

MINUTES FOR THE MEETING  
JUDICIARY COMMITTEE  
MONTANA STATE  
HOUSE OF REPRESENTATIVES

February 4, 1985

The meeting of the Judiciary Committee was called to order by Chairman Tom Hannah on Monday, February 4, 1985 at 8:00 a.m. in Room 312-3 of the State Capitol Building.

ROLL CALL: All members were present.

CONSIDERATION OF HOUSE BILL NO. 310: Rep. Steve Waldron, chief sponsor of this bill, appeared before the committee and offered testimony. He said that this bill will provide for a self-help temporary restraining order (TRO). It also makes the violation of the TRO a criminal misdemeanor. He said that currently under state law, the judge can issue a TRO, but the police have little recourse because it is a civil matter. Presently, this procedure is providing very little protection especially in battered spousal situations. Also, it is very expensive to hire a lawyer in order to obtain the TRO. Under this bill, a TRO may be acquired without having to hire an attorney. Rep. Waldron stated that the state of Oregon has a similar type of law now in effect which has been working well.

Caryl Wickes Borchers, executive director of the Great Falls Mercy Home, and also representing the Montana Coalition Against Domestic Violence, testified in support of this bill. She feels that the "self help" restraining order would allow a more effective tool to keep the family violence from escalating and to work with our clients, especially in the rural areas where people don't have access to a long term shelter or safe homes. A copy of her testimony was marked as Exhibit A and attached.

Cathy St. John, houseparent/counselor/advocate at the Mercy Home in Great Falls, appeared and offered testimony as a proponent for this bill. A copy of her testimony was marked as Exhibit B.

Rosemary Keller testified in support of HB 310. A copy of her testimony is attached hereto as Exhibit C.

Julie Ferguson appeared and offered testimony in support of HB 310, and a copy of that statement is attached hereto as Exhibit D.

Gail Kline, representing the Women's Lobbyist Fund, stated that this bill is needed to provide dignity and equal protection for abused family or household members. A copy of her testimony is attached hereto as Exhibit E.

Bob Rowe, appearing on behalf of the Missoula Legal Services Association, testified in support of the bill. He stated that this bill creates a very simple self help procedure whereby a person can obtain a TRO. Mr. Rowe said that he is familiar with the TRO forms and said they are very intelligible and would be understood by most people.

Holly Franz, representing the Women's Law Caucus from the University of Montana Law School, testified in support of this bill. She stated that the primary purpose of this bill is to protect victims of domestic violence through greater availability and increased enforcement of temporary restraining orders. She further informed members that over 20 state, including Alaska, Arizona, California, Utah, Oregon and Washington, have adopted legislation similar to HB 310. Each year more states recognize the need to protect domestic violence victims through TRO's. She also stated that the United States Attorney General's Task Force on Domestic Violence, in its September 1984 report, strongly endorsed the concept of HB 310. A copy of her testimony was marked as Exhibit F and is attached hereto.

Mary Gallagher also from the Women's Law Caucus in Missoula, offered support for HB 310.

Leonore F. Taliaferro, program counselor for Domestic Violence/Family Protection, briefly testified in support of HB 310. A copy of her testimony was marked as Exhibit G and is attached hereto.

Mike McGrath, Lewis and Clark County Attorney, testified in support of this bill. He supports this bill principally because of the enforcement provision of the bill. It would make it a crime -- a misdemeanor -- to violate the provisions of the TRO. He feels that passage of this bill will be very helpful to the law enforcers at the scene.

There being no further proponents or opponents, Rep. Waldron, closed. He pointed out that this bill also includes those persons cohabiting or who have cohabited with the other party within 1 year immediately preceding the filing of the petition. The floor was opened to questioning at this time.

Rep. Eudaily wondered if the title of the bill wasn't being expanded too much when the language on page 5 subsections (a) and (b) lines 12-16 was included. Rep. Waldron said that perhaps that particular language should have been included in the title, but the Legislative Council drafted the bill as it presently is.

In response to a question asked, Rep. Waldron stated that involuntary sexual relations is a form of abuse and should be included in the bill.

Rep. Keyser feels the language on page 5, line 2 is very broad. In response, Holly Franz stated that this language came from the misdemeanor assault statute.

In response to another question by Rep. Keyser, Holly said that the purpose of subsection (e) on page 4 is to increase access to temporary restraining orders. In situations where the victim wants to get an attorney but cannot afford the attorney, she then doesn't want to go forward with the case.

Rep. Keyser wanted to know where in this bill does it show which party is able to recover damages and which party has the right to reasonable attorney fees other than the new added language. Holly said that in the Title 40 of Family Law 40-4-110, costs for attorney fees are already available for violations of the chapter.

Rep. Krueger referred to the language on page 5, line 2. He asked Bob Rowe if by adding the language including physical abuse or threatening physical abuse against a petitioner and family or household as a basis for a restraining order would meet his needs in the bill. It basically would include only the area of bodily injury. In Rep. Krueger's opinion, the area dealing with sexual relations would be included as well. Mr. Rowe stated that better language might be included but not limited to. Mr. Rowe said there are definitely judges in Montana who would be uncomfortable to issue a TRO on the basis of a threat alone.

In response to a question from Rep. O'Hara, Bob Rowe stated that a TRO is usually served with the divorce decree. Rep. O'Hara asked what the attorney fees usually run when a TRO is requested. Mr. Rowe answered by saying that a rock bottom price for a divorce and restraining order would be approximately \$300 in addition to filing fees. Again Mr. Rowe stated that he feels it is important that there not be a cost involved when a TRO is requested.

Rep. Montayne spoke in favor of the bill. He feels it is desperately needed.

Rep. Addy wanted to know why the TRO's would be extended to 20 days instead of the usual 10 days. Mr. Rowe said that the 10 days period is an extremely short time to get the respondent served and to set up a court hearing.

Rep. Addy also stated his concern that perhaps they would be losing more than would be gained with this bill. Rep. Waldron responded by saying that this bill is an effective means for TRO enforcement. He feels that the current TRO procedure does not provide the protection.

In response to a question from Rep. Mercer, Mr. McGrath does not feel that passage of this bill will create more domestic violence. Rep. Waldron also pointed out that the bill does not provide that city judges could issue TRO's. He does, however, feel that the justices of the peace should be given the privilege of doing so.

CONSIDERATION OF HOUSE BILL NO. 341: Rep. Ron Miller, sponsor of this bill, testified before the committee. He stated that this is an act to provide civil liability for a person who wrongfully stops payment on a check, draft or an order for the payment of money. He stated that the Montana Automobile Dealers Association informed him that this is a very severe problem.

George Allen, representing the Montana Retail Association, informed members that the bill passed last session dealing with bad checks had included in it some of the same language as this bill does. This bill is a supplement for a person who deliberately stops payment on a check.

Blake Wordahl, representing the Montana Hardware and Implement Association, testified in support of the bill. He informed the committee that Rep. Bergene's bill which passed last session has definitely helped and he feels this bill will be beneficial as well.

Bob Likewise, representing the Montana Pharmaceutical Association, wished to go on record as supporting this bill.

Also testifying in support of this bill was Tom Harrison.

There being no further proponents or opponents, Rep. Miller closed. The floor was opened up for questioning.

Rep. Addy wanted to know what happens to the guy with a "good faith" dispute. Mr. Harrison thinks the defenses are still present in the statutes. Mr. Harrison said this bill would provide a little "teeth" in that it would penalize the person who wrongfully stops payment of a check.

Rep. Montayne feels that the bill may be a little one-sided.

There being no further discussion, hearing closed on HB 341.

CONSIDERATION OF HOUSE BILL NO. 323: Rep. Jack K. Moore, sponsor of this bill, testified on its behalf. He said this bill will provide a civil penalty for shoplifting. The bill is very similar to the one that is now in effect in the state of Washington which he understands is very effective. The bill is divided into two parts which he reviewed with the committee.

Blake Wordahl, representing the Montana Hardware and Implement Association, testified on behalf of HB 323. He said that shoplifting is a major crime that retailers are faced with today. He believes that a civil penalty provision will provide another weapon to stop this crime.

George Allen, representing the Montana Retail Association, spoke in favor of this bill. He informed members that there is more merchandise lost in the United States through minor thefts and shoplifting than through major robberies. He feels that passage of this bill would provide a great deterrent to shoplifting.

Bob Likewise, representing the Montana Pharmaceutical Association, testified in support of the bill.

There being no further proponents, Chairman Hannah called the opponents to testify:

Jim Jensen, representing the Montana Magistrates Association, hesitantly opposes the bill. The part of the bill he, in particular, is opposed to deal with the minimum mandatory fines. He feels that passage of the bill may hinder a judge's discretion in particular cases.

There being no further opponents, Rep. Moore closed. He feels that there has to be some way to keep habitual shoplifters from committing a crime. He stated that a mere slap on the hand does not deter the crime of shoplifting.

Rep. Montayne stated his support for this bill and further asked if Mr. Allen has some statistics on amount of goods lost to retailers because of shoplifting. Mr. Allen did not have any figures.

Following further questions, hearing closed on HB 323.

CONSIDERATION OF HOUSE BILL NO. 304: Rep. Jan Brown, chief sponsor for HB 304, testified in support of it. She said that this bill changes the existing law on spousal immunity so that a husband couldn't testify against his wife unless he consented to do so. Under the change proposed in HB 304, a person could testify against his/her spouse if that person consented to testify. A copy of her testimony was marked as Exhibit H and attached hereto. She quoted from a letter sent to Rep. Connelly by District Judge Michael Keedy dealing with this subject. A copy of the letter is attached to the Exhibit H.

Mike McGrath, county attorney for Lewis and Clark County, appeared and offered testimony in support of HB 304. He said that this bill would allow the spouse who wishes to testify against the other spouse the right to claim that privilege. He told members that he has many cases that have been adversely affected by the present spousal immunity law. Mr. McGrath referred to a U.S. Supreme Court Case (United States vs. Trammel) which recognized the same thing that is being discussed today.

Caryl Wickes Borchers, representing the Montana Coalition Against Domestic Violence, testified on behalf of the bill.

There being no further proponents or opponents, Rep. Brown closed. Following brief questioning, the hearing closed on HB 304.

CONSIDERATION OF HOUSE BILL NO. 293: Rep. Francis Bardanouve, sponsor for HB 293, appeared and offered testimony. He said that this bill is an act to provide a civil penalty for failure to acknowledge a lien. He said the bill was introduced upon request of a frustrated northern Montana rancher. Rep. Bardanouve said that the bill provides a very conservative penalty because sometimes things are accidentally overlooked. If the lending agencies realize that they will be subject to a civil penalty of \$100, he feels they will be more conscientious in removing the liens from people's property. It doesn't necessarily limit it to farmers and ranchers -- it includes everyone who borrows money.

There being no further proponents or opponents, Rep. Bardanouve closed. The floor was opened up for questions from the committee.

Rep. Eudaily wanted to know if this bill would cover cattle. He feels the bill is very restrictive. He feels that it will not cover some of the things that Rep. Bardanouve would like covered. Rep. Hannah pointed

out that the bill deals only with mechanics liens.

Rep. Kruegar stated that he doesn't see why a punitive penalty as it is cannot be imposed. He said the bill would severely limit the penalty to \$100. He's not sure that it would be giving the lending agencies more of a benefit rather than a non-benefit from the standpoint that they are only facing a \$100 penalty. Rep. Bardanouve pointed out that this bill does not change the present law.

There being no further questions, hearing closed on HB 293.

EXECUTIVE SESSION:

ACTION ON HB 293: Rep. Keyser moved that HB 293 DO PASS. The motion was seconded by Rep. Addy. Discussion followed.

It was Rep. Eudaily's opinion that the bill should include personal property, too. Rep. Hannah pointed out that cattle is not included in this particular section.

Brenda Desmond, staff attorney, pointed out that the lien law is divided into several different parts. She said that there are liens on livestock. Rep. Hannah said this bill is very specific in the area it deals with. Rep. Eudaily just feels that the title gives the impression that it deals with everything. Brenda suggested that perhaps the word, "mechanics" could be inserted following "a" on line 5 of the title. Representative Eudaily moved to include "mechanics" as proposed. The motion was seconded by Rep. Keyser and carried unanimously.

Rep. Keyser moved that HB 293 DO PASS AS AMENDED. The motion was seconded by Rep. Brown and further discussion followed. It was Rep. Gould's opinion that the bill does not address the problem which Rep. Bardanouve intends it to.

Rep. Addy made a substitute motion to table the bill. The motion was seconded by Rep. Gould and failed.

It was Rep. Brown's opinion that the bill could be easily amended. Rep. Grady feels this bill should include all personal property. However, Rep. Addy pointed out that they would be talking about 13 different liens if the committee wishes to include all personal property.

The question was called on the DO PASS AS AMENDED motion, and the motion carried with Reps. Gould and Addy dissenting.

ACTION ON HB 395: Rep. Brown moved that HB 395 DO PASS. The motion was seconded by Rep. Bergene, and discussion followed. Rep. Brown further moved to amend the bill as follows:

1. Title, line 4 following "THAT" insert "CERTAIN".
2. Page 1, line 10 strike "no" and insert "limitation of"
3. Page 1, line 11 following "acts." strike "No" and insert "(1) Except as provide in subsection (2), no"
4. Page 1, following line 19 insert "(2) Subsection (1) does not apply to any person or entity that sells, serves, gives, or delivers alcoholic beverages to a person under the legal drinking age in violation of 16-3-301, 16-6-305, or 45-5-623, MCA."

Rep. O'Hara seconded the motion and dicussion followed. Rep. Brown stated that this amendment is what he sensed the committee wants to do with the bill relating to minors. The amendment re-emphasizes the statute and leaves it entirely where it is and makes it very clear.

Rep. Mercer spoke in favor of the amendment but further pointed out to the committee that because as a society we have made a decision to have bars and its okay to serve drinks. He doesn't think the burden should be placed on every bar owner to be civilly responsible for the actions of his patrons. It is almost impossible to run a bar and not serve a drink to someone who is under the influence. He said that he hopes that everyone understand that if the section is passed, we are saying that a bar owner can serve liquor to an intoxicated person without being civilly responsible for that person.

The question was called on the amendment, and the motion to amend as stated above carried unanimously.

Rep. Brown further moved that HB 395 DO PASS AS AMENDED. The motion was seconded by Rep. Hammond and carried with Reps. Mercer, Addy and Bergene dissenting.

ACTION ON HB 446: Rep. Bergene moved that HB 446 DO PASS. The motion was seconded by Rep. Darko, and discussion followed.

Rep. Mercer moved to amend HB 446 by deleting subsections (3) and (4) in their entirety. The motion was seconded by Rep. Gould and discussed.



The Department of Revenue submitted some recommended amendments to HB 446 that have been marked as Exhibit I. Rep. Hannah feels these amendments would significantly change the whole bill.

Rep. Mercer feels the committee should expand this bill to include a lien on personal property, but he feels that the committee should exclude the ideas in subsections 3 and 4. Rep. Mercer stated that Mr. McRae said these subsections were not required by the federal government. He feels we should let the lien follow the property if a person cannot be found.

Rep. Krueger stated his initial concerns of HB 446 which dealt with section 1. Rep. Krueger is concerned that there should be hearing as to the arrearage. In a civil action if we have a contractual obligation we have an amount that is established. This new gray bill makes provision for establishing that amount as opposed to leaving it up in the air.

Rep. Mercer stated that the bill refers to any person or member of the public can serve upon any person by certified mail the existence of this lien. That freezes the property. The problem he has with it is that the lien is going to follow the property anyway, and he hates to see the property frozen up until the lien is satisfied. He feels the lien statutes should be left as is.

Rep. Addy said the whole purpose of notice to pay the lien holder to satisfy the lien and then pay the balance of the proceeds to the person who is in possession of the vehicle. Both bases would then be covered.

Rep, Mercer didn't know if a lien necessarily means just child support that is past due and owing, or if it means all child support that may become due and owing. This seems to be requiring that a person must get rid of that lien on the property which will require the ex-wife to either consent to it which would eliminate her security or on the flipside accept some kind of payment. Once she accepts that payment her lien is gone forever, but child support is an ongoing thing.

Rep. Addy said that the lien is only as good as the property that it is against. What is the difference to her whether she receives the cash or just has the right to receive the cash from the sale of the property. He doesn't see where she is giving up anything here.

Rep. Addy made a few comments. He said that Rep. Mercer's objections to the bill are based upon an incorrect understanding of what the bill does. The intent of the bill is

not to freeze the property or prohibit the transfer. The purpose of the bill is to extend to personal property the kind of judgment lien that already is placed on real property.

Following further discussion, a roll call vote was taken on Rep. Mercer's previous motion. The motion carried 9-8.

Rep. Krueger moved to amend sections 1 and 2 of the bill by inserting in lieu thereof subsections 1, 2, and 3 of the new "gray" bill. The motion was seconded by Rep. O'Hara.

Rep. Krueger said the bill as written now does not make any determination for amount. This will require a hearing to be held in relation to the determination of the arrearage.

Rep. Mercer spoke against the motion to amend. He said that if the committee adopts these provisions, we are saying that it is not a lien on the personal property from the date of the decree -- it only becomes a lien after there is a service that it is in default and a hearing.

Rep. Krueger said that after talking with the department, he came to the conclusion that it is going to be very hard to get courts to enforce the lien because of the time periods of determination of arrearage. The question was called and a roll call vote was taken on the motion, and it carried 11-6.

Rep. Hammond moved that HB 446 DO PASS AS AMENDED. The motion was seconded by Rep. Brown and followed by discussion.

Rep. Krueger moved to amend the bill further on page 2, line 24 by striking from the word "support" all the language through line 1 of page 3. Rep. Brown seconded the motion.

Rep. Krueger stated that his rationale behind this amendment is that we still need the court clerk's records as prima facie evidence, but since we are having a hearing in relation to it, the judge would be making the determination. The question was called, and the motion carried unanimously.

Rep. O'Hara questioned the bill is now more cumbersome than initially intended. Rep. Krueger feels that intention of the bill was to provide some remedies for these people in relation to establish and secure creditors behind real and personal property. We are extending the element of due process in terms of determining the amount of arrearage as in any other type of proceeding. The purpose and intent of the department was to have some ability to attach to real

and personal property which we would be giving them in this bill.

Rep. Mercer feels that with Rep. Krueger's amendments, we have gutted the bill. He doesn't think real property should be included in the bill because real property is already dealt with under existing judgment law. He feels that this bill will place a lot of confusion in the dissolution process.

Rep. Mercer made a substitute motion to delete any reference to real property in the bill. Rep. O'Hara seconded the motion, and it carried 9-8. (See roll call vote)

Chairman Hannah asked Brenda to clarify a priority lien. It is her understanding that the purpose of the sentence which says, "this lien is in addition to . . . and has the priority granted a secured creditor. . ." is to advance this lien in time ahead of any nonsecured lien. Therefore, if a property has one secured lien on it, that would come in front of any nonsecured lien. But if a judgment is obtained on January 1st in an ordinary civil case, that becomes a lien on your real property. If a judgment for child support is obtained on January 10th, she feels that the purpose and effect of this provision is that the January 10th child support lien will be in advance of and must be satisfied before the January 1st ordinary judgment lien. The department made it clear that they wanted to extend (with respect to child support judgments) child support judgments to personal property. They also wanted child support judgments to be higher in priority than an ordinary judgment.

Rep. Mercer moved that the committee reconsider the last amendment because he feels that child support should have first priority. The motion was seconded by Rep. Hammond and carried unanimously.

Rep. Hammond moved that HB 446 DO PASS AS AMENDED. The motion was seconded by Rep. Addy. The question was called and the vote taken. The motion passed with Rep. Gould and Eudaily dissenting.

ADJOURN: A motion having been made by Rep. Keyser, the committee adjourned at 11:10 a.m.

  
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REP. TOM HANNAH

DAILY ROLL CALL

HOUSE JUDICIARY COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date 2/4/85

NAME	PRESENT	ABSENT	EXCUSED
Tom Hannah (Chairman)	✓		
Dave Brown (Vice Chairman)	✓		
Kelly Addy	✓		
Toni Bergene	✓		
John Cobb	✓		
Paula Darko	✓		
Ralph Eudaily	✓		
Budd Gould	✓		
Edward Grady	✓		
Joe Hammond	✓		
Kerry Keyser	✓		
Kurt Krueger	✓		
John Mercer	✓		
Joan Miles	✓		
John Montayne	✓		
Jesse O'Hara	✓		
Bing Poff	✓		
Paul Rapp-Svrcek	✓		

# STANDING COMMITTEE REPORT

Page 1 of 2

February 4

19 1985

MR. Speaker:

We, your committee on Judiciary

having had under consideration House Bill No. 446

first reading copy ( white )  
color

## LYENS AGAINST REAL AND PERSONAL PROPERTY FOR UNPAID CHILD SUPPORT

Respectfully report as follows: That House Bill No. 446

### BE AMENDED AS FOLLOWS:

1. Title, line 5.

Following: ~~XXXXXX~~ "AN ACT "

Insert: "ESTABLISHING A PROCEDURE"

2. Page 1, line 10.

Following: "support."

Strike: subsections (1), (2), and (3) in their entirety

Insert: "(1) When the requirements of this section have been met, the amount of due and unpaid child support arrearages accrued under any judgment or order for child support issued by a district court under this chapter becomes a general lien upon all real and personal property of the obligor not exempt from execution. This lien is in addition to any other lien created by the judgment or order and has the priority granted a secured creditor."

~~XXXXXX~~  
DO PASS

CONTINUED

February 4

1935

(2) Upon a verified application by a person authorized to enforce or collect a child support obligation, by the department of revenue, or by the department of social and rehabilitation services showing that a person obligated to pay child support pursuant to a judgment or order of a district court is delinquent in an amount equal to three months' support payments, the court shall direct the obligated person to appear and show cause why a lien should not be imposed upon the obligor's real and personal property.

(3) If the court finds that a delinquency equal to or greater than the total of three months' support is owed and the court determines that the obligated person has real or personal property upon which a lien may be imposed, the court may enter an order imposing a lien in the amount of the support arrearages. The order imposing the lien must be docketed in the judgment book of the clerk of court."

3. Page 2, line 24.

Following: "support"

Strike: "and" through "obligor" on page 3, line 1.

hb446.scr

pc2/kip

**AND AS AMENDED,  
DO PASS!**

# ROLL CALL VOTE

HOUSE COMMITTEE JUDICIARY

DATE 2/4/85

BILL NO. HB 446

TIME 10:45

NAME	AYE	NAY
Kelly Addy		✓
Toni Bergene		✓
John Cobb	✓	
Paula Darko		✓
Ralph Eudaily	✓	
Budd Gould	✓	
Edward Grady	✓	
Joe Hammond		✓
Kerry Keyser	✓	
Kurt Krueger	✓	
John Mercer	✓	
Joan Miles		
John Montayne		✓
Jesse O'Hara	✓	
Bing Poff		✓
Paul Rapp-Svrcek		✓
Dave Brown (Vice Chairman)		✓
Tom Hannah (Chairman)	✓	

Marcene Lynn  
Secretary

Tom Hannah  
Chairman

Motion: Rep. Mercer moved to amend HB 446 by deleting subsections

3 and 4 in their entirety. The motion was seconded by Rep.

Gould and passed 9-8

# ROLL CALL VOTE

HOUSE COMMITTEE JUDICIARY

DATE 2/4/85 BILL NO. HB446 TIME 10:53

NAME	AYE	NAY
Kelly Addy	✓	
Toni Bergene	✓	
John Cobb	✓	
Paula Darko	✓	
Ralph Eudaily		✓
Budd Gould	✓	
Edward Grady		✓
Joe Hammond	✓	
Kerry Keyser		✓
Kurt Krueger	✓	
John Mercer		✓
Joan Miles		
John Montayne	✓	
Jesse O'Hara		✓
Bing Poff	✓	
Paul Rapp-Svrcek	✓	
Dave Brown (Vice Chairman)	✓	
Tom Hannah (Chairman)		✓

Marcene Lynn  
Secretary

Tom Hannah  
Chairman

Motion: Rep. Kruegar moved to amend sections 1 and 2 of the  
bill by deleting those sections and inserting in lieu thereof  
the subsections 1, 2, and 3 of the new "gray" bill which has been  
marked as Exhibit I.



# ROLL CALL VOTE

HOUSE COMMITTEE JUDICIARY

DATE 2/4/85 BILL NO. HB 446 TIME 11:05

NAME	AYE	NAY
Kelly Addy		✓
Toni Bergene		✓
John Cobb	✓	
Paula Darko		✓
Ralph Eudaily	✓	
Budd Gould	✓	
Edward Grady	✓	
Joe Hammond		✓
Kerry Keyser	✓	
Kurt Krueger		✓
John Mercer	✓	
Joan Miles		
John Montayne	✓	
Jesse O'Hara	✓	
Bing Poff		✓
Paul Rapp-Svrcek		✓
Dave Brown (Vice Chairman)		✓
Tom Hannah (Chairman)	✓	

Marcene Lynn  
Secretary

Tom Hannah  
Chairman

Motion: Rep. Mercer moved to delete any reference to real  
property in the bill. Rep. O'Hara seconded the motion, and  
it carried 9-8.

# STANDING COMMITTEE REPORT

February 4

19 85

MR. **SPEAKER:**

We, your committee on **JUDICIARY**

having had under consideration **HOUSE** Bill No. **293**

**FIRST** reading copy ( **WHITE** )  
color

**CIVIL PENALTY FOR FAILURE TO ACKNOWLEDGE LIEN SATISFACTION**

**HOUSE**

Respectfully report as follows: That..... Bill No. **293**

be amended as follows:

1. Title, line 5.

Following: "A"

Insert: "MECHANICS"

**AND AS AMENDED,**

DO PASS

# STANDING COMMITTEE REPORT

February 4 19 35

MR. **SPEAKER:** .....

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

having had under consideration **HOUSE** Bill No. **395** .....

**FIRST** reading copy ( **WHITE** )  
color

**NO CIVIL LIABILITY OF PURVEYORS OF ALCOHOL FOR DAMAGE DONE BY  
CONSUMER**

Respectfully report as follows: That **HOUSE** Bill No. **395** .....

be amended as follows:

1. Title, line 4.

Following: "THAT"

Insert: "CERTAIN"

2. Page 1, line 10.

Strike: "no"

Insert: "limitation of"

3. Page 1, line 11.

Following: "acts."

Strike: "No"

Insert: "(1) Except as provided in subsection (2), no"

4. Page 1, following line 19.

Insert: "(2) Subsection (1) does not apply to any person or  
entity that sells, serves, gives, or delivers alcoholic  
beverages to a person under the legal drinking age in  
violation of 16-3-301, 15-6-305, or 45-5-623, MCA."

~~DO PASS~~

AND AS AMENDED,

DO PASS

February 2, 1985

EXHIBIT A

HB 310

2/4/85

Capitol Station  
Helena, Montana 59601

Dear Legislators,

I am writing to ask you to support the continuation of additional funding of the Domestic Violence Grant Program with the 4% General Fund Monies in the Executive Budget over and above the Marriage License Fee monies that we have totally funded the Domestic Violence Grant Program with since July of 1979.

In February of 1977 the Montana Legislature started working with us to start solving the problem of Domestic Violence by a Senate-House Joint Resolution which mandated Crime Control to study Spouse Abuse in Montana. That Study was made and called 'SPOUSE BATTERING IN MONTANA'. In April 1978, A STATE TASK FORCE ON SPOUSE ABUSE was established to read and study 'THE STUDY' and make recommendations to the 1979 Legislature. In addition to the Legislation that has been passed by you in the last 4 Legislatures, the Montana Task Force on Spouse Abuse has been able to have written a STATE TRAINING PACKET ON SPOUSE ABUSE developed for Mental Health Professionals and Clergy; a SPOUSE ABUSE PROTOCOL in the 61 State Hospitals; and a RAPE PROTOCOL in the 61 State Hospitals; a booklet with the STATEWIDE SERVICES entitled 'BATTERED WOMEN RIGHTS AND OPTIONS IN MONTANA'; do COMMUNITY INTERVENTION WORKSHOPS sponsored by the LAW ENFORCEMENT ACADEMY plus spearhead GRASS ROOTS EDUCATION on the problem in Communities; do State Workshops in TRAINING ADVOCATES; training in the use of the STATE TRAINING PACKET; and a workshop in the latest research on the BATTERER and the CONTINUING CYCLE of DOMESTIC VIOLENCE. In October 1982, the MONTANA COALITION AGAINST DOMESTIC VIOLENCE was formed and incorporated. We are continuing the GRASS ROOTS EDUCATION statewide(I do 60 Educational workshops and talks each year)plus have continued our State Workshops such as: Dr. Lenore Walker's latest RESEARCH on the BATTERED WOMEN and BATTERER; the "RELIGIOUS RESPONSE TO DOMESTIC VIOLENCE;" and THE BATTERERS PERSPECTIVE" at our Montana Coalition Against Domestic Violence State meetings.

The Great Falls Mercy Home, Inc. opened in May 1977, our first Shelter in Montana and one of 30 in the United States addressing the problem of Spouse Abuse. We have been able to give technical assistance and spearhead 6 other Shelters in the State and 12 Spouse Abuse Task Forces who have Safe Homes (private homes for 3 day intervention) and network with the Shelters if needed, in addition to having grass roots education and outreach to all parts of the State. Listed below are recent updated services and educational outreach.\*asterisk denotes Shelters.

- Hi-Line Help for Abused Spouses has done education and outreach to: Joplin, Box Elder, Ft. Belnap Reservation, Rocky Boy Reservation, Chinook, Hingham, Kremlin, Rudyard, State Workshop.
- \*\* Great Falls Mercy Home has done education and outreach to: Belt (trained an outreach Group Facilitator), Cascade, Stockett, Ulm, Vaughn, Sand Coulee, Choteau, Fort Benton, University of Montana (2 classes), Browning, Shelby, Cut Bank, Conrad, Lewistown, State Workshop.
- \*\* Missoula BWS Shelter has done outreach and education to: Stevensville, Hot Springs, Hamilton, Darby, Seeley Lake, Ronan, Frenchtown, Milltown, Potomac.
- Kalispell Rape Action Line has done education and outreach to: Bigfork, Whitefish, Columbia Falls, Olney, Pablo-Ronan, Dayton, Libby.
- Glasgow, Glendive and Miles City have had a 17 County State Grant until this past year when they did individual Grants but they have done outreach to: Sidney and Glasgow did outreach to Richland, Nashua, Malta.
- Glendive did outreach and education to Wibaux, Terry, and Circle Whitehall.
- \*\* Helena Friendship Center has done education and outreach to Boulder, Townsend, Augusta and
- \*\* Bozeman has done education and outreach to: Belgrade, Ennis, Livingston, West Yellowstone, Big Sky, White Sulphur Springs, State Workshop.
- Dillon has done education and outreach to: Melrose, Sheridan, and Lima.
- \*\* Butte Safe Space has done education and outreach to: Whitehall, Twin Bridges, Sheridan, Anaconda, Deer Lodge.
- \*\* Pablo-Ronan Shelter supported by some Salish-Kootenai Monies opened in 1982 in Pablo-Polson, Ronan Area.
- \*\* Billings Shelter did outreach and education to: Ft. Belnap Reservation, Cheyenne Reservation, Colstrip-Victims of Violence Task Force Crow Reservation and Colstrip.
- Lewistown- Spouse Abuse Emergency Services (SAVES)
- Libby - Lincoln St. Womens Help Line for Eureka and Troy
- Twin Bridges- has a 24 hr. Crisis Line/Information
- Whitehall - Jefferson Ct. Spouse Abuse Program

February 4, 1985

Dear Legislators,

I am here today to support House Bill 310- Self-Help Temporary Restraining Orders, as a representative from the Montana Coalition Against Domestic Violence.

We feel a "Self Help" Restraining Order would allow a more effective tool to keep the family violence from escalating and to work with our clients, especially in the rural areas where people don't have access to a long term shelter or safe homes.

Currently, I have a client who got a Temporary Restraining Order and he broke it and came into her home with a shotgun. She has to go to court next Tuesday, regarding this violation of the "TRO", instead of being able to have an immediate arrest, since it's a Civil Writ instead of a criminal offense. She came into the shelter after this incident, where she would be safe.

Nationally, there are more homicides in family violence than any other way. In Cascade County we have never had any homicides due to Spouse Abuse, in the course of seven years. However, we were fortunate enough to have a shelter to take them out of the crisis situation. We need to give some other options to other parts of the state such as a "Self Help Restraining Order."

I am very proud of the ways in which our "grass roots" plans have developed into strong programs of human services and education, through the cooperation of the past four legislatures, the past two governors, and the Department of Social and Rehabilitation Services in the State of Montana. Without this cooperation, we would not have been able to serve the victims of Domestic Violence as we have. We hope for your continued support and assistance in the future, to further expand the programs which we have begun, and to create those needed to assist the victims of this crime.

Sincerely,

*Caryl Wickes Borchers*

Caryl Wickes Borchers

Executive Director, Great Falls Mercy Home  
Chair, Montana State Task Force on Spouse Abuse  
(1978-1982 )

Rep., Montana Coalition Against Domestic Violence

2/4/85

February 4, 1985

Dear Legislators,

I am a houseparent/counselor/advocate at the Mercy Home, a shelter for battered women and their children, in Great Falls, Montana. I come to you today to urge your support for some important legislation which directly applies to those whom I serve.

House Bill 310 has been proposed to allow family and household members to obtain temporary restraining orders without cost or attorney services. Also, it would give criminal status to the violation of such an order, warranting arrest.

For the many victims of domestic abuse who manage to establish themselves free from their batterers, the nightmare does not end. Often, the batterer discovers where the woman is living and continues to harass her verbally, physically, even sexually. Why should anyone have to pay for peace and safety? Too many times we've had to tell women who come to us, penniless, that they cannot afford a temporary restraining order. For those able to afford them, the difficulty in enforcing them reduces their effectiveness.

In domestic abuse, as in all crimes, time is a key factor. By giving immediate criminal status to the violation of a restraining order, its effectiveness increases, and perhaps those served with such an order will take it more seriously.

In working with battered women, I have had to leave many questions unanswered. One such question is "Why do I have to leave my home? I haven't done anything! He should be the one to leave." Since these women need to get out of an abusive situation, as of now her only choice is to leave. She comes to us with only the clothes on her back, her children the same. Later attempts to enter her home for personal belongings is potentially dangerous and often requires police protection. By allowing the batterer to remain in the home, we are condoning his behavior. Domestic abuse is a crime and should be seen as such, rather than be minimized to a "marital problem." No one has the right to shatter another's peace.

I have worked with battered women since August 1984. I have been woken at 3:30 a.m. to answer crisis calls. I have dealt with hysterical women over the phone who cry, "But the police won't help me!" I have watched little children act out the violent behavior they have seen--"And then he did this and this..." followed by kicking, punching, pulling and pushing motions. I have seen enough, and yet I shall see more.

In conclusion, I urge your support for House Bill 310, as well as your support for continued funding for programs for the victims of domestic violence, such as the Mercy Home. While shelters such as ours can educate and provide safety for the victim, when shall we begin to address the criminal?

Recently, I had a young woman and her son in our office. She fled from her hometown, leaving family, friends and personal possessions behind, to escape a very dangerously abusive ex-boyfriend. Her decision to flee was not one of choice; for safety, it was her only option. Now alone in a new city, not knowing anyone, missing her family and friends, I sat with her as she cried over her situation. "It's so unfair. I can't even live where I want to live. All because of one person."

Your support, please.

Sincerely,

Cathy St. John

February 4, 1985

Dear Legislators,

I had a need for a restraining order on my spouse in August '84. Luckily, I had a job and was able to pay an attorney for one, but even so, it still took two weeks to obtain. Can you imagine how long 2 weeks is when you live in fear of someone? I had to continue working to keep food in my children's mouths. I could not hide. My bosses received threatening phone calls in the office, and at their homes, at 2 and 3 in the morning; their wives were subjected to this also. My female co-workers also feared my husband, as he would enter the office mid-morning and threaten them if I were not around. The security men were alerted to this, but my husband was seen lurking in the bushes where I work and hiding behind cars close to where I had parked mine.

I was subjected to his shouting obscenities at me as I walked with colleagues across the parking lot and people I work for were accused of having affairs with me, and threatened by my husband. He bragged about carrying a gun in the car, threatening to shoot me and any man that might be walking out of work with me. Since I work in a place with over 1,200 employees, I was terrified to walk out alone and even more fearful that someone else might be hurt by this maniac.

We were married five years ago in England. He was charming, attentive, good looking, and always a gentleman around my family. He had been married before, but told me his wife had "run off to Holland" with their two children. I had neither the sense nor initiative at the time, to check this out. His excuse for getting drunk was because he missed his children so. I sought to resolve that by having his child, now a beautiful four-year-old girl.

We came to the States when she was 4 months old. I sold my home in England for £18,000 (\$45,000). I had only a £5,000 (\$12,500) loan on it. My car and all my furniture were paid for and I had no other debts to pay. I sold my car and all my appliances to follow the man I loved to Montana, where I knew no one and had no relatives. I brought Waterford crystal, china, antiques and other items of great worth with me. When I got to Malstrom Air Force Base I paid cash for all the carpets throughout our home and cash for all new appliances.

By summer '82, I realized that my husband had a serious drinking/drug problem. He'd go to work at 4am, come home at 1pm and start drinking. This would continue all day and night until he blacked out. He totally refused to discuss his lifestyles or problems, and refused to admit he had a problem. He disappeared for 2-3 days at a time, started fires in our home and couldn't remember them the next day. When I went to the base chaplains, his commander, and base psychiatrists, all they did was put him on an outpatient program in January '83. He managed to stay dry for some time, but in summer '83, was accepted for an overseas assignment which required special clearance. He left in November '83 and his family met him at JFK airport, so drunk he had to be helped off the plane. They phoned me to see how long he had been drinking and to what extent.

He returned in May '84 and within 2 weeks his behavior went from normal to bizarre, nervous and edgy. I realized he needed to drink again. He taped all our phone calls, spent long hours in the basement, missed meals. A month later, his moods deepened and darkened. He had no time for his darling, bubbly, blonde 3-year-old daughter. Suddenly, instead of just hearing voices on the phone tapes, he heard "extra voices," voices which he concluded were those of the men I was having affairs with.

I work full time and always arrived home within 5 minutes of punching out. I never went out evenings and when I shopped I always invited my husband along and took my daughter. I never answered the phone when he was home so he could not accuse me of lying when it was a wrong number. I called his family for help. They advised me to go to the Base Chaplain, which I did. With his help, and with that of the commander, I got him into psychiatric help, but only on an outpatient basis.

The final blow came when after all weekend of his verbal abuse, pinning me down in chairs, preventing me from leaving, accusing the children of lying, at 4am Monday morning he dragged me from my bed, in front of the children, and tried to strangle me.

I called the base Chaplain at home, waking him up, and he advised me to go to the Mercy Home in Great Falls.

Since then, I have asked myself a thousand times, what would have happened to the four of us (myself and three children), had there been no Mercy Home? Would friends have taken us in, knowing this man's behavior traits? Yes, I needed an immediate restraining order for my children, as well as for myself.

While gone, my husband had taken my bank cards and credit cards from my billfold. My credit union told me my name had been taken off the account and I could not even get my own wages that had been direct deposited a few days earlier. I had no money for food, and all I owned was in the house. I had to move into low income housing and receive a care package of food from the Mercy Home to survive.

Although I got a restraining order, child support and an order to return a few basic items of furniture, my problems were far from over. My husband continually broke the restraining order, called us at all hours of the night from bars, as well as gave my phone number to other drunks who called and threatened me at 3am. He'd show up at my apartment, and I'd call the police, who told me "But, we can't arrest him." "Why not?" "But, you're MARRIED!"

Here I am, living across town from him, forced from my home and all I've worked for for 20 years because of his brutality/drunkenness and yet, he is outside of the law because we have a marriage license. I never realized what I was signing away back in 1980 when I promised to love and cherish this man. We pay our taxes to be protected and safe in our homes, but there seems to be a loophole somewhere in the law's framework that allows a person such behavior.

Where I'm from in England, when a person has a restraining order, you call the police and they arrest the violator. You both go before the judge within 24 hours, and he makes a decision, usually 2 days in jail for first offenses, up to 30 days for further offenses. It's effective, very effective, and very few ever break it once and rarely come back for more after cooling off in a cell. But here I am, having paid \$200 for one, it's 3am and I've my 3-year-old daughter clinging to me, while the officer tells me he can't make an arrest.

I had to get the restraining order to try to prevent my spouse from selling, hiding or disposing of my hard earned possessions. Now, six months from the day we were forced out of our beautiful home, my elder son still sleeps on a mattress on the floor, my daughter and I share both a bed and a room. My husband took all the savings in our three accounts, refuses to sell the house or turn over the items I requested in the court. He is behind in all the bills, is in bars every night, while I have had to change my phone numbers and my lifestyle, but yes, I have a restraining order!

We certainly need an "instant" restraining order that's easy to obtain for people on a small income, but much more importantly, we need it to be effective! My husband is laughing at your court system--he can blatantly defy what is ordered and get away with it.

With the influx of wives and children such as myself to Montana (courtesy of the Air Force), this state definitely needs "Do-it-Yourself Restraining Orders," and shelters where they can be safe and begin to restructure their lives. It is only through awareness, education and the law, that we will overcome behavior such as my husband's. This education needs to begin in schools where children, already marred by the scenes witnessed at home, can learn this is not normal behavior, and yes, we do live in a country that is home for the

free and the brave, not run by those we should be afraid to go home to each night. Please, Montana, pass this bill without question, to protect your most cherished asset, your children and families.

It is long overdue.

Sincerely,

*Sherry Keller.*



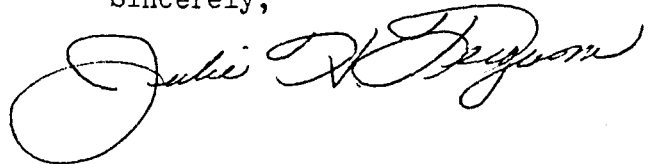
Dear Legislators,

"Do-it-yourself" restraining orders are needed because of the cost involved in issuing them now. A lot of people in dangerous situations cannot afford to issue a restraining order so are left vulnerable. Is a person in danger required to remain there solely on the issue of finances? That's what happens today. That is why "Do-it-yourself" restraining orders are needed.

I, myself, never obtained a restraining order due to the cost. I left a home my spouse and I were purchasing together, my possessions and those of my children to enter a shelter. I took only a few clothes and some items that were special to me. While I stayed at the shelter, there were several times My spouse threatened to **sell or dispose of what I had left there**. Had I had a restraining order, my children and I might have been able to remain in our home.

Another crucial reason for the "Do-it-yourself" restraining order is so many victims do not have immediate access to a shelter as I did. If they have no safe place to go, and no finances available to issue a restraining order, they have little choice but to remain in the situation, no matter how dangerous it is to her and her family.

Sincerely,

A handwritten signature in cursive script, appearing to read "Julie W. Ferguson". The signature is written in dark ink and is positioned below the word "Sincerely,".

# WOMEN'S LOBBYIST FUND

Box 1099  
Helena, MT 59624  
409 /917

EXHIBIT E

2/4/85

HB 310

February 4, 1985

Testimony of the Women's Lobbyist Fund by Gail Kline, before  
the House Judiciary Committee on HB 310

Mr. Chairman and other members of the Committee:

I am Gail Kline representing the Women's Lobbyist Fund (WLF)  
and am speaking in favor of this bill.

What we must keep in mind is our State Constitution, Section  
4, which says, "The dignity of the human being is inviolable.  
No person shall be denied the equal protection of the laws."

HB 310 is needed to provide that dignity and equal protection  
for abused family or household members.

WLF urges you to pass HB 310.

Thank you.

Testimony of Holly Franz  
of the Women's Law Caucus,  
University of Montana Law School,  
IN SUPPORT OF HB 310

I am here today in support of HB 310. The primary purpose of this bill is to protect victims of domestic violence through greater availability and increased enforcement of temporary restraining orders.

Over 20 states, including Alaska, Arizona, California, Utah, Oregon and Washington, have adopted legislation similar to HB 310. Each year more states recognize the need to protect domestic violence victims through temporary restraining orders,

The United States Attorney General's Task Force on Domestic Violence, in its September 1984 report, strongly endorsed the concept of HB 310. The Task Force recommended that simple, inexpensive restraining order forms, which can be completed by the victim without an attorney, should be available at all courtrooms. The Task Force also recommended that law enforcement agencies maintain a current file of temporary restraining orders to inform police officers at the scene of a domestic violence dispute of the existence of a restraining order. Without such information, the police cannot appropriately intervene and provide protection to the victim. The Task Force also recommended that violations of a restraining order be punished as a criminal offense. Only when the offender knows that his actions are subject to immediate arrest and further prosecution will the protective order be an effective deterrent to abuse and provide the intended relief and security to the victim.

I want to specifically address section 6 of HB 310 which establishes jurisdiction and venue for temporary restraining orders. Montana is a large rural state where a single district judge often covers hundreds of miles within his or her judicial district. This creates a serious problem for victims who need the immediate emergency protection of a temporary restraining order. Victims often escape their homes with little more than the clothes on their back and without money or transportation. Many victims, living in rural areas without available district judges, may be denied the emergency protection of a temporary restraining order.

HB 310 addresses this problem by allowing justices of the peace and municipal judges to issue domestic violence restraining orders. These judges already have the expertise to handle domestic violence cases. Justice and municipal courts currently hear the majority of misdemeanor domestic assault cases. A judge who can punish an offender after a violent act should also be able to prevent that violence. A victim should not have to be battered before she can turn to the courts for help.

Section 6 of HB 310 also addresses venue by allowing the victim to petition for a temporary restraining order in the county in which either party resides or in which the violence occurred. Many times domestic violence victims flee their homes to hide with friends or family. These victims are entitled to emergency protection without endangering their lives by returning to the abuser's hometown. If the alleged abuser feels he cannot get a fair hearing or the county chosen is inconvenient for witnesses, he can petition to change the venue. In the meantime, the victim's access to emergency relief is not denied.

Friendship Center of Helena, Inc.

Jill Kennedy, Director

442-6000

"Maybe We Can Help You . . . Give Us a Try"

1503 Gallatin  
Helena, Montana 59601

February 2, 1985

TO: House Judiciary Committee Members

SUBJECT: HOUSE BILL 310

The Friendship Center, its staff, and its clients recommend strongly that you support the purpose of HB 310, and vote unanimously to pass this bill.

The Friendship Center provides emergency shelter to victims of family violence, and recognizes the need to strengthen laws which will reduce continued abuse to victims. Fear of retaliation and continued battering is one of the primary reasons why so many battered spouses and children do not escape the situation sooner.


Immediate protection by speeding up the process of obtaining a restraining order is one means of providing safety to the victims. It is recognized that not all abusers abide by the restrictions of a restraining order. However, one that can be filed quickly by the victims, does allow the law enforcement personnel to act more quickly when a violation of that order occurs.

The passage of this bill would help to prevent further and continued physical and mental abuses to the victims of violence and, in some cases, save lives.

If one has any real knowledge of the brutality experienced by the families of abusers, and the difficulty of assuring that the abuse will not be repeated would not hesitate to vote yes on HB 310. Please vote to pass HB 310.

Thank you for your consideration.

Sincerely yours,

  
Lenore F. Taliaferro  
Program Counselor  
Domestic Violence/Family Protection


  
Jill Kennedy  
Executive Director

EXHIBIT H

House Bill 304 - spousal immunity  
House Judiciary Committee  
February 4, 1985

House Bill 304 changes the existing law on spousal immunity so that a husband couldn't testify against his wife unless he consented to do so; and a wife couldn't testify against her husband unless she agreed to do so. Using myself as an example, under present law, I couldn't testify against my husband unless he consented to it. Under the change proposed in House Bill 304, I could testify against him if I consented to testify.

The law wouldn't apply to a civil action, or proceeding by one against the other, or to a criminal action for a crime committed by one or the other.

I'd like to quote briefly from a letter sent to Rep. Connelly by District Judge Michael Keedy to explain the basis for "spousal immunity"...

LETTER

House Bill 304 was requested by the Montana County Attorneys' Association, and our County Attorney, Mike McGrath, can cite specific cases that led to the request for this legislation.



## *State of Montana Eleventh Judicial District*

POST OFFICE BOX 839 KALISPELL, MONTANA 59901 755-5300 EXT. 221

MICHAEL H. KEEDY  
JUDGE OF THE DISTRICT COURT

January 4, 1985

ROBERT G. MEERKATZ  
COURT REPORTER

Ms. Gail Leonard  
c/o N.O.W.  
P.O. Box 2604  
Kalispell, MT 59901

Re: Spousal Immunity

Dear Ms. Leonard:

Thanks very much again for speaking with me this afternoon about legislation which Representative Mary Ellen Connelly has agreed to sponsor in the upcoming legislative session. As you know, this bill, a draft of which is enclosed for your reference, would soften substantially the so-called "spousal immunity privilege" now provided in Montana's laws. Its principal effect would be to allow a witness spouse (rather than the party spouse) to invoke the privilege, or not, as he or she chose in individual situations, and to abolish the privilege with respect to defendant spouses in criminal prosecutions.

I believe the effect of the bill is reasonably self-explanatory; however, I could well imagine that some or most members of N.O.W. would appreciate a better description of the rationale for it than you may now have. With that in mind, I should explain that the doctrines giving rise to today's statutory "privilege" developed years ago, as a part of the common law, in which it was taken for granted that a woman's character, spirit and personality were absorbed into those of her husband when she married, so that, in effect, she became "one" with her mate, losing not only her independence but her individualism. Then, as now, in criminal cases a defendant could not be obliged against his wishes or better judgment to incriminate himself; therefore, the thinking was that a man's wife, as little more than an extension of his own person, could not be called upon to testify against him, over his objection. Thus the origin of spousal immunity, or the so-called "spousal privilege."

More recently, courts and legislatures have reasoned that the privacy of one's communications to a spouse ought to be honored, and the sanctity of one's marital relationship

January 4, 1985

Ms. Gail Leonard  
Continued - Page 2

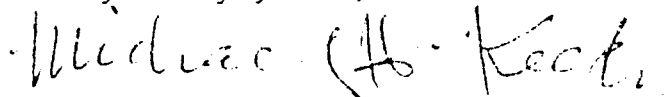
preserved, even if doing so might require the exclusion of testimony by one spouse against the other. That is, it was considered more important to protect the value and integrity of a marriage than to be able to ascertain all of the facts in a civil or criminal dispute.

However, supporters of this bill and similar measures in the past to modify the present-day privilege would argue that it ought to be the witness's to invoke, or not, as s/he chooses. In that way, if the sanctity of a particular marriage and the privacy of communications between the spouses to it are really worth protecting, the witness can call upon the privilege; but, if the witness has determined that his or her testimony is more important than considerations of privacy, s/he ought to be given the opportunity to testify, apart from the other spouse's wishes. In that case, as you can see, the privacy of one's marriage relationship would be secondary to the need to get at the truth, and properly so.

Furthermore, as you can see from the bill draft, this proposal would make the privilege unavailable altogether in criminal prosecutions, on the theory that in cases of overriding public importance, the people's dependence upon the truth ought be put above considerations of marital harmony, in all cases.

In short, that is what this bill draft would provide, for the foregoing reasons. If you'd like to discuss the idea in better detail before your meeting on Monday night, please just give me a call at your convenience, at my office (755-5300, ext. 221) or home (257-4031). In the meantime, I appreciate your interest in this matter, and the potential for your and N.O.W.'s support. Thank you.

Very truly yours,



Michael H. Keedy  
District Judge

MHK/cs

cc: Representative Mary Ellen Connelly, c/o Capitol Station,  
Helena, MT 59620

Dear Representative,

I feel that the self-made restraining order would benefit both men and women. It would especially be beneficial to middle- and low-income spouses. I was low-income myself.

I experienced fear, abuse, and assaults as I could not afford \$300.00 for the lawyer to obtain me a restraining order. I had called the police several times, and was told that they had no authority without a restraining order against my spouse. Also my husband kicked my daughter (4 months old) and I out of our home, took my vehicle, and sold most of my possessions.

Therefore I suffered numerous beatings before I could afford to pay for a divorce.

Sincerely,

A very concerned Texan



Dear Montana Legislature,

I am writing in reference to shelters. I am currently staying at the Mercy Home. I am extremely grateful that there was a place and people to turn to. It is a terrifying feeling when a person has no place to go. Especially after being abused. Life is difficult at times and it is extremely more difficult when your spouse or someone you love is threatening your life or the life of your child. A person needs their own time and solitude to be able to think over their situation and perhaps take action. This is what I feel the Mercy Home provides.

I am also concerned with the first bill, which states that the batterer is to be arrested automatically if it appears there has been abuse toward their spouse or mate. This takes a lot of pressure away from the victim. Plus, it may give officers a less frustrated feeling toward these sort of situations. It might even make a batterer think twice before doing something he may later regret.

As for the temporary restraining order; I feel it is extremely important for punishment to be a bit harsher. This is so the batterer will take the TRO seriously. A victim is usually pushed to the limit before obtaining these. Once the victim should receive one, they should at least be able to feel that the police will help as much as possible. Also being able to obtain an order without an attorney and at no cost would be ideal. The majority of women usually are in a financial bind or not even married to the batterer. This makes it almost impossible to obtain a TRO.

Please consider the proposals presented with thought and care.

Thank you.

*Karen*

to whom it may concern

I've been married 1 1/2 yrs.  
Shortly after we got married  
it became violent the beatings  
started out not real bad  
in the beginning kid hit  
me a couple times, then  
he would say he was sorry  
and promised he'd wouldn't  
ever do it again, but as  
time went on the beatings  
got worse and he criticized  
me constantly, I felt like  
it was something I did  
wrong, he'd get mad at me  
for little things like dinner  
being a few minutes late or  
the kids crying too much or  
one thing being out of place  
in the house. Finally I stopped  
blaming myself and I did  
everything I could to try  
to make him happy but the  
beating just got worse, he  
always hit me in the face  
first then he would start

pushing me around, he'd  
throw me on the floor  
and he'd grab me and  
just keep pushing me, and  
he'd choke me, he'd throw  
me outside and kick me  
until I couldn't move, I  
left him several times but  
he always talked me back  
into the relationship, until  
I was age every thing was  
going fine ~~and~~ but his  
temper was getting bad  
again and I knew that if  
I didn't get out of there  
that I was going to get  
beat again, just a week  
before I left he beat me  
and my sister and room  
mate were there and they  
tried to leave the house  
so they got ~~beaten~~ beat by  
him also, they took filed  
assault charges against  
him so he was put in  
jail but he was out of

jail within an hour after  
he was picked up. That  
time he also talked me  
back into the marriage.  
I can remember one time  
he held a gun on his  
hand with my daughter  
sitting on his lap, I still  
shake when I think about  
that, the police were called  
several times because of  
his violence towards me  
but he was never arrested  
because of hitting me.

Every time he would  
drink which was almost  
every night toward the  
end he would yell at  
me and call me names,  
every time he would  
beat me I'd have to lie  
for him or I'd get beat  
all over again, I began  
to hate myself for letting  
him get away with making

me lie for him. I felt  
lost and lonely, I stuck  
with the marriage because  
I thought he would change  
but now I know different  
I know it won't change,  
I've lost all of the feelings  
I ever had for him I  
got tired of living every  
day with the fear that  
I was going to get beat  
again.

I've left now and I  
like myself again. I don't  
have to feel scared of him  
any more, I'm on the  
process of a divorce, I don't  
worry about my babies  
any more, my oldest daughter  
didn't belong to him and  
he would yell at her  
constantly he never really  
physically ~~never~~ hit the  
kid but I was always  
scared that if he got

mad and ~~he~~ wasn't there  
for him to hit that  
he would hit them.

I'm glad to be out of  
the situation, and I  
won't ever go back.

My sister and her  
roommate filed charges against  
him and before he got out  
of jail he had to sign  
paper stating that he would  
not bother them or go around  
them so when I left I  
went and stayed with  
them, he called all over  
town trying to find me  
but he couldn't come over  
to my sister and ~~see~~  
bother me, because of the  
temporary restraining order,  
he still calls and tries to  
talk me into meeting him  
places or letting him see  
the kids, but at this time  
I can't do that because

the scars he left on me  
haven't even begun to fade  
yet.

Sincerely  
Sherry Wood

To Whom It may Concern;

I was married for 10 years. My husband started slapping me. He started cussing me and calling me names. He threatened to kill me and tear my name off of the sockets. It happened about 6 months after we were married. It got worse by hitting me with his fists. At first when he hurt me he said he was sorry and that he would not do it again. When it got to hitting with his fist he never said sorry. Later on I got so scared that I could not live in peace. I could not trust him whenever he walked into the house because I never knew when he would be in a good mood or bad mood. Me & my kids was living in fear. So I decided that I could not live this way for a good environment for the kids. I planned on moving out by getting ready to live in another place with my 2 kids. I was all packed and ready to go to a shelter for a while month at Billings. Then I moved to Glendora because in Billings he was calling the shelter every day trying to contact me & have me call him. He even threatened my friends that he would hurt them if they would not tell him where I was at. My friends did not know even where I was at. I did not get to a lawyer. I just



waited till I got to Missoula to start the divorce.

I was at the Shelter here at Missoula for 1 week then I found a place to live at. then I started a divorce. With the divorce I got a T. R. D. . He came to Missoula to find my our boy at schools. He could not find our son so he went back to Billings. Then he got the Divorce papers and the T.R.D. at the same time. But he is still violating that by calling my lawyer and the shelter trying to find us. Now he does know that I do live at Missoula instead of Billings and. he is calling my lawyer. He does not have a lawyer for himself at all.

I feel so scared so many times because if he ever finds me he will beat me up. I would like to have him arrested if he keeps on bothering me.

Sincerely yours  
Sonya L. Lann

Feb. 3, 1985

To whom It May Concern:

My husband and I have been together for three years. We lived together for a year before getting married. The abuse started a few weeks after we were first together. The abuse at first started with a slap. Later during a time we were drinking, he hit me in the eye with his fist and it required hospitalization. The police would not believe me as my husband convinced them I had fallen.

Later the verbal abuse started along with the physical abuse. The threats toward me and the name calling became a constant thing. Then one night he was drunk and I was not drinking and he started kicking me in the face. The police arrested him that time but not for assault and I had to go to the hospital for treatment.

Eventually he started making threats towards my children, my family, my friends or any ~~one~~ <sup>one</sup> who came around.

At one time he grabbed me around the neck, lifted me off my feet and threw me

## II

on the floor of his lawyers office while his lawyer was present. He was jailed for a while then set free. My children and I lived in constant fear and at times he was drinking my children would have to leave our home.

Every time I would try to do something for myself he would put so much pressure on me that I would eventually drop out of what I was doing.

I was in constant fear and confusing. At first he always managed to make me feel guilty about the beatings that I would help him be released from jail. Eventually with the help of counseling I found would not drop an assault charge when he had back handed me and knocked out my tooth. After a few weeks he went into an alcoholism treatment center, came back, faced the judge and was put on a years probation.

I was going to school at the time and the verbal abuse started at school, then physical abuse at home and threats. I finally called my lawyer to file for a divorce.

At one time I had talked to my lawyer about a restraining order and he explained that he could get me one but it

### III

would take 30 days or more to get one and even if I got one it would not prevent them from beating me. I needed one at the times he threatened me and I could not wait that long because I knew by that time he would have already beat me. (restraining order)

I filed for a divorce, asked my husband to leave and the same day he left, he called me and asked to come back. I told him no. I was home alone asleep on the couch, Halloween night of 1982 and he came back drunk. I ran from my mobile home across the street to another mobile home but the women would not let me in. The last thing I remember was ~~pleading~~ pleading with her to call the police that my husband was going to beat me up. By then he caught me, hit me with his fist and knocked me unconscious. The people at the hospital told me when I came to an hour or so later that he had kicked me in the face and head, knocked my teeth out, broke my nose, blacked both my eyes & numerous other cuts and bruises. At the time I came too they told me that they thought they would have to take me into surgery.

My husband was jailed, and later

pleaded guilty and was sentenced to 20 yrs  
dangerous, with 12 years suspended.

A bout a month and a half after my last  
beating I got my device. At that time a  
restraining order was written in to my device,  
but while he was in prison the verbal abuse  
and the threats did not stop because he  
continued to call me, cuss me out and  
threaten me.

The proposed bill would be helpful  
in order to prevent the abuse to keep  
continuing if he violates the restraining  
order.

Erden Young

A BILL FOR AN ACT ENTITLED: "AN ACT TO IMPOSE A LIEN  
AGAINST REAL AND PERSONAL PROPERTY FOR UNPAID CHILD SUPPORT."

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

Section 1, Lien for unpaid child support. (1) When the requirements of this section have been met, the amount of due and unpaid child support arrearages accrued under any judgment or order for child support issued by a district court under this chapter shall become a general lien upon all real and personal property of the obligor not exempt from execution. This lien is in addition to any other lien created by the judgment or order and has the priority granted a secured creditor.

(2) Upon a verified application by a person authorized to enforce or collect a child support obligation, the department of revenue, or the department of social and rehabilitation services showing that a person obligated to pay child support pursuant to a judgment or order of a district court is delinquent in an amount equal to three months support payments, the court shall direct the obligated person to appear and show cause why a lien shall not be imposed upon the obligor's real and personal property.

(3) If the court finds that a delinquency equal to the total of three months of support is owed and the court determines that the obligated person has real or personal property upon which a lien may be imposed the court may enter an order imposing a lien in the amount of the amount of support arrearages. The order imposing the lien shall be docketed in the judgment book of the clerk of court.

(4) The person or public agency authorized to collect or enforce the child support order may serve written notice of the support lien upon any person, firm, corporation, association, political subdivision, or state agency in physical possession of real or personal property due to or owned by the obligor and to which the lien applies. After personal service or service by certified mail of the notice of support lien, such property may not be paid over, released, sold transferred, encumbered, or conveyed until:

(a) a written release or waiver signed by the lienor or lienor's assignee or successor in interest is received;

(b) an order of the court is received ordering the release of such support lien on the basis that the lien is invalid, has ceased to exist, or that there are no unpaid child support arrearages; or

(c) the lien is foreclosed in the manner provided for the foreclosure of judgment liens.







## JUDICIARY

BILL NO. 341

DATE 2/4/85

SPONSOR Rep. Ron Miller

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

## VISITORS' REGISTER

JUDICIARY

COMMITTEE

BILL NO. 310

DATE 2/4/85

SPONSOR Rep. Steve Waldron

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Holly Franz	Missoula	X	
RESLIE DARLAND	Gr. Falls	X	
Caryl Wickes Borchers	Gr. Falls	X	
Julie D. Tregon	Great Falls	X	
Modemery Falls.	Great Falls	✓	
Cathy H. John	Great Falls	✓	
Toby Rowe	Msia	✓	
Mary Gallagher	Msia	X	
Lenore F. Jalaseno	Helena	✓	
Ron Miller	Rep (Sponsor)	✓	
Gail Kline	WLF	✓	
MIKE McGRATH	HELENA	✓	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.