

MONTANA STATE SENATE
JUDICIARY COMMITTEE
MINUTES OF THE MEETING

March 11, 1985

The forty-sixth meeting of the Senate Judiciary Committee was called to order at 10:05 a.m. on March 11, 1985, by Chairman Joe Mazurek in Room 325 of the Capitol Building.

ROLL CALL: All committee members were present.

CONSIDERATION OF HB 644: Representative Dennis Nathe, sponsor of the bill, testified this bill provides for an evaluation after a conviction of any of the offenses found in Sections 45-5-502 through 505 and 45-5-507 and 625, MCA. It would provide for an evaluation of a person under conviction under those statutes before the sentencing. It gives the judges some background in their sentencing as to whether certain individuals should be removed from society or have counseling.

PROPOSERS: David Briggs testified on behalf of Mental Health Services Inc. He stated the standard training does not adequately train them to deal with the unique and difficult problems of sex offenders. In order to evaluate and treat them, they need special training and equipment. It is only through a proper evaluation that it can be determined who can or should be treated on an incarceration basis or safely on an outpatient basis in the community. Just putting them in jail does the offender and the community no good. Individuals incarcerated without treatment don't get any better. Sex offenders cannot be cured, but they can be controlled.

OPPOSERS: None.

QUESTIONS FROM THE COMMITTEE: Senator Blaylock questioned how this would work in connection with the bill that gives them 30 days in jail. Representative Nathe replied the other bill called for a mandatory jail sentence for violation of any of the statutes listed. They would spend their 30 days and then if this bill were passed, either during the 30 days in jail or after that, they would have to have the evaluation and then possibly go for treatment. Senator Yellowtail asked if "qualified by professional experience" were enough of a definition. Mr. Briggs replied they struggled with that but thought it was satisfactory. Senator Yellowtail asked if the court would know who those individuals were. Mr. Briggs replied that although there is no guarantee, he would hope so. Senator Mazurek pointed out we have some licensing standards by the Department of Institutions. He asked if they would be appropriate

here. Mr. Briggs replied no. They just qualify people very generally and very broadly in terms of professional people. Senator Crippen pointed out this qualified person could also be a psychiatrist. He asked if the fiscal note were based on a psychiatrist's doing all 25 cases contemplated. Mr. Briggs responded yes, since they would be doing them at the Deer Lodge facility, although other facilities are capable of doing the evaluating.

CLOSING STATEMENT: Representative Nathe explained that a psychiatrist's doing these evaluations meant they had to go to the one in Billings or to the prison. If they put in psychologists, that fouled it up with the psychiatrists.

Hearing on HB 644 was closed.

CONSIDERATION OF HB 300: Representative Dennis Nathe, sponsor of the bill, testified this bill provides for a uniform statute of limitations of five years for all of the offenses listed in the previous bill. This tries to achieve some consistency by making it five years for all of these sexual crimes.

PROPOSERS: David Briggs, representing Mental Health Services Inc., stated this would allow them to go back five years and get the full extent of that person's crime, which would be very helpful.

OPPOSERS: None.

QUESTIONS FROM THE COMMITTEE: Senator Pinsoneault asked why they used five years. Representative Nathe said this is consistent with the statute of limitations or the time limit for all felonies. If the committee felt going back further would be helpful, he would find that acceptable. Senator Pinsoneault asked if he were aware there are some violations for which there are no statutes. Representative Nathe replied yes.

CLOSING STATEMENT: Representative Nathe explained that by extending this back five years, what happens is it is not the transients, it is the close friends or the relatives or someone in the immediate family. Then someone gets involved who has the guts to stand up for the child. At the point when someone steps forward, other people have the guts enough to come forward. By extending this back five years on all of these crimes, the judge and psychiatrist can see if there is some pattern.

Hearing on HB 300 was closed.

CONSIDERATION OF HB 547: Representative Joan Miles, sponsor of HB 547, testified all this bill does is add the words "or both" in the section that talks about a person dealing with sexual assault to a fine, imprisonment, "or both." On page 2, we are dealing with the part of the statute that talks about sexual intercourse without consent. Page 3 talks about admissibility of evidence of the victim's past sexual conduct. They took it out and moved it to the other section dealing with all sexual crimes. By moving it there, that detailed information about the person's inquiry into the victim's past. She thinks that is an issue of fairness for both the defense and the prosecution. It is very clear what information is relevant and how it can be used.

PROPOSERS: Mike McGrath, Lewis and Clark County Attorney, testified on behalf of the Montana County Attorneys' Association. He explained this bill was drafted by the association. It is a very common defense tactic in the defense of civil crimes to put the victim or witness on trial. The statutes before the committee have already limited the inquiry into the victim's past. This statute would extend that prohibition to all sexual offenses. As a general rule, when they have a victim under the age of 16, they charge sexual assault as opposed to sexual intercourse without consent. It is easier to prove, the difference being the penetration factor. It is easier for the young children to talk about what happened to them. When they do that, it tends to open up the defense as to all types of tactics about what happened previously. That often leaves a lot of questions the defense cannot answer. This will reassure victims what they can expect will happen. The same is true with the prohibition about bringing up the victim's failure to cry out. Many agree that the best way to deal with the rape is for the victim not to cry out or fight. This prohibition recognizes that. It covers what is already covered under the sexual intercourse without consent statute and makes them apply to all sexual offenses. Gail Kline, representing the Women's Lobbyist Fund, presented written testimony in support of the bill (Exhibit 1).

OPPOSERS: None.

QUESTIONS FROM THE COMMITTEE: Senator Blaylock questioned whether in the rare case where someone were charged and was not guilty, if they have enough defense left to get a fair trial. Mr. McGrath responded yes. The courts have limited evidence from either side to evidence that is relevant to the crime charged. What the legislature is doing is defining what is relevant.

CLOSING STATEMENT: Representative Miles thought the statute does provide consistency as to what is and isn't relevant. It is clear when you

can use consent as a defense. The defense can use the consent defense when the accused believes the victim was over 16.

Hearing on HB 547 was closed.

ACTION ON HB 547: Senator Crippen moved HB 547 be recommended BE CON-CURRED IN. The motion carried unanimously.

ACTION ON HB 644: Senator Crippen moved HB 644 be recommended BE CON-CURRED IN. Senator Yellowtail stated he found the whole sentence to be very uncertain and would like it more specific somehow. Mr. Petesch pointed out there are some other statutes that refer to people certified by the Department of Institutions. At the current time, that is limited to clinical psychologists. The motion carried unanimously.

CONSIDERATION OF HB 781: Representative Gary Spaeth, sponsor of the bill, testified the prosecution can't appeal in every instance because there is a double jeopardy situation. At the lower court level, the defendant may appeal to the district court. That has been interpreted that only the defendant can appeal into the district court. He is carrying this bill at the request of the Attorney General's office. There is no right of appeal on behalf of the prosecution. The lower courts should be treated in the same way as the district courts are. We are trying to upgrade them, and we should give them the same type of responsibilities and the same powers of the parties as the district court. Double jeopardy does not come into the picture here. It is used in very limited instances.

PROPOSERS: Mark Murphy, Assistant Attorney General assigned to the County Prosecutors Service, testified the Attorney General and the County Attorneys' Association are supporting this bill. The case of Sanchez says the state cannot appeal. This bill corrects that. In the areas of drunk driving and misdemeanor possession of marijuana, all of the suppression motions have been heard in justice court, and the state cannot appeal; nor can it appeal in other areas where the justice courts make decisions concerning issues of law. Betty Wing, Deputy County Attorney from Missoula, testified the justices of the peace do not have to be attorneys and occasionally they make a decision to dismiss a case or suppress evidence. To her, it is frustrating not to be able to appeal those decisions.

OPPOSERS: None.

QUESTIONS FROM THE COMMITTEE: None.

CLOSING STATEMENT: Representative Spaeth stated this bill essentially provides the same provision to the lower courts as are being applied to our district courts.

Hearing on HB 781 was closed.

CONSIDERATION OF HB 726: Representative Bud Gould, sponsor of HB 726, testified he questioned how many people had spent any time in jail and been convicted for DUIs with a fatality involved. He found only one instance in two years. He has no intention with this bill of doing anything to harm the drunk driving legislation that has been passed. He has come across a problem. If a person is convicted for the first time and hasn't been involved in the system before, and their mind is not working well because of alcohol, the officer tells them if you do not take the implied consent test, there is no way you can get a provisional license. If the person wakes up the next morning and realizes he made a mistake by refusing to take the test, he will probably continue to drive anyway. What we have done is make a criminal out of somebody who, instead of losing his job, will sneak around. We don't want to make criminals out of the people in the state of Montana who have done something wrong one time. What he has proposed is that if a person does not take the implied consent test, if they can show to the district court absolute evidence they must have a probationary license to continue in their job, they will be allowed on a first conviction to get a provisional license. The penalty section is very severe. It calls for the same penalty as you would have for a third conviction of drunk driving. There are only 16 of the 50 states that are eligible for the federal 408 funding. What this bill says is it is effective upon passage and signing off by the Department of Transportation. He does not think this will cause any court problems.

PROPOSERS: None.

OPPOSERS: Doris Fisher, representing Mothers Against Drunk Drivers (MADD), presented written testimony in opposition to the bill (Exhibit 2). Larry Majerus, Administrator of the Motor Vehicle Division of the Department of Justice, testified they disagree with Representative Gould and feel this bill weakens the DUI laws in Montana. The implied consent laws came into being in the late 1960s. Senator Halligan's SB 313 was the most important of all of the DUI bills passed last session in that it increased the license suspension period from 60 to 90 days and established a second offense. We are talking about a second refusal. Implied consent doesn't always apply to a conviction. The first time he refuses is a first-time refusal. That bill prohibits a provisional license. It is necessary if you are going to give judges chemical test results. He stated 7,000 of the 17,000 picked up for DUI refused the test last year. He believes this bill would cripple the DUI efforts in

education, law enforcement, and treatment. It is unreasonable to place this burden on the courts. The courts are too busy now to look into these matters. There is no provision in the bill to give the court the basis to deny a license. Section 4 is arguably unconstitutional. Candace Compton, representing the Highway Traffic Safety Division of the Department of Justice, testified the U.S. Department of Transportation has upgraded our DUI system. There is a general deterrent approach: (1) increased DUI enforcement; (2) perception of the probability of arrest; (3) probability of harsh sanctions being imposed on an individual if they were caught; (4) swiftness and certainty of the system's response to the individual if they were caught (this bill will take away the certainty of sanctions); and (5) public education through the mass media. Alcohol involved accident rates have diminished. There are three parts of the deterrent: (1) fines for all offenders; (2) jail time for all offenders; and (3) loss of drivers' licenses. An important component is the implied consent law. Four things will happen with this bill: (1) increased prosecution for DUI offenses (the burden of proof will be put on the prosecution); (2) the DUI trials on a lower court level will increase dramatically; (3) impact on the district court system which will become the licensing agency for all those who will want hearings; and (4) the law will become unfair, for those who can't afford to get to get to district court won't get off. Jeannette Buchanan, Chairman of the Missoula County DUI Task Force, presented written testimony in opposition to the bill (Exhibit 3). She also testified you make the choice to drive before you take the first drink. Betty Wing, Deputy County Attorney from Missoula, echoed how effective these new laws have been. She stated there is an appeal process now if someone has his license taken away because he refused the test. She stated she had a problem with the bill on page 7, lines 9-12. There is no standard the district court will use to determine if someone will abide by the rules and the public will be adequately protected. There is nothing that says anything about people who lose their jobs to apply for a probationary license. It says you must have written certification of the above from the U.S. Department of Transportation. She asked how they can approve of something the state of Montana does.

QUESTIONS FROM THE COMMITTEE: Senator Pinsoneault asked Representative Gould if an avalanche of people came to him that fell under the category of the people he suggested. Representative Gould replied a couple of people brought this to his attention. He felt it was important. Senator Crippen asked if you knew you needed your license for a job, wouldn't it go through your mind not to have that last drink? Representative Gould stated it would to him because he is much smarter than the average person, but people do make mistakes.

CLOSING STATEMENT: Representative Gould stated he has checked this out with the U.S. Department of Transportation, and they have no problem with it.

Hearing on HB 726 was closed.

CONSIDERATION OF HB 44: Representative Steve Waldron, sponsor of HB 44, testified this bill requires that the victimizer in a rape or incest case will pay for the counseling costs of the victim. It ties itself to some current sections of law. We have incontrovertible evidence that those victims of these types of crimes require intensive counseling to overcome these types of assault.

PROPOSERS: Cathy Campbell, representing the Montana Association of Churches, presented written testimony in support of HB 44 (Exhibit 4). Gail Kline, representing the Women's Lobbyist Fund, presented written testimony in support of the bill (Exhibit 5).

OPPOSERS: None.

QUESTIONS FROM THE COMMITTEE: Senator Mazurek asked if he tried to leave the court an out after determining the ability to pay the court shall require payment. Representative Waldron replied it was not his objective. If he has the ability to pay, then the court should require the payment.

CLOSING STATEMENT: None.

Hearing on HB 44 was closed.

CONSIDERATION OF HB 310: Representative Steve Waldron, sponsor of the bill, stated this bill expands the use of the temporary restraining order (TRO) for spousal abuse situations. There must be a contempt of court filed against the individual. Consequently there isn't much protection with a TRO. It makes a violation of a TRO a criminal matter. It allows the officer to arrest someone for violating the TRO. They can get the offender or potential offender out of the way. It makes the knowledge of the TRO readily available to the police. It was taken from the self-help TRO laws in Oregon. The House, by a very close vote, decided not to have justices of the peace implement the TRO. That is not a problem in the urban areas, but it is a problem in the rural areas.

PROPOSERS: Representative Paul Rapp-Svrcek thought this was a very important mechanism for victims of domestic violence. He spoke in favor of reintroducing the language dealing with the justices of the peace.

If you leave the language out, you delete the advantages of this bill to the majority of the state. Bob Rowe, from the Montana Legal Services Association in Missoula, testified the victim's tool is the TRO. Access to the courts is necessary, as well as her ability to obtain an attorney and his ability to drop everything and deal with the problem immediately. The proposed bill addresses this problem by creating a self-help process. The second problem is that of enforcement. Studies and experience both indicate the need in a domestic violence program is to remove the offender. The police are reluctant to act. Offenders realize the limits of the TRO and act in disregard to it. It gives the offender notice. It provides a penalty. It gives the police the right to act. He has a problem in that the House deleted the provision allowing for waiver of the filing fee. In addition, where the victim flees from a location because of the abuse, he should not have to return to that place. The statute should make sure the victim may obtain a TRO where she resides because that is where she needs protection. The deletion of justice court jurisdiction is a very important issue, as Representative Rapp-Svrcek suggested. Mike McGrath, Lewis and Clark County Attorney, supported the provisions of HB 310, particularly those that make a violation a criminal offense. This will let law enforcement know what they can or cannot do. They will also have access to this information. Holly France, representing the Women's Law Caucus, presented written testimony in support of the bill (Exhibit 6). Caryl Wickes Borchers, representing the Montana Coalition Against Domestic Violence, presented written testimony in support of the bill (Exhibit 7). Julie Ferguson presented written testimony (Exhibit 8). In addition, she presented testimony from other individuals in support of the bill (Exhibit 9). Rosemary Keller presented written testimony in support of the bill (10). Kelly Chandler testified for the Women's Lobbyist Fund and presented written testimony (Exhibit 11).

ADDITIONAL TESTIMONY: Jim Jensen, representing the Montana Magistrates Association, stated he was present to answer any questions the committee might have, although he was neutral on the subject matter before the committee. Doug Grob, of Kalispell, stated he did not oppose any of these bills. He stated if these individuals are guilty, okay; but if they are not, he questioned whether these individuals will need proof to obtain the TROs.

OPPONENTS: None.

QUESTIONS FROM THE COMMITTEE: Senator Mazurek asked if there were a potential for this to have an impact on custody determinations. Mr. Rowe stated those matters would be removed to district court.

CLOSING STATEMENT: None.

Hearing on HB 310 was closed.

CONSIDERATION OF HB 717: Representative Steve Waldron, sponsor of HB 717, stated this bill attempts to make joint child custody an option along with other custody options. Under this law, if you do not provide for child custody, you must tell why. One of the problems is the judge says there will be joint custody, but the law is so new, we don't know what that means. We need some sort of definition. Joint legal custody with all of the major decisions approved by both parents and joint physical custody are two separate matters. The bill attempts to define what joint custody means and requires that the judge has to have a plan submitted so he will know what's going to happen and how it will be implemented. If a judge does not order child support, then they can say there is no child support. The bill requires the judge to tell why he is not ordering child support. One problem we are seeing with child custody is that husbands are using this as a bargaining tool to get lower child support payments. In abuse situations, spouses will force someone to go along with joint custody. The best joint custody is when both parents are supportive. By making it mandatory, you may be creating some problems that may otherwise not have been created.

PROPOSERS: Klaus Sitte, managing attorney from the Missoula Montana Legal Services Association office, spoke on behalf of the bill as it had been originally drafted. The bill tries to accomplish two things. One is to clarify child support. In joint custody situations, both people must be the ones that solve the problems and not the courts. The court needs to state the reason why no child support is awarded. Joint custody is a new concept and is not a question of fathers' rights versus mothers' rights. He is convinced it can only operate in a situation where two people can work to make it in the best interests of the children. He felt the committee should put back in the language where it is given on the application of both parents. He stated 50% of women in relationships will be abused. He questioned how a joint decision is reached in a situation where the power struggle remains the same. He has never seen a judicially-imposed joint custody situation work. Joint custody should not be a cop out for the inability of the court to make a decision. He wants to find out if the court understands joint custody. This proposed legislation is a piece of hope. It is a good concept, but it allows the courts the widest degree of latitude. The legislature did not want to relieve the court from making decisions. Children are the least able to express themselves. Caryl Wickes Borchers, representing the Montana Coalition Against Domestic Violence, testified they would like the amendment back to where they both feel they want joint custody. Dr. Bailey Molineaux, representing the Montana Psychological Association, testified they support the concept of this bill and SB 152. He suggested an amendment to page 5, line 5. They would like to see mediation or custody counseling without consent.


OPPONENTS: Alan Nicholson, representing himself, a resident of Helena, testified he supports SB 152 but not HB 717. The language could say the court may or may not arbitrarily discriminate. It should say all forms of custody are equal, and we want to pick the best one for the child. What is more fundamental than parenting? It is a right we will have. The state should take very carefully into consideration under what conditions it will violate the right to parent. Parenting is more fundamental in some respects than the law. When we separate a parent from his child, it should be done only under some extreme circumstances. Bill Leinewer testified he was a fugitive because there was no joint custody up until a few months ago. He could not leave his children in the situation they were in. This will make you feel like you at least have a chance when you go into court. Douglas Grob, of Kalispell, testified in the long run, children, fathers, and mothers do better post-divorce. Five states have mandatory joint custody. Joint custody is more than a viable alternative. It is something this state should try to enhance. Bill Riley, of Helena, stated this is not a men's or women's issue. It is a children's issue. It is to perpetrate two things--the adversarial relationship between the parents and the loss of a parent to the child. Children in a divorced family have a lot of fear of losing their father. They utilize a fantasy denial. There is a rise in aggressive behavior. Many blame themselves. There are loyalty conflicts and physical harm situations. The visitation suggested in HB 717 won't work.

QUESTIONS FROM THE COMMITTEE: None.

CLOSING STATEMENT: Representative Waldron stated he could not figure out what the opponents were testifying against. The opponents support the concept of joint custody. SB 152 does not require if there will be not be child support that the court doesn't have to tell why. There is no place in the law that defines joint custody. The plan for child custody clarifies it and makes it meaningful. If the court does or doesn't provide for joint custody, it should say why or why not. Dr. Molineaux talked about the adversarial relationship. Whether or not this bill passes, that situation will occur, because a divorce is an adversarial relationship before the court. Representative Waldron suggested the court's requiring them to get counseling sounds like a good idea. His studies on joint custody have all dealt with parents where both parents were supportive of joint custody. Those cases work well.

Hearing on HB 717 was closed.

There being no further business to come before the committee, the meeting was adjourned at 12:21 p.m.


Committee Chairman

DATE

March 11, 1985

COMMITTEE ON

Judiciary

BILL NO. ~~H.R. 311~~

Self Help Restraining Order

VISITOR'S REGISTER

HB 44, 300, 310, 444, 717, 726, 781

NAME

REPRESENTING

Check One ~~SB~~

Support Oppose

Carol Wickes Borchers

Montana Coalition Against Domestic Violence

HB 310

Julia D. Chapman

Victim of Domestic Violence

HB 310

Susan B. Chapman

Sweet Home 72, 444, 717

HB 310

Maryann Keller

Victim Domestic Violence

HB 310

Kelly Chandler

Women's Lobbyist Fund

HB 310

Yael Klein

Women's Lobbyist Fund

HB 310

Tomie Fisher

ma & s

HB 726

Klaus D. Witt

Montana Legal Services Assn.

HB 717

Bill Furrer

Department of Justice

HB 726

Robert C. Rowe

Mont. Legal Services Assn.

310

Liam Shaw

Dept. of Labor

Patricia Campbell

MT Assn. of Churches

HB 44

Wendy Briggs

Montana Health Service

HB 644

Larry Mapenus

Dept of Justice

HB 726

MARR MARRIN

A.G. OFFICE

HB 781

Jeanette Buchanan

Missoula - Flathead Co. DUI Task Force

HB 726

BETTY WING

MISSOULA COUNTY ATTY'S OFF

HB 726

Jim Jensen

MT. MAGISTRATES ASSN.

HB 310

Alan Nicholson

TII Zwickler - Helms

HB 717

Marti Adria

Counselor

HB 310

Douglas Greb

Children's Rights for Parents (R)

HB 717

Bill Ritz

Hna.

HB 717

Bill Leineweber

"

HB 717

Mike McGrath

County ATTY'S ASSOC

HB 547

Andis Compton

Highway Traffic Safety - Justice

726

Carol Wickes Borchers

Great Falls Community Core
DUI Task Force, Team of Att. Falls

HB 726

(Please leave prepared statement with Secretary)

COMMITTEE ON BILL NO.

[illegible]

(Please leave prepared statement with Secretary)

WOMEN'S LOBBYIST FUND

Box 1099
Helena, MT 59624
449-7917



March 11, 1985

Testimony of the Women's Lobbyist Fund by Gail Kline
before the Senate Judiciary Committee on HB 547

Mr. Chairman and other members of the Judiciary Committee:

For the record my name is Gail Kline, representing the
Women's Lobbyist Fund (WLF), speaking in favor of HB 547.

This bill is in the interest of all Montanans, because sexual
crimes cut across all social and economic lines.

Currently, a victim's past may only be excluded in the crime
of sexual intercourse without consent. HB 547 extends this
existing language to other sexual crimes such as sexual
assault and incest.

HB 547 is needed to provide dignity and equal protection for
victims of sexual crimes as guaranteed under our state
constitution.

The WLF urges you to pass HB 547.

Thank you.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 1
DATE 03/11/85
BILL NO. HB 547

I represent MADD, and the family of a drunk driving victim. We all worked hard in the last session to raise the level of awareness regarding the drinking driver and to put together a package of DUI legislation which was confronting, without being harsh; fair, because all would be treated alike and intelligent. We are all proud of that effort and now it is up to you to protect that effort. HB 726 must be studied carefully and killed.

To design a law which might convenience a few is not fair or democratic. It takes us to a well-used message heard often before the mandatory sentencing became law. "Justice for those who can afford". That kind of law is amusement for the manipulators and resented by those who get caught and cannot afford. Today, all of those who abuse chemicals will be confronted alike. It is no more unsafe for a rich man than a poor man to drive a vehicle while under the influence. We all have to be confronted alike and unsafe drivers must be taken off the roads!!!

Now, let's talk money! There is no one on Welfare in Gallatin County because he or she lost a job due to loss of license. There have been many on welfare because alcohol interfered with their desire to go to work. Now, that many of these people have been put in contact with an alcohol counselor, because of a DUI, the abuser is given the choice of treatment or jail, and others are given alcohol education. Few people volunteer for this service but many have gone to treatment. We now have families driving Mom or Dad to work and therefore the whole family is going to counseling instead of walking around the "elephant" that has been living at their house---ALCOHOL! Money well spent at the Problem Drinking Center=The abuser's money---not mine!!!

Let's talk about my money. There are many counties who are already complaining about the burden of maintaining a district court. There will now be 7000 people applying for a provisional license. That is the number of arrests last year. As long as the law allows for anyone with a lawyer to apply--all who can afford will apply. What will that cost the district courts? How nice it will be for the defense lawyers--7000 X \$300 will yeild 2 million dollars for the legal profession. \$\$\$\$

Last year, a man from Three Forks, who was a known alcohol abuser got a DUI, was found guilty and his license was removed for 6 months. He immediately applied for a provisional license and it was granted. The next day, he visited his favorite watering holes in Three Forks. On his way home, he drove his pick-up truck into the drivers' side of the Manhattan minister's car. The drinking driver was not injured but the minister was dead. This is a boring Montana story--you have heard many like this, I am sure. After examining the minister, I have the honor of taking this news to the family of the deceased. The nursing supervisor at the hospital alerted me to the fact that the wife of the minister had just been dismissed from the hospital. She had a serious heart attack about three weeks previous. So, I drove to the address outside of Three Forks to a residence which was in the process of being built. The house had no siding, no partitians, no heat, other than the wood stove, and no telephone. They had just moved in and the minister planned to finish the inside in his spare time. This lady had never worked, other than helping her husband with church activities. She now had no wage earner, no one to haul in wood, no car, no road to the house and 2 children. No one in this room would deny her Welfare for the rest of her life. \$\$\$\$\$

I can only speak for Gallatin County but as of today, there have been no deaths and no serious injuries in 1985!!! That didn't happen from wishing. The drinking driver is being confronted with law enforcement, awareness and education and IT IS WORKING! So, I ask you to not allow the Implied Consent law to be weakened. Please kill HB 726! It is an error which must be stopped here today!

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 2DATE 03/1/85BILL NO. HB 726

Before the Senate
Committee Hearing HB 726 - Gould

HB 726 - Opposed

I am Jeannette S Buchanan, chairman of the Missoula County DUI Task Force.

I am opposed to House Bill number 726 as I am concerned about the implied consent that goes with the privilege of driving.

The use of alcohol and other drugs, which impair judgement, is incidious. The user becomes very cunning.

The peace officer should be supported in his findings. Testing is one of the concrete methods available to him.

This bill simply allows the court the circumvent the implied consent to be tested, when due cause is present for blood alcohol or drug concentration, that a person gives when he or she applies for a driver's license.

I am therefore opposed to alternatives that will reduce the findings used to identify the impaired driver. *In Missoula, refusals are already on the increase - up to 26.6% in January from 16% for all of last year.

I support the peace officer retaining authority and not giving the impaired driver an opportunity to avoid the consequences and further deny his condition.

Removal of privileges gives impetus to fact finding.

Thank you.

Jeannette S Buchanan

Jeannette S Buchanan
301 West Alder
Missoula MT 59802

** The current law was adopted by the 1983 legislature. At that time, the rate of refusals was about a third in Missoula county.*

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 3

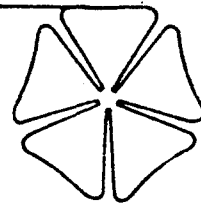
DATE 03/1/85

BILL NO. HB 726



MISSOULA CITY-COUNTY HEALTH DEPARTMENT

301 West Alder • Missoula, Montana 59802 • Ph. (406) 721-5700



March 7, 1985

Senator William Norman, President
Montana State Senate
Capitol Building
Helena, Montana 59601

Dear Senator Norman:

The undersigned members of the Missoula County Task Force for the Prevention of Drinking and Driving ask for your consideration of the following bill.

H.B. 726 - We strongly oppose this bill as it would make it possible for someone who refuses to take a blood alcohol test to receive a probationary drivers license. Under the implied consent law, a person arrested for DUI must take the test or lose his license for 90 days. The purpose, of course, is to insure that drivers on our roadways are not under the influence of intoxicants. Providing a probationary license destroys the purpose of the implied consent law and will encourage drivers to refuse the test. It will also clog the District Courts with hearings and increase the workload of the Division of Motor Vehicles.

We strongly urge you to oppose this bill. We would be happy to provide more detailed information at your request.

MISSOULA COUNTY DUI TASK FORCE
(See attached signature list)

cc: Senate Committee on the Judiciary

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 3

DATE 03/11/85

BILL NO. HB 726

Norma S. Fitch

Elmer Leach Missoula City County Health Dept

John Hamilton 475 1st

Jona Baertsch 9-11 Missoula County

Diana Biehl - Sentinel School Nurse

Betty Wingo

Deputy County Attorney

Harold Hoig

Missoula Co. S.O.

Ron Wickman

Missoula P.D.

Jim Wigginton Missoula City Attorney

Sam Warren

Deputy City Attorney

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 3
DATE 03/11/85
BILL NO. HB 726

Montana

Association of
Churches

MONTANA RELIGIOUS LEGISLATIVE COALITION • P.O. Box 745 • Helena, MT 59624

March 11, 1985

WORKING TOGETHER:

American Baptist Churches
of the Northwest

American Lutheran Church
Rocky Mountain District

Christian Church
(Disciples of Christ)
in Montana

Episcopal Church
Diocese of Montana

Lutheran Church
in America
Pacific Northwest Synod

Roman Catholic Diocese
of Great Falls-Billings

Roman Catholic Diocese
of Helena

United Church
of Christ
MT-N.W.Y. Conference

United Methodist Church
Yellowstone Conference

Presbyterian Church (U.S.A.)
Glacier Presbytery

Presbyterian Church (U.S.A.)
Yellowstone Presbytery

MR CHAIRMAN AND MEMBERS OF THE SENATE JUDICIARY
COMMITTEE:

I am Cathy Campbell of Helena, representing
the Montana Association of Churches and speaking
in support of House Bill 44.

We've been concerned about the victims of
crime for years, and in 1977 adopted a position
paper supporting compensation of victims of crime.
We feel that the financial burden should not be
placed upon the victim.

The intent of this bill is consistent with our
position, and acknowledges a dimension of the
particular offenses that simple compensation doesn't.

We would therefore like to lend our support
to the bill.

SENATE JUDICIARY COMMITTEE

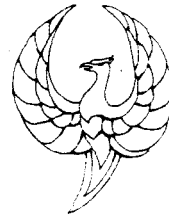
EXHIBIT NO. 4

DATE 03/11/85

BILL NO. HB 44

WOMEN'S LOBBYIST FUND

Box 1099
Helena, MT 59624
449-7917



March 8, 1985

TESTIMONY IN SUPPORT OF HB 44

Mr. Chairman and members of the Senate Judiciary Committee:

My name is Gail Kline and I am speaking on behalf of the Women's Lobbyist Fund (WLF) in support of HB 44. A priority of the WLF is to work to strengthen laws which reduce or, as in this case, mitigate the impact of crimes of sexual violence against women and children. As you well know, rape and incest are some of the most horrendous crimes of violence. Women and children are the most frequent victims of such crimes.

The seriousness of the crimes of rape and incest is heightened by the fact that the harm done to the victim is not limited to the time of the criminal act. Instead, crimes of rape and incest leave long lasting psychological wounds on those who have been victimized.

Rape is an act of violence. Incest is an act that is most often committed over a continuing period of time and the victims are children. The psychological harm caused to both rape and incest is severe for the victims.

HB 44 is a bill that requires the obvious to be done. It recognizes that psychological harm is inflicted on victims of rape and incest. It recognizes that counseling may be necessary because of that psychological harm. And finally, it requires the perpetrator of the crime to pay monetarily for the counseling that is required as a result of a criminal act.

We urge you to pass HB 44.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 5

DATE 03/11/85

BILL NO. HB 44

SBA MONTANA STUDENT BAR ASSOCIATION
UNIVERSITY OF MONTANA LAW SCHOOL
MISSOULA, MONTANA 59801
WOMEN'S LAW CAUCUS

TEMPORARY RESTRAINING ORDERS AND JUSTICES' OF THE PEACE

House Bill 310 provides protection for domestic violence victims by increasing availability and enforcement of temporary restraining orders. As originally introduced, HB 310 allowed justice of the peace courts to issue temporary restraining orders. The House of Representatives amended this section out of the bill. This amendment severely limits access to temporary restraining orders. The provision allowing justice of the peace courts to issue temporary restraining orders should be restored to HB 310.

The Amendment Limits Access to T.R.O.s

Currently only district court judges may issue restraining orders. Restraining orders provide emergency relief from imminent harm. To be effective, they must be available immediately. Many women are now denied this immediate relief. Rural women are at a special disadvantage. A single judicial district may cover hundreds of miles. For example, one district judge covers the counties of Meagher, Wheatland, Golden Valley and Mussellshell. Domestic violence victims in these counties are effectively denied emergency relief due to the lack of access to district judges. Urban women suffer also. Domestic violence victims in Butte went an entire month this summer without access to a district judge. One district judge was on vacation, and the other was ill. Butte victims had nowhere to turn. Since every county has at least one justice of the peace, allowing justices to issue restraining orders would protect victims by greatly increasing access to emergency relief.

Justices of the Peace Have the Necessary Expertise

A temporary restraining order may be issued when a delay would cause immediate and irreparable injury to the victim. MCA 27-19-315. Justices of the peace have the expertise to make this determination. Their current jurisdiction requires them to make many similar determinations. For example, justice of the peace courts have the power to issue arrest warrants. MCA 46-1-201(6). Before issuing an arrest warrant, the justice of peace must determine whether there is sufficient evidence to believe that the person committed a crime. MCA 46-6-201. This determination is very similar to that involved in issuing a temporary restraining order. Justice of the peace courts also determine whether an arrested person has committed a felony, and if not, the justice has the power to discharge the accused person. MCA 46-10-203. In addition, justices of the peace have jurisdiction over all misdemeanor domestic assault cases. MCA 3-10-303. It is sadly ironic that a justice of the peace can punish an offender after a violent act but cannot prevent violence.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 6

DATE 03/11/85

BILL NO. HB 210

Justices of the Peace Have the Necessary Training

To be a justice of the peace, a person must be an attorney; must have been a justice withing the preceeding five years; or must complete an orientation course under the direction of the University of Montana law school. MCA 3-10-202. In addition, justices of the peace must attend two annual training sessions supervised by the supreme court. MCA 3-10-203. In contrast, a district court judge must practice law in Montana for five years prior to becoming a judge. MCA 3-5-202. To suggest that an attorney, through his or her technical knowledge of the law, is better suited to issue temporary restraining orders is ludicrous. Common sense and experience, not legal training, is necessary to determine whether a temporary restraining order is needed to prevent immediate and irreparable harm to a domestic violence victim.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 6

DATE 03/1/85

BILL NO. HB 210

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

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 7
DATE 03/11/85
BILL NO. HB 310

February 1985

Capitol Station
Helena, Mt. 59601

Dear Legislators,

House Bill 310 is an essential piece of legislation in combating domestic violence. Temporary restraining orders, as they stand now, are very costly and essentially ineffective. A lot of people in dangerous situations cannot afford to have "TRO's" issued, have them issued only to find the police's hands tied when called in to assist, or the time involved in issuing TRO's leaves the person vulnerable and very afraid.

In an abuse situation, effective help is needed immediately. Usually, by the time the police are called in, an abuse situation has escalated into a crisis situation. Even if a restraining order has been issued, essentially all the police can do is ask him to leave. If a restraining order is broken, it has to be taken back to court on a contempt charge, which is so time consuming and again, costly, that this action is seldom followed up. It doesn't provide the immediate assistance needed today in abuse situations, yet is the only available tool people have now for help that is so desperately needed.

One area of House Bill 310 being amended has been done so without proper consideration of why it was put there in the first place. This involves transferring issuance of restraining orders to the Justice of the Peace Court System. The reason behind this was to provide immediate aid to abuse victims in out-lying areas, where women have no access to shelters, and going through the District Court System to obtain a restraining order could require extensive travel and time.

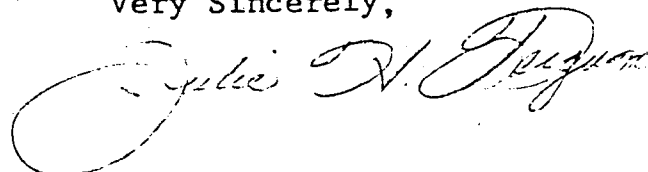
Again, it is imperative an abuse victim receives aid immediately, not two to three weeks and \$150 (minimum cost) later.

Domestic abuse in our society has been tolerated too long. It must be stopped. Witnessing abuse as a child teaches that child that the abuse is a normal reaction to distress. Abuse has been carried through generation after generation because of this learned behavior. Domestic violence can be directly related to crimes such as child abuse, incest, sexual abuse and many others, so any effective legislation against domestic violence will also have a positive effect on other crimes as well.

I feel a child witnessing abuse is ingrained with a tolerance to things he knows in his heart are wrong. This tolerance is rampant in society today. Let's begin now, in passing House Bill 310, as written, to effectively combat domestic violence. I assure you, the results will be dramatic.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 8
DATE 03/18/85
BILL NO. HB 310

Very Sincerely,



February 4, 1985

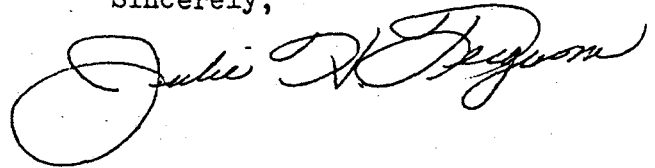
Dear Legislators,

"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,



SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 9
DATE 03/11/85
BILL NO. HB 310

February 1985

Capitol Station
Helena, Mt. 59601

Dear Legislator,

I am writing in reference to the need for more support of battered spouse centers, and equally important, for the need of more adequate protection for women in battered situations.

In the 2½ weeks after my last battering, I lived in a state of chronic fear before I was finally able to tie up all of my loose ends and leave town. I feel that the laws at this time are inept in dealing with the rampantly growing problem of family violence.

There is no doubt in my mind that my husband would have succeeded in ending my life if my children had not awoken and heard my pleas for help. If I had pressed charges, my husband would have spent a short time in jail and then would have probably finished what he had not ended.

I had no financial means of obtaining a lawyer in order to obtain a restraining order for my husband. My children and I were forced to leave our home, town, schools and employment to be safe. There is no way I can express to you the emotional stress this has subjected our family to.

In closing, I would like to make a statement about what the battered shelters (we have stayed in Billings and Great Falls) have done for me. They have given me hope, that there is and will be a better way of life for my children and myself. They have helped me find the resources available, new directions to take, and most importantly, once again I feel like a whole person, instead of the shattered and fragmented woman I was before I finally sought help.

Sincerely,

Melissa

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 9
DATE 03/1/85
BILL NO. HB 310

February 1985

Capital Station

Helena, Montana 59601

Dear Legislator,

I am 7 years old. ~~I want~~
~~And~~ I want to help
people so mothers won't
get hurt by ~~there~~ husbands.
My sister has got problems
because my ^{mother's} get's beat up
by my dad. Please help
so we can live in a
better life.

Dusty

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 9

DATE 03/1/85

BILL NO. HB 310

February 1985

Capitol Station
Helena, Montana 59601

Dear Legislator,

I am ten years old and I'm writing about supporting the home and all the people that have had family problems.

I hate seeing my mom get beat up, and if you don't help support us it will get very bad. My little brother and sisters are really hurt by my mother and father fighting. Now we have somewhere to stay. Please help the home of battered women and children.

Sincerely,
Shawn

Shawn

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 9
DATE 03/11/85
BILL NO. HB 310

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 \$200.00 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.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 9

DATE 03/1/85

BILL NO. HB 310

Sincerely,

A very concerned taxpayer

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.

SENATE JUDICIARY COMMITTEE
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DATE 03/11/85
BILL NO. HB 310

Sincerely,

Cathy St. John

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

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 9

DATE 03/1/85

BILL NO. HB 310

to whom it may concern

I've been married 1 1/2 yrs.
Shortly after we got married
he became violent the beatings
started out not real bad
in the beginning. He hit
me a couple times, then
he would say he was sorry
and promised he would
never do it again, but as
time went on the beatings
got worse and he criticized
me constantly. I felt like
I 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 to much.
one thing being out of place
in the house. Finally I kept
wondering myself what I did
everything I could to try
to make him happy but the
beating just got worse, he
slung his arm on the face
just then he would start

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DATE 03/1/85

BILL NO. H#B 310

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 ago every thing was
going fine ~~and~~ but his
temper was getting bad
again and I know 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 sisters and some
nephews were there and they
had to wait and hear
so they got ~~better~~ that by
him also, they took filed
assault charges against
him so he was put in
jail but he was out of

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BILL NO.

HB 310

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 get 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

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DATE

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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 hit
again.

I've left now and I
like myself again. I don't
have to feel scared of him
any more, I'm in 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

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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 with
to my sister and he
bothered 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

SENATE JUDICIARY COMMITTEE

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DATE 03/1/85

BILL NO. HB 310

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

Sincerely,
Sherry Ford

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 9

DATE: 03/1/85

BILL NO. HB 310

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~~ ^{one} who came around.

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

SENATE JUDICIARY COMMITTEE

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FILE NO. HB 310

II

on the floor of his lawyer's 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 benched out my tooth. After a few weeks he went into an alcoholism treatment center, came back, faced the judge and was put on a year's 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

SENATE JUDICIARY COMMITTEE

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DATE 03/1/85

III

would take 30 days or more to get one even if I got one ^(restraining order) it would not prevent him 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.

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

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BILL NO. HB 310

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.

Ernest Young

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 9
DATE 03/18/85
BILL NO. HB 310

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 10DATE 03/18/85

February 4, 1985

BILL NO. #B 310

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.

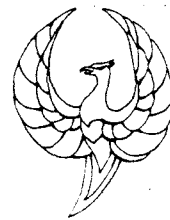
Sincerely,

Shirley Keller

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 10
DATE 03/11/85
BILL NO. HB 310

WOMEN'S LOBBYIST FUND

Box 1099
Helena, MT 59624
449-7917



March 11, 1985

Testimony of the Women's Lobbyist Fund by Kelly Chandler,
before the Senate Judiciary Committee on HB 310

Mr. Chairman and members of the Committee:

My name is Kelly Chandler, testifying for the Women's Lobbyist Fund. Please support HB 310 and the amendment to allow Justices of the Peace to issue temporary restraining orders (TRO). The decision whether or not to support HB 310 and the amendment (to allow a Justice of the Peace to issue a TRO) is a question of protection for abused victims. In domestic violence cases, women are usually the victims.

You have heard the saying: a man's home is his castle. Should not a woman's home be her castle in which she is safe?

By giving victims increased availability to TRO's through a Justice of the Peace and through enforcement of temporary restraining orders, we will not be sacrificing the abused victims' rights and will be consistent with our Montana Constitution, which states, "The dignity of the human being is inviolable. No person shall be denied the equal protection of the laws."

Please do not deny the victims of domestic violence emergency protection for safe refuge in their "castle". I urge you on behalf of myself and as a representative of the Women's Lobbyist Fund to support HB 310 with the amendment.

Thank you.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 11

DATE 03/11/85

BILL NO. HB 310

STANDING COMMITTEE REPORT

March 11

19 35

MR. PRESIDENT

JUDICIARY

We, your committee on.....

HOUSE BILL

having had under consideration.....

No. 644

third reading copy (blue)

color

(Senator Crippen)

SEX OFFENSE AGAINST PERSON UNDER 16 YEARS OF AGE; PRESENTENCE REPORT

Respectfully report as follows: That.....

HOUSE BILL

No. 644

BE CONCURRED IN

~~XXXXXXXXXX~~

~~XXXXXXXXXX~~

Senator Joe Mazurek

Chairman.

STANDING COMMITTEE REPORT

March 11

19 35

MR. PRESIDENT

JUDICIARY

We, your committee on

HOUSE BILL

having had under consideration

No. 547

third

reading copy (

blue

) color

(Senator Marurek)

REVISION OF LAW ON CERTAIN SEXUAL CRIMES

Respectfully report as follows: That

HOUSE BILL

No. 547

BE CONCURRED IN

XXXXXX

XXXXXXXXXX

Senator Joe Marurek

Chairman.