 women  
, 13 children for a total of 16,725 nights in 1992. 181 women  
turned away because of being overcrowded or having lack of funds  
provide services. 9,855 persons sought services as a result of  
violence.

Since 1935 domestic abuse has been a crime. We have finally held  
de s accountable for their actions. But in order to prevent the  
increasing costs to society, and particularly to Montana, in  
h care, job loss, victims services, and counseling, we must  
to emphasize that offenders must change their behavior. Only

**HOUSE OF REPRESENTATIVES  
VISITOR REGISTER**

Judiciary COMMITTEE BILL NO. 2277  
DATE March 17, 1993 SPONSOR(S) M. Waterman  
PLEASE PRINT PLEASE PRINT PLEASE PRINT

[illegible]

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES  
VISITOR REGISTER

COMMITTEE

BILL NO.

DATE

SPONSOR(S)

PLEASE PRINT

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PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Jim Pomroy	DC + HS	<input checked="" type="checkbox"/>	<input type="checkbox"/>
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HOUSE OF REPRESENTATIVES  
VISITOR REGISTER

Judiciary COMMITTEE BILL NO. SB 406  
DATE March 17, 1993 SPONSOR(S) S. Bartlett  
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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Ann Pfeifer	Women's Law Section of State Bar	X	
Janet Carver	MT Coalition Against Domestic Violence	X	
Judith Wang	Missoula City Attorney's Office Missoula Coalition against Domestic Violence	X	
CC Hansen	Sen F	X	
Kellie Anderson	Women's Law Caucus	X	
Kate Cholewa	MT Women's Lobby	✓	
Linda Cryczan	MT Women's Lobby	X	
Katie Dean	Women's Place, Missoula, MT	X	
Linnea Wang	Sen Helms	X	
Camie Hansen	WOMEN'S LAW CAUCUS UM SCHOOL OF LAW	X	

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HOUSE OF REPRESENTATIVES  
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Judiciary COMMITTEE BILL NO. SB 323  
DATE March 17, 1993 SPONSOR(S) C. Christiaens  
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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Jimi Pomroy	DCHS	✓	
Wm. Minow	MT Ed State Employees		X

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HOUSE OF REPRESENTATIVES  
VISITOR REGISTER

Judiciary COMMITTEE BILL NO. SB 264  
DATE March 17, 1993 SPONSOR(S) J. Van Valkenburg  
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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
J. MICHAEL O'HARA	Missouri County Sheriff	X	

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