

**MINUTES**

**MONTANA HOUSE OF REPRESENTATIVES  
54th LEGISLATURE - REGULAR SESSION**

**COMMITTEE ON JUDICIARY**

**Call to Order:** By **CHAIRMAN BOB CLARK**, on March 7, 1995, at  
8:00 AM.

**ROLL CALL**

**Members Present:**

Rep. Robert C. Clark, Chairman (R)  
Rep. Shiell Anderson, Vice Chairman (Majority) (R)  
Rep. Diana E. Wyatt, Vice Chairman (Minority) (D)  
Rep. Chris Ahner (R)  
Rep. Ellen Bergman (R)  
Rep. William E. Boharski (R)  
Rep. Bill Carey (D)  
Rep. Aubyn A. Curtiss (R)  
Rep. Duane Grimes (R)  
Rep. Joan Hurdle (D)  
Rep. Deb Kottel (D)  
Rep. Linda McCulloch (D)  
Rep. Daniel W. McGee (R)  
Rep. Brad Molnar (R)  
Rep. Debbie Shea (D)  
Rep. Liz Smith (R)  
Rep. Loren L. Soft (R)  
Rep. Bill Tash (R)  
Rep. Cliff Trexler (R)

**Members Excused:** NONE

**Members Absent:** NONE

**Staff Present:** John MacMaster, Legislative Council  
Joanne Gunderson, Committee Secretary

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

**Committee Business Summary:**

Hearing: SB 278, SB 66, SB 174, SB 353  
Executive Action: NONE

{Tape: 1; Side: A}

**HEARING ON SB 174**

**Opening Statement by Sponsor:**

**SEN. JUDY JACOBSON, SD 18**, gave background on SB 174 which would provide for some revisions to the local citizen review board pilot program as well as provide for administrative procedures to be adopted by the supreme court and designation of the district court judge rather than the youth court judge to administer the local citizen review board pilot program. It would also allow for an increase in the time allowed for the Department of Family Services (DFS) to respond to recommendations of the board and would grant immunity to volunteer members of the board.

**Proponents' Testimony:**

**Patrick Chenovick, Montana Supreme Court**, said the foster care review pilot program started late in the biennium due to the special session of the legislature adjustment in the funding. Because the program was a pilot, they did not hire staff to draft the rules and to begin the training. The Chief Justice volunteered his senior law clerk along with a member of his staff to draft the rules. They received five replies from their solicitation for interested judges to participate. Missoula was selected. It is believed that the program will save money in that foster children will not get into the foster care cycle of continually being replaced in foster care homes. A report was submitted., **EXHIBIT 1**

**John Larson, Fourth Judicial District Judge**, spoke on behalf of all the judges in the fourth judicial district to support SB 174. The fourth judicial district was the first pilot program. He said they have three committees which work simultaneously on up to 10 - 12 review hearings each. These hearings occur every month. He said it is the only time these people can all be in the same room together talking about those children. He said that he thought it was much more detailed than the existing program. He had seen the old review sheets which would take about 30 seconds to complete while this system of hearings takes one-half hour to an hour per child to complete. He said that it will save money in the long run because the kids will be in more appropriate placements and will receive more appropriate care.

**Opponents' Testimony:**

**Laurie Koutnik** said she was not appearing in her official capacity as the Executive Director of the Christian Coalition but as a private citizen and former foster care parent. She submitted written testimony and supporting documents.

**EXHIBITS 2 - 5**

{Tape: 1; Side: A; Approx. Counter: 22.9}

Questions From Committee Members and Responses:

**REP. BRAD MOLNAR** stated that this would provide for administrative procedures to be adopted by the supreme court rather than with the youth court. He asked why they would want to put that kind of power with the supreme court as opposed to people who actually have to work with the system.

**SEN. JACOBSON** answered that the supreme court is the administrator of the program rather than DFS. That would give them arms length from the social workers and people working in the program. The reason was so that the rules would be uniform.

**REP. MOLNAR** said they also go from the youth court judge to the district judge. While district judges argue the court judges, he was still confused as to how they would have "experts in the field" (which are the youth court judges) not being mandated as being the person to handle it and give it to the district judge who had perhaps never been a youth court judge.

**Judge Larson** said the change was because of the various configurations they have in district courts in Montana. He described the rotation of duties and said because of that rotation it made more sense to have it shared by the district judges because at one time or another they would have had those responsibilities. It would provide a broader range of experience to deal with those issues.

**REP. MOLNAR** questioned granting judicial immunity to members of the local citizen review board. He knew one board had a \$1,000 fine if they broke confidentiality and he wanted to know what the need was for granting immunity.

**Judge Larson** said it was because they are agents of the district court. There is no ability to buy insurance for this type of thing and citizens won't volunteer their time and expose themselves to lawsuits. The court takes responsibility and trains them.

**REP. MOLNAR** asked how many districts currently use this system.

**Judge Larson** said there was only one pilot program in Missoula. Five districts applied but because of the funding and the need to start in one area, Missoula was selected. They have one of the highest case loads in the state and all of the judges in that district supported the program. Expansion is planned in the other counties which have heavy case loads.

**REP. MOLNAR** asked him to respond to the charge that this is a "feel-good" measure and in duplication of the DFS program.

**Judge Larson** said that he had never seen the material provided by **Mrs. Koutnik** nor did he believe it had ever been provided to any other judge in the state. One of the main problems, he said, was that DFS (not that they wanted to hide information or prevent others from having it) did keep that information away from the courts, the families and the treating professionals for those kids. He said the Missoula courts had produced results at no cost because their secretaries handle the administrative needs. DFS helps coordinate the schedules of their caseworkers, but he felt that there was little additional cost and they are getting the valuable information to the courts, the parents and to the treating professionals. Those items were just sitting in a box at DFS and no one was ever given that information. He said that he had cases which were over four years old where more kids had been born into the families since the case was initiated by DFS. He said the [DFS] system is not working and was proven by the increased numbers of cases being presented.

**REP. DANIEL MC GEE** said the first assumption in the fiscal note was that there is no funding provided after June 30, 1995. He asked if the sponsor was proposing additional funding.

**SEN. JACOBSON** answered that there was funding provided in HB 2 for this program.

**REP. MC GEE** understood the funding for the one pilot program was \$75,000. He asked if it was correct that the amount needed would be 20 times \$75,000 because of the 22 district courts.

**SEN. JACOBSON** said she did not think it would be that high with all 22 districts because it involved an administrator and administrative costs which would run across the system. Many of the costs were just getting the rules and paperwork done and other start-up costs. She also thought there were federal funds they could tap into since the system was becoming nationwide.

**REP. MC GEE** asked what the proposed budget was for this program in HB 2.

**SEN. JACOBSON** believed it was about \$120,000 each year of the biennium of about \$200,000. They hope to get about five programs up and running.

**REP. JOAN HURDLE** asked who attends the hearings and asked for a comment to the charge that knowledgeable people are disqualified from the meetings.

**Judge Larson** said the knowledgeable people are there for the first time. Under the old system, it was not unusual for one person to fill out the form with no meeting, notice or discussion. In their meetings, there are five volunteer members from the community, the supreme court staff, as well as parents, social worker and all treating professionals who deal with those children.

**REP. HURDLE** questioned **Mrs. Koutnik** about her testimony requesting evidence that it was going to be successful and asked what evidence she had that the program wasn't successful.

**Mrs. Koutnik** said she had been in contact with Oregon where the program had been in place for six years under the assumption that it would save money, time and move children more quickly into a more permanent situation. She said it had failed in all of those. She said she would provide the committee with documentation to show that it had failed in that state after which this program was modeled.

**REP. HURDLE** wanted to know what evidence she had that the present [DFS] program in Montana is successful.

**Mrs. Koutnik** said that she believed it was successful. She said that if it was failing in Missoula it is probably because of lack of supervision but that in other parts of the state it was functioning quite well. She cited the program's success in Great Falls.

**REP. HURDLE** asked if she had any evidence that the kids in the Great Falls area are getting more permanent placements more quickly.

**Mrs. Koutnik** said she could get that information for her. She said that the emphasis in DFS was due to just that.

**REP. HURDLE** stated that if one person is filling out the reports and some of the information is not seen by the judge, she wanted to know if there was evidence that is actually happening.

**Mrs. Koutnik** said in her understanding where it was being effectively followed as procedural manuals specify, the committees complete the report, not just DFS though it is a DFS form. All the information is made available. She said the process included ongoing involvement and she appreciated that. She gave a personal example of how the DFS program accomplished the goal.

**REP. HURDLE** asked **Judge Larson** to respond to the assertion that the present program is working.

**Judge Larson** said it is not working, they are not receiving the information and said he also has a case in Cascade County which is well over two and a half years old with no information in the file. The three children are in their second placement where a sex offender is present. He felt all the judicial districts could benefit from the new program.

**REP. LIZ SMITH** asked if there was a child protective team in the community [in Missoula]. And she wanted to know how often they meet.

**Judge Larson** said they did and that they were associated with the county attorney's office but was sure they met frequently because they were deluged with TIA requests from the department and the county to protect children.

**REP. SMITH** said that since the child protective team is a local citizens review board if that would not also identify the child protective team.

**Judge Larson** said the child protective team was at the beginning of the system when they see children who are at risk or who are in danger. They are put into the system. The citizen review board reviews what is happening to the children in the placement to make sure there is some permanency for the child.

**REP. SMITH** asked if there was a conflict in having that child protective team be the ongoing citizen review board.

**Judge Larson** said the volume is such in Missoula that they have one child protective team. To review all of the current foster care placements in Missoula County over a six-month period, they need three separate committees reviewing as many as ten placements each month, or thirty reviews every month. The one child protective team cannot handle the volume of kids already in placement and who are continually being referred to placement. The child protective team is made up of county and state employees. There are so many of them being referred that many are falling through the cracks.

**REP. DEB KOTTEL** asked if it was true that the supreme court's traditional role is to promulgate court rules when uniform rules are necessary.

**Judge Larson** answered that it was.

**REP. KOTTEL** asked for an explanation of the liability issue. She asked if the district court judge places the child or recommends placement.

**Judge Larson** said that when the process starts, they initially grant that authority for placement to the department. They oversee it. If there is a dispute, they resolve the dispute.

**REP. KOTTEL** asked if that was the reason for the mantle of immunity over the citizen's review board.

**Judge Larson** affirmed that was true because they were making recommendations to them. There was immunity also for the DFS people who were making similar recommendations and decisions.

**REP. KOTTEL** asked if the guardians ad litem who work in child abuse cases have a similar immunity provision.

**Judge Larson** replied that they do and they make them their agents by specific order.

**REP. KOTTEL** asked if all the counties do this if the bill is passed or if it was elective of those counties who wished to incorporate system review boards.

**Judge Larson** said it was optional. Only those which think they will benefit from having their citizens involved in the process will apply and it will only go as far as the money goes.

**REP. AUBYN CURTISS** asked what kind of recommendations are made by DFS to judges, how long they have been using their present record keeping system and whose responsibility it is to provide the judges with the information.

**Judge Larson** said that within the local regional office, DFS delegates it to their social workers who make the recommendations to the court as to where the initial placement should be done and what the parents should do to get the children back or whether the parents' rights should be terminated. Because of the case load, it is a problem since the proceeding starts and is not completed while the child remains separated from the parents with no communication about ways to resolve it. The judge only gets the front page which says that everything is fine.

**REP. CURTISS** asked **Mrs. Koutnik** how the system is working now. It looked to her like a grave problem across the state.

**Mrs. Koutnik** gave historical information about the system from her experience since 1975. She said there were concerns, but they should not "throw the baby out with the bath" and should address those concerns. She said that her experience as a foster parent was that the information about the child was always being updated. She submitted that sometimes the breakdown in communication happened because of dynamics of the parties involved. She assured the committee that DFS wants to find permanent placement that is best for the child.

**REP. CURTISS** said she was still puzzled about the relationship between DFS and the judges. She wanted to know who makes the report or recommendation to the judge.

**Judge Larson** said it was the responsibility of the social worker. They make an initial recommendation, but that doesn't mean that it continues on a regular basis. That is why a citizen review process stimulates that and keeps the cases going. DFS gets the process started, but it doesn't move toward resolution.

**REP. DEBBIE SHEA** referred to **Mrs. Koutnik's** testimony that "just because a program will work in Nebraska does not mean it would work in Montana" and asked what she meant by that.

**Mrs. Koutnik** said there are a number of states which are just beginning to initiate this approach. Nebraska is one of them and she did not know what the statistics are. She had talked to Oregon, because she knew that Montana's program was modeled after the Oregon approach.

**REP. SHEA** asked if what she was saying was that just because it was working in one state did not mean it would work in Montana. **Mrs. Koutnik** affirmed that was what she said.

**REP. SHEA** said her contention was why they should pay credence to what is going on in Oregon, but not to the success in Nebraska.

**Mrs. Koutnik** said that she thought they should pay credence to all the states. She encouraged a search of all of them which have citizen review boards in place and see if they are working. She referred to Oregon because that is Montana's model for the program. There are other states using various portions of this model.

**REP. SHEA** said that because it is not working in Oregon, did not mean it would not work here and **Mrs. Koutnik** agreed.

**REP. SHEA** asked for an exposition of the pilot program as opposed to the current system.

**Judge Larson** said that one difference was the amount of detail they go into in a meeting. There are five citizens asking questions from their own perspectives for the purpose of exchanging information. That exchange of information is not happening now, he asserted.

**REP. ELLEN BERGMAN** asked if he was familiar with the CASA program.

**Judge Larson** said that was the Court Appointed Special Advocates (CASA) program and they had a program in Missoula with which he had worked. All the other judges have court appointed volunteer guardians ad litem although they don't call them special advocates. They have 20 in Missoula. They are also a citizen component to the foster care process and can track what is happening to a particular child. It is a program with no cost to the state.

**REP. BERGMAN** asked how that programs differs from this one or did they work together.

**Judge Larson** said it was volunteer, it does not go through every foster care case while the foster review board goes through every foster review case. The CASA program only begins when a case begins. The citizen review board works through all the pending cases and they may pick out one that needs a special advocate. The court will appoint one as needed. In other judicial



districts, there may not be enough guardians ad litem or CASA's to go through all of their cases.

**REP. BERGMAN** asked if the citizen review board was volunteer. The answer was yes.

**REP. BERGMAN** asked how the money was to be spent if it is a volunteer program.

**Judge Larson** said it is not spent on the volunteers, but is spent on the process of the supervision of the supreme court staff travel and administrative expenses.

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**REP. MOLNAR** asked if the actions of this committee override or eliminate the DFS procedures in the districts in which the committee is established.

**Judge Larson** thought the citizen review panel would help coordinate everyone's efforts and concerns and expertise. It would help the courts, DFS, the parents and the kids.

**REP. MOLNAR** asked if he was saying that the same procedures they don't like are still there even if this were implemented; i.e., they won't supply the information if they don't want to.

**Judge Larson** said they supply it, they are under court order.

**REP. MOLNAR** said the recommendations of the citizen review board become part of the case file and that DFS may modify them as considered appropriate. In other words, he said, the citizen review board makes findings and recommendations and DFS does as they see fit and they may implement them. He asked if the board is only making recommendations, other than a breach of confidentiality, why they would be sued and why they would need judicial protection.

**Judge Larson** said the same could be said of any judge or DFS. They are helping make a decision and if someone were dissatisfied with that decision, they would sue everybody along the line. They each get copies of the recommendations of the citizen review panel for their cases and they take them very seriously. There is a high correlation between the actions filed in court and the degree of sensitivity and emotional involvement. To get the community participation, they need to assure them that there is actual immunity.

**REP. SMITH** asked if there was a possible breakdown in foster placement utilization primarily due to the responsibility for decisions being placed with one person (the social worker).

**SEN. JACOBSON** said she did not know all the inner workings of DFS and they saw a need for something to change for the system to

look better. DFS clearly thought there could be a better way to do this and were in support of the bill. She did not remember any opponents to the original bill. She explained why the old review process was left in place while making a gradual change-over.

**REP. LOREN SOFT** recounted an assessment of the need for the changes in the system.

**SEN. JACOBSON** said the problem with the system now is that they are relying on DFS with many workers who are already too overworked to put this on the front burner while it clearly is on their back burner. They needed some local involvement where citizens who cared in those communities could volunteer time. This system makes it their top priority where the DFS top priority is to deal with the immediate situation by removing a child from a harmful situation and then go on to the next one.

**REP. SOFT** asked if this was what the foster care committee was originally intended to do.

**SEN. JACOBSON** said that was correct--to replace them. If they had been able to fund the program, that is what would have been done last time--repeal the old system and put the new system in place. She said that DFS is under-funded, so they could not take the funds out of DFS for this program. Therefore, they had to come up with new money.

**REP. SOFT** struggled with the duplicate nature of the effort and asked what suggestions the sponsor had to move along without duplicating the efforts and to achieve more efficiency and effectiveness in the system.

**SEN. JACOBSON** supposed that they could ask for more appropriations and a repeal of the old statute. But she thought the long-term goal was to get the pilot programs started and to have the supreme court present a full budget next time through the Governor's office.

**REP. SOFT** asked if there was data which would indicate the speed and success of placements.

**Judge Larson** said that they were seeing more motions for permanent legal custody, more motions to terminate parental rights or more dismissals where parents have "come up to speed."

**REP. SOFT** asked if he understood that the rest of the judges were sharing the same frustration that he had expressed.

**Judge Larson** said he knew that they do and that they had all decided together that this was a program they needed. They knew they were not getting the attention from an internal review versus an external review program.

**REP. SOFT** asked if this was what the foster care review committee was supposed to do when they were originally established.

**Judge Larson** said he did not know what they said then, but he knew what it looked like now. He said it was people in DFS, the youth court and people already in the agency reviewing their own work. He said they need change, so they would have to look to outside in the community where the kids would grow up to get that change.

**REP. BOHARSKI** and **SEN. JACOBSON** reviewed the reasons for creating the pilot program. He remembered that DFS was doing a lousy job getting permanent placements. She had brought people in from Oregon who had given testimony about how it would work and they were going to save money by getting placements completed more quickly than DFS was doing it. He asked if it was working.

**SEN. JACOBSON** answered that it was working and knew there were at least four other communities which are anxious to get the program started. She said that she had a review of the Oregon program that is quite positive and would provide it to the committee.

**REP. BOHARSKI** asked if it was working why there was no reduction in the DFS foster care budget which he said was their whole goal.

**SEN. JACOBSON** said the program had been refunded with the idea that there will be more foster care programs started. She believed there was a similar reduction that would be taking place. Because of the special session, the program's funds were cut from \$150,000 to \$75,000 and the program was not started until after the special session. So there would not be any cost savings from November to April.

**REP. BOHARSKI** said his understanding was that the Oregon program was working very well. He expected to hear that this program would save money in the foster care budget which is more than \$200,000.

**SEN. JACOBSON** said she could say it was working in New Jersey, Nebraska, Alaska, Iowa, Kansas and in a total of 22 states. She had the statistics and favorable review.

**REP. BOHARSKI** asked if **Judge Larson** was sure it was going to work better than the old system.

**Judge Larson** said they get back to their parents, they get better treatment and it will keep them out of the adult system.

**REP. BOHARSKI** asked the same question of **Mrs. Koutnik**.

**Mrs. Koutnik** said she also saw the dollar signs and desired for the system to work and felt the primary concern should be the placement of the children. She said she had information from **Irma Vasquez** and two gentlemen of the study in Oregon that this

program, after being in place six years, did not save money. Further, their information was that children are placed two to three months later and that the permanency was not effective on a long-term basis nor were adoptions happening as quickly as they thought they would. She said she would provide the committee with **Ms. Vasquez's** (the program administrator in Oregon) phone number.

**REP. BOHARSKI** said that she was the only person he had talked to who was telling him that the current program run by DFS is working.

**Mrs. Koutnik** clarified that what she was saying was that on the budget DFS has been given and the staff they have, the level of training they had and with the best of intentions, they are doing the best they can. She did not say there were not problems, but there are bills which would address the concerns. She also wanted the committee to realize that two years ago, when the bill was heard, it would be improper for DFS to say they didn't support it. They are willing to better their system.

**REP. BOHARSKI** asked what is wrong with extending the pilot program other than it might be a waste of money.

**Mrs. Koutnik** said that if that was their feeling, they should extend it but "do not implement it on a statewide basis at the cost of the taxpayers without knowing that truly this is going to work. We are simply doing a pilot program and we are trying, but I don't think four months is indicative that the program is really going to work when you are looking at foster care placements which are long term."

**REP. BOHARSKI** said he thought that was what was being asked for. He said he wanted to know what her opposition was to doing that.

**Mrs. Koutnik** replied that her opposition was that instead of expanding it, they should be sure that in one area where they are already spending \$75,000 that this is truly going to work before bringing on five other areas or all judicial youth district courts. She wanted to be sure they had the data that it is working. She wanted to ensure that it was not a duplication and more administration wasting tax dollars rather than meeting the needs of the child.

**REP. BOHARSKI** asked if it was true that she was not opposed to the program but was giving a word of caution.

**Mrs. Koutnik** answered, "Absolutely not." She came in as an opponent because after she appeared as a proponent on the Senate side, **SEN. CRIPPEN** said a proponent would not talk about the concerns [she voiced] and that she was really an opponent. She had said there that she was not an opponent to the proposal, but was concerned about where it was headed and wanting to exercise

caution before going further. She said maybe they should fix what is in place.

**REP. BOHARSKI** asked for clarification, "As far as the program, as far as the minor statutory changes, if we keep this as a limited pilot program to try it out to see if it works, is there anything that is being proposed to be changed in the bill in the pilot program that you have a problem with?"

**Mrs. Koutnik** said the only thing she could find were two things:

1. People that are directly knowledgeable are not always invited, and
2. While she understood the liability issue, she had a problem with that. She saw somewhere a clerical worker being made responsible for compiling the documentation or maintaining it and being brought up on charges because someone inadvertently released information that was confidential. They are immune from prosecution and then who would be prosecuted.

**REP. BOHARSKI** asked if they still use the other advisory team in addition to this team.

**Judge Larson** said the statute was still in place and so was still being followed by the department.

**REP. BOHARSKI** asked if that wasn't the intent, to take one area of the state and exempt them from the statute and put the pilot program in place instead.

**SEN. JACOBSON** answered that the original bill totally repealed the old system and put into place the new system. When they realized that they would not get the full funding, they were hesitant to do anything with DFS because they felt they were under-funded and overworked. They left it alone and started the pilot program with the intention of continuing to expand it and then replace the old system with the new.

**REP. BOHARSKI** asked if they could amend the current statutes to allow an area to opt out of the old system to eliminate duplication.

**SEN. JACOBSON** said she thought they could and would look into it.

**REP. CHRIS AHNER** asked if they had spent \$75,000.

**Judge Larson** said that was the amount appropriated, but did not know where they were with it, though he thought it ran until July.

**REP. AHNER** asked if data were available concerning the monies that had been spent so far.

**Judge Larson** said he would request the supreme court administrator to do that.

**REP. AHNER** asked for data concerning the placement success.

**Judge Larson** said they could provide an interim report on how many hearings had been held and what action had occurred since then.

**REP. AHNER** asked how many CASA programs were in the state.

**Judge Larson** said there were four programs licensed by their national office, but there was only one program affiliated with volunteers. He outlined where they were and their current status.

**REP. AHNER** asked if these special advocates just recommend placement of the child.

**Judge Larson** said they begin when the case begins to look into the history. They are at all the hearings to speak for the child as to any recommendations made concerning the child either by the parent, the social workers or the treaters. He has conferences with them and assigns them to juvenile cases, domestic violence cases where there is a plea of guilty and doesn't just use them in abuse and neglect cases. The citizen review board reviews every foster care placement.

**REP. AHNER** asked it would be helpful if he had access to more of the court appointed special advocates who would follow the child through to completion.

**Judge Larson** replied that it would be.

**REP. AHNER** asked if there was some way to tie it to this program.

**Judge Larson** said the statute which was passed two years ago allows the citizen review board to use the court appointed advocate to help so they are tied together.

**REP. CURTISS** pointed out that though they were talking about a single pilot program, the language of the bill was that the supreme court administrator shall solicit written indication of interest from each district court judge and wondered if **Judge Larson** knew how many district court judges would be interested in starting a similar program.

**Judge Larson** said that four or five districts had applied when they did and he thought they generally were the larger districts.

**REP. CURTISS** wondered about the potential fiscal impact on DFS.

**SEN. JACOBSON** said she imagined that it referred to the social worker being asked to come to the meeting.

Informational Testimony: EXHIBIT 6 was provided to the committee following the meeting for their information.

Closing by Sponsor:

SEN. JACOBSON reviewed the 1993 information which was presented and the statistics from other states using the program which indicated positive results. She said the bill made the proposed changes and the funding was in HB 2.

HEARING ON SB 353

Opening Statement by Sponsor:

SEN. MIKE HALLIGAN, SD 34, said the bill would allow the judge to appoint a special master. It is a local discretionary matter in both civil and criminal proceedings. He discussed the various sections of the bill.

Proponents' Testimony:

Judge John Larson, Fourth Judicial District, rose in support of SB 353 as a bill which would simplify and provide flexibility in some cases where a district judge is not needed. He said it was based on the federal court model and has been tried in the federal judiciary for 200 years. He said that some divorce cases are referred to counselors regarding visitation and to accountants for calculating child support issues. He said that was an effective tool in diffusing the cases and getting them resolved earlier and keeping the kids out of the disputes.

Opponents' Testimony:

None

Questions From Committee Members and Responses:

None

Closing by Sponsor:

SEN. HALLIGAN closed. REP. DUANE GRIMES agreed to carry SB 353.

HEARING ON SB 66

Opening Statement by Sponsor:

SEN. J.D. LYNCH, SD 19, said SB 66 came about because of current situations where criminals were being seen in public and dangerous criminals were being released. He had seen that the state of Georgia had put the most violent crimes on an initiative for two strikes and they were out. In his opinion the whole

concept of rehabilitation had failed miserably if someone commits the same offense a second time and he asked why they would want to give a third opportunity to rape, murder, or kidnap our citizens. He said, "Two strikes and you are in and you are in for good." The Senate committee lightened the original bill by removing some of the offenses from the two strikes concept and making them three strikes offenses.

He said they could cut the fiscal note in half in terms of the long-term effect. In about 10-20 years, another 80-bed unit would have to be built to keep the incorrigible criminals in prison. He said there would be no short-term effects. One opponent suggested that passage of the bill would commit future generations to paying for it. His answer was that he would want his children and grandchildren alive to pay for it and did not think it was too great an investment. He challenged the committee to check with their constituents to find that they too would be in favor of locking up the predators for good.

**Proponents' Testimony:**

**Stan Frasier** spoke on behalf of **Gary Marbut** and the Shooting Sports Association, Gun Owners of America, Citizens Committee for the Right to Keep and Bear Arms, Western Montana Fish and Game Association, and Big Sky Practical Shooting Club, in favor of SB 66. **EXHIBIT 7**

**CHAIRMAN CLARK** relinquished the chair to **VICE CHAIR SHIELL ANDERSON**.

**Sharon Bakerson, Majority Against Child Molestation (MACeM)**, said that child molestation was rape. She said that how a child interacts with others is greatly influence by how the case is handled once he or she has had the courage to expose the molester. If they see the perpetrator punished and kept in prison, the victim has the chance to heal. When the offender is slapped on the wrist and set free, the victim cannot trust the judicial system or anyone and cannot heal. She said it is time to take the shame from the victim and help them become well again by placing the blame on the offender where it belongs. She asked that the committee amend the bill on number 27 to include child molestation and/or sexual assault on a minor.

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**REP. LIZ SMITH, HD 56**, rose in support of SB 66. She carried a message from a constituent who is fearing for her life because of a potential release of a perpetrator.

**REP. DANIEL MC GEE, HD 21**, stood in strong support of SB 66. He reiterated that the legislators are policy makers, not just fiscal analysts. This is the kind of policy they need to make for future generations, he said.



**Erinne Haskett, Founder of MACeM,** urged the committee to amend SB 66 to include child molesters and/or persons who commit felony sexual assault on a minor. She testified to a current situation which hinged on the passage of this bill. Laws should be passed to favor the victim, she implied, and urged the committee's favorable action.

**Informational Testimony:**

**Sharon Hoff, Montana Catholic Conference,** made it clear that she was standing as neither a proponent nor an opponent, but said that the Catholic Church had always been pro-life. She said that they understood that people are sick of crime, but they had to look at putting money into prisons at the expense of other social programs and that they might be doing it at the expense of crime prevention. She challenged the committee to look at ways to address the issues up front. She did not believe that prevention programs had ever been fully funded. She said that California has a three-strikes bill and were building four prisons per year. She said they were looking at the California industrial complex at the expense of other programs. Their education programs have been reduced while the prison system is being expanded. The Georgia prisons are already full even though the law has not been in place for long. In California, the first person arrested under the three strikes law was a purse snatcher and the victim did not press charges because she felt the crime did not warrant life-time imprisonment. She said these were cautions which needed to be looked at.

**Proponents' Testimony:**

**Nina Pullman, MACeM,** supported the bill wholeheartedly. She said that if people can't get it right after the first or second time, they should not be given any more chances.

**Opponents' Testimony:**

**Scott Crichton, Executive Director, ACLU,** prefaced his remarks by stating that he did not want to denigrate the testimony of victims before the committee. He presented the civil liberties concerns about the bill. He said a closer look at the reality of the situation was that there already was effectively a two-strikes program with enhanced penalties for habitual offenders and recidivist provisions and there already were enacted mandatory sentencing requirements.

He recalled the Governor's remarks about Montana's aggressive criminal justice system and law enforcement community having produced one of the lowest crime rates in the nation. Other remarks were quoted from the Governor and discussed the fiscal impact of this bill which included aging out and the costs of establishing a geriatric ward at the prison. He said that violent crime arrests rise rapidly in the teens, peak at 18 and taper off by the 20's. By age 35, most adults mature out of

violent crime and commit crimes at a lower rate than teenagers, according to FBI statistics. Violent crime is a young man's game. By adopting mandatory life without parole statutes, they would be creating a legacy for future generations the effects which would not be felt this biennium. Perhaps the effects would not be felt during this decade, he remarked. He said that gradually the effect will be felt by future generations. He said they needed to scrutinize any fiscal note by recognizing that the costs in the future will be greater, there will be a need of medical care for the prisoners who become elderly and the variety in department projections of costs. He said the only real beneficiary was the prison construction industry. He repeated that age is the most powerful crime reducer and to life sentence people who would most likely age out of their criminality made no sense to them.

He also discussed the issues of non-deterrents and increased violence. He said most violent crimes are not premeditated but done in the heat of anger and passion or under the influence of alcohol or drugs. He said that this bill would not stop those impulsively committed crimes. He said that repeat offenders do not consider penalties because they really do not anticipate being caught. Some law enforcement officials fear such legislation because they believe it will spur violent crimes against police and correctional officers as well as bystanders. A criminal facing life time sentences may be more likely to resist arrest and to kill witnesses or to attempt prison escape or to be non-compliant while incarcerated. They would have nothing to lose. He felt it would tie the hands of judges who weigh the differences between circumstances before imposing sentences. He said they should request a fiscal note on how it would impact the judicial system. Plea bargaining would be eliminated as an option and holding complete trials would cost a great deal of money.

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**CHAIRMAN CLARK** resumed the chair.

**Craig Frazier**, representing Montana State Prison inmates, said he was an ex-convict who was concerned with the addition of crimes which would be defined as violent. He said that those crimes which involve a weapon carry a sentence enhancement and at the judge's discretion now can be termed without parole. He said that public safety was at stake because the talk among the prisoners is that they would "go out with a blaze of glory." He said it would leave officials without means of negotiation. He urged the committee to look at truth in sentencing and quality of sentencing and the adoption of federal sentencing guidelines.

**REP. JOAN HURDLE, HD 13**, opposed the bill. She felt that those who were concerned about government growth needed to be aware that rapidly expanding imprisonment programs are the largest

government programs today. She suggested looking at the California penal system which is third in size next to the United States as a whole and China. She quoted statistics showing that super-incarceration has a negligible influence on crime and also talked about the size and impact of the prison industry. Further, she said that in California education was being replaced "brick by brick" for prisons.

She suggested that the prison population was made up of first-time nonviolent drug offenders and the mentally ill who may not belong there at all but belong in a treatment program. She said that imprisonment can train people for crime.

**Jeff Renz, Attorney,** said he had had a criminal practice as an attorney. He tended to specialize in child molestation cases. He said that 50% of those who came to his office were factually innocent of the accusations made against them. They had been accused because of certain actions to divorce cases or someone was afraid to identify the real abuser. He was convinced that two clients who were serving long term imprisonment were innocent. He said the committee needed to keep in mind that innocent people are convicted. He told of a case where a person who committed a robbery executed the persons who had stated that they remembered what he looked like as he was leaving the scene of the robbery because he knew he would face a life sentence. He agreed that this would result in the increase in the deaths among witnesses.

He said the tools which are being properly used now at the discretion of the judges in sentencing were effective and could not be set aside to free people presently incarcerated.

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#### Questions From Committee Members and Responses:

**REP. BOHARSKI** asked **Mr. Renz** about the case of the innocent man in prison who he cannot get released. He asked how he knew he was innocent and why he couldn't get the prisoner out of prison.

**Mr. Renz** said he had referred to two men who had been convicted of sexual abuse of children. There are certain kinds of cases where the men fit all the indications that make them highly suspect. The one person was accused of sexually assaulting his niece. The niece had made similar accusations on a number of occasions against other people. The only evidence against this man was her testimony, there was no physical evidence and her testimony of unfounded accusations against others was excluded from trial. He can't get him out because he cannot retry the case and because the supreme court had ruled that that evidence was properly excluded.

**REP. BOHARSKI** stated that while **Mr. Renz** did not believe the man to be guilty, the court system had determined that he was legitimately convicted.

**Mr. Renz** contend the courts are not infallible and that the man is innocent.

**REP. BILL TASH** asked the sponsor if he had any feel for the value of this type of legislation as a deterrent.

**SEN. LYNCH** said he would not sponsor the bill if he did not think that it would act as a deterrent. He said they were talking about someone who had actually been convicted by a jury previously on the same crime.

**REP. TASH** asked if the information which was given about the increase of incarceration in other states was factored in the current factor on a per capita basis.

**SEN. LYNCH** said that California's law is three felony convictions. Felony crimes can be bad checks over \$500. One publicized case was about a man whose third crime was stealing a piece of pizza from a child and was convicted under the three strikes law. He said he was not going that far but was talking about those who were actually hurting people.

**REP. KOTTEL** asked why there were no representatives in the hearing from the Departments of Justice and Corrections.

**SEN. LYNCH** said they were in the Senate. He said they had provided the information behind the amendments made in the Senate. He said the police officers association had also endorsed the bill.

**REP. KOTTEL** noted that they had included sexual intercourse without consent, 503, but did not include 502 and asked for a technical interpretation of the difference between sexual assault and sexual intercourse.

**Mr. Renz** answered, "Penetration." [of the vaginal area]

**REP. KOTTEL** asked if in his mind it was any less of a crime when a woman is sodomized with a foreign object or a women is forced to.....is that sexual intercourse when a woman is forced to engage in oral sexual conduct....is that sexual intercourse, penetration of any.....

**Mr. Renz** answered that was right.

**REP. KOTTEL** asked for examples of sexual assault.

**Mr. Renz** answered that it was essentially offensive touching of the vaginal area instead of penetration, clothed or unclothed.

**REP. KOTTEL** said 503 talked about "without consent" and asked if this would be commonly known as date rape or acquaintance rape.

**Mr. Renz** said under the statute, consent had to be given knowingly and freely. When someone who was intoxicated or asleep and unable to be give consent, that would be termed sexual intercourse without consent. If someone were incapacitated because of mental disability, therefore deemed unable to give consent, that would also be termed sexual intercourse without consent.

**REP. KOTTEL** said sexual intercourse without consent seemed to cover a wide variety of sexual activity.

**Mr. Renz** explained that sexual intercourse without consent is not measured by the degree of interaction. If the defendant beats a woman half to death and rapes her, that indicates a certain state of mind. If the defendant decided no is not a no, that indicates a different state of mind. He did not distinguish between the two in terms of minimal level of the crime.

**REP. KOTTEL** asked to clarify that they would both be sexual intercourse without consent and he affirmed that.

**REP. KOTTEL** asked if under 45-5-503(3)(a), MCA, the victim is less than 16 years old and the defendant is three years or more older that was what was called statutory rape. He affirmed that.

**REP. KOTTEL** asked if it was presumed to be without consent if an 18-year-old has sex with a 15-year-old.

**Mr. Renz** thought it was that under 14 it was considered without consent and for 16 and under with a three year age difference.

**REP. KOTTEL** asked if all of this type of behavior is included in the two-times-and-you-are-out provision when 456-5-503, MCA, is included.

**Mr. Renz** said it would qualify.

**REP. KOTTEL** asked why, if a man or woman violently rapes a child, they are seldom charged under 503 but almost always charged under sexual molestation.

**Mr. Renz** said he does not make the charging decisions so he did not know what prosecutors were thinking. He guessed that much of the time, the requirement of penetration either wasn't there or the child could not testify credibly.

**REP. KOTTEL** asked if it seemed inconsistent to him that when there was a charge of sexual molestation where vaginal penetration was clear and the person plead guilty, they would not be included under this section, but in a sexual intercourse without consent to an adult case, they are included under this

section in the two-times-and-you-are-out..... She asked if they were offering more protection to adult men and women than to children.

Mr. Renz said he did not understand the question.

REP. KOTTEL re-asked the question. If a child is vaginally penetrated.....

Mr. Renz said that would be sexual intercourse without consent.

REP. KOTTEL asked if it was not also true that generally they are not charged with 503, but with sexual molestation.

Mr. Renz could not say that was true. He said he was sure there were exceptions where it could have been charged, but because of the age and ability of the child to testify it was not.

REP. KOTTEL asked about aggravated kidnapping and asked if that was like a false imprisonment.

Mr. Renz said that they do distinguish between degrees of kidnapping. Montana's Supreme Court considers kidnapping to be any forcible restraint for any period of time whether a few seconds or a few months.

REP. KOTTEL said it says that it is kidnapping if "he" knowingly or purposefully and without lawful authority restrains another person, etc. It did not say that they would have to use physical [force] or necessarily threatening physical force, and asked if that could be a custodial situation in terms of not returning a child under a custodial divorce order. She wanted to know the parameters of kidnapping.

Mr. Renz said technically that would fit kidnapping, but it probably would be charged as custodial interference.

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REP. LINDA MC CULLOCH asked the sponsor to discuss the fiscal impact on the judicial system.

SEN. LYNCH said it was amazing that the same opponents were suggesting that this would have no affect anyway because it was going on right now. He said the judge would have discrimination in sentencing for the first violent offense and the second the bill adjusts as a policy decision in the state. He said there was no opposition from any judges' association.

REP. MC CULLOCH asked if the sponsor was familiar with REP. JORE'S two-strikes-and-you-are-out bill. The sponsor was not. She reviewed it with the sponsor.

REP. MC CULLOCH asked if the sponsor thought the citizens of Montana were willing to pay for the increased costs of this bill.

SEN. LYNCH said the citizens had indicated to him clearly from all over that those types of people ought not to get third, fourth and fifth times to commit those types of crimes.

REP. MC CULLOCH said she had run a survey asking if people were willing to pay for it. She was surprised that they were not overwhelmingly willing to pay for it.

SEN. LYNCH suggested that if the questions were worded in a certain way, the answers would be that people are overwhelmingly unwilling to let them go free.

REP. MC CULLOCH referred to testimony that some of the criminals should be put into other programs such as the boot camp and pre-release centers and asked if he agreed with that.

SEN. LYNCH said he was. He said they will need more prison space regardless of this bill.

REP. MC CULLOCH was concerned because of the recent furor over the Swan River Boot Camp.

SEN. LYNCH said the boot camp philosophy was a good one because it takes first-time offenders and tries to keep them away from hardcore criminals.

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REP. ANDERSON asked if the sponsor would agree to a coordinating instruction with the arson bill.

SEN. LYNCH said he would.

REP. ANDERSON asked for a discussion of the behavior of those who have life sentence with no parole versus those who don't and if they are more of a problem.

John Huth, Department of Corrections and Human Services, said he did not believe they had data to answer that, but said he would try to secure it.

REP. ANDERSON asked for any evidence at all that they might have.

REP. MC GEE asked if he understood that the sponsor served on the Institutions ..... [Committee].

SEN. LYNCH said he did last time, but not this year.

REP. MC GEE asked if he knew if they took a tax dollar, how much of it went to institutions. The sponsor could not tell him that.

**REP. MC GEE** cited article 2, section 28 of the Montana Constitution as providing that, "laws for the punishment of crime shall be founded on the principles of prevention and reformation." In addressing the concept of deterrents, he asked **Mr. Crichton** if he agreed that deterrents are a form of prevention.

**Mr. Crichton** said he believed they could be.

**REP. MC GEE** asked if he agreed that by passing this bill that there would be a deterrent effect by having as a policy of the state of Montana that a second-time offender of a major violent crime would in fact be institutionalized for life.

**Mr. Crichton** did not agree to that. He said he thought that most violent crimes are committed in the heat of the moment when people are not thinking about the consequences of their actions.

**REP. MC GEE** said that was a very good point and pursued the thought and asked how many repeat offenders of crimes of passion there are.

**Mr. Crichton** said he could not answer that.

**REP. MC GEE** asked if he agreed that this bill would address people who are not acting out of passion, but rather out of violence and purpose and in a predatory manner.

**Mr. Crichton** answered that the crimes listed in the bill are reprehensible, but was certain that he would not say that someone could not be either reformed or rendered harmless at some point and be capable of being re-introduced to society. He pointed to the maturing process in prison as a factor in that possible reformation. He objected to keeping the youthful perpetrators in prison for life when they probably would not be driven by the same instincts and desires after they had matured.

**REP. MC GEE** said that though there is an obligation under article 2, section 28 for reformation, there is also a responsibility to the people who are law abiding, decent citizens. He asked **Mr. Crichton** if he really felt that people who had committed violent crimes (such as a person in previous testimony) who vowed to recommit those acts upon release could be rehabilitated in any fashion, ever.

**Mr. Crichton** said that in that individual instance he did not know the person. He said there are some people who will never learn and some who will be released and will re-offend.

**REP. KOTTEL** asked if without objection from the committee she could question persons from departments of justice and corrections. There was no objection and she asked **John Connor, Department of Justice**, to state what the good parts and the



concerns of the department with this bill. She asked if he had testified during the Senate's hearing.

**Mr. Connor** said he did not testify and explained that he does not appear on behalf of the Montana County Attorneys' Association on bills other than those in which they had a direct involvement in their drafting unless they are asked to. He had not received a request to appear, but appeared at executive session at the request of the Senate and worked with them on some amendments. He was willing to answer questions from a personal perspective, but did not feel he could speak for the association since they were not asked to take a position on it.

**REP. KOTTEL** asked him to speak from the perspective of a prosecutor what some of the pitfalls were as well as the positive sides of the bill.

**Mr. Connor** said the positive side was that the repeat offenders would not be able to re-offend. He said if it were a perfect world, that some would be rehabilitated, but his experience in the criminal justice system suggested that it is a rarity which happens at the personal motivation of the inmate more than anything else. The drawback would be that they would be forcing out cases to trial because people would not want to plead guilty if they were looking at a life sentence and would have nothing to lose by going to trial. There would possibly be more charge-bargaining, which would result in the record not showing what crime was actually committed. He said that they don't normally take positions on mandatory minimums because they are a matter of policy.

**REP. KOTTEL** voiced her concern with parity under this bill. Included in the bill was aggravated assault which includes reasonable apprehension of serious bodily injury by the use of a weapon. In domestic abuse cases, often a weapon is used in terms of creating reasonable apprehension. If a "loved-one" threatens another with a gun, it is a \$100 fine, while if done by a stranger it is the three-times-and-you-are-out provision. She asked why there was such a drastic difference in parity.

**Mr. Connor** said they were not precluded from charging under the other statutes in a domestic abuse case.

**REP. KOTTEL** asked how often a domestic abuse case had been charged as aggravated assault.

**Mr. Connor** could not provide statistics. He had seen those kinds of cases and said they depended on the severity of the circumstances and the discretionary exercise of the various county attorneys.

**REP. KOTTEL** asked if the police association had taken a position on the bill.

**Mark Muir, Montana Police Association**, answered that they had not.

**REP. KOTTEL** asked if there was a reason.

**Mr. Muir** said that the most serious reason was that they felt that it was a moot point with the crowding of the prisons.

**REP. KOTTEL** asked if the passage of the truth-in-sentencing bill and the elimination of good time would solve many problems in eliminating persons getting out of prison early.

**Mr. Muir** did not believe that they would solve the problems which [the proponents] were attempting to be addressed by this bill.

**REP. SMITH** questioned **Mr. Frazier** about his employment and about his incarceration history.

**Mr. Frazier** explained his history briefly since he did not want to detract from his testimony.

**REP. SMITH** asked if he believed this bill would have affected him.

**Mr. Frazier** said that he was pointing out that the laws for violent and nonviolent crimes are already in place. He said it would affect him, but explained how in his case it was already in place.

**REP. SMITH** asked if it was his first offense and gave reasons why she did not believe the bill would affect him.

**Mr. Frazier** clarified how it could affect him.

**REP. SMITH** made the point that they would not deter the ability for someone to be rehabilitated and become productive in society.

**Mr. Frazier** said that rehabilitation was a good concept, but for him it was choices he had to make, and the prison could take no credit for them. The rehabilitation concept is a myth, he said, because good criminal knowledge is gained by going to prison. He felt he had more problems when he came out than when he went in. Not only is knowledge in criminal law gained, but criminal activity is discussed and learned.

**REP. SMITH** asked if he had learned anything qualitative while in prison which had assisted him to be motivated to move on.

**Mr. Frazier** credited his own personal choices. He said prison breeds hate and discontent.

**REP. KOTTEL** cited 46-18-592, MCA, and said it is effectively a two-strikes-and-you-are-out provision in statute and asked why judges are not currently using it.

Mr. Renz said they were using it.

REP. KOTTEL asked why there is still a perceived problem.

Mr. Renz said he could not answer the question.

{Tape: 2; Side: B; Approx. Counter: 27.8}

Closing by Sponsor:

SEN. LYNCH rebutted the arguments of the opponents. He said they were not talking about a three-strikes-felony bill or nonviolent offenders or the mentally ill. He said the most important thing is that a jury has to convict the offender a second time beyond a reasonable doubt. He reiterated that the issue was not protecting our children and grandchildren from the expense, but rather to protect them from the very few predators of society. He said he was amazed by the argument that they already have this in statute. He said that if that is the case, there would not be anymore costs. He did not think that age was a factor to the degree that the opponents proposed. He did believe that this proposed statute would be a deterrent. He suggested that child molesters should also be included in the bill.

HEARING ON SB 278

Opening Statement by Sponsor:

SEN. VIVIAN BROOKE, SD 33, said SB 278 would revise the laws relating to domestic violence.

Proponents' Testimony:

Judy Wang, Assistant Missoula City Attorney, Missoula Family Violence Council, summarized where SB 278 originated and why it was needed legislation. A committee drafted the bill and it was reviewed and amended by a district court judge, a justice of the peace and the Attorney General's office.

She said there were two logical divisions in the bill. The first addressed civil problems of victims of crimes, which involved restraining orders (TROs) (renamed orders of protection). She said that currently restraining orders are a subsection of Montana's marriage and divorce laws. She said that does not make sense since there are stalking victims and rape victims. The second division of the bill was the criminal changes in the laws impacting victims and abusers. They were asking that the crime called domestic abuse be renamed partner or family member assault and they were asking for minimum penalties so that assaults which occurred with the family would be treated like crimes.

She described nine problems under current Montana law which SB 278 would address and these are included in **EXHIBIT 8**. She referred to a letter from Judge Douglas Harkin, **EXHIBIT 9**.

{Tape: 2; Side: B; Approx. Counter: 51.0}

Janet Cahill, Violence Free Crisis Line, testified in favor of SB 278. **EXHIBIT 10**

Kathy Kendall, Board of Crime Control, urged support of SB 278.

REP. LIZ SMITH, HD 56, supported the bill.

Jim Humira, Missoula Police Department, supported SB 278.

Kelly Slatery-Robinson, Shelter Coordinator, YWCA Domestic Violence Assistance Center, pointed out the provisions of the bill which she supported. **EXHIBIT 11**

John Connor, Montana County Attorneys' Association, and on behalf of Beth Baker of the Department of Justice, said the association was asked to appear on behalf of this bill. He said that they were in support of strengthening the domestic violence laws. They had learned over the years from mistakes at the expense of victims that they need to respond more immediately and more sensitively and appropriately in domestic violence situations. Some amendments were proposed. **EXHIBIT 12**

Marty Bethel, Limited Jurisdiction Judge for Hamilton and Darby, highlighted the three changes which she felt were very important:

1. The name change from domestic abuse to partner or family member assault. The second violation of a cruelty to animals statute becomes a felony, where it takes a third offense against a wife or partner to become a felony offense.
2. Probation was a welcome aspect.
3. Mandatory jail time is a necessary change with a cooling off period being important to both the offender and to the victim.

She cited a North Carolina Supreme Court case of 1874 which said, "it is better to draw a curtain and shut out the public gaze and leave the parties to forgive and forget." She wanted to point out how familiar this sounds in regard to the current social responsiveness. She felt this bill was a move toward better intervention.

Mary presented written testimony. **EXHIBIT 13**

{Tape: 3; Side: A}

Carl Ibsen, Missoula County Deputy Sheriff, supported the bill and said it was a good bill without the amendments.

Sheriff Chuck O'Reilly, Lewis and Clark County, Montana Sheriffs' and Peace Officers' Association, said with the amendments they supported SB 278. Without the amendments, they felt the victim and responding officer were placed at a greater risk. The current language only would allow the officer to seize the weapon used in the assault. If the home contained several weapons and were not all seized, the means would be left for the offender to continue the initial assault. He and other police and peace officers felt the amendment would clarify the issue and prevent that from occurring.

Mark Muir, Montana Police Association, encouraged the support of SB 278. They recommended the bill be passed as enacted by the Senate.

Mary Alice Cook, Advocates for Montana's Children, said the statewide membership strongly supported the bill.

Holly Franz, Women's Law Section of the State Bar of Montana, strongly supported SB 278.

Jan Healy, RN, Billings Area Family Violence Task Force, presented written testimony. EXHIBIT 14

{Tape: 3; Side: A; Approx. Counter: 9.6}

Kate Cholewa, Montana Women's Lobby, urged support of SB 278. EXHIBIT 15

Sharon Hoff, Montana Catholic Conference, presented testimony in support of SB 278 with the amendments. EXHIBIT 16

Patrina Sims, Missoula County Family Violence Council, offered personal testimony to support the passage of SB 278. EXHIBIT 17

Jim Oberhofer, Montana Chiefs of Police Association, urged support of SB 278.

Diane Tripp, Missoula Family Violence Council, felt that SB 278 was a good bill because it addressed several issues which had become apparent since the last legislature. She mentioned that TROs do not travel from county to county or state to state but that this bill addressed that as a very important and helpful issue to victims.

Opponents' Testimony:

None

**Informational Testimony:**

The following are letters and documents in support of SB 278:

EXHIBIT 18, letter from Rocky Mountain Psychological and Addiction Services.

EXHIBIT 19 letter from Klaus Sitte.

EXHIBIT 29 letter from Chief Deputy Charles Unmack, Dawson County Attorney.

EXHIBIT 21 letter from Sam Lemaich, Regional Supervisor, Probation and Parole Officer with attached anonymous letter.

EXHIBIT 22 letter from Pamela Anderson, Montana ACT Program.

EXHIBIT 23 letter from Missoula Indian Center.

EXHIBIT 24 letter from Karin Diane Sellman-Nesse.

EXHIBIT 25 letter from Theresa Troutman.

EXHIBIT 26 letter from Gail Hammer.

EXHIBIT 27 letter from Dodie Moquin, Domestic Violence Assistance Center, YWCA.

EXHIBIT 28 letter from Judy Williams, Lawyer, State Bar of Montana.

EXHIBIT 29 document from Majority Against Child Molestation (MACeM), with written testimony from Ms. Haskett.

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**Questions From Committee Members and Responses:**

REP. MOLNAR said he was confused as to why somebody would petition for an order of protection but not want to press the charge.

Ms. Wang said it was very common when a family member or a partner is involved to not bring criminal charges because it makes it very public and though she did not have absolute numbers, the city of Missoula charged 189 offenders for domestic violence last year. The victim advocate helped approximately 400 victims with restraining orders. The overlap in those cases was that the victim sought civil remedies but did not wish to involve the criminal justice system.

REP. MOLNAR recalled that testimony indicated that restraining orders would no longer be mutual, but would be for the one charged. He said that some cases involved people who aggravated each other and asked why it would be wise to allow a restraining

order when the person would not press a charge and the other person was the only one restrained.

**Ms. Wang** replied that it was a civil remedy for having committed a crime and they were saying that anyone could get a TRO who fit within the parameters of being eligible, but if the person hadn't been the victim of a crime or hadn't been intimidated by a "loved one." She gave examples of reasons for not filing charges through the criminal justice system. If the other party had grounds for a restraining order, they could get one as well. She described current practice in which persons can get a restraining order without having to swear to anything or affirm that they had been the victim of a crime and how the bill provided for certain parameters to be met in order to obtain one. She said **Judge Harkin's** letter (EXHIBIT) summarized it best.

**REP. MOLNAR** discussed the application to sexual intercourse without consent whereby a person could say they had been raped and a restraining order issued based just on that person's word.

**Ms. Wang** said that there were civil and criminal penalties for false swearing and discussed the process of the hearing whereby someone can defend against it. She said the numbers of bogus restraining orders they saw was very small.

**REP. SMITH** asked about the procedure for the seizure of weapons as being the reason for the amendments.

**Sheriff O'Reilly** said they supported the amendments because they felt they made the bill stronger. He referred to his earlier testimony and pointed out in the bill where the provision stated they could seize the weapon used in the assault.

**Closing by Sponsor:**

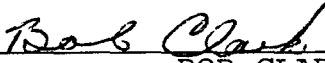
**SEN. BROOKE** closed with the remarks that SB 278 would strengthen the laws that are now on the books. She said that HB 69 went hand-in-hand with SB 278 so that society could protect victims.

**Motion:** **REP. MC GEE** MOVED TO ADJOURN.

*{Comments: This set of minutes is complete on three 60-minute tapes.}*

ADJOURNMENT

**Adjournment:** The meeting was adjourned at 12:30 PM.

  
\_\_\_\_\_  
BOB CLARK, Chairman

  
\_\_\_\_\_  
JOANNE GUNDERSON, Secretary

BC/jg



# HOUSE OF REPRESENTATIVES

## Judiciary

ROLL CALL

DATE 3/7/95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bob Clark, Chairman	✓		
Rep. Shiell Anderson, Vice Chair, Majority	✓ 8:05	✗	
Rep. Diana Wyatt, Vice Chairman, Minority	✓		
Rep. Chris Ahner	✓		
Rep. Ellen Bergman	✓		
Rep. Bill Boharski			
Rep. Bill Carey	✓		
Rep. Aubyn Curtiss	✓		
Rep. Duane Grimes	✓		
Rep. Joan Hurdle	✓		
Rep. Deb Kottel	✓		
Rep. Linda McCulloch	✓		
Rep. Daniel McGee	✓		
Rep. Brad Molnar	✓		
Rep. Debbie Shea	✓		
Rep. Liz Smith	✓ 8:0	✗	
Rep. Loren Soft	✓		
Rep. Bill Tash	✓		
Rep. Cliff Trexler	✓		

EXHIBIT 2  
DATE 3/7/95  
SB 174

Mr. Chairman, members of the Committee:

For the record, my name is Laurie Koutnik, and I appear before you today not in my official capacity as executive director of Christian Coalition of Montana, but as a private citizen, former foster parent for the State of Montana and Casey Family Program for 55 of our children, and a concerned individual on where the tax dollars are being spent. I'm a firm believer that moneys should be directed at real needs, the children served, not in unnecessary administration or establishing a new bureaucracy that allows us to feel good about what we are doing, but not resolving the true problems. As you know I am an advocate for loving homes and caring placement for youth, preferably with natural families, but when not possible, with adoptive placement or foster care or treatment alternatives when found in the best interest of child.. Knowing all this, I rise in opposition to SB 174 because of several concerns I hold.

SB 174 was originally introduced in the '93 session with \$150,000 price tag. That was cut in half in the special session to \$75,000 for a Citizens Review Board program that was determined to be established in Missoula County. Though this was given the go ahead from the special session, the Citizen's Review Board did not begin to function till December of 1994... just a few short three months ago. At that time, it was decided that one CRB would not be sufficient to meet the caseload demands, so three CRBs were established with five persons per board (fifteen total). A thirty percent increase in just three months of operation.

I have requested from the Supreme Court Administrator who oversees the program, a breakdown of moneys spent to this point, but have not received that information. You too, should request that important data. If we are going to establish this new model around the state, we should know what costs we are incurring for just one county program that is only a few months old.

There too presents another concern. Do we really know enough about this approach as to its effectiveness besides its cost consideration to warrant establishing it in our state?

In checking with Irma Vasquez who oversees the Oregon CRB program that our state was modeled after and which has been in effect for six years, she conveyed that a survey conducted within the department at the department's request showed that children were not placed any sooner, but rather 2 to 3 months later, nor were adoption proceedings accomplished any quicker. There was no indication that placements were more secure. In fact, as an administrator she was somewhat frustrated that what was to be accomplished has not proven out. In fact, backlog is a growing concern as well. That is a concern I hold. I do not want our children to be used as guinea pigs on a new, improved, better idea with some concrete evidence that this is going to be successful. We know the devastating effects each move through placement has on a child and their ability to bond or trust those who care for them. I'd encourage this committee to have legislative council do a search of states where Citizens Review Boards are in place to see for yourselves if this is time saving, cost saving, truly child friendly placement proposal before we go sinking taxpayers money into it or adding to administrative bureaucracy. Just because a program is in place in Nebraska does not mean it will necessarily work in Montana. Let's not give up local district court control to state supreme court administration.

Currently, our state has in place by law, Foster Review Committees that are established in each judicial district. Some have one, others more, comprised of highly qualified, committed individuals that volunteer their time in doing exactly what the CRBs are to do. Only there are no costs incurred by this totally volunteer board. Here is sample of the report each committee submits to Dept. Of Family Services and to the Courts as well as a policy manual. Are these duplications of Boards necessary? Do we negate FRCs or abolish both of these entities? If we abolish the existing FRCs, do its experienced members become members on the new CRBs? Rather why don't we address concerns we have and work it out within the existing boards rather than create an entire new entity?

The only people that would be disqualified from serving on these boards are some of the most knowledgeable individuals... namely the counselors, the case workers, and the foster parents. They are only allowed to participate upon the request of the CRB. Those who know the situations best are disqualified. In my estimation, we are overlooking key people with first hand knowledge of these children not always recorded to the same degree on paper. They know circumstances, reactions, and almost have an instinctiveness as to the reactions of a child as well as cause and effect.

Now there is the issue of confidentiality. Though much has been stated to try and address this concern, as a former foster parent, I would be remiss not to stress the importance of confidentiality. Under the trial program in place in Missoula, we have fifteen individuals that are given case histories, other pertinent privileged information, and inviting attorneys, and other interested individuals into the process. Need I spell out the possibility for mischief or the breach of confidentiality. Who is going to protect the privacy of these documents? Who will administer there security? Who would be liable? Page 6, Section 6, lines 13 and 14, absolve any of these members from liability. Would it be the State Administrator for the Supreme Court or DFS? Should a clerical person have to worry that they are responsible for liability?

Just from January 1, 1995 to January 20, 1995 fourteen reams of paper alone were used to begin documenting forty cases that were reviewed. And that wasn't the end results. How much more paperwork will this Board require to keep all parties informed? Is DFS being compensated for use of clerical staff that are already overloaded with caseload demands? Or will DFS have to hire additional staff? \$12,000 for one part time worker in that 20 day period alone has been spent.

Now we have the concerns of costs, data to support effectiveness, duplication of services, disqualification of knowledgeable parties involved, question of confidentiality, and additional staffing. There may be others, but time doesn't permit.

Putting in place a new Board with a new name will not resolve the old concerns. Nor will investing additional dollars on an unproven pilot program that may end up costing us money beyond your intentions. Before you give the green light, get some answers as to the necessity of this measure. Thank you for your time and consideration

Respectfully Submitted March 7, 1995  
Laurie Koutnik

**Child and Family Services Policy Manual: Substitute Care for Children  
Case Plan/Report of Foster Care Review Committee (DFS 427, Parts A and B)**

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<b>Case Plan Required</b>	If the child's placement in out-of-home care continues longer than 30 days, the DFS 427 Part A is required.
<b>Definition</b>	<u>Placing worker</u> refers to a social worker, juvenile parole officer, probation officer or child-placing agency representative responsible for placing a child into foster care.
<b>Description</b>	The DFS 427 face sheet is attached to the DFS 427 Part A and, as a component of the case plan, is provided to the FCRC for review every six months. The face sheet records the foster child or youth's family information, custody actions, placements, and school history, and must be updated whenever a change occurs. The face sheet will be given to the youth when he or she moves to independent living.
<b>Placing Worker Responsibility</b>	<p>The DFS 427 Part A and face sheet must be completed by the placing worker within 30 days of the initial placement into foster care and every six months thereafter, as long as the child remains in foster care, regardless of the type of facility.</p> <p>The DFS 427 Part B, when completed with the DFS 427 Part A, constitutes a report of the foster care review committee (FCRC) and contains the minimum items that must be reviewed by the committee.</p>
<b>Instructions DFS 427 Part A</b>	<p>To complete the DFS 427 Part A enter:</p> <ul style="list-style-type: none"><li>• child's legal name, social security number and birth date;</li><li>• name of foster care facility;</li><li>• type of facility, e.g., foster home, group home, child care agency;</li><li>• the reason the facility is an appropriate placement for the child, e.g. close to home;</li><li>• the date the child first entered placement for this continuous foster care period; and</li><li>• date of current placement.</li></ul>

**Child and Family Services Policy Manual: Substitute Care for Children  
Case Plan/Report of Foster Care Review Committee (DFS 427, Parts A and B)**

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**Specific questions:**

- 1.a. State the reasons the placing worker has become involved with the child/family.
- 1.b. State what services the placing worker has provided, if any, to avoid the child's removal. If none were provided, indicate why prevention was not appropriate.
- 2.a. Self-explanatory.
- 2.b. Self-explanatory.
3. State what has to be provided to the child and parents by what date and by whom, to return the child home. If the child can't return home, state what needs to be done to establish an alternate, permanent home for the child.
4. State what needs to be provided to the child and foster parents, by what date and by whom, to attain the goals or to return the child home.

**NOTE**

All health-related services provided to the child should be documented under No. 3 or No. 4 depending on the placement. Health-related services may include:

- arranging for services such as medical, dental, hospital or mental health services;
- providing transportation or arranging for transportation to a health service;
- providing social work counseling to help the client and family accept and follow through with needed health services; and
- helping clients apply for Medicaid or programs for medically needy offered by SRS.

**Child and Family Services Policy Manual: Substitute Care for Children  
Case Plan/Report of Foster Care Review Committee (DFS 427, Parts A and B)**

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5. State the frequency and who is responsible to make contacts with the child and service provider assuring proper care is provided to the child.
6. State how the planned services are meeting the child's needs by correcting the problem that created the need for placement.
7. Self-explanatory.
8. Self-explanatory.
- 8.a. In an effort to avoid educational disruption, placement should include considering a location where the child can continue to attend the school in which he or she is enrolled.
- 9.a. The response to this question requires establishing target dates for emancipating to independent living and the anticipated living arrangement.
- 9.b. List the task(s) to reach the goals established for the youth to live independently and the date the service will begin.
10. Explain that the child is placed in foster care to meet the judicial determination.
11. List other custody actions.
12. Self-explanatory.
13. Self-explanatory.
14. Self-explanatory.
15. The most recent report card or other school records should be attached to the case plan and a copy is given to the foster care provider.

**Child and Family Services Policy Manual: Substitute Care for Children  
Case Plan/Report of Foster Care Review Committee (DFS 427, Parts A and B)**

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16. Medical records submitted to the FCRC are also provided to the foster care provider. Medical records must contain a record of:

- immunizations;
- medications;
- any disability or health problems, and
- the name and address of the child's health care provider.

<b>Filing</b>	The completed forms are signed by the placing worker, dated and filed in the case record under the section entitled "case plan." A copy of the case plan is provided to the youth (if appropriate) and/or parent.
<b>Child Placing Agency</b>	The child placing agency shall provide to the department either a written case plan or the DFS 427 Part A including a face sheet, at the times stated above. If a written case plan is used, it shall include all the items contained in the DFS 427 Part A, including a face sheet.
<b>Foster Care Review Committee</b>	The court-appointed FCRC evaluates the plan of action every six months for each youth in foster care. The review ensures permanency planning.
<b>DFS-427 Part B</b>	The DFS 427 Part B is the report of the committee's findings and any recommendations the committee feels necessary to provide more effective services to the youth. The yellow copy of the DFS 427 Part B is sent to the judge who ordered the foster care placement. The original is retained in the child's file along with the DFS 427 Part A and a face sheet. The pink copy is sent to the foster parent or birth parent, as appropriate. (An additional copy of the reports may be made if both the foster and birth parents are to receive the reports.)
<b>Continuance</b>	A majority of the committee members must be present. (See Section 307-1, <u>Child and Family Services Policy Manual</u> for FCRC membership.) If fewer than a quorum are present, the hearing must be postponed. All members present date and sign the initial review and set a continuance date. A copy of the continuance (DFS 427 Part B) must be placed in each child's case record.

**Child and Family Services Policy Manual: Substitute Care for Children  
Case Plan/Report of Foster Care Review Committee (DFS 427, Parts A and B)**

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When the review is completed, the DFS 427 Part B form is dated and signed by all members present and the next review date is set.

If the review is the usual six-month review, then "Periodic Review" is marked. If the review is to be considered a "Dispositional" hearing review, 18 months after initial placement and annually thereafter, then "Dispositional Hearing Review" must be marked.

Should the child/youth or the parents/foster parents disagree with the review findings or recommendations, they may mark their decision and add their comments. (The back of the form may be used.)

**References**

42 USC 627  
42 USC 671(15) and (16)  
42 USC 672  
42 USC 675  
45 CFR 1356.21  
Section 41-3-11 through 15, MCA.  
Sections 11.7.501 through 11.7.504, ARM.



**Child and Family Services Policy Manual: Substitute Care for Children  
Foster Care Review Committee**

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<b>Philosophy</b>	All children in substitute care shall be afforded the opportunity for permanency. To ensure the child's right to the stability and continuity of family life, the department encouraged the legislature to establish Foster Care Review Committees (FCRC).
<b>Purpose of FCRC Committee</b>	The foster care review process is intended to reduce the number of children in foster care, and when possible, to expediently return children to their birth homes, or free them for alternate, permanent placements.
<b>Who is reviewed by FCRC</b>	<p>The FCRC reviews any child who has been placed in substitute care for a period of six months or longer; and</p> <ul style="list-style-type: none"><li>• has been placed under the supervision of the department;</li><li>• has been placed by the department; or</li><li>• whose placement is paid for by the department.</li></ul>
<b>Frequency of Review</b>	<p>All children must have an initial review no later than the 6-month anniversary of the date of their initial placement.</p> <p>Subsequent follow-up reviews must take place within six months of the initial review and within every six months thereafter for as long as the child remains in care.</p> <p>FCRC review ensures the procedural safe guard of open participation by the parents or the child who is the subject of the review.</p> <p>If the child is in a pre-adoptive placement or the parents' rights have been terminated, the notification of the review to the birth parents should be waived.</p> <p>Reviews may take place more frequently than described above.</p>
<b>NOTE</b>	A court hearing may substitute for a FCRC review. Some offices prefer to have both a FCRC review and a court hearing, even though IV-E regulations do not require both.

**Child and Family Services Policy Manual: Substitute Care for Children  
Foster Care Review Committee**

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**Dispositional Hearing**

A dispositional hearing must take place within 18 months of the initial placement of a child. This hearing is a federal requirement that the court make a determination of the child's future status after placement and after the case plan has been in effect.

The dispositional hearing determines the child's future status, including whether the child should be:

- returned to the parents;
- continued in foster care for a specified period;
- placed for adoption; or
- continued in foster care on a long-term or permanent basis, because of the child's special needs or circumstances.

Subsequent dispositional reviews must be held every 12 months thereafter and may be conducted by an administrative body approved by the court. If a FCRC meeting is approved as a dispositional review, the committee must be notified that the meeting is a dispositional review, the items above must be discussed and determined, and the appropriate box checked on the DFS 427 per section 307-2.

**Location of  
Review**

If a child is placed under a court order, the child is reviewed in the judicial district which issued the order. The FCRC in the judicial district where the court order was issued is responsible for the reviews, although the FCRC where the child is located (county of service) may negotiate actually doing the reviews.

If a child is placed by voluntary agreement, the child is reviewed by the FCRC in the judicial district where the child is living.

The county of financial responsibility must be notified of the necessity for reviews at the same time the county retaining placement responsibility/authority is notified.

## Child and Family Services Policy Manual: Substitute Care for Children Foster Care Review Committee

### Timelines

The supervisor assures that the appropriate people are provided written notice of the FCRC, 10 days prior to the scheduled review.

The social worker prepares a DFS 427 Part A on each child to be reviewed and submits that form to the CSWS prior to the scheduled review.

The supervisor provides the DFS 427-A reports to the FCRC members. All information is marked confidential, and the FCRC shall adhere to DFS confidentiality policy as set forth in section 104 of this manual.

### Who Attends FCRC Meetings

Unless DFS or another agency has permanent custody, the child's parents must be notified in writing that they may attend the meeting. The child's foster parents must also be notified in writing.

The committee consists of four to seven members. A majority must be present to conduct an official review. The committee must include at least the following representatives:

- the department (usually a DFS supervisor and/or social worker; however, the worker responsible for the child's placement should not be a committee member when the committee reviews that child's placement);
- the youth court;
- the local school district;
- a person who is knowledgeable of foster children's needs, and not employed by the youth court or the department;
- if the child under review is an Indian, a person, preferably an Indian, who is knowledgeable about Indian cultural and family matters; and
- the foster parents for a child placed in their care.

*Change  
meetings to reflect  
previous members*

## Child and Family Services Policy Manual: Substitute Care for Children Foster Care Review Committee

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The following individuals may also attend FCRC meetings:

- the placing social worker and/or his or her supervisor;
- the birth parents;
- the child, if of appropriate age and maturity; and
- the child's guardian ad litem, for the review of that child's case only.

### What Information to Bring to FCRC

The placing social worker or the supervisor brings the documentation necessary to substantiate the DFS 427-A prepared by the social worker prior to the FCRC meeting. Such documentation includes:

- current social information;
- the treatment plan;
- placement history;
- health history (mandatory);
- educational history (mandatory);
- court orders;
- available psychiatric and psychological information regarding the child/family; and
- any other material requested by the FCRC.

### FCRC Action After Review

The FCRC prepares a written report (DFS 427 Part B) which is submitted to the appropriate court, the social worker and the department representative.

The DFS 427, Parts A and B, are maintained in the child's case record.

*ARM 11.7.504 ALSO INCLUDES "OTHER PEOPLE AS APPROPRIATE" SHOULD THIS BE REFLECTED HERE?*

**Child and Family Services Policy Manual: Substitute Care for Children  
Foster Care Review Committee**

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**Response to FCRC Report**      The social worker shall attempt to implement the recommendations made in the FCRC report. If the FCRC's written recommendations to the court are adverse to the department's case plan, and the court schedules a hearing, the appropriate regional administrator shall be notified to determine what additional action may be needed.

**Private Placing Agencies**      When children have been placed in foster care by a private placing agency, the social worker from that agency is responsible for preparing the case for the FCRC.  
**Tribal Courts**      When a child is placed in foster care under a tribal court order, the following procedures apply:

1. If the child is placed under the supervision of the department, the department's social worker is responsible for preparing the case for the FCRC.
2. If the child is placed under the supervision of tribal social services, the tribal social worker is responsible for preparing the case for the FCRC.

In all cases where the child reviewed has been placed under a tribal court order, the social worker's report and the FCRC report shall be sent to the tribal court issuing the order.

**Youth Court Placement**      When a child is placed in foster care under the provisions of the Youth Court Act (i.e., youth in need of supervision or delinquent youth), the following procedures apply:

1. If the Youth Court is reviewing the child's placement every six months through a formal court review, a FCRC review is not necessary.
2. If the Youth Court is not reviewing the case every six months, the probation officer supervising the child is responsible for preparing the case for the FCRC.

**Child and Family Services Policy Manual: Substitute Care for Children  
Foster Care Review Committee**

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**Interstate Placements**

Children who are placed by the department in foster care in another state must be reviewed by the FCRC in the judicial district which contains the county responsible for payment. The FCRC in the judicial district is responsible to ensure the reviews are done, but the FCRC where the child is receiving service may negotiate actually doing the reviews.

If the FCRC where the child resides does the 6-month review, the report should be immediately sent to the FCRC of the responsible judicial district, with a copy to the district judge. The social worker should obtain the information necessary to conduct the review from the receiving state's social worker. Children who are placed into foster care in Montana by another state will be reviewed by the sending state. Social workers shall provide the information necessary to conduct the review to the sending state's worker, as requested.

**References**

Section 41-3-1115, MCA.  
Sections 11.7.501, 11.7.502 and 11.7.504, ARM.

Montana Department of Family Services  
**REPORT OF FOSTER CARE REVIEW COMMITTEE**

EXHIBIT 5  
DATE 3/7/95  
SB 174

(Instructions: Part B is completed within each 6 months. When completed by the FCRC, it serves as the report of the Foster Care Review Committee of the child's case plan.)

Child's Name: \_\_\_\_\_ Social Security #: \_\_\_\_\_

1. Placement Goal:
  - a. Short Range: \_\_\_\_\_ Achievement date: \_\_\_\_\_
  - b. Long Range: \_\_\_\_\_ Achievement date: \_\_\_\_\_
2. Is there a written case plan for the foster care child? Yes ☐ No ☐ Does the plan need to be modified? Yes ☐ No ☐
3. Was the plan completed within 30 days of placement? Yes ☐ No ☐ Is it updated each six months? Yes ☐ No ☐
4. Are services provided to show reasonable efforts are provided to return the child home? Yes ☐ No ☐
5. Is continuation of placement necessary? Yes ☐ No ☐
6. Does the placement continue to be appropriate in the least restrictive setting and close as possible to the parents home? Yes ☐ No ☐
7. Is the case plan being carried out? Yes ☐ No ☐
8. Is there progress being made toward alleviating the cause necessitating foster care placement? Yes ☐ No ☐
9. Can the child return home? Yes ☐ Expected date \_\_\_\_\_ No ☐ Why not? \_\_\_\_\_
10. Is the review open to parental participation and were they notified? Yes ☐ No ☐
11. How does the case record document written notice given to parents, foster parents and the child for foster care review committee meeting? \_\_\_\_\_
12. Has the social worker made appropriate arrangements for parent/child visits? Yes ☐ No ☐ If not why? \_\_\_\_\_
13. Have the parents made scheduled child visits? Yes ☐ No ☐ If not why? \_\_\_\_\_
14. What is the future status of the child? \_\_\_\_\_ Until what date? \_\_\_\_\_
  - a. returned to parent
  - b. continue foster care
  - c. placed for adoption
  - d. permanent long term foster care
15. Committee Recommendations: \_\_\_\_\_

☐ Periodic Review

☐ Dispositional Hearing Review

Parents notified of any change in:

1. Change in placement Yes ☐ No ☐ N/A ☐
2. Actions affecting parents visitations Yes ☐ No ☐ N/A ☐

☐ Agree  
☐ Disagrees

\_\_\_\_\_  
Youth Signature

\_\_\_\_\_  
Social Worker

\_\_\_\_\_  
Supervisor

☐ Agree  
☐ Disagrees

\_\_\_\_\_  
Parent or Foster Parent

\_\_\_\_\_  
Other Present

\_\_\_\_\_  
Other Present

\_\_\_\_\_  
Other Present

\_\_\_\_\_  
Other Present

\_\_\_\_\_  
Other Present

Date Review initiated: \_\_\_\_\_ Date Review continued until: \_\_\_\_\_

Date Review completed: \_\_\_\_\_ Next F.C. Committee Review due date: \_\_\_\_\_

Montana Department of Family Services  
**427 FOSTER CARE CASE PLAN**

Child's Name: \_\_\_\_\_ D.O.B. \_\_\_\_\_

S.S.#: \_\_\_\_\_ Tribal Affiliation: \_\_\_\_\_

Eligible For Enrollment Yes \_\_\_\_\_ No \_\_\_\_\_ Enrolled Yes \_\_\_\_\_ No \_\_\_\_\_ Enrollment # \_\_\_\_\_

**FAMILY MEMBERS, RELATIVES, SIGNIFICANT OTHERS:**

Name (List Parents Surnames)	Relationship To Youth	Address/City/State	Phone

**CUSTODY ACTIONS**

Type (Temp, Perm, TIA)	Effective Dates (From — To)	County of Action

**PLACEMENTS**

Name of Family/Facility	Date Placed	Date Removed	Reason For Move	S.W. Name

School at Placement \_\_\_\_\_ City \_\_\_\_\_ Teacher \_\_\_\_\_ Grade at Placement \_\_\_\_\_

**SCHOOL HISTORY**

Name and Address	Date Entered	Date Left	Teacher	Grade



Montana Department of Family Services  
**427 FOSTER CARE CASE PLAN**

(Instructions: Part A is completed within 30 days of placement and within 6 months thereafter in all cases and when appropriate signed by the client or legal guardian or both. Part A reflects the current situation and should be updated as often as needed.)

**CASE PLAN:**

Cause or Case Number: \_\_\_\_\_

Child's Name: \_\_\_\_\_ Soc. Sec. Number \_\_\_\_\_ Birthdate: \_\_\_\_\_

Where is child placed? \_\_\_\_\_ Type of Facility: ☐ Foster Home ☐ Group Home ☐ Child Care Agency

Why is this placement appropriate? \_\_\_\_\_

Date of original placement: \_\_\_\_\_ Date of current placement: \_\_\_\_\_

**Problem Description** 1. a. Briefly describe the primary problems which led to your intervention with this child: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

b. What efforts and services were provided to prevent removal from home: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Permanency Goal** 2. What are the short and long range goals for the child's placement?  
a. Short Range: \_\_\_\_\_ Achievement Date: \_\_\_\_\_  
\_\_\_\_\_

b. Long Range: \_\_\_\_\_ Achievement Date: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. Describe the services to be provided to the child and/or to his/her parents to improve the home condition in order for the child to be returned home, or to be permanently placed. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Achievement Date: \_\_\_\_\_

4. Describe the services to be provided to the child and to his/her foster parents to address the child's needs while in foster care. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Achievement Date: \_\_\_\_\_

5. What is the plan to assure that the child receives proper care? \_\_\_\_\_  
\_\_\_\_\_

6. Evaluate the appropriateness of the services that have been provided to the child. \_\_\_\_\_  
\_\_\_\_\_

7. Is this placement the least restrictive (most appropriate family-like setting) available, consistent with the best interest and special needs of the child? Yes \_\_\_\_\_ No \_\_\_\_\_ Explain: \_\_\_\_\_

8. Is this placement in close proximity to the parent's home, consistent with the best interest and special needs of the child? Yes \_\_\_\_\_ No \_\_\_\_\_

a. Does the placement consider proximity to the school in which the child is enrolled at the time of foster care placement? Yes \_\_\_\_\_ No \_\_\_\_\_ Explain: \_\_\_\_\_

Montana Department of Family Services  
**427 FOSTER CARE CASE PLAN**

Child's Name: \_\_\_\_\_

Youth  
Age 16  
or Older

9. a. By what date will the youth be living independently and what is the goal for independent living. \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

b. List activities and services needed for independent living and their date for implementation. \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

10. Describe the activities and services provided to carry out the judicial determination made with respect for the child? \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

11. Removal from home was the result of: ☐ Parental agreement: ☐ Court order

Current status of child is: ☐ Parental Agreement ☐ TIA ☐ Temporary Legal Custody

☐ Permanent Legal Custody or Other: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

12. a. Does the court order contain statement "continuation therein would be contrary to the welfare of the child"? Yes \_\_\_\_\_ No \_\_\_\_\_

b. Does the court order state that reasonable efforts were made to prevent or eliminate the need for removal of the child from his/her home or to make it possible for the child to return home. Yes \_\_\_\_\_ No \_\_\_\_\_

13. Does the case record document that the parents were notified prior to foster care review? Yes \_\_\_\_\_ No \_\_\_\_\_

14. a. Does the case record contain a copy of the CS/EA-1? Yes \_\_\_\_\_ No \_\_\_\_\_

b. If IV-E eligible, has eligibility redetermination been completed within 6 months of last determination? Yes \_\_\_\_\_ No \_\_\_\_\_

15. Is the child's most recent school report card attached and a copy given to the foster care provider? Yes \_\_\_\_\_ No \_\_\_\_\_ Explain \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

16. Is the child's current medical record attached and a copy given to the foster care provider? Yes \_\_\_\_\_ No \_\_\_\_\_ Explain \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Youth Signature (if appropriate)

\_\_\_\_\_  
Parent/Guardian

\_\_\_\_\_  
Date

\_\_\_\_\_  
Social Worker

\_\_\_\_\_  
Supervisor

\_\_\_\_\_  
Date

(Note: Supervisors may require additional information for treatment plans or foster care reviews.  
Additional information should be attached to the case plan, when needed.)

**The Supreme Court of Montana**  
 Office of the Court Administrator

PATRICK A. CHENOVICK  
 Court Administrator



Justice Building Room 315  
 215 North Sanders  
 P.O. Box 203002  
 Helena, Montana 59620-3002  
 Telephone (406) 444-2621  
 FAX (406) 444-3274

**MEMORANDUM**

TO: Lori Koutnik  
 FROM: Patrick Chenovick *PC*  
 DATE: March 8, 1995  
 SUBJECT: Local Citizen Foster CARE Review Boards Pilot Program

Per your request I am providing the following information detailing the expenditure of funds on the Local Citizens Foster Care Review Boards Pilot Program.

**Fiscal 1994 (July 1993 - June 1994)**

Personal Services .....	\$ 11,816.48
(includes benefits and insurance costs)	
Supplies .....	53.52
Travel .....	1,984.97
Equipment .....	3,474.00
Total all expenses .....	\$ 17,528.97

**Fiscal 1995 (July 1, 1994 - June 30, 1995)**

Personal Services .....	\$ 30,768.06
(includes benefits and insurance costs)	
Contracted Services .....	1,894.33
Supplies .....	507.99
Communications .....	187.42
Travel .....	1,551.73
Other Expenses .....	200.00
Total all expenses .....	\$ 34,438.50

Fiscal 1995 expenses are for expenses paid through February 1995.

If you have further questions, please don't hesitate to advise.

*CRB money going to administrative costs rather than direct Services to kids at a time when service budget has been cut! Major objection and concern!*

*Laure Koutnik*

*1/2 budget spent by June with no review by Dec.*

EXHIBIT 7  
DATE 3/7/95  
SB 66

March 7, 1995

Stan Frasier            Testimony on    SB 66

At the request of Gary Marbut, on the behalf of;

Montana Shooting Sports Association

Gun Owners of America

Citizens Committee For The Right To Keep and Bear Arms

Western Montana Fish and Game Association

Big Sky Practical Shooting Club

- 1) Most violent crimes are committed by previous offenders.
- 2) Guns and law abiding gun owners are often blamed for crimes involving guns.

Therefore we think that people who are repeat offenders should just stay behind bars.

EXHIBIT 8  
DATE 3/7/95  
SB 278

To: Chairman Clark and Honorable Members of the House Judiciary Committee  
From: Judy Wang Assistant City Attorney, Chair Missoula Family Violence Council  
Re: Senate Bill 278  
Dated: March 7, 1995

## Introduction to Senate Bill 278

Senate Bill 278 proposes changes to two areas of Montana law that deal with violence and victims of violence. The first change removes TROs (Temporary Restraining Orders) from a subsection in the marriage and divorce statutes and places them in their own code section. The proposal renames TROs Orders of Protection. The new section revises Montana law to allow victims some protections that are currently not available. As an example, the proposal allows rape victims to get an Order of Protection.

The second change revises the criminal code concerning assaults within the family and between partners. We propose changes that cause these assaults to be taken more seriously, so that they are treated like similar crimes. The proposal calls for suggested minimum sentences for a first and second offense partner or family member assault that are similar to DUI sentences. We ask that local governments be allowed, but are not required, to establish probation offices to monitor offenders after conviction, to increase sentence compliance and reduce the rate of reoffending.

This bill was drafted by a committee of people including a prosecutor, a legislator, victim advocates, family law attorneys and children's advocates. A number of people who had input into the bill attended a National Conference on Family Violence Legislation and some of the proposals in the bill began as ideas from that Model Code. The proposal was reviewed and suggestions were implemented from a District Court Judge, County Attorneys, a Justice of the Peace, Health care workers, Victims of Family Violence, Victim Advocates and the Attorney Generals office.

Senate Bill 278 looks longer and more complicated than it really is. The proposal renames the crime currently called Domestic Abuse Partner or Family Member Assault and the renaming process called up many statutes that aren't otherwise impacted by the proposal. The real essence of the bill starts on page 10.

The easiest way to explain why the changes are needed in Montana now is to give examples of problems that have occurred under current Montana law. I will then explain how the proposal would prevent the problem from happening under the law as it will read if Senate Bill 278 is enacted.

## Name Changes (Sections 10, 45-5-206 and Sections 21-29)

The current criminal statute that prohibits violence within the family is called "Domestic Abuse". Using everyday definitions for those terms the crime sounds like "Tame" (domestic) "misuse" (abuse). It hardly sounds like a crime at all!

The proposal renames that crime "Partner Assault" or "Family Member Assault". That makes the offense "sound like" a crime. As it is renamed the title refers to the criminal act (Assault) and the victim in the crime (Partner or Family Member). This is similar to other Montana Statutes (Assault, Mistreating Prisoners, Endangering the welfare of children).

Orders issued by a judge to protect a victim from further violence are currently called Temporary Restraining Orders (TROs). Sometimes other terms are used like Preliminary Injunction or Injunction or Restraining Order. The different titles we currently use have created confusion and don't make it clear what the real purpose of the statute is-to protect victims of crime. The proposal renames TROS Orders of Protection and Temporary Orders of Protection. This makes the purpose of these orders clear, to protect victims of crime from further violence.

Suggested Minimum Penalties (Section 10 45-5-206(3)(a) and Section 12)

Missoula County District Court Judge Douglas Harkin is a member of Missoula's Family Violence Council. He sees third offense felony Domestic Abusers (to be renamed Partner or Family Member Assaults). Many of the offenders that he sees for felony offenses have not spent any time in jail other than when they were arrested. Basically many of the offenders are charged with a felony before they even "get it" that what they have done is an crime.

The proposal calls for minimum sentences that are similar to first and second offense DUIs. The minimum sentences are proposed in strong language "an offender convicted of partner or family member assault shall be fined... and shall be imprisoned in the county jail not to exceed 1 year or not less than 24 hours...". The committee's intention was that those sentences are strongly suggested, but not necessarily absolute. We did not add language that stated that those sentences cannot be suspended. The intent is that the minimums could be suspended given appropriate circumstances. For example, an indigent defendant who could not pay the fine or an offender so ill that incarceration could endanger his or her health could have the minimums imposed, but suspended. The purpose of the minimums is to make it clear that, like DUIs, this is a crime and there are penalties that follow when you commit a crime.

TROs (to be renamed Orders of Protection) frequently are not taken seriously under Montana's current laws. In Missoula Municipal Court we frequently see offenders who have committed two, three, four sometimes even five TRO Violation offenses. Each and every one is a misdemeanor offense and often times offenders are only penalized with a small fine. Some times traffic offenses are taken more seriously than TRO Violations.

The proposal calls for a third offense Violation of an Order of Protection to be a felony. It also suggests a minimum sentence for a second offense TRO Violation (to be called a Violation of an Order of Protection).

Victims Who Still Need Protection (Section 10, 45-5-206 (2)(a) and Section 22)

There are still victims of crimes who need protection but are not eligible for a TRO under current Montana law. The proposal makes Victims of Rape, Incest and Sexual Assault eligible for an Order of Protection, regardless of their relationship to the offender. Inlaws who commit one of the listed crimes against a family member could be served with an Order of Protection. Senate Bill 278 includes people who have had a child with their abuser in the definition of "Partner" so that they are eligible for an Order of Protection, if they have been the victim of one of the listed crimes committed by their partner.

#### Counseling (Section 10, 45-5-206 (4)(a) and (b))

Montana law mandates 25 hours of counseling upon conviction for the offense of domestic abuse (to be renamed Partner or Family Member Assault). There is no assessment prior to counseling.

A few years back a Missoula offender in counseling disclosed in group that he had been a "Hit Man" for the Mafia prior to moving to Montana. He was in the same group with offenders who had been cited for their first offense. It doesn't make sense that we could or should put an experienced killer in with first time offenders. That is exactly what we did. We undoubtedly do mix inappropriate people in the same counseling group when we do not assess offenders before we send them to counseling.

The proposal calls for an assessment of violence, dangerousness and chemical dependency prior to counseling. It only makes sense that we want to figure out what the offenders problems are before we try to fix them with counseling.

#### Notice of Rights to Victims (Section 15, 45-6-602 and Section 20)

Currently Victims are given some information about their rights and the services that are available at the time of an arrest. Some of the information that is given, under our current statutes, is misleading. No one other than peace officers is required to give a notice of rights to victims.

The proposal calls for a corrected notice of rights, both to reflect current law and the other proposed amendments. Health care workers, when they suspect that a partner or family member assault has occurred, under Senate Bill 278, may also give a similar notice of rights. The reason for including health care workers is that there are many many victims of family violence who seek health care for their injuries but who do not connect with anyone else in the system. We propose that health care workers also give a notice of rights so that we get the message out to victims about their rights and services that are available.

#### Organization of Montana Laws relating to Victims of Family Violence (Sections 5, and Sections 21 through 29)

Currently TROs are located as a subsection of a Marriage and Divorce statute. That doesn't make sense when stalking victims and victims of sexual assaults also need Orders of Protection. Most people who get a divorce do not need an Order of Protection. Many of the

people who get an Order of Protection do not need a divorce and many are not married to the offender.

Our proposal moves Orders of Protection (formerly TROs) to a victims rights section. It simply makes sense that an Order of Protection is very different than a divorce.

#### Sentence Monitoring (Section 18)

We really don't have a way to make sure that offenders follow the sentences that are required of them under current law. We tell them to quit drinking, get counseling or stay away from the victim but we don't have a method of making sure that they do what we tell them to do.

The proposal gives local governments the authority to create misdemeanor probation officers who can monitor offenders. The probation officers can monitor DUI offenders and other misdemeanants as well. Senate Bill 278 allows local governments to set up these offices but did not make it mandatory that they do so.

#### Protections Available (Section 23)

There are a number of kinds of protections for victims available under current law. We continued the protections currently available and added some other protections.

The proposal gives judges the discretionary authority to order that an offender shall stay a certain number of feet away from a victim. That is important because some offenders, if ordered to just stay away without being told a foot restriction, will go where ever and when ever the victims is on public property and terrorize her or him. Having a foot restriction gives the victim a comfort zone and makes it clear to the victim or the offender where the boundaries are. The proposal gives a judge the option to order that an offender stay away from other named family members and order some additional property protections where and when it is appropriate.

#### Practical Problems (Sections 24 and 27)

Currently there is some question about whether TROs are enforceable throughout the state. There are still a number of courts that will order that a victim of a crime, who requests that he or she be protected by an TRO (to be renamed an Order of Protection) be restricted in her contact with the offender. An additional question is whether and when a TRO is moved to district court.

Senate Bill 278 resolves all of those questions. It states clearly that an Order of Protection is enforceable throughout the state. It states that the process to get an Order of Protection is the same for all persons. To get an order of Protection you must swear out a Petition that you are a victim of a crime. No one can get an Order of Protection by simply showing up at a hearing and asking that it goes both ways. We clarified when and if a



Petitioner should file an Order of Protection in District Court or a court of limited jurisdiction.

Brief Summary of Written testimony

Counselor Dee Lundberg

Attorney Klaus Sitte

District Court Judge Douglas Harkin

Dawson Deputy County Attorney Charles Unmack

Pam Anderson with Turning Point the DUI school in Missoula

Sam Lemaich Regional Supervisor Probation and Parole

Anonymous Victim a Survivor

Prevention Education Specialist Linda Hanson

Karin Nesse a Survivor

Thresa Troutman a Survivor

Gail Hammer an Attorney who has worked with battered women

On behalf of the Missoula Family Violence Council, the Missoula City Attorneys Office and personally as a Prosecutor with 8 years experience prosecuting Partner Family Violence cases I request you to vote for Senate Bill 278 as it was enacted by the Senate.

STATE OF MONTANA  
FOURTH JUDICIAL DISTRICT  
MISSOULA AND MINERAL COUNTIES  
DEPARTMENT 4



EXHIBIT 9  
DATE 3/1/95  
SB 278

COUNTY COURTHOUSE  
200 WEST BROADWAY  
MISSOULA, MT 59802-4292  
(406) 523-4774

DOUGLAS G. HARKIN  
JUDGE OF THE DISTRICT COURT

March 6, 1995

COPY

TO: Chairman Clark and  
Members of the House Judiciary Committee

RE: House Bill No. 278

Please consider my comments on the following proposals  
contained in House Bill No. 278.

I suggest that the appropriate paragraphs of §40-4-121 be  
amended because this statute allows a justice, city, or municipal  
court to grant a permanent injunction upon a showing made in that  
court without the filing of a sworn affidavit. This presents three  
problems:

1. The resulting restraining order is subsequently presented  
in district court as a justification for district court action  
against the restrained party - but the district court has no  
factual basis for taking action because there is no record of why  
the justice, city, or municipal court granted the restraining  
order. "Just do it because the other court did it" is not a good  
reason for my court to issue a restraining order. I want facts.

2. The affidavit that was filed by the party requesting a  
restraining order is examined with a fine-toothed comb when the  
case arrives in district court, and slight exaggerations or  
misstatements are used to great advantage. The other party who  
obtaining a restraining order, without an affidavit, does not  
experience that grueling cross-examination.

3. It's too easy for the justice, city, or municipal court  
judge to just grant mutual restraining orders against each person  
and not do what judges are required to do - decide who is the real  
troublemaker and put a stop to it!

I support the proposal that §45-5-626 be amended so that only  
the restrained person would be cited for violation of the  
restraining order.

Sincerely,

Douglas G. Harkin  
District Judge

TESTIMONY OF JANET CAHILL, REPRESENTING MONTANA COALITION  
AGAINST DOMESTIC VIOLENCE

Representative Clark, members of the committee, my name is Janet Cahill from Violence Free Crisis Line, Kalispell, Montana and I represent the Montana Coalition Against Domestic Violence. The coalition is an organization of programs and individuals who provide services to battered women and their children - the victims of domestic violence.

In 1994 Montana domestic violence service programs report providing over 30,000 days of shelter to battered women and their children. More than 6,000 battered women were served through Montana's crisis lines and shelters. Montana Coalition Against Domestic Violence strongly supports and urges you to support SB 278 as it came from the Senate. Justice Department statistics report only 2295 cases of domestic violence. The increased protections for victims and consequences for offenders will encourage more battered women to seek the remedies that the criminal justice system and provide.



EXHIBIT 11  
DATE 3/7/95  
SB 278

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

March 7, 1995

Chairman Clark and members of the House Judiciary Committee,  
thank you for this opportunity to speak.

I am Kelly Slattery-Robinson, the Shelter Coordinator of the YWCA Domestic Violence Assistance Center in Missoula and have worked in the field of domestic violence for 6 years.

I will be very brief. There are many things that I like about this bill. I especially like the proposal of misdemeanor probation officers to monitor offenders. Holding offenders accountability for their behavior is a very important step in eradicating the problem of partner assault. I also like that the third offense of Orders of Protection violation will be a small felony, again holding offenders responsible for their behavior.

Thank you for your time and please vote for Senate Bill 278 as it was enacted by the Senate.

Thank You,

*Kelly Slattery-Robinson*

Kelly Slattery-Robinson, Shelter Coordinator  
YWCA Domestic Violence Assistance Center

SENATE BILL 278

Testimony of Elizabeth S. Baker  
Assistant Chief Deputy Attorney General

Attorney General Mazurek and the Department of Justice strongly support Senate Bill 278. Montana's major crime rate has not fluctuated significantly over the past ten years. However, with the exception of 1993, the rate for domestic violence offenses has risen steadily since the offense was separately classified in 1988. Figures are not yet available for 1994.

In 1993, there were nearly 2300 reported cases of domestic abuse in Montana--one every three hours and 49 minutes. The statistics would no doubt be higher if all such offenses were reported but often they are not.

The United States Department of Justice 1994 report indicates that more than two thirds of violent attacks against women nationally were committed by someone the women knew.

Senate Bill 278 represents a significant effort to heighten public awareness about the fact that domestic abuse is not at all domestic; it is a crime of violence and must be treated seriously. The bill strengthens options available for the protection of victims. One of the most important features is separating the protective order provisions from the marital dissolution statutes. There has been confusion in the past about when someone is entitled to a restraining order. This bill will keep restraining order provisions in the family law code for appropriate cases but will also give independent protection to victims regardless of the status of their marital relationship.

Many violent behaviors are learned at home. To prevent crime, we need to stop violence in the family. Senate Bill 278 is an important step toward that goal.

EXHIBIT 12  
DATE 3/7/95  
SB 298

Amendments to Senate Bill 278  
Third Reading Copy (Blue)

Requested by Sen. Vivian Brooke  
for the House Judiciary Committee

Prepared by  
Beth Baker, Department of Justice

1. Title, line 10.  
Following: "AUTHORIZING"  
Strike: remainder of line 10 through "SITUATION" on line 11.  
Insert: "POLICE OFFICERS TO TAKE REASONABLE ACTIONS FOR THE PROTECTION OF VICTIMS OF PARTNER OR FAMILY MEMBER ASSAULT"
2. Page 12, line 6.  
Following: "offender"  
Strike: "~~charged or~~"  
Insert: "charged or"
3. Page 12, line 7.  
Strike: "THE"  
Insert: "a"  
Strike: "USED IN THE ASSAULT"
4. Page 15, line 15.  
Following: "(6)"  
Strike: the remainder of line 15 and line 16 in its entirety.  
Insert: "any other order of protection reasonably necessary to protect you or other family members"
5. Page 17, line 22.  
Strike: "**seizure of weapon**"  
Insert: "**peace officer response**"
6. Page 17, line 23.  
Following: "assault"  
Strike: remainder of line 23, all of line 24 and line 25 through "officer".
7. Page 18, line 1.  
Strike: "(3)"  
Insert: "(2)"
8. Page 18, lines 23 and 24.  
Following: "(6)"  
Strike: remainder of line 23 and line 24 in its entirety.  
Insert: "any other order of protection reasonably necessary to protect you or other family members."

February 3, 1995

Chairman Clark and Members of the  
House Judicial Committee:

EXHIBIT 13

DATE 3/7/95

SB 278

My name is Mary. I am a Survivor of Domestic Abuse. I am most grateful for this opportunity to be with you and present testimony about an issue that has nearly destroyed us as a family, as individuals, as simple human beings trying to peacefully inhabit this earth. I am a Registered Nurse by profession. I am blessed with two wonderful children, now ages 4 and 7 who live with me, and are learning some very difficult lessons about life - far, far ahead of their time. I am the third from a family of 8 children, grew up with little money - but lots of other "prince benefits" - for example - a warm home, 3 square meals per day, a solid education, a sense of being cared for, and lots of laughter. My Mother was the most trusted and consistent person I've ever known. From my Father, we learned an uncanny way to deal with life's little difficulties - we learned to laugh at our problems and with ourselves. Anger, exhibited either physically or verbally toward another person was not even an option. It just didn't happen. Conflicts, it seemed, were resolved quickly and easily. My Father was neither disrespectful nor punitive towards my Mother. I learned patience and tolerance on all levels.

And never, NEVER did I EVER imagine that I would grow up to experience violence in my own home. Never did I ever expect my husband (a respected Health Care Professional) to violate me in the ways he ultimately did. Beyond all - never did I ever fathom that my sweet and innocent children would be subjected to the intense pain and gutting emotional struggles they have been forced to endure. The frustration of all frustrations? I was totally unable to stop it. To contain it. To soothe it. To heal or medicate or manipulate or obliterate it. It was a Monster who surfaced without invitation or provocation. On a good day, or a bad day - often a holiday. No predictable rhyme or reason. I learned to generically limit my social gatherings or get-togethers for fear of its release, for fear the Monster might jump out and seize the moment. I loved the good nature of the man who "harbored" the "Monster", the Intimidator, the chow of brut strength. He was a man I first met as the funny man - light of spirit, fun to be with, intelligent, adventurous, a lust for life and all its fullness.

I wanted to travel and "experience life" with him. To do things / go places I'd never been. And all was well within this game plan - for it satisfied his needs. But as time moved along, it was soon evident that his appetite for self indulgences was not only huge, but insatiable. And his willingness to "share" his "resources" (myself) with even his own blood (his first-born son) was intolerable. His temper flared, his anger soared. He acted up (verbally accosting me, throwing things all over the house, breaking special things of mine, smashing my glasses, tearing my clothes, kicking in walls and appliances, holding me down and choking me - to name a few) and he acted out (outside our marriage). And then came the day I almost lost my stomach - not to mention my mind. He killed our neighbor's dog - "hog-tied" - with his Marine Corps knife - and later bled out of several other animals who ceased to be at his hands. I told him to leave, I tried to leave - on several occasions - but somehow, when the acute stage was over - he became his sweet self once again - apologized, wept, begged for forgiveness and for "another chance". And vowed - vowed to "never again". And for a while, he wouldn't, he didn't. He would be great. He was believable. In fact, the craziness became the unbelievable. The past. Over. Forgotten.

But then, one day again, he would get mad. Yes, again. The hell waters would rise, and on and on...

And then one day, I drew a line. I told him not to cross it. I told him, "if you ever again lay a hand on me in anger I will call the police." He responded, "I hope you would, because I could never live with myself knowing that I ever hurt you again."

And of course one sunny wonderful afternoon, he again got angry, he said some horrible things, he choked me. I left.

I called the police. I obtained "protection" (-a restraining order.) He came back. Angrier. He choked me - and this time, with his hands on my neck - thrust my whole body to the ground, struck my head on the sidewalk. I blacked out / came back (it scared him - he too must have thought I was dying) and begged him to leave me alone. He tried to keep me from going for help. My forehead was deeply abraded, freely bleeding outwardly and major swelling beneath the skin. Both eyes blackened and swelled, as did my nose. I had a concussion, and a severe headache for several days, of lesser intensity for 3 wks. For 2 days I barely moved from the couch - except for my bare necessities and to care for my 6 mo. old baby.



My 3 1/2 year old son took care of me - wiping blood from my head, holding ice to my wounds. A series of horrible events ensued for my son - from intense fear to nightmarish bedwetting, -acting out what he saw - choking his little sister and other little friends - I was devastated and horrified. My baby wept in her sleep, and later, unprovoked tantrums. My life became a living nightmare. My children and I feared going out our front door - not knowing where he might be (and sometimes was) lurking. (Stalking) I had bizarre phone calls day and night. I died emotionally. He terrorized us with his craziness. We were victims of his encampment even when he was not near. I developed asthma. I was financially consumed - nearly lost our home, car and all. The 3 of us slid into a black hole of numbness and depression.

Three and one half years later, myself and my children are getting on with our lives. I had started by my oldest son and myself immediately into counselling which helped both of us to develop a healthy perspective about life despite the incredible void we had been trapped in. My son is doing well in school - both socially and academically, and he and his sister (for the most part) adore each other and are very protective of one another. We've learned that sometimes life just doesn't unfold the way one might plan or hope for. And somewhere in the back of my head resounds a sentiment from my 8th grade teacher - "...with every privilege goes responsibility..." I do truly feel lucky and privileged to be alive today. And I do feel a responsibility to speak out against all violence towards other living beings. I feel the we as a society must open our eyes and look at the pain and suffering around us - and know that it is all highly unnecessary, and can be resolved - if we can just allow it to happen. In the words of my 7 yr. old son - "If someone feels like he has to 'do it' (act out violently) - why doesn't he just walk out the door instead - and not act the kids through watching it, and not act the Mom through it."

The answers truly are simple. We only complicate our lives by keeping our hands in the sand. We do have some very big problems with escalating interpersonal violence throughout the world. But we also each have a choice. To think, or not to think. To act, or not to act. To facilitate healing - or remain a stick in the mud. We have a choice about how to manage the problems at hand in our communities. We are fortunate to have experts who have made excellent recommendations on how to support the offended + effectively deal with the offenders. Don't miss the opportunity to

make life just a little bit easier for someone who desperately needs it. Someone you know is suffering from the effects of Domestic Violence right now I though you may not yet be aware of it.

Think.

Act.

Vote for Senate Bill 278 as enacted by the Senate.

Then, sleep well tonight.

DOMESTIC VIOLENCE - HAS ANY THING CHANGED IN TWENTY YEARS?

By Jan Healy, R.N., B.S.N., C.E.N.

EXHIBIT 14  
DATE 3/2/95  
SB 228

Has anything changed in twenty years in the way society views domestic violence? How about the judiciary and law enforcement, has their attitude changed? The health care providers, the mental health workers, the social service agencies, the clergy, has their attitude changed? When you see today's news headlines, it makes you wonder at the number of women who have "fallen through the cracks" of the system that is supposed to protect and help them, and as a result have been brutally assaulted and murdered. Why does abuse have to reach the sensational headline status before attention is paid ever so briefly to the victims of the abuse and their rights?

Emotional abuse starts long before the physical assault. Emotional abuse is the cruelest and longest lasting of all the forms of abuse. Emotional abuse scars the heart and damages the soul according to Andrew Vachss, noted author and attorney. Like cancer emotional abuse does its most dangerous work internally. Yet little attention is paid until the physical assaults cause serious physical injury to the victim, the batterer or both. Why does society not respond sooner to avert tragedy? The following story is a prime example.

The other day I visited with my former attorney who is now a judge. We chatted about my children, where they are and how they are doing. Then we talked of the events leading up to and that occurred after the court proceedings I was requesting information on. Toward the end of our visit the judge made the comment that perhaps if he had been a little more adversarial in my behalf, that tragedy could have been averted twenty years ago. But this story could have happened yesterday.

It was on March 23, 1974, Saturday afternoon at 12:20, that my husband of six years broke down the locked front door of my home and in front of our two small children, ages five and nine years, shot me seven times and then killed himself. It was the culmination of many threats and acts of violence that escalated into that final act. There were many beatings over trivial things, bouquets of red roses, apologies and promises that it would never happen again, if only I were thinner, a better wife, mother, housekeeper. His rationalizations went on and on. First came the emotional abuse with continual put-downs and attempts to completely control me. My husband was a manipulator par excellence. He manipulated me and my belief in the sanctity of marriage and a traditional family life. But no matter what I did, it was not right, nor was it enough. I sought help and counsel from my church leaders where I was affectionately patted on the hand and told to, "Try a little harder dear, be more submissive and your marriage will work." I am sure they were thinking love can conquer all. But this re-enforced my husband's blaming me for his battering and increased my feelings of failure and responsibility for the abuse. My self esteem was so low, I felt I had no rights as a wife, mother or person. It reached the point that even though I was employed full time, my husband would give me \$75 to buy groceries. Then after purchasing the groceries, I would give my husband the change. He then would check off the items on the grocery receipt as I put them away. He felt all money in the household was his and he controlled it as he saw fit.

When the physical abuse started, I learned to wear long sleeved blouses and dark hose or pants to cover the bruises on my arms and legs. I did not want anyone to know. I did not tell anyone because I was so ashamed. This kind of

thing did not happen to anyone I knew. There must be something wrong with me. I lived isolated in constant fear. But my friends at work knew and protected me from being questioned too closely by others about my black eyes. Finally one night after drinking he came home, raped me, beat me and then threw me out of the house in my pajamas. It was the end. I could take no more. I told my husband either he get help or I would leave and take the children with me. He then committed himself voluntarily to Warm Springs State Hospital for treatment for ninety days. Toward the end of that ninety day period, the psychiatrist from Warm Springs called me one evening at work. He informed me my husband had told him that if he was released from Warm Springs, he would come back to Billings and kill my children and me. The psychiatrist said he was obligated by law to warn me, but that was all he could do. Because my husband was there on a voluntary commitment they could not hold him once the ninety days were up. I will never forget the cold terror that gripped me at that moment and from then on became my constant companion. I felt totally helpless and exposed. No one could or would protect me or my children from this man. The nightmare intensified.

My husband was released from Warm Springs and instructed to stay away from my children, my home and me. He also was to report to the local Mental Health Center for further follow up counseling and drug therapy.

Needless to say, he did not comply with his treatment regime. Within a day of returning to Billings, he was back at my home harassing me. I never knew from one moment to the next when he was going to show up threatening me with guns and knives at all hours of the day and night. I was held at gun point on several occasions. Then when all the guns were taken by the sheriff's deputies, I was held at knife point while my husband threatened to kill himself if I did not let him move back in the house with me. He was there so often the sheriff deputies and I had a signal worked out. They would just "stop by" to see how things were if they saw a certain light turned on (it was a light I never turned on otherwise). I refused to let my husband move back in. Strangely enough, I remained calm. Each time he showed up I called the police and tried to file a complaint. However, some of the times when I would go to the sheriff's office to file a follow up complaint, I would be told there was no report filed by the officers so I could not file a complaint. Nothing worked to keep him away. I obtained a restraining order to "legally" keep him from harassing me. Still he came back!

Finally in desperation, I went against my religious beliefs and filed for divorce. I would not have had the courage had it not been for a counselor at the Mental Health Center. He had called and suggested I come in for some supportive counseling. When I went in to see him, he validated my feelings that I was being beaten unjustly -- that no one has the right to beat anyone!

At this time, December 1973, I was working full time and taking pre-nursing courses at a local college. I had been accepted into the School of Nursing of Montana State University, and was scheduled to start classes winter quarter, January, 1974. This meant my children and I would have to move 144 miles away to Bozeman. I thought that at least here we would be safe. Besides, there was to be absolutely no contact with my husband except through my attorney. He was not even to know what town we were in.

My husband had been in and out of jail and the psychiatric unit at Deaconess Medical Center many times. Yet, after each release he came back to harass and

beat me day or night. I lived with constant mortal fear every moment of every hour of every day. So, on the advice of his psychiatric social worker and because of my husband's persistent non compliance with his treatment regime and I had found him hiding in the crawl space under my house with a loaded 357 magnum pistol, I started commitment proceedings.

At his trial he was represented by an attorney who was more concerned with protecting my husband's civil rights than his mental health. An attorney who had no concern for the safety of my children or me. My husband was interviewed for an hour by a psychiatrist who did not know his case at all because the psychiatrist in charge of my husband's case was out of town at the time. My husband was a highly intelligent professional person who knew how to play the game and work the system. He used to laugh about how he could fool them. And he did it this time too. The court turned him loose January 3, 1974.

Within a month, on a Saturday afternoon, when my children and I returned to our apartment in the married student housing at M.S.U. after a day of skiing, he was on our doorstep. That was the only time the terror got the best of me. I had thought we were safe. I had tried so hard to follow the advice given to me by the police, the psychiatric social worker and my attorney. Yet not even the law or hiding could keep him away from us. I managed to get the children inside the apartment and lock the door. Thank God it was a metal door so his pounding did no harm. I was hysterical and crying when I called the police for help. They told me I did not have a restraining order in Gallatin County so there was nothing they could do. I pleaded with them to call the Yellowstone County Sheriff's Department and my attorney. I then called some friends from church. The police came. My husband left. My friends arrived and took my children and me home with them for the night. I could not stop crying. After that I neither saw nor heard from my husband until the time of the shooting over a month later.

Winter quarter at M.S.U. ended. I was so proud and happy I had received my M.S.U. nursing cap signifying I was ready to start my clinical training. That was a Friday. That night my children and I returned to our home in Billings about 10:30 unannounced. The next morning I had a neighbor girl come and babysit my children while I met with my attorney concerning the divorce proceedings that were to take place the following week. I had just returned home from the meeting when my husband knocked down the locked front door of my home. His eyes were blood shot and there was the smell of beer on his breath. I looked in his eyes. I knew this time was different -- he was going to kill us! My son screamed, "He has a gun! He has a gun!" I shoved my son out the hole in wall that had been the door. The babysitter took my daughter out the family room door. As I turned back around to face my husband, he shot me three times point blank in the abdomen, then once in each side of the chest. By this time I too was out the front door. I fell off the front steps and he shot me again once in each hip. Mike then killed himself with one shot to the head. I was so confused. His last words to me as he stood over me shooting me were, "I am going to fix you so no one will ever think you are beautiful or love you again." I did not understand. He was the one that ran around and had the extra-marital affairs. I was the one who was forgiving and stayed home taking care of the children and the home.

Although I lived when the doctors said I would not, went skiing six months after the doctors said I would not walk because my right leg was paralyzed by femoral nerve palsy due to a partially severed femoral nerve, graduated from

M.S.U. with a Bachelor of Science in Nursing on June 10, 1977, and have worked as a registered nurse for the past seventeen years, I still have problems with my self esteem and have a difficult time trusting people. I still have my strong religious beliefs and have raised two outstanding children by myself. My son, Jim, is married to a wonderful young woman and is the father of the world's cutest three year old boy and eight month old baby girl. Jim is currently on a full ride scholarship to Stanford University Medical School and is in his third year of their M.D./Ph.D. program. Michelle, my daughter, is a senior at Brigham Young University majoring in psychology. This summer she married a sweet kind young man. Both children served outstanding missions for our church, Jim in Denmark, Michelle in South Korea. Despite the success in raising my children and my nursing career, I could never quite understand all that went on during those traumatic years. I felt I must be deeply flawed that this had happened to me. There must have been something more I could have done. I must have failed.

The understanding that I was not flawed, that I did not fail, did not start for sixteen years. Not until May 1990 when I attended the first McGuire Memorial Conference on Family Violence. As I sat there listening to the lectures, it was as though a knot deep within my soul was untied and I began to understand at last. There was nothing I could do to control my husband's behavior or prevent his battering. He was the one responsible for his actions. I was so relieved tears ran down my cheeks as I sat there among my colleagues from the emergency department.

Now I am committed to the education of the public - both lay and professional - in the hopes that other women will not have to live with the terror and confusion that were a part of my life for so many years. For this reason I share my story. Frequently I am asked if I have any anger about what I have been through. I would not call it anger -- it is rage. A rage that has been channeled into productive means. No one will ever hurt me or my children that way again! No one should have to go through what we went through! My children and I had fallen through the cracks of the system. Unfortunately today there are still thousands of stories similar to mine. So I ask, "Has anything changed in twenty years? Why are nearly 4,000 women being murdered each year by their spouses, former spouses, boyfriends or ex-boyfriends?" According to the National Coalition Against Domestic Abuse 4,000,000 women each year are battered so severely they require police or medical assistance.

Somethings have changed in twenty years. Most states have laws making domestic abuse a misdemeanor. Law enforcement goes on the domestic abuse call and makes the arrest. Unfortunately it is to the same residence, involving the same people again and again, frustrating the officers, prosecutors and judges involved.

The key to making substantial changes in community attitude about domestic is EDUCATION. Educating everyone from the judiciary, to the prosecutor, to the law officer, to the health care professionals, to the clergy, to the layman on the street. Orders of Protection must be stringently enforced. Sentences once the batterer is convicted must be stringently enforced. Victims must be informed of their rights by health care professionals as well as law officers. WE MUST DO EVERYTHING IN OUR POWER TO KEEP THE VICTIMS OF DOMESTIC VIOLENCE SAFE!!! We must assist them in accessing social service agencies, child care and legal assistance. WE MUST HAVE EARLIER INTERVENTION!!

# MONTANA WOMEN'S LOBBY

P.O. BOX 1099 HELENA, MT 59624 406-449-7917

To: House Judiciary Committee  
Re: Support of SB 278

The Montana Women's Lobby urges your support of SB 278. SB 278 includes several proposals that will allow the state of Montana to better respond to the problem of partner and family member assault. In renaming the offense previously called domestic abuse to partner and family member assault, we acknowledge the nature of the offense that effects three to four million American women per year. The violence done in domestic abuse cases is an assault on an individual whose suffering is not alleviated, nor whose battering is made less horrifying, by the fact that the offender was a household member. Domestic violence, according to data put out by the National Association for Female Executives, is often treated with a slap-on-the-wrist. The same violence that would be called assault when committed against a stranger, is somehow diminished, perceived as a lesser crime, when done unto a spouse or family member and called domestic abuse. We believe the renaming better describes the crime and thus, better instructs the public and police as to its violent, unacceptable nature and how we need to deal with it.

We also support, in particular, in section 24, bringing the end to mutual restraining orders made for the convenience's sake. Those who are not a threat should not be treated as one. It is wrong to blame the victim, to criminalize the victim, for purposes of simplification.

We urge your support SB 278.

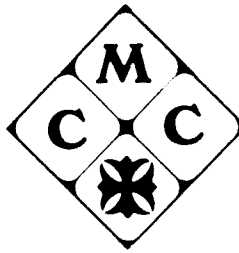
Facts:

A third of female emergency room patients are battered women.

A third of all homeless women in the U.S. are fleeing domestic violence.

Thirty percent of female homicide victims are killed by their male partners.

(National Association for Female Executives)



# Montana Catholic Conference

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE, FOR THE RECORD, I AM SHARON HOFF, REPRESENTING THE MONTANA CATHOLIC CONFERENCE. I ACT AS LIAISON FOR MONTANA'S TWO ROMAN CATHOLIC BISHOPS ON MATTERS OF PUBLIC POLICY. THE MCC SUPPORTS SB 278. STRENGTHENING MONTANA'S DOMESTIC VIOLENCE LAWS IS THE RIGHT THING TO DO.

AN ESTIMATED 3 TO 4 MILLION WOMEN IN THE U.S. ARE BATTERED EACH YEAR BY THEIR HUSBANDS OR PARTNERS.<sup>1</sup> APPROXIMATELY 37 PERCENT OF OBSTETRIC PATIENTS--OF EVERY RACE, CLASS, AND EDUCATIONAL BACKGROUND--REPORT BEING PHYSICALLY ABUSED WHILE PREGNANT.<sup>2</sup> MORE THAN 50 PERCENT OF THE WOMEN MURDERED IN THE UNITED STATES ARE KILLED BY THEIR PARTNER OR EX-PARTNER.<sup>3</sup>

<sup>1</sup> Council on Scientific Affairs, American Medical Association, "Violence against Women," Journal of the American Medical Association, June 17, 1992, 3184-3189.

<sup>2</sup> Ibid

<sup>3</sup> Ibid



**DOMESTIC VIOLENCE COUNSELORS TEACH THAT VIOLENCE IS LEARNED BEHAVIOR. IN MANY CASES, MEN WHO BECOME ABUSIVE AND THE WOMEN WHO ARE ABUSED GREW UP IN HOMES WHERE VIOLENCE OCCURED. IN SUCH A SITUATION, A CHILD CAN GROW UP BELIEVING THAT VIOLENCE IS ACCEPTABLE BEHAVIOR; BOYS LEARN THAT THIS IS A WAY TO BE POWERFUL. ABUSE COUNSELORS SAY THAT A CHILD RAISED IN A HOME WITH PHYSICAL ABUSE IS A THOUSAND TIMES MORE LIKELY TO USE VIOLENCE IN HIS OWN FAMILY.**

**MEN WHO ABUSE WOMEN CONVINCe THEMSELVES THAT THEY HAVE A RIGHT TO DO SO. THEY MAY BELIEVE THAT VIOLENCE IS A WAY TO DISSAPATE TENSION AND TO SOLVE PROBLEMS--A VIEW THAT SOCIETY OFTEN SUPPORTS. BATTERING AND OTHER FORMS OF ABUSE OCCUR IN A SOCIETY SATURATED WITH VIOLENCE, WHERE VIOLENCE IS GLORIFIED IN BOOKS, IN MOVIES, AND ON TELEVISION. OFTEN, VIOLENCE IS PORTRAYED AS AN APPROPRIATE WAY FOR PEOPLE TO RESPOND TO THREATENING SITUATIONS.**

**NO ANSWER FULLY EXPLAINS WHY WOMEN STAY WITH THEIR ABUSERS. PSYCHIATRISTS REPORT THAT ABUSIVE RELATIONSHIPS USUALLY START OUT LIKE OTHER RELATIONSHIPS; INITIALLY, THEY ARE LOVING AND REWARDING TO BOTH PARTIES. WHEN THE FIRST VIOLENT ACT OCCURS, THE WOMAN IS LIKELY TO BE INCREDULOUS AND WILLING TO BELIEVE HER SPOUSE WHEN HE APOLOGIZES AND PROMISES THAT HE WILL NEVER REPEAT THE ABUSE. AS THE ABUSE IS REPEATED, MANY WOMEN COME TO BELIEVE THAT THEY SOMEHOW ARE TO BLAME FOR THEIR HUSBAND'S OR PARTNER'S ACTIONS: THAT IF THEY JUST ACTED DIFFERENTLY, THE ABUSE WOULD NOT OCCUR. IN TIME, AS THEIR SELF-ESTEEM PLUMMETS, THEY FEEL TRAPPED IN THE ABUSIVE RELATIONSHIP, ESPECIALLY IF THEY HAVE CHILDREN AND NO OTHER MEANS OF SUPPORT.**

**ULTIMATELY, ABUSED WOMEN MUST MAKE THEIR OWN DECISION ABOUT STAYING OR LEAVING. WOMEN ARE AT THE MOST DANGEROUS POINT WHEN THEY ATTEMPT TO LEAVE THEIR ABUSERS. RESEARCH INDICATES THAT**

**“WOMEN WHO LEAVE THEIR BATTERERS ARE AT A 75 PERCENT GREATER RISK OF BEING KILLED BY THE BATTERER THAN THOSE WHO STAY.”<sup>4</sup> WE FULLY SUPPORT STRENGTHENING LAWS TO PROTECT DOMESTIC VIOLENCE VICTIMS.**

**WE BELIEVE THAT SB 278 AS ORIGINALLY INTRODUCED, WAS STRONGER THAN THE CURRENT VERSION, PARTICULARLY THE SECTIONS REFERENCING WEAPONS USE AND ASK THE COMMITTEE TO CONSIDER RESTORING THE ORIGINAL LANGUAGE. WE URGE THE COMMITTEE’S SUPPORT OF SB 278. THANK YOU.**

*With the Attorney General's  
Amendments.*

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<sup>4</sup> National Coalition Against Domestic Violence, 1990

03-07-95

Senate Bill 278

Chairman Clark, members of the House Judiciary Committee, I am grateful for this opportunity to testify here today. My name is Patrina Sims and I was a victim of spousal abuse for 6 1/2 years.

My husband started beating me within a month of our marriage. At first the beatings occurred behind closed doors then progressed in front of my children as they sat cringing on the sofa or in the corners of the room. Protecting my children from harm as his fists reined down on me didn't exactly keep my bruises or swelling hidden when I went to my doctor's regular appontment. He took one look at me and asked, "Who's been hitting you?". Embarrassed, I denied his accusation but later felt humiliated when the x-rays confirmed a cracked clavicle. He gave me phone numbers of a battered womens' shelter and the name of a support group. I proceeded to switch doctors.

The last beating occurred after an argument over my oldest son's misbehavior at school. My husband threatened to beat Tyler severely. I fled Fortine, Montana with bruises and swelling body parts to remind me that I was doing the best thing for my children. Previous attempts to flee in my car proved hopeless. He would pull plugs and wires, grab the children, or take the keys away.

03-07-95


Through the concerted efforts of several crisis lines, I was able to seek shelter at the Domestic Violence Assistance Center in Missoula. By the time I found a home for my children and I, custody visitations were granted. This allowed my husband to continue with his menacing threats, breaking of my personal property and harassing my children and I, both in our home and at their school. After my husband physically restrained me from dialing 911, I obtained an Order of Protection. When police officers again responded, I was impressed. They took necessary action to assure my children and I remained safe.

My ex-husband's incarceration in Deer Lodge gives me TEMPORARY RELIEF, but once he's out, I would feel safer if his movements were monitored and I could obtain an Order of Protection for my children and I despite the time elapsed since his last offense.

By voting YES, on Senate Bill 278, I truly believe it will make it LESS LETHAL for all victims. Please vote YES on Senate Bill 278.

Thank you for allowing me to be heard.

Sincerely,

A handwritten signature in cursive script, appearing to read "Patrina Sims".

Patrina Sims

Missoula, Montana 59801

ROCKY MOUNTAIN PSYCHOLOGICAL & ADDICTION SERVICES

210 N. Higgins Avenue, Suite 202 Missoula, MT 59802 (406) 721-0909 fax (406) 721-7071

March 6, 1995

To: Chairman Clark  
RE: Senate Bill 278

Dear Chairman:

I am writing in support of SB278, specifically to address the need for a counseling assessment prior to counseling for Domestic Abuse. As a practitioner providing batterers' treatment, it has been my experience that the current 25 hours is, in many cases, not sufficient to lower the risk of re-offending. In addition, the absence of counseling to address other complicating factors, such as chemical dependency, leaves the abuser at a significantly higher level of risk for repeat offense.

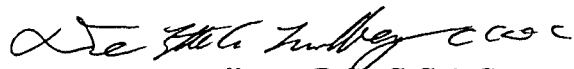
National statistics show 70-80% of domestic abuse cases have substance abuse involved in the incident. As a Montana State Certified Chemical Dependency Counselor, it is likely I have had a greater awareness than many batterers' counselors of the frequency of substance abuse issues among my battering clients. My experience over the past eight years supports national statistics. Furthermore, it has been my experience that the skills taught in domestic abuse courses are essentially useless if the client has a substance abuse problem. It is difficult to incorporate skills that call for some sense of judgment and reason when an individual is intoxicated.

Aside from the issue of chemical dependency, there are several cases of domestic abuse in which the standard 25 hours of counseling, now allowed by law, is insufficient. For some of these men and women, 25 hours may only begin to break the denial. Many of these individuals' patterns of abuse are so long-standing and so ingrained that to expect major change in this amount of time is totally unreasonable and unfair to the client.

In closing, I urge you to seriously consider amending the current domestic violence laws to support counseling assessments up front and enforcement of any recommendations made by the counselor. I do not see this as punishment. As a counselor, my interest in this matter is providing the best possible opportunity for positive change with domestic abuse clients. My experience suggests that many of these people do want to change, yet it almost always takes legal intervention to start the ball rolling. The current laws are just not enough!

Thank you for your careful consideration of this matter.

Respectfully,

  
DeEtte A. Lundberg, B.S., C.C.D.C.

WRITTEN TESTIMONY SUBMITTED IN SUPPORT OF SB 278

My name is Klaus Sitte. I serve on the Missoula Domestic Violence Council Legislative Subcommittee. I am an attorney for the Montana Legal Services Association, an organization which helps low income Montanans with civil legal problems. I have represented abuse victims for more than 20 years. For the past 15 years, the demand for our services has increased so dramatically that we have restricted our family law caseload to domestic violence cases only. MLSA continues to provide those services to family violence victims.

As you know, however, family violence, is cross racial, cross cultural and cross economic. The families we serve and protect represent only a small portion of those who need protection. I am here to offer support for SB 278, as passed by the Montana Senate.

This revision of Montana's Temporary Retraining Order laws is needed and necessary. In addition to consolidating, simplifying, clarifying and modernizes the code, SB 278 makes it clear that neither marriage **nor relationships** provide a haven for abuse.

## WRITTEN TESTIMONY SUBMITTED IN SUPPORT OF SB 278

Family violence cases are among the most difficult matters facing the courts and the judicial system. Surely, we all know the risk faced by law enforcement officials when encountering any form of partner assault. Peace officers should have every conceivable protection in their arsenal of options, for themselves, the victim and innocent bystanders, usually the children. SB 278, as passed by the Senate, provides additional remedies for the protection and safety of all concerned.

The counseling assessment provisions buttress the present counseling requirements. These elements together recognize that Montana considers partner or family member assault a **serious** offense. These revisions go a long way toward dispelling the myths that victims seek out abuse or that we can tolerate **some** violence, as long as it stays in the family.

All too often clients I have represented continue to face repeated assault because options are unnecessarily limited. Continued and repeated harassment, "drive-bys," threats to remove the children from Montana and threats with weapons are addressed by SB 278.

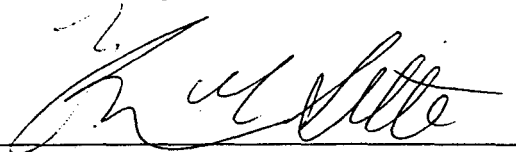


WRITTEN TESTIMONY SUBMITTED IN SUPPORT OF SB 278

And, because there always exists the opportunity to abuse the **process**, the alleged abuser has options too, such as requesting emergency review of temporary orders of protection.

Victims, children and law enforcement need this bill. Those of us working in family law and the area of domestic violence sometimes wonder what it is we are doing. What does it all mean? Are we helping? It is all too infrequent that what we do **can** make a difference. It is even more rare that what we do can actually save lives. SB 278 has that potential. I strongly urge you support of SB 278, as passed by the Senate.

Respectfully submitted this 7th day of March, 1995.

A handwritten signature in dark ink, appearing to read 'Klaus D. Sitte', written over a horizontal line.

Klaus D. Sitte  
Montana Legal Services Assn.  
304 North Higgins  
Missoula, MT 59802

- DAWSON COUNTY ATTORNEY -  
215 SO. KENDRICK • P.O. BOX 1307  
GLENDALE, MONTANA 59330  
(406) 365-2532

EXHIBIT 20  
DATE 3/1/95  
SB 278

February 1, 1995

Senate Judiciary Committee  
Bruce Crippen, Chair  
Capitol Station  
Helena, MT 59620

Re: Domestic Violence Legislation

Dear Senators:

I hoped I could be present for your hearing on the Domestic Violence legislation on Friday, February 3, 1995, but my schedule does not permit me to make the trip. I hope you will accept my written comments for your discussion of the bill.

I am a Deputy Dawson County Attorney and I am frequently required to apply the domestic abuse laws. Domestic abuse is a serious problem in our community. It devastates our families. It humiliates the victim and overwhelms the children. Domestic violence often places the abused spouse into our welfare system. The children often become involved in the youth judicial system, either as youths in need of care or as juvenile delinquents. The social cost of domestic violence is enormous.

From my experience, many instances of domestic violence occur in families with a history of violence. It is natural for people to act in the manner in which they observed their parents act. I have also witnessed women get away from an abusive man only to fall

Senate Judiciary Committee  
February 1, 1995  
Page -2-

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in with another abusive man. I do not know why. But I do know that intervention and education are keys to the problem.

I am asking your support for this legislation for the following reasons:

1. The bill refines the process of obtaining a restraining order. Currently, restraining orders may be obtained in the statutory section dealing with divorce. But the crime of domestic violence occurs in many more situations than just divorce. This bill creates a new section for orders of protection. That section should be more readily understood by distraught, abused spouses.

2. The bill increases the minimum penalties for committing the crimes of Domestic Abuse and Violation of a Protection Order. Presently, a violation of a Protective Order is a misdemeanor for any number of offenses. The bill will make a third offense a felony. I strongly support increased penalties for repeat offenders.

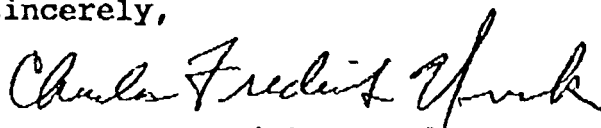
3. The bill provides a more detailed educational course for an offender and gives prosecutors more latitude in requiring additional hours of counseling for offenders. If we are to break the cycle, we must do it through education.

4. The bill expands the categories of persons eligible for an order of protection. Presently, the protection of victims falls on county attorney offices. Sadly, we often do not accomplish enough on behalf of victims. This bill will allow victims to be more active on their own behalf.

Senate Judiciary Committee  
February 1, 1995  
Page -3-  
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I hope you will give your support and your vote to this legislation. It represents a strong and informed step toward crime.

Sincerely,

A handwritten signature in cursive script, reading "Charles Frederick Unmack". The signature is written in dark ink and is positioned above the printed name.

Charles Frederick Unmack

DEPARTMENT OF CORRECTIONS  
AND HUMAN SERVICES

EXHIBIT 21  
DATE 3/7/95  
SB 278



STAN STEPHENS, GOVERNOR

1539 11TH AVENUE

STATE OF MONTANA

(406) 444-3930 FAX (406) 444-4920

HELENA, MONTANA 59620-1301

January 26, 1995

Judy Wang  
Missoula City Attorney Office  
Missoula Family Violence Council Chair  
Missoula City Hall  
435 Ryman  
Missoula, MT 59802

Dear Ms. Wang,

Thank you for sending me a copy of the proposed legislation regarding family violence and DUI offenders and establishing of local misdemeanor probation officers to supervise these offenders.

I support the proposed legislation and view as very positive the plan to have these serious misdemeanor offenders supervised by probation officers. In both the cases of family violence and repeat DUI offenses, the offenders often pose a serious threat to community safety. This is even more true when they fail to get required counseling or follow court imposed conditions of release. I view monitoring for compliance an essential part of any effective probation in these cases.

As Regional Supervisor for State Adult Probation and Parole, I see as a side benefit to this misdemeanor supervision, the potential to divert offenders prior to their being further immersed into the Criminal Justice System and possibly the State Prison. Many of the offenders we see first came to the attention of the Criminal Justice System via a DUI or family violence issues.

Thanks again for sharing with me this proposed legislation and feel free to use this letter as support for your proposal.

Sincerely,

A handwritten signature in cursive script, appearing to read "Sam Lemaich".

SAM LEMAICH, Regional Supervisor  
Probation & Parole Officer  
127 E. Main, Suite 303  
Missoula, MT 59802  
(406) 549-0022

RECEIVED  
1-27-95

February 1, 1995

To Members of the Montana State Senate:

I am writing in support of SB-278. I am presenting my testimony anonymously, and in writing, to prevent reprisals from my former husband. My former husband is a well-known business and political figure in our community. He is also well-known to the members of the legislature as a lobbyist.

I believe there is a perception among many that domestic violence only occurs in households at the lower end of the socio-economic scale. My husband always wore a suit and tie. He was pleasant and well-spoken. He appeared to be very attentive and concerned while we were in the presence of the medical care providers. In actuality, his concern was based on a need to be sure that I would not disclose the real cause of my injuries.

My marriage to this man was marred by domestic violence. I suffered injuries which ranged from bruises to sprains to cracked ribs. To conceal the cause of my injuries, my husband did not take me to the same medical provider twice in succession. Although I received medical treatment numerous times, no medical provider ever discovered the true cause of my injuries. This was due, in part, to the fact that my husband never left my side at any time during the medical examinations. In each emergency room, at each doctor's office, my husband gave a detailed account of how my injury occurred. Of course, the explanation was always untrue but, because I was never left alone with the medical staff, I never had the opportunity to give an accurate account of the cause of my injuries. On at least two occasions, when the medical care providers suspected I might have broken bones, my husband insisted on accompanying me while x-rays were taken. I never had the opportunity to describe what had actually happened to me. If the medical care providers ever suspected that my injuries were not consistent with the explanations given by my husband, they never had the opportunity to question me outside the presence of my husband.

At the time, I was unaware of any options available to me to remove myself from this situation. I had a small child and no independent income. I had no family in town nor in this state. My circle of friends were primarily persons who were associated with my husband and his business. My husband repeatedly warned me not to disclose what had occurred, convincing me that no one would believe me. I was convinced that I had no options.

I believe that the provisions of this Bill, which would require medical care providers to speak to a person suspected to be a victim of family violence outside the presence of the suspected perpetrator, might have given me the information I needed to extricate myself from this relationship. I believe that many times the explanation of my injuries were not consistent with the

injuries themselves. However, no one had the opportunity to question me about my injuries nor did any one have the opportunity to inform me of my rights as a victim of family violence. My ordeal might have ended months, maybe even years, earlier if this Bill had been in effect.

Since my divorce I have worked with other victims of family violence. In my experience with other victims, many feel as I did. They don't know where they will go or what they will do. They are unaware of any options that may be available to them and they are unaware of any rights they, as victims, might have. The provisions of SB-278 would give vital information to victims, through law enforcement and through medical providers. I strongly urge you to pass this bill.

WESTERN MONTANA  
MENTAL HEALTH CENTER  
TURNING POINT

EXHIBIT 22  
DATE 3/7/95  
SB 278

500 North Higgins, Suite 101  
Missoula, MT 59802

(406) 543-8623

February 2, 1995

TO: Senator Bruce Crippen, Chair  
Senate Judiciary Committee

FROM: Pamela B. Anderson, Supervisor, Montana ACT Program

This is being submitted in support of SB 278, An Act Revising The Domestic Violence Laws, particularly as it relates to allowing local governments to establish a misdemeanor probation office.

Over the last fifteen years, I have been involved with the Montana ACT Program, the assessment and education program mandated for DUI offenders. As a consequence, I have worked closely with the lower court systems and have a great deal of respect for their power and effectiveness in terms of intervention and deterrence. The lower courts tend to be more of a "people's court" where defendants often represent themselves and disclose information to the judges that they might not do in a more formal setting, or in the presence of an attorney. This then allows a judge to fashion sentencing conditions that deliver the necessary punishment, and offer rehabilitation. It is not uncommon in Missoula for a judge to sentence a DUI offender to the maximum jail term and then suspend part of the sentence provided that certain conditions are met. These conditions are typically designed to intervene in a pattern of substance abuse and they are often applied in domestic violence convictions as well give the high incidence of alcohol or other drug involvement in those cases. If the conditions are violated, the Court may then revoke the suspended sentence and the defendant may serve the maximum jail term. For many, the fear of further jail time is an essential motivating factor in bringing about the necessary change and in deterring them from engaging in behavior that could lead to further illegal activities.

Unfortunately, the diligence of the court systems in applying these strategies is hampered by there being no mechanism in place to monitor compliance with the sentencing order. SB 278 specifically addresses that deficiency. Given the high correlation between substance abuse and domestic violence, a program to monitor compliance with sentencing conditions for family violence offenders would target both populations. We, in the chemical dependency treatment field believe that change will occur when the cost of use outweighs the perceived benefit. Adverse consequences consistently applied by the legal system often tip the scales in favor of providing the motivation to engage a recovery process.

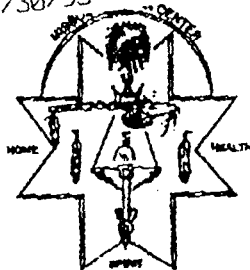
Finally, I suspect it would be the rare felon who did not leave behind a trail of misdemeanors. Swift and certain punishment at the misdemeanor level, combined with stringent sentencing conditions and close monitoring could serve to intervene in that progression. In terms of the financial cost to society and the human cost to victims, early intervention efforts would seem to be worthy of serious consideration.

Thank you.



01/30/95

11:20



# MISSOULA INDIAN CENTER

2300 Regent St., Suite A • Missoula, MT 59801-7939

Telephone (406) 329-3373 • Fax (406) 329-3398

EXHIBIT 23  
DATE 3/7/95  
SB 278

January 30, 1995

To whom it may concern,

This letter is in support of The Proposal, L. C. 265. I feel this proposal addresses many of the issues we are facing today, concerning domestic violence, in a more timely and appropriate manner than current laws in existence. Required counseling assessments prior to counseling can only help to insure more effective counseling. Expanding the definition of relationship to include in-laws and people who have parented children will help to reduce the barriers that prevent many people from accessing help through legal means. It will also help to reduce the overwhelming numbers of child abuse in this state through mandating better ways to deal with violent behavior. A lot of the violence among our youth today is because this behavior has been role-modeled in their home environment.

It is time for our state laws to take a more workable stand against violent acts perpetrated on one human being by another and see to it that people who are convicted of domestic violence receive the education they need to better communicate their feelings of frustration and anger. If a person is continuing to appear in court on domestic violence charges then apparently that person is not benefitting from the counseling and the criminal charges should be raised to a felony status. I feel the same way about TRO violations remaining misdemeanors after multiple violations. Most people have learned to be accountable for their behavior by the time they reach adulthood. Allowing continuing TRO violations to remain misdemeanors is allowing these people to thumb their noses at the entire legal system and endangering the lives of their victims. A third offense TRO violation should be raised to a felony status.

Sincerely,

*Linda Hansen*

Linda Hansen

Prevention Education Specialist

In August of 1993, my ex-husband was returning my four children after a week-end visitation. I am the sole custodial parent. He has the first and third week-ends with the children. He entered my house against my request that he remain outside, he pushed me up against the wall, knocked me down....He hurt me badly so I called 911 for help. I was hurting, both physically and emotionally, and it came through clearly in the phone call. I ended up in emergency care. X-rays showed injury to my neck, arms, and back. On Monday morning, the next day, I went from the medical clinic to the police and requested a temporary restraining order. The judge granted the TRO. A date was set for hearing in September. At that hearing, my ex-husband showed up with his attorney. Unfortunately, no evidence was presented. I had my medical records with me, etc. The opposing attorney simply stood up and told the court that I might, sometime in the future, come to my ex's home or place of business and assault him, so a mutual restraining order was necessary. I had not been to his home or store in any of the years (1987 on) since the children and I had left him and did not intend to ever be near him at any time. Yet, I was not allowed to even protest --- a mutual restraining order was issued to my utter shock and amazement!

Looking at the preceeding, one could obviously assume a case of "sour grapes." Not so! I was married to this man from 1972 until 1991. We had five children. Some times were good, some times were horrible. He hit me, he broke bones, he threw me down stairs, ad nauseum. I loved him and I stayed with him. I dragged us from counselor to psychologist to psychiatrists, to marriage seminars, to family seminars.... to no avail. He would be kind for a period of time and then all hell would break loose again. I left him when he began hitting the children. The pattern of violence and pain had to stop!

I got my first restraining order in 1976. I fled with my infant daughter from Lewistown, Montana, to California to escape the pain. My ex followed me to California, convinced me that change was possible, and thus began the ride of counselors. I was forced to obtain multiple restraining orders over the following years, just to keep him away from me. He usually obeyed these orders. But once an order expired, I was facing violence again. We left him for good in the fall of 1987. In October of 1988, he attacked me in my home, severely injured me in front of all the children, and the summer of that year, he was found guilty of Domestic Abuse. He appealed to District Court and plead guilty there. He got a suspended sentence and a round of mandatory counseling. He'd seen enough therapists in the past so, of course, there was no significant changes.

With this brief history, it should be apparent that I needed and once again, applied for, a restraining order. I

had not gone to this man's home or office, entered it, and assaulted him. He was at my home, hurting me, while the children cried. So, why the mutual restraining order in September of 1993? He had not requested this TRO. I had done so. Yes, there was a history of pain and anger and abuse. Yet, on the assumption that I "might" assault him at some time in the future, I was made equally guilty as he when the mutual restraining order was issued. Is this fair? Or is something wrong here?

In the year that followed the issuance of this order, I would receive numerous phone calls at odd times of the day or night. I would pick up the phone and my ex would tell me that we were not allowed verbal contact with each other as a result of the mutual restraining order. He would tell me that because I spoke to him (i.e. saying, "Hello!" when I picked up the phone) that he was going to "put me away for good this time" and that I was violating the court's order. He was allowed, by terms of the order, to call the children. However, most of the calls were placed when the children were either in school or in bed because it was so late at night. The harassment continued, I spoke to the police, and they recommended an answering machine to screen my calls. In the spring of 1994, I bought a machine. My ex was furious and accused me of trying to avoid him and keep the children from him, etc. etc. I was forced to change my life in other ways as a result of the mutual order. I changed my driving patterns so that I was never near his home or store, I hid in the house when he arrived to pick up our children for visitation, etc. ---- all because of his threats to get me in some violation of the order. It was a very paranoid way to live. He did, in fact, try to file some restraining order violations against me. My children and I were all forced to go to the police and each of us answer his so-called allegations. They did not hold up as a matter of fact. It was a bad year! Gary did violate the order and <sup>was</sup> charged with the violation.

Mine is not an isolated case. I was presumed to be as guilty as my ex because of the mutual restraining order. I was never given a chance to prove otherwise. I have heard many other cases (I volunteer at the Domestic Violence Assistance Center here in Missoula) where exactly the same thing occurred. It makes a person not want to ask for help because just the fact of asking for protection puts them in the position of having the tables turned on them. They end up as guilty as their abuser. This is very, very wrong and should not be allowed!!!

I am writing this as a means of protesting the court's handing down mutual restraining orders. It seems to have become almost routine practice for the courts to issue these orders in domestic violence and/or stalking cases. Such a ruling presumes that both parties at the restraining order hearings are equally guilty when, in fact, it is almost overwhelmingly one party, the injured party, who has applied for the relief afforded by these orders. Why should the innocent party be deemed as guilty as the offending party? It is my belief that only in very, very rare cases should a mutual restraining order be utilized by the courts. It appears that it is easier and less time-consuming for the courts to simply issue these mutual orders rather than taking the time for a brief hearing where the parties could present their cases, where the injured party could present his/her evidence as to why they asked for a temporary restraining order in the first place and why they need to have this order continued, either permanently or for a year. By issuing mutual restraining orders, the courts are failing to protect those individuals who have come asking for their help.

*Karin Diane Bellmarv-Nesse*

1-1-95

EXHIBIT 25  
DATE 3/7/95  
SB 278

Theresa H. Troutman  
303 Bannack Ct.  
Missoula, MT 59801  
*Feb. 1, 1995*

Dear Mr. Chairman,

I am writing this letter to you concerning Senate Bill 278. I strongly believe a third restraining order violation ought to constitute as a felony. I also believe making a restraining order mutual without having any basis of violence or intimidation to be unjust and unfair, if not ridiculous.

In September of 1993 I separated from my husband John. We had been married for 6 years. During our entire relationship of 8 years he had become violent with me on many occasions. 2 days before I left him he was particularly violent with me and was consequently arrested and convicted of domestic violence. To this day John thinks he was justified in his treatment towards myself.

For 2 months after our separation John threatened my welfare and my life. He followed me everywhere and called me on some days over 20 times. To say the least I was terrified and found it very difficult to go about my regular daily schedule of attending the University of Montana and taking care of our 2 children. I was increasingly worried about ~~myself~~ our survival. I decided to get a restraining order. From day 1 John never took it seriously. I would see him outside my classes and he would follow me where ever I went. He was cited 4 times for violating the restraining order. Each time he was cited he would become more furious and become even more insistant and sneaky about how to come in contact with me. By March of 1994 I was a nervous wreck and I was increasinly frightened to stay at my home. On many occasions I took the children and went to stay where I knew John could not get to me. His threats and strange behavior and his past violence made me very aware of what he is capable of doing to me and my children. In June of 1994 he was convicted of violating the restraining order and because it was only a misdemeanor he was again warned to stay away from me and given a fine.

John's blatant disregard for the restraining order needs to be used as an example. Obviously to violate the restraining order brought on no dire consequences. None at all. I am fortunate in the fact that I was able to get away ~~from~~ <sup>for</sup> John and keep myself and my family safe, but if John had been arrested and been tried for a felony instead of a misdemeanor then I would have been protected according to the law.

*John also had the restraining order made mutual without even trying to explain why. There was no justification or reason for*

Respectfully,

*Theresa H. Troutman*

Theresa H. Troutman

EXHIBIT 26  
DATE 3/7/95  
SB 278

March 6, 1995

Dear Chairman Clark and Members of the House Judiciary Committee:

I am a native Montanan who has worked for the past nine years as a volunteer crisis counselor for several organizations opposed to domestic violence. I am also an attorney with eight years' experience representing protective parents of children at risk of abuse or neglect in custody cases. My experiences prompted me to write this testimony, to urge you to adopt Senate Bill 278 as enacted by the Senate. I am especially concerned about mutual protective orders.

Domestic violence is a serious health and social problem in the United States and in Montana. The only significant reduction in domestic violence seems to come from a consistent and firm message from the community that it is unacceptable behavior and will not be tolerated in a civilized society. Meaningful protective orders consistently enforced play an important role in carrying this message.

Mutual protective orders carry a different message, one that diffuses accountability and furthers the myth that both parties are in equal positions, so both are equally able to stop or prevent the violence. Such a message ensures that the violence will continue.

According to the AMA, domestic violence is the single largest cause of injury to women in the United States, exceeding car accidents, rapes, and muggings combined. Nearly four million women are injured by domestic violence each year.

One in six pregnant women are physically assaulted by their partners during pregnancy.

The Montana legislature created restraining orders to protect battered citizens from domestic partners, family members and former spouses. Mont. Code Ann. 40-4-121(3)(a). Violation of a restraining order is a misdemeanor, which provides the additional protections of the criminal justice system.

Some courts routinely issue mutual protective orders. This practice appeals to judges and lawyers because it saves time by avoiding show-cause hearings. But saving time at the expense of safety and lives of Montana citizens is misguided.

Often people who have been battered do not oppose mutual orders because they want to expedite the proceedings and avoid any further violent reactions from their abusers. Since they do not intend to commit acts of violence, they have no objection to a mutual protective order. They do not know that mutual protective orders do not protect effectively.

#### **MUTUAL PROTECTIVE ORDERS DO NOT PROTECT VICTIMS OF DOMESTIC VIOLENCE**

Mutual protective orders have harsh, unanticipated results. When police officers respond to a domestic violence call and discover a mutual, they may not know who has the actual history of battering. It may be unclear who the real victim is. They can only assume both parties have been violent. They may arrest both parties, even with no evidence of mutual abuse. This possibility will prevent many battered people from seeking much needed assistance from public safety officials. Or

police may decline to arrest either party, leaving the victim to face the batterer's retaliation alone.

Mutual orders and mutual arrest give the wrong message to both batterer and battered. They say the person who was battered is equally responsible for the violence. They absolve the batterer from responsibility and tacitly give permission for further battering.

### **MUTUAL PROTECTIVE ORDERS PERPETUATE DOMESTIC VIOLENCE**

Mutual protective orders give the wrong message to victim and batterer alike. They create the impression that the battered person is equally responsible for the batterer's violent behavior, reinforcing a basic misconception held by many victims that they have either instigated or somehow deserve the abuse.

The abuser will interpret a mutual order as a message from the court that the batterer is not accountable and the battered person is as much to blame for the violence. Rather than helping to break the cycle of domestic abuse, mutual orders enhance the probability of future violence. The batterer must be held accountable and both parties must understand that violence is unacceptable.

Although many battered people do fight back against batterers, their actions are largely defensive and the effect is less severe than the batterer's violence. The critical question is which party truly needs protection.

The self-defense must not be equated with the violence initiated by the batterer. Equating self-defense and battering helps the batterer rationalize the defensive behavior of the battered person as justification for further battering.



Mutual orders can put the victim in a worse position than if there were no protective order at all. REPORT OF THE NEW YORK TASK FORCE ON WOMEN IN THE COURTS, 15 FORDHAM URB. L.J. 11 (1986-87). Mutual protective orders can make the battered person look equally violent in the eyes of the courts, and may make it harder to get a more restrictive order if the violence recurs.

The solution to domestic violence must involve increased concern and awareness of this serious problem. We can draw an analogy between this problem and the successful approach used to combat drunk driving. The combination of saturation education of people of all ages, innovative prevention, strict enforcement, and stringent punishment have had a dramatic impact on highway fatalities associated with drunk driving. *Developments in the Law: Legal Responses to Domestic Violence*. 106 Harvard Law Review 1505 (1993). The same approach can work with domestic violence.

Courts are the first line of defense. Courts must be aware of the negative impact mutual protective orders can have. People who have been battered must receive meaningful protection. Batterers must receive the clear, unequivocal message that their violence is unacceptable and will not be tolerated. Mutual orders accomplish neither.

Assault on a "loved one" is as unacceptable as any other form of assault. Inappropriate mutual orders further victimize and stigmatize the one battered and absolve the batterer of all accountability for the violence.

Mutual protective orders are appropriate only when each party petitions for protection and proves the other engaged in assaultive behavior. I urge you to adopt Senate Bill 278 as enacted by the Senate.

Respectfully submitted,

A handwritten signature in cursive script that reads "Gail Hammer".

Gail Hammer  
501 West Alder #B  
Missoula, Montana 59802



EXHIBIT 27  
DATE 3/7/95  
SB 278

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

March 7, 1995

Dear Chairman Clark and members of the House Judiciary Committee:

I am writing in support of Senate Bill 278 and urge you to vote yes on this very important piece of legislation.

It is important that we have individual filing for TRO's. Currently, when "Jane Doe" files for a TRO, "John Doe" can also ask that it be made mutual at the same hearing. He is not asked for witnesses or documentation and his allegations do not have to be substantiated. He (and in some cases she) needs to go through the same process as his/her partner in filing for a TRO.

In changing the name Domestic Abuse to Partner/family member assault - I feel this is a more accurate description of events than Domestic Abuse. Domestic has many meanings and brings up many thoughts and feelings - warmth, home, comfort etc. Abuse also has many applications. This is almost an oxymoron. The word "domestic" minimizes the seriousness of this crime. There is no question as to the meaning of partner and family member assault. With the change in nomenclature - Domestic Violence is treated as any other assault to a person crime - as it should be.

Please vote for Senate Bill 278 as it was enacted by the Senate. Thank you for your time in considering this letter.

Sincerely,

A handwritten signature in cursive script that reads "Dodie Moquin".

Dodie Moquin, Case Manager, Domestic Violence Assistance Center

EXHIBIT 28  
DATE 3/7/95  
SB 278

## Testimony Supporting Senate Bill 278

March 7, 1995

Judy A. Williams, P.O. Box 3093, Billings, MT; (406) 252-6351.

Chairman Clark and members of the House Judiciary Committee:

Thank you for allowing me to speak to you today. My name is Judy Williams. I am from Billings: a 1977 graduate of MSU-Billings and a 1985 graduate of the University of Montana School of Law. Although I am currently working for the State Bar of Montana coordinating a pro bono project, the focus of my law practice with Montana Legal Services from 1985 - 1994 was representing victims of family violence.

First, I wish to note that I favor the proposed name changes in the bill before you: family or partner assault calls this crime by its proper name: assault. Order of protection, aside from being more descriptive, is specific. No one understands what preliminary injunctions are.

Although many aspects of the bill before you are noteworthy, the rest of my testimony will be confined to the issue of prohibiting mutual orders of protection, and the prohibition against arresting a petitioner for alleged violations of an order of protection. By adopting those two specific changes you will do much to improve the process of protecting family assault victims.

Too often, our over-worked and frustrated law enforcement personnel must answer family assault calls. Where a protective order is in place, the officer must decide whether there has been a violation and whether to make an arrest. Too often, the facts are muddled. Frequently, the respondent (restrained party) alleges that, although he may have violated an order, it was because of an invitation by the petitioner (victim). In too many cases for me to count, the victim is arrested by the officer. That should not happen.

Seeking protection from the Courts is one of the most difficult things a family assault victim ever does. It exposes a very private and usually embarrassing problem to others, often for the first time. Victims in need of protection are in no position to argue with a judge who often states it is the Court's policy to make protective orders mutual. But problems with mutual orders include:

1. Violation of Due Process: the opposing party/assaulter does not need to fill out the petition and affidavit the victim did, so the victim has no notice of the claims against her and no opportunity to defend herself against such claims.

2. If law enforcement assistance is necessary, responding

officers have difficulty determining who the real victim is when a protective order is mutual. On more than a few occasions in Billings, when confronted with such a dilemma, officers have arrested both parties, resulting in even more trauma to the real victim and any children, who find may themselves in foster care.

3. Mutual orders suggest that the victim is somehow responsible for what happened to her. The victim goes to the Court for help and is essentially told: we will give you an order for protection, but you have to live under the same restraints as the person who harmed you. In no other situation do we ask the harmed person to submit to such a condition of protection.

The absurdity of this is, perhaps, best illustrated by a short analogy. Imagine you are driving home today and you are hit by a drunk driver. Your car is demolished and you receive minor injuries. The other driver is arrested and charged with Driving Under the Influence of alcohol.

You go to Court to testify against the other driver, who is found guilty, loses her driver's license, and is ordered to pay you restitution for the damages to your car plus your medical expenses. After sentencing the drunk driver, the Judge turns to you and says: if you had not been on the street you would not have been in this accident. So that you will not be in another accident and you will take this situation seriously, you will also lose your driver's license for a year. This is essentially what happens when mutual restraining orders are issued. A victim proves to a judge she needs protection from a person and is told that, without any notice or evidence against her, she will also be restrained.

When the situation involves a family assault victim seeking protection, the circumstances are far more serious than in my illustration. A mutual restraining order also implies that the offender is not responsible for what he did.

Judges like mutual orders because many of them do not understand the dynamics of family violence and they think that the only goal of a restraining order is to keep the parties apart. The real goal is to protect someone from violence.

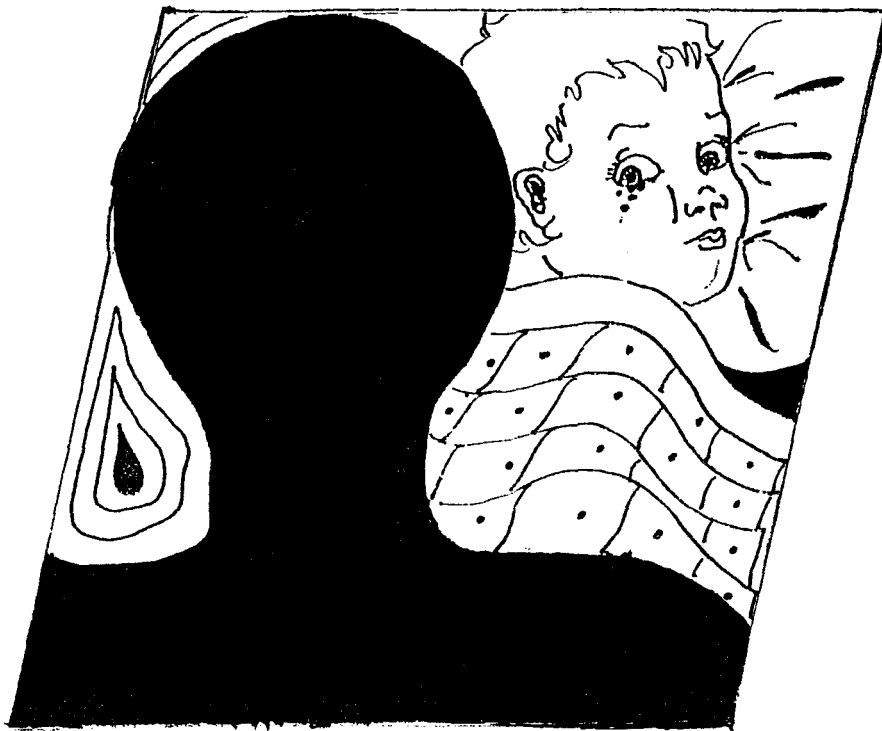
A mutual order is easy. It is also wrong. Sometimes the only way to right a wrong is to pass a law. This is one of those times. The only way for victims seeking self-help protection orders to avoid the mutual order trap is for you to legislate its prohibition.

I support SB 278 as transmitted from the Senate, and I urge you to pass this bill. Thank you.



EXHIBIT 29  
DATE 3/7/95  
SB 278

The real  
**MONSTERS**



aren't under the bed

**MACeM**

MAJORITY AGAINST CHILD MOLESTATION

MESSAGE PHONE: 227-5173

## ***IMPORTANT NOTICE***

MACeM - Majority Against Child Molestation is a non profit organization and support group who meet each Monday to offer support to families and individuals affected by molestation. If you or a loved one has been a victim, we are here to listen, to help and to work toward positive change.

We hope to work within the system to improve the laws. If justice has been denied you or your children and if you feel the system only works against you, please join us. We need your stories and your support. The only way we can stop the madness is by joining together and coming out from the shadows to be heard.

We are compiling a record of true life accounts of what happened to the victim and their attacker. The only way we are going to stop molesters from continuing the abuse is by joining together and working for our rights. Please help us make a change.

**WHEN:** Every Monday at 7:00 p.m.  
**WHERE:** Helena Housing Authority Office  
812 Abbey Street  
Helena, MT

If you have any questions, please call Sharon at 227-7043 or Connie at 458-4754 or write to MACeM, P.O. Box 1003, East Helena, MT 59635.

We will respect your right to privacy.

# CLUES TO POSSIBLE VICTIMIZATION

Sometimes children don't tell us they are in crisis, they show us. A change in a child's behavior could be due to the stress of being abused. These changes in behavior can alert adults to their problem.

Abuse and neglect can also sometimes leave physical marks on a child's body which adults can observe. Knowing both the physical and behavioral clues to abuse can help adults intervene on behalf of children.

Keep in mind that some clues can be normal behavior for a given child at a given time. Therefore it is important to be aware of new behaviors, extreme behaviors, or combinations of the following characteristics.

Abused children can not be identified by racial, ethnic, religious or socioeconomic class. Abuse crosses these lines.

Abused Children Are Often	<ul style="list-style-type: none"><li>• fearful of interpersonal relationships or overly compliant</li><li>• withdrawn or aggressive, hyperactive</li><li>• constantly irritable or listless, detached</li><li>• affectionless or overly affectionate (misconstrued as seduction)</li></ul>
Physical Symptoms	<ul style="list-style-type: none"><li>• bruises, burns, scars, welts, broken bones, continuing or unexplainable injuries</li><li>• urinary infections (particularly in young children)</li><li>• sexually transmitted diseases</li><li>• chronic ailments, stomachaches, vomiting, eating disorders, vaginal or anal soreness, bleeding, or itching</li></ul>
Activity and Habit Clues	<ul style="list-style-type: none"><li>• nightmares</li><li>• inappropriate masturbation</li><li>• a child afraid to go home or to some other location, running away</li><li>• delinquency</li><li>• fear of being with a particular person</li><li>• lying</li><li>• prostitution</li></ul>
Age Inappropriate Behavior	<ul style="list-style-type: none"><li>• an onset of thumb sucking</li><li>• sexually active or aware</li><li>• promiscuity</li><li>• bed wetting</li><li>• alcohol/substance abuse</li><li>• older child assaulting younger children</li><li>• child takes on adult responsibilities</li></ul>
Educational Concerns	<ul style="list-style-type: none"><li>• extreme curiosity, imagination</li><li>• academic failure</li><li>• sleeping in class</li><li>• inability to concentrate</li></ul>
Emotional Indicators	<ul style="list-style-type: none"><li>• depression</li><li>• phobias, fear of darkness, public restrooms, etc.</li><li>• chronic ailments</li><li>• self-inflicted injuries</li><li>• injuring/killing animals</li><li>• excessively fearful</li><li>• lack of spontaneity, creativity</li></ul>



## JUDICIARY

COMMITTEE

DATE 3/7/95

BILL NO. SB 174

SPONSOR(S) Sen. Jacobson

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

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

HR: 1993

wp:vis**s**bcom.man

CS-14

3/7/95

SPONSOR(S) Sen. Halligan

**PLEASE PRINT**

CS-14

HOUSE OF REPRESENTATIVES  
VISITORS REGISTER

JUDICIARY

COMMITTEE

DATE 3/7/95

BILL NO. SB 66 SPONSOR(S) Sen. Lynch

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
ERINNE HASKETT HELENA, MT 59601	MACeM.	X	
2420 Village Sharon L. Bakerson Helena	MACeM	X	
Scott Omet	ACLU		X
Stan Frazier	MT. S.S.A	X	
Craig W. Frazier	mSP inmates		X
Liz Smith	HO <sup>+</sup> 5/6	X	
Nina M. Pullman	MACeM	X	
JEFF RENZ	JAIL		X
SHARON HOFF	MT CATHOLIC CONF	no - present neutral	
John Huth	DC HS	neutral	

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NAME AND ADDRESS	REPRESENTING	Support	Oppose
Jim Oberhofer	MT CHIEF'S OF POLICE	X	
Ben Chabnan	State Farm Ins	✓	
Sen Boker	Dept of Justice	✓	
Mary Alice Cook	adv. for MT's Children	✓	
Cheryl Krell	League of Women Voters	✓	
CC. T. B. S. E. N.	Sen	✓	
Jim Neumayer	Mtla. Police	✓	
Grant Cahill	Mt Coalition Against Domestic Violence	✓	
Mark Min.	MT. POLICE ASSN	✓	
Maria O'Brien	Self	✓	
LAUREN A. ADLER	Bliss Area Family Violence Task Force	✓	
JAN HEALY	Bliss Area Family Violence Task Force	✓	
Angeline Denmark	Hum. Rts. Ass'n	✓	

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NAME AND ADDRESS	REPRESENTING	Support	Oppose
Chuck O'Reilly	MT Sheriff's & Peace Officers Assn	Strong Support	
Kelly Slattery-Robinson	INCA D.V.A.C. - Missoula	✓	
DATRINA Jurn	MC.Fam Violence Council	✓	
Mary Grady	Private Citizen	✓	
Holly Franz	Women's Law Section of the State Bar of Montana	✓	
DIANE FRIPP	MISSOULA FAMILY VIOLENCE COUNCIL	✓	
Judy Wang	Missoula City - Hervey's Office Missoula Family Violence Council	✓	
Amy Pfeiffer	Women's Law Section State Bar of Montana	✓	
SHARON HOFF	MT CATHOLIC CONF	✓	
John Connor	Dept of Justice MT County Attys Assn	✓	
Kate Cholewick	MT WOMEN'S LOBBY	✓	

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