MINUTES

MONTANA SENATE
52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Dick Pinsoneault, on March 13, 1991, at 10:08 a.m.

ROLL CALL

Members Present:
Dick Pinsoneault, Chairman (D)
Bill Yellowtail, Vice Chairman (D)
Robert Brown (R)
Bruce Crippen (R)
Steve Doherty (D)
Lorents Grosfield (R)
Mike Halligan (D)
John Harp (R)
Joseph Mazurek (D)
David Rye (R)
Paul Svrcek (D)
Thomas Towe (D)

Members Excused: none

Staff Present: Valencia Lane (Legislative Council).

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

Announcements/Discussion:

HEARING ON HOUSE BILL 675

Presentation and Opening Statement by Sponsor:

Representative Carolyn Squires, District 58, said the bill is an act to revise temporary injunction proceedings. She explained that the justice courts in Missoula want clarification on issuing restraining orders when there may be conflict with action in district court. Representative Squires told the Committee that an Attorney General's opinion issued December 22, 1989 under subsection (3) of 40-4-121, MCA, was the cause of this issue. She said 40-4-123, MCA, pertains to jurisdiction over temporary restraining orders, and that HB 291 which dealt with this issue was tabled.

Proponents' Testimony:

Patricia Bradley, Montana Magistrates Association, read from prepared testimony in support of the bill (Exhibit #1), and provided an amendment (Exhibit #2).

John Ortwein, Montana Catholic Conference, provided prepared testimony in support of HB 675 (Exhibit #3).

Opponents' Testimony:

There were no opponents of HB 675.

Questions From Committee Members:

Chairman Pinsoneault commented that this issue has been here before, and said law enforcement's greatest fear is responding to domestic violence situations. He explained that many times they don't know if there is an actual physical threat or if there may be spite on the part of the complaining party. Representative Squires replied she is concerned with physical abuse and the threat of abuse, as a result of the Attorney General's opinion. She said Justices Clark and Morris in Missoula feel this needs to be clarified.

Senator Halligan commented that if he pointed a weapon at his spouse and said he was going to kill her and had that weapon cocked, but fled when he heard sirens, the Attorney General's opinion is that is not enough. He stated that Missoula judges are concerned, and asked for time to look at the Magistrates amendment.

Closing by Sponsor:

Representative Squires thanked the Committee for the hearing and asked that Senator Halligan carry the bill.

HEARING ON HOUSE BILL 286

Presentation and Opening Statement by Sponsor:

Representative Bill Strizich, District 41, said the third reading copy of HB 286 has a printing problem, and that second reading copies are correct. He explained that the bill was requested by the Montana Juvenile Probation Officers Association, and narrows their authority concerning youths in need of supervision. Representative Strizich stated it goes back to the philosophy of the youths courts, that probation officers act in the role of parents.

Representative Strizich told the Committee that most of the calls he receives for youth in need of supervision are actually concerning youths who disobey their parents, are truant, or are violating curfew. He said this bill puts the responsibility on parents and relieves unnecessary intrusion by juvenile probation officers in family matters. Representative Strizich said he suggests to such parents that they talk to a counselor or a professional clergy person. He stated the role of probation officers is to deal with kids who commit crimes (Exhibit #4 -second reading copy).

Proponents' Testimony:

Mona Jamison, Montana Juvenile Probation Officers Association, said a group of youths has been identified by federal agencies as "throw-away" or "push-out" children. She explained that these children are forced out by their parents, i.e., are abandoned children. Ms. Jamison stated that if parents are incapacitated, such as by alcoholism, then a finding would be made not to prevail upon parents to seek other services.

Bryce Johnson, Juvenile Probation Officer, Havre, said he is also the Chairman of the Juvenile Probation Officers Association. He told the Committee he has run into many instances such as those described by Representative Strizich, and has found that parents are not taking steps to get help in the community, such as counseling. He commented that there is no requirement in the law that parents get counseling.

Dick Meeker, Chief Probation Officer, Lewis and Clark County, said life as an adolescent is not easy, and is not easy on parents. He said the bill tries to provide access to help direct parents to agencies where they can get parenting skills.

Opponents' Testimony:

There were no opponents of the bill.

Questions From Committee Members:

Chairman Pinsoneault asked Representative Strizich if probation officers would go into the home and sit down with parents or handle situations from the office if this bill passes. Representative Strizich replied it is now quite often done over the phone. He commented that Chairman Pinsoneault's suggestion would not be not difficult to follow through with.

Senator Towe asked why language was stricken in lines 4-5 on page 4. Representative Strizich replied it goes back to who is responsible, and new language essentially says that truancy is a family matter.

Senator Towe asked if that is not another tool that probation officers really need. Representative Strizich replied a predisposition report to the court as to whether a child attends school is not precluded by the bill.

Senator Towe asked whether probation officers would be able to get that child under their jurisdiction, if there was no alcohol violation, but there was truancy. Chairman Pinsoneault replied that Title 20 addresses truancy, and the policy in St. Ignatius is to bring parents and the truant child before the superintendent of schools.

Senator Towe asked if juvenile probation officers wanted an informal adjustment to be signed by both the parents and the youth (lines 13-20, page 6). He said this language adds the requirement that in order to obtain an adjustment the parents or guardian must have made all reasonable efforts to control the youth's behavior. Mona Jamison replied it is, and said she didn't view that language as being particularly cumbersome.

Senator Towe commented that he believes the concept of the bill is excellent, and asked why it requires this statement by the probation officer. Dick Meeker replied he was saying that until the parents can demonstrate that they have exhausted all resources available, probation officers should refrain from stigmatizing the youth.

Senator Pinsoneault commented that walking into the home and visiting with the parents face-to-face tells a lot more than talking on the phone. Representative Strizich replied that the in-take process in Missoula gets the parents involved immediately.

Closing by Sponsor:

Representative Strizich commented that it may seem odd that probation officers are narrowing their authority, but they believe it is a good policy move, as well as a responsible move. He said there are many programs available to help.

HEARING ON HOUSE BILL 581

Presentation and Opening Statement by Sponsor:

Representative Bill Strizich, District 41, said the bill allows law enforcement agencies within a judicial district to use photographs and fingerprints of youths for certain purposes. He told the Committee HB 581 is a housekeeping measure, and asked their concurrence.

Proponents' Testimony:

There were no proponents of the bill.

Opponents' Testimony:

There were no opponents of the bill.

Questions From Committee Members:

Chairman Pinsoneault commented that HB 581 will help child protective services a lot.

Senator Towe asked if this means arrest records of juveniles will be transferred from one agency to another in the state. Representative Strizich replied it does not, and that the bill

limits this activity to judicial districts in which the youth resides.

Senator Towe asked how confidentiality is preserved. Representative Strizich replied the bill drives at the need to know, and said he shares Senator Towe's concerns. He explained that the bill deals with a narrow area, and that confidentiality would be preserved by the need to know. He said the bill was brought by Great Falls which does 90 percent of fingerprints processed for all of Cascade County and surrounding areas. He explained that this legislation allows them to turn around and reshape this information with the arresting agencies.

Senator Towe commented that the bill says "any" agency, and asked if that would not be substantial violation of confidentiality. Representative Strizich replied he did not think so, as any agency must clearly demonstrate the need to know.

Chairman Pinsoneault commented that the original agency would not have to surrender that information, but it could be looked at in the Sheriff's office. Representative Strizich replied that would be correct.

Senator Svrcek asked if fingerprints and photographs of juveniles are affected differently than for adults, and if this would affect legislation he sponsored during a prior session. Representative Strizich replied fingerprint and photograph records of juveniles are not shared, and that this would not change.

Closing by Sponsor:

Representative Strizich told the Committee HB 581 is a logical way to allow agencies to deal with the situation.

EXECUTIVE ACTION ON HOUSE BILL 581

Motion:

Senator Svrcek made a motion that HB 581 BE CONCURRED IN.

Discussion:

Senator Towe commented that 44-____-502, MCA impacts this.

Amendments, Discussion, and Votes:

There were no amendments.

Recommendation and Vote:

Senator Svrcek withdrew his motion.

HEARING ON HOUSE BILL 284

Presentation and Opening Statement by Sponsor:

Representative Mike Foster, District 32, said HB 284 addresses child support in divorce decrees. He explained that current laws says support will last to the time of emancipation or age 18. Representative Foster advised the Committee that the bill would extend this time through graduation from high school and that it can't go beyond age 19.

Representative Foster stated that various attorneys say "boiler-plate" language in child support agreements usually means that support will last through high school, but this is not always done. He said the problem is the definition of emancipation, and commented that the bill requires the child to provide proof of being in high school if it is requested.

Representative Foster told the Committee the situation as it exists now presents a fairness issue, as some children graduate at age 18 and some graduate at age 19.

Proponents' Testimony:

Esther Hahn, Townsend area, told the Committee her son was deprived of child support when he became 18 years old in November 1990. She explained that this happened at the time when, as a senior, he needed that support the most. She read from prepared testimony in support of the bill (Exhibit #5).

Opponents' Testimony:

There were no opponents of HB 284.

Questions from Members of the Committee:

Chairman Pinsoneault said he believes the change proposed by the bill is good.

Closing:

Representative Foster told the Committee he believes Mrs. Hahn adequately described the situation, and said Senator Jacobson would carry the bill.

Valencia Lane commented that there is a technical problem with HB 284 o page 3, line 11. She said existing law says that termination of support won't override decrees, but the parties can change it by written agreement. She advised the Committee that this needs to be addressed.

Senator Towe asked Representative Foster if he were suggesting this apply whether the child is going to high school or not.

Representative Foster replied that he was confused, as the intent is not to cover children not in high school.

Senator Towe asked if the Committee needed to address language with regard to pursuing course of study. Representative Foster replied he believes the language in the bill covers this.

Senator Towe commented that Judge Holmstrom kicked out a law which was not perfectly clear, and said it is important that language in this bill be made clear.

HEARING ON HOUSE BILL 920

Presentation and Opening Statement by Sponsor:

Representative Paula Darko, District 2, said HB 920 is part of a package of four bills that the Child Support Enforcement Division of the Department of Social and Rehabilitation Services (SRS), asked her to carry. She explained that one of these bills died, and one is still in the House. Representative Darko stated that the bills conform Montana statute to federal regulations in this area. She said that, under prior law, the statute of limitations was three years from date of application, but under HB 920 paternity can be brought any time with no liability for past support. Representative Darko commented that the state needs to find fathers so they can begin to pay support.

Proponents' Testimony:

John McCrea, Staff Attorney, Child Support Enforcement Division, SRS, said this issue goes back to 1975 as part of the Social Security Act. He explained that there are two possible sanctions if the state does not conform to federal law, and said Congress amended the Social Security Act in 1984, and that Montana passed legislation in 1987 paraphrasing federal language.

John McCrea advised the Committee that discussions with federal agencies in 1988 were clarified by the Family Support Act of that same year. He said that, as a result, old cases had to be worked as still fresh cases. Mr. McCrea stated the bill clarifies legislative language. He said he did research constitutional issues and found paternity stands by itself, but in Montana it has always been tied to liability with the state for past child support. Mr. McCrea told the Committee that if this liability is re-opened, there would be problems with constitutional law. He said thus the bill only bars state agencies and allows Montana to meet federal standards (Exhibit #6).

Opponents' Testimony:

There were no opponents of the bill.

Questions From Committee Members:

There were no questions from the Committee.

Closing by Sponsor:

Representative Darko told the Committee HB 920 is a straightforward bill, and asked the Committee to give it favorable consideration.

EXECUTIVE ACTION ON HOUSE BILL 920

Motion:

Senator Svrcek made a motion that HB 920 BE CONCURRED IN.

Discussion:

There was no discussion.

Amendments, Discussion, and Votes:

There were no amendments.

Recommendation and Vote:

The motion made by Senator Svrcek carried unanimously.

HEARING ON HOUSE BILL 922

Presentation and Opening Statement by Sponsor:

Representative Paula Darko, District 2, told the Committee HB 922 is another bill drafted to comply with federal regulations and to avoid sanctions (Exhibit #7). She explained that the bill sets up a new administrative procedure, aside from the court, to modify child support orders according to federal child support guidelines.

Proponents' Testimony:

John McCrea, Staff Attorney, Child Support Enforcement Division, SRS, said this language was derived from the Family Support Act of 1988, and requires SRS to examine all cases, upon request, for modification. He explained that it also requires the Department to seek modification on behalf of the obligee or the obligor, if necessary.

Mr. McCrea stated there are good reasons for this bill, especially with regard to orders established for small children who have now become teenagers. He said it allows for periodic update of child support obligations to meet the needs of the child, and

also allows the needs of fathers in a fluctuating economy to be addressed. Mr. McCrea stated this is federally required, but the problem is that it must be done wherever the order is, even if that is out of state.

Mr. McCrea advised the Committee these orders can be put in district court to be modified, but there is no way to take and administrative court order out of state and address it in Montana. He explained that there is also a problem with the massive amount of cases which must be dealt with in the 56 counties in Montana, when there are only 5 attorneys to work on them. John McCrea said many hours are wasted in travel time, and that the bill would resolve these issues.

John McCrea stated that because some parties involved would be required to take time from work for hearings, cases are now being resolved by teleconference calls. He said the worst problem the Division is facing is the conflict of interest in representing the needs of both the obligor and the obligee if the matter goes to court. Mr. McCrea explained that other states contract these cases out to private attorneys, but Montana cannot afford to do that, so the bill sets up a small claims court with hearings. He said this meets federal standards and only requires assistance in providing information. Mr. McCrea advised the Committee this was the only way SRS could see to resolve the matter, and he urged the Committee to pass the bill.

Opponents' Testimony:

There were no opponents of HB 922.

Questions From Committee Members:

Chairman Pinsoneault asked if a party would still have the option to go to court if his or her wages fluctuated. John McCrea replied they would have.

Senator Svrcek asked if the administrative process could be appealed to the district court. John McCrea replied that judicial review is always available.

Closing by Sponsor:

Representative Darko told the Committee the court option is always open, and said she believes the Child Support Enforcement Division is doing an increasingly better job during the time since she began working with them in 1985. She said the bill asks for fairness via an easier, quicker, and less expensive method.

EXECUTIVE ACTION ON HOUSE BILL 922

Motion:

Senator Halligan made a motion that HB 922 BE CONCURRED IN.

Discussion:

There was no discussion on the bill.

Amendments, Discussion, and Votes:

There were no amendments.

Recommendation and Vote:

The motion made by Senator Halligan carried unanimously.

EXECUTIVE ACTION ON HOUSE BILL 286

Motion:

Senator Towe made a motion that HB 286 BE CONCURRED IN.

Discussion:

There was no discussion on the motion.

Amendments, Discussion, and Votes:

There were no amendments.

Recommendation and Vote:

The motion made by Senator Towe carried unanimously.

EXECUTIVE ACTION ON HOUSE BILL 675

Motion:

Senator Halligan made a motion that HB 675 BE CONCURRED IN.

Discussion:

Senator Halligan stated that the Magistrates wanted to make it clear who has the authority on actions filed in district court. He said the only change in the bill is beyond the scope of the title.

Amendments, Discussion, and Votes:

There were no amendments.

Recommendation and Vote:

The motion made by Senator Halligan carried unanimously.

EXECUTIVE ACTION ON HOUSE BILL 284

Motion:

Discussion:

Amendments, Discussion, and Votes:

Valencia Lane asked for guidance from the Committee with regard to amending HB 284. She suggested striking the remainder of line 11 through "provisions" on line 12, on page 3, following "(5)", and inserting "Provisions". She further suggested including language that support decrees can terminate if the child is due to receive monies such as from an inheritance.

Senator Svrcek asked if the Committee isn't trying to ensure that parties to settlements know this is in the law. He commented that language to this effect may need to be inserted in the bill.

Senator Towe said Valencia Lane is right, as a decree says child support shall terminate upon emancipation. He commented that the bill would accomplish nothing to address the problem, and that decrees providing for termination of support upon emancipation also need to include time to graduate from high school unless the parties provide otherwise.

Senator Mazurek stated it should be made incumbent upon the parties to do this, but decrees cannot be changed retroactively.

Senator Towe commented that he believes the bill has serious problems.

Valencia Lane suggested inserting ", unless the termination date is extended or knowingly waived by written agreement or by an express provision of the decree", following "BIRTHDAY" on page 3, line 16.

Senator Towe suggested inserting "if the child is enrolled in high school", following 'school" on page 3, line 14, and striking the remainder of line 16 through "PROVIDED." on line 17.

Senator Svrcek made a motion that all of the suggested amendments be approved (Exhibit #8). The motion carried unanimously.

Recommendation and Vote:

Senator Towe made a motion that HB 284 BE CONCURRED IN AS AMENDED. The motion carried unanimously.

EXECUTIVE ACTION ON HOUSE BILL 311

Motion:

Discussion:

Amendments, Discussion, and Votes:

Valencia Lane provided amendments, clarifying language in the title the body of the bill. She said existing law is not very well written, and advised the Committee of the exception clause on page 3, line 11 (Exhibit #9).

Senator Towe commented that Valencia Lane did an excellent job of drafting the amendments.

Senator Halligan made a motion that the amendments be approved. The motion carried unanimously.

Recommendation and Vote:

Senator Halligan made a motion that HB 311 BE CONCURRED IN AS AMENDED. The motion carried unanimously.

ADJOURNMENT

Adjournment At: 11:50 a.m.

Senator Dick Pinsoneault, Chairman

Joann T. Bird, Secretary

DP/jtb

No minutes were transmitted for the executive action on SR 6.

ROLL CALL

SENATE JUDICIARY COMMITTEE

52nd LEGISLATIVE SESSION -- 1991 Date 13 Mar 91

NAME	PRESENT	ABSENT	EXCUSED
Sen. Pinsoneault	✓		
Sen. Yellowtail	✓		
Sen. Brown	✓		
Sen. Crippen	✓		
Sen. Doherty	✓	X	
Sen. Grosfield	✓		
Sen. Halligan	✓		
Sen. Harp	✓		
Sen. Mazurek	✓		
Sen. Rye	✓		
Sen. Svrcek	✓		
Sen. Towe	✓		

Each day attach to minutes.

SENATE STANDING COMMITTEE REPORT

March 13, 1991

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration Senate Resolution No. 6 (first reading copy -- white), respectfully report that Senate Resolution No. 6 be adopted.

Signed: _____
Richard Pinsoneault, Chairman

3-13-91
Amd. Coord.

SR 3-13 - 12:50
Sec. of Senate

SENATE STANDING COMMITTEE REPORT

March 13, 1991

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 284 (third reading copy -- blue), respectfully report that House Bill No. 284 be amended and as so amended be concurred in:

1. Page 3, lines 11 and 12.
Following: "(5)" on line 11
Strike: remainder of line 11 through "provisions" on line 12
Insert: "Provisions"

2. Page 3, line 14.
Following: "school"
Insert: "if the child is enrolled in high school"

3. Page 3, line 16.
Following: "BIRTHDAY"
Insert: ", unless the termination date is extended or knowingly waived by written agreement or by an express provision of the decree"

4. Page 3, lines 16 and 17.
Following: "." on line 16
Strike: remainder of line 16 through "PROVIDED." on line 17

Signed: R. Pinsoneault
Richard Pinsoneault, Chairman

3-13-91
Amd. Coord.

3-13-91 2:10
Sec. of Senate

SENATE STANDING COMMITTEE REPORT

March 13, 1991

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 920 (third reading copy -- blue), respectfully report that House Bill No. 920 be concurred in.

Signed: _____
Richard Pinsoneault, Chairman

3-13-91
Amd. Coord.

SB 3-13 12:50
Sec. of Senate

SENATE STANDING COMMITTEE REPORT

March 13, 1991

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 922 (third reading copy -- blue), respectfully report that House Bill No. 922 be concurred in.

Signed: R. Pinsoneault
Richard Pinsoneault, Chairman

3-13-91
Asst. Coord.

3-13 12:50
Sec. of Senate

SENATE STANDING COMMITTEE REPORT

March 13, 1991

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 286 (third reading copy, corrected, second printing -- blue), respectfully report that House Bill No. 286 be concurred in.

Signed: _____
Richard Pinsoneault, Chairman

3-13-91
Amd. Coord.

SB 3-13 12:57
Sec. of Senate

SENATE STANDING COMMITTEE REPORT

March 13, 1991

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 675 (third reading copy -- blue), respectfully report that House Bill No. 675 be concurred in.

Signed: R Pinsoneault

Richard Pinsoneault, Chairman

3-13-91
Amd. Coord.

SR 3-13 12:50
Sec. of Senate

SENATE STANDING COMMITTEE REPORT

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 311 (third reading copy -- blue), respectfully report that House Bill No. 311 be amended and as amended be concurred in.

1. Title, line 5.
Following: "FORFEITURES"
Insert: "COLLECTED BY JUSTICES' COURTS"

2. Title, line 6.
Strike: "ACCOUNTS USED TO COMBAT DRUG CRIMES"
Insert: "THE DRUG FORFEITURE ACCOUNT; CLARIFYING DISTRIBUTION OF MONEY COLLECTED BY DISTRICT COURTS AND JUSTICES' COURTS"

3. Page 2, lines 24 and 25.
Following: "court" on line 24
Strike: remainder of line 24 through "court," on line 25

4. Page 3, line 2.
Following: "paid"
Insert: ":
(1) by a district court"

5. Page 3, line 5.
Strike: "(1)"
Insert: "(a)"

6. Page 3, line 10.
Strike: "(2)"
Insert: "(b)"

7. Page 3, line 11.
Strike: "district or justice's"

8. Page 3, line 16.
Strike: "(3)"
Insert: "(c)"

9. Page 3, lines 17 through 19.
Following: "collected" on line 17
Strike: remainder of line 17 through "3-10-601," on line 19

10. Page 3, line 22.
Strike: "."
Insert: "; and
(2) by a justice's court pursuant to 3-10-601."

Signed: _____
Richard Pinsoneault, Chairman

3-13-91
Amd. Coord.

SP 3-13 15:50
Sec. of Senate

13 Mar 91
HB 675

Montana Magistrates Association

March 13, 1991

HB 675, an act revising temporary injunction procedures.

Testimony before the Senate Judiciary Committee by Pat Bradley MMA

Mr. Chairman and Committee members:

The courts of limited jurisdiction are the primary court in Montana for filing petitions for injunctive relief under Sec. 40-4-121.

The MMA supports legislation such as HB 675 that will give clearer intent and guidance fromthe legislature to adjudicate these vexing cases.

In a December 22, 1989 opinion, the Attorney General concluded that the legislature did not intend to provide injunctive relief under 40-4-121(3) in the absence of physical abuse, harm or bodily injury. Since that time, the courts have followed this interpretation. I submit a copy of this opinion with my testimony.

Rep. Squires' bill broadens legislative intent to include the threat of physical abuse, harm or bodily injury.

The courts take no position on what this statute should contain. As stated before, these matters are vexing to adjudicate on application. On the one hand, the court must look to the protection of one party, and on the other, the court has the burden of deciding whether to throw a party out of his or her house.

Our request of the legislature is that you give clear intent and definition to this statute regarding injunctive relief, to facilitate the judges' decisions.

A minor problem that occurs infrequently inthe TRO process is one that was addressed in HB 291, sponsored by Rep. Benedict, called for the filing of TRO's in Justice, City or Municipal courts (HB 291 tabled unless a case is already filed in District Court. These courts all have concurrent jurisdiction in these matters. It could happen that both courts could be acting on the same matter. This conflict could be addressed by an amendment to the bill, which I have handed out, and states that "In a case that has been filed and is pending in the district court, the application for a temporary restraining order must be made to that court."

We ask your clarification of Sec. 40-4-121 MCA. Thank you.

Pat Bradley

Exhibit #2
13 Mar 91
HB675

Montana Magistrates Association

Proposed amendment to HB 675, an act revising temporary injunctive relief in domestic cases.

Add: ~~Sec.~~ Section (9), page 4, after line 11

(9) In a case that has been filed and is pending in the district court, the application for a temporary restraining order must be made to that court.

Exhibit #3
13 Mar 91
HB 675

Montana Catholic Conference

March 13, 1991

CHAIRMAN PINSONEAULT AND MEMBERS OF THE SENATE JUDICIARY COMMITTEE

I am John Ortwein, representing the Montana Catholic Conference. I serve as the liaison of the two Roman Catholic Bishops of the State of Montana in matters of public policy.

I am here today in support of HB 675.

A study conducted by the United States Catholic Conference entitled: **Violence in the Family; A National Concern/A Church Concern,** stated that one of every two women in the United States will be abused during her lifetime. This translates to an abusive situation occurring every 18 seconds somewhere in the United States. The study also showed that a disproportionately large number of attacks by husbands seem to occur when the wife is pregnant, thus posing a grave threat to the life of the unborn child as well as the woman.

Research by Dr. Lenore Walker indicates a definite cycle composed of three phases in most domestic violence situations. The first one is the tension-building stage; the second is the explosion; and the third is the calm, loving, respite stage.

With the knowledge we have of domestic violence it seems reasonable to us that it should be halted in stage one of its three stage process. A temporary injunction procedure will help alleviate a number of domestic abusive situations.

Please give your "yes" vote to HB 675.

a program

Tel. (406) 442-5761 P.O. BOX 1708 530 N. EWING HELENA, MONTANA 59624

CARE & SHARE

EX. 29
3-13-91
HB 675

VOLUME NO. 43 OPINION NO. 50

COURTS - Necessary allegations in petition for temporary restraining order under section 40-4-121(3), MCA;
MONTANA CODE ANNOTATED - Sections 27-19-201(5), 40-4-121, 40-4-123, 45-5-206(1)(b);
MONTANA LAWS OF 1985 - Chapters 526, 700.

HELD: A petition for injunctive relief under section 40-4-121(3), MCA, must allege physical abuse, harm, or bodily injury.

December 22, 1989

Keith D. Haker
Custer County Attorney
1010 Main
Miles City MT 59301

Dear Mr. Haker:

You have requested my opinion on the following question:

> Must there be physical abuse committed before a temporary restraining order may be issued by a justice court under section 40-4-121(3), MCA?

In 1985 the Legislature addressed the issue of domestic violence by enacting two separate pieces of legislation. Senate Bill 449 (1985 Mont. Laws, ch. 700) created and defined the criminal offense of domestic abuse, codified at section 45-5-206, MCA, and amended criminal procedure statutes concerning arrest and bail. House Bill 310 (1985 Mont. Laws, ch. 526) amended statutes in Titles 27 and 40 of the Montana Code Annotated so as to permit certain abused family and household members to obtain self-help temporary restraining orders and preliminary injunctions. See §§ 27-19-201, 27-19-315, 27-19-316, 40-4-121, MCA. House Bill 310 also provided for municipal and justice court jurisdiction to hear and issue the protective orders. In 1989 the Legislature extended this civil jurisdiction to city courts. § 40-4-123, MCA.

Your inquiry arises in part from an apparent ambiguity created by sections 27-19-201(5) and 40-4-121(3), MCA. Section 27-19-201(5), MCA, provides that an injunction order may be granted "when it appears the applicant has suffered or may suffer physical abuse under the provisions of [section] 40-4-121." However, section 40-4-121, MCA, provides in subsection (3)(a) that a person may seek injunctive relief by filing a verified petition "alleging physical abuse, harm, or bodily injury against the petitioner by a family or household member." While the former statute appears to allow injunctive relief for potential victims of physical abuse which may occur in the future, the latter statute requires a petition for such relief to allege the prior occurrence of physical abuse, harm, or bodily injury.

In addition, your letter notes that a person may be convicted of the criminal offense of domestic abuse, as specified in section 45-5-206(1)(b), MCA, if he "purposely or knowingly causes reasonable apprehension of bodily injury in a family member or household member." Under this provision, actual physical abuse or bodily injury is not required to sustain a charge of domestic abuse. If the victim of such criminal domestic abuse is unable to allege actual physical abuse, harm, or bodily injury and is thereby precluded from obtaining a civil temporary restraining order to prevent further abuse, the statutes create an anomaly which arguably serves to frustrate the prophylactic purpose of the 1985 legislation.

Prior to 1981 a district court could enjoin a party in a marriage dissolution or legal separation proceeding from molesting or disturbing the peace of the other party. § 40-4-106, MCA (recodified in 1985 as § 40-4-121, MCA). Recognizing that state laws were not providing adequate protection to some spouse abuse victims, the 1981 Legislature extended the availability of district court injunctive relief to spouse abuse victims who had not filed a petition for dissolution of marriage or legal separation. 1981 Mont. Laws, ch. 180. This legislation added subsection (3) to former section 40-4-106, MCA, which is now section 40-4-121, MCA, and added subsection (5) to section 27-19-201, MCA. As discussed above, the 1985 Legislature enacted further changes in these laws to increase the availability and effectiveness of the protective orders. See "Montana's New Domestic Abuse Statutes: A New Response To An Old Problem," Women's Law Caucus, 47 Mont. L. Rev. 403, 414-18 (1986). Former spouses and cohabitants, as well as current spouses, may now obtain protective orders, which are enforceable by criminal misdemeanor sanctions. §§ 40-4-121(3)(b), 45-5-626, MCA. Municipal, justice, and city courts have concurrent jurisdiction with district courts to issue protective orders under section 40-4-123, MCA.

Ex. 3a
3-13-91
HB 675

Initially, it is necessary to distinguish between injunctive relief available to parties in a district court proceeding for dissolution of marriage or legal separation under subsection (2) of section 40-4-121, MCA, and injunctive relief available under subsection (3) of section 40-4-121, MCA, where a petition for dissolution or separation has not been filed. In the former instance, a motion brought by a spouse under subsection (2) does not have to allege physical abuse in order for the district court to issue a temporary injunction against the other spouse. In the latter instance, subsection (3) requires an allegation of physical abuse, harm, or bodily injury against the petitioner. Since section 27-19-201(5), MCA, authorizes injunctive relief in both instances, its language ("has suffered or may suffer physical abuse") is not inconsistent with the different requirements of subsections (2) and (3) of section 40-4-121, MCA.

The fundamental rule of statutory construction is that the intention of the Legislature controls. § 1-2-102, MCA. See Missoula County v. American Asphalt, 216 Mont. 423, 701 P.2d 990 (1985). The intention of the Legislature is first determined, if possible, from the plain meaning of the words used. Haker v. Southwestern Railway Co., 178 Mont. 364, 578 P.2d 724 (1978). If legislative intent cannot be so determined, other rules of statutory construction, including consideration of the statute's legislative history, may be applied to ascertain the intent. State ex rel. Normile v. Cooney, 100 Mont. 391, 47 P.2d 637 (1935); Thiel v. Taurus Drilling Ltd. 1980 II, 218 Mont. 201, 710 P.2d 33 (1985).

Subsection (3) of section 40-4-121, MCA, provides in relevant part:

> A person may seek the relief provided for in subsection (2) of this section without filing a petition under this part for a dissolution of marriage or legal separation by filing a verified petition:
>
> (a) alleging physical abuse, harm, or bodily injury against the petitioner by a family or household member; and
>
> (b) requesting relief under Title 27, chapter 19, part 3.

The question is whether the Legislature intended to authorize a justice court to issue a temporary restraining order under this subsection where the person requesting relief has been threatened with physical abuse or has a reasonable apprehension of bodily injury but has not been physically abused, harmed, or injured.

The plain meaning of the words "alleging physical abuse, harm, or bodily injury" supports the view that threats or apprehension would not be a sufficient basis for a petition requesting injunctive relief under section 40-4-121(3), MCA. This view is further supported by the legislative history of House Bill 310, and I must conclude that the Legislature did not intend to provide for injunctive relief under this statute in the absence of physical abuse, harm, or bodily injury.

As introduced, House Bill 310 required the subsection (3) petition to allege "physical abuse against the petitioner, including attempting to cause or causing bodily injury or causing the petitioner to engage in involuntary sexual relations by threat or force." At the hearing before the House Judiciary Committee on February 5, 1985, Representative Krueger noted that courts may be reluctant to issue temporary restraining orders in response to threats alone. Committee minutes, House Judiciary Committee, February 5, 1985. House Bill 310 was thereafter amended so that a subsection (3) petition could allege "physical abuse, harm, or bodily injury or the threat of physical abuse, harm, or bodily injury." However, the Senate Judiciary Committee voted to strike the amendment's reference to "threat of physical abuse, harm, or bodily injury," and the Senate passed the bill with the reference deleted. The House of Representatives subsequently concurred in the Senate version of House Bill 310, resulting in the present language in section 40-4-121(3)(a), MCA.

Generally, the rejection of an amendment indicates that the Legislature did not intend the bill to include the provisions embodied in the rejected amendment. 2A Sutherland Statutory Construction § 48.18 (4th ed. 1964). Cf. Matter of W.J.H., 226 Mont. 479, 736 P.2d 484 (1987). I am persuaded that the Legislature's rejection of the specific provision concerning threats of physical abuse, harm, or bodily injury indicates its intention that injunctive relief under section 40-4-121(3), MCA, should not be granted solely upon an allegation of such threats.

The Legislature did not choose to define the terms "physical abuse," "harm," and "bodily injury" for purposes of section 40-4-121(3), MCA. However, the definitions of "harm" and "bodily injury" found in section 45-2-101, MCA, appear to be applicable to the terms as they are used in Title 40. See § 1-2-107, MCA. The 1985 Legislature added the two latter terms to accompany the term "physical abuse," indicating an intention to expand the range of abusive conduct to which injunctive relief under section 40-4-121(3), MCA, would be an appropriate judicial response. Finally, I note that in admitting a defendant to bail in a criminal domestic abuse proceeding, the judge may prescribe reasonable conditions in order to protect any person from bodily injury. In particular, the judge may order the defendant to avoid all contact with the alleged victim of the crime. § 46-9-501(b)(v), MCA.

THEREFORE, IT IS MY OPINION:

A petition for injunctive relief under section 40-4-121(3), MCA, must allege physical abuse, harm, or bodily injury.

Sincerely,

Marc Racicot

MARC RACICOT
Attorney General

EXHIBIT 3
13 Mar 91
HB 284

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

MY NAME IS ESTHER HAHN. I AM A RESIDENT OF THE TOWNSEND AREA IN BROADWATER COUNTY, AND I AM HERE IN SUPPORT OF HOUSE BILL 284. I BROUGHT THIS MATTER TO THE ATTENTION OF REPRESENTATIVE MIKE FOSTER, AS RESULT OF A RECENT CIRCUMSTANCE IN MY OWN LIFE REGARDING THE WELFARE OF MY TWO TEENAGE CHILDREN.

AS YOU MAY KNOW, SECTION 40-4-208, SUB PARAGRAPH 5 OF THE MONTANA CHILD SUPPORT LAW NOW STATES THAT CHILD SUPPORT IS PAYABLE UNTIL "EMANCIPATION OF THE CHILD" UNLESS OTHERWISE STATED IN WRITING AT THE TIME OF THE DIVORCE. I, LIKE MANY OTHER WOMEN WHO END UP IN DIVORCE, AM NOT KNOWLEDGEABLE REGARDING THE LANGUAGE OF THE LAW IN THIS AND MANY AREAS, AND AM THEREFORE DEPENDENT UPON OUR LAWYERS AT THE TIME OF THE DIVORCE TO COVER ALL BASES TO PROTECT THE RIGHTS OF OURSELVES AND ESPECIALLY OUR CHILDREN. "EMANCIPATION" WAS NOT EXPLAINED TO ME AT THE TIME OF MY OWN DIVORCE AS MEANING THE SAME AS THE "AGE OF MAJORITY", OR MORE SPECIFICALLY, THE "AGE OF MAJORITY" WAS NOT EXPLAINED AS BEING 18 AND NOT 21. MR. WEBSTER DEFINES EMANCIPATION AS "TO SET FREE; RELEASE FROM BONDAGE; TO FREE FROM RESTRAINT OR INFLUENCE". THEREFORE, I LOGICALLY ASSUMED A CHILD WAS EMANCIPATED ONLY WHEN HE LEFT HOME AND WAS NO LONGER DEPENDENT UPON PARENTAL SUPPORT. AT THE TIME OF MY DIVORCE, I MISTAKENLY BELIEVED MY CHILDREN WOULD BE SUPPORTED BY BOTH PARENTS UNTIL THEY GRADUATED FROM HIGH SCHOOL.

MY SON TURNED EIGHTEEN LAST NOVEMBER 25TH AND ON DECEMBER 1ST WE FOUND HIS CHILD SUPPORT CUT OFF WITH NO WARNING. THE LEGAL OBLIGATION WAS OVER, BUT WHAT ABOUT THE MORALE OBLIGATION? MY SON WAS DEVASTATED AND FELT HIS FATHER HAD ABANDONED HIM. THE EMOTIONAL UPSET AND MENTAL

Exhibit 1
13 Mar 91
HB 286

APPROVED BY COMMITTEE
ON JUDICIARY

INTRODUCED BY _____ BILL NO. 286

A BILL FOR AN ACT ENTITLED: "AN ACT TO CHANGE THE DEFINITION OF A YOUTH IN NEED OF SUPERVISION FOR PURPOSES OF THE MONTANA YOUTH COURT ACT; TO PROVIDE THAT IN INFORMAL PROCEEDINGS REGARDING A YOUTH, THE PROBATION OFFICER SHALL BELIEVE THAT THE PARENTS OR OTHER GUARDIAN EXERTED ALL REASONABLE EFFORTS TO CONTROL THE YOUTH AND THE YOUTH REMAINS BEYOND CONTROL; AND AMENDING SECTIONS 41-5-103 AND 41-5-401, MCA."

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

Section 1. Section 41-5-103, MCA, is amended to read:

"**41-5-103. Definitions.** For the purposes of the Montana Youth Court Act, unless otherwise stated the following definitions apply:

(1) "Adult" means an individual who is 18 years of age or older.

(2) "Agency" means any entity of state or local government authorized by law to be responsible for the care or rehabilitation of youth.

(3) "Commit" means to transfer to legal custody.

(4) "Court", when used without further qualification, means the youth court of the district court.

LC 1027/01

(5) "Department" means the department of family services provided for in 2-15-2401.

(6) "Foster home" means a private residence licensed by the department for placement of a youth.

(7) "Guardianship" means the status created and defined by law between a youth and an adult with the reciprocal rights, duties, and responsibilities.

(8) "Judge", when used without further qualification, means the judge of the youth court.

(9) (a) "Legal custody" means the legal status created by order of a court of competent jurisdiction that gives a person the right and duty to:

(i) have physical custody of the youth;

(ii) determine with whom the youth shall live and for what period;

(iii) protect, train, and discipline the youth; and

(iv) provide the youth with food, shelter, education, and ordinary medical care.

(b) An individual granted legal custody of a youth shall personally exercise his rights and duties as guardian unless otherwise authorized by the court entering the order.

(10) "Parent" means the natural or adoptive parent but does not include a person whose parental rights have been judicially terminated, nor does it include the putative father of an illegitimate youth unless his paternity is

SECOND READING
HB 286

Ex. 5
3-13-91
HB 284

ANGUISH HE SUFFERED CAME AT A TIME WHEN HE SHOULD HAVE BEEN ENJOYING HIS LAST YEAR OF HIGH SCHOOL, FREE TO CONCENTRATE FULLY ON HIS STUDIES, ETC., WITHOUT THE UPSET OF LEARNING HIS FATHER'S LEGAL OBLIGATION TO HIM WAS OVER AND THAT HIS FATHER FELT NO MORAL OBLIGATION TO HELP ME SUPPORT OUR SON UNTIL HE GRADUATED IN JUNE 1991. THE FINANCIAL LOSS CAME AT A TIME WHEN MORE MONEY THAN EVER IS NEEDED TO TAKE CARE OF ALL THE VARIOUS EXPENSES OF A HIGH SCHOOL SENIOR. I HURT FOR MY SON. HE HAD JUST BEEN UNFAIRLY VICTIMIZED BY A LAW WHICH HAD NO PROVISION TO PROTECT HIM UNTIL HE GRADUATED FROM HIGH SCHOOL. I MADE MANY CALLS TO LAWYERS TO DISCOVER THE LAW WAS ON HIS FATHERS SIDE AND THERE WAS NOTHING I COULD DO TO ASSURE MY SON ADEQUATE FINANCIAL SUPPORT FROM BOTH PARENTS UNTIL GRADUATION, BECAUSE EVEN THOUGH I HAD MADE IT CLEAR TO MY LAWYER AT THE TIME OF THE DIVORCE THAT I WISHED MY CHILDREN SUPPORTED THROUGH HIGH SCHOOL BY BOTH PARENTS, THE FINAL DECREE WAS NOT WORDED TO PROVIDE FOR MY CHILDREN PAST "EMANCIPATION" OR "AGE OF MAJORITY". HOW UNFORTUNATE THAT I WAS NOT AWARE OF THIS FLAW IN MY DIVORCE SETTLEMENT IN 1981 UNTIL 1990. AND IN TWO YEARS WE STAND TO SUFFER DOUBLE JEOPARDY BECAUSE MY DAUGHTER'S BIRTHDAY IS ALSO IN NOVEMBER, AND SHE WILL BE 18 1/2 YEARS OLD WHEN SHE GRADUATES FROM HIGH SCHOOL. SHE IS ALREADY ANXIOUS OVER THIS SITUATION, DREADING THE TIME WHEN SHE WILL FEEL THE SAME REJECTION.

I HAVE A VERY STRONG SENSE OF RIGHT AND WRONG, AND I FEEL IT IS EVERY PARENT'S OBLIGATION TO SUPPORT THEIR CHILD IN EVERY WAY UNTIL THAT CHILD HAS GOTTEN THE EDUCATION HE NEEDS TO SURVIVE ON HIS OWN IN THIS WORLD. TO HAVE A LAW THAT READS "EMANCIPATION" AND MEANING "AGE OF MAJORITY", WHEN THAT AGE OF MAJORITY IS ONLY 18 YEARS OF AGE IS UNJUST TO EVERY CHILD, AS THE MAJORITY OF CHILDREN ARE OVER AGE 18 WHEN THEY GRADUATE FROM HIGH SCHOOL. MANY CHILDREN EVEN GRADUATE AT AGE 19, DUE

Ex. 5
3-13-91
HB 284

TO CIRCUMSTANCES OF THEIR AGE WHEN ENTERING SCHOOL, OR MISSING SCHOOL DUE TO ILLNESS, ETC. AND HAVING TO BE HELD BACK A YEAR OR SO. WE MUST PROTECT THE RIGHTS OF ALL CHILDREN WHO ARE VICTIMS OF DIVORCE AND WHO ARE ATTEMPTING TO RECEIVE THEIR HIGH SCHOOL EDUCATIONS.

I HAVE BEEN INFORMED THAT MANY PARENTS WILLINGLY CONTINUE TO HELP THEIR CHILDREN PAST THE AGE OF MAJORITY AND ONLY A SMALL PERCENTAGE DO NOT. BUT WHAT ABOUT THE CHILDREN OF THAT SMALL PERCENTAGE? THERE ARE THOUSANDS OF CHILDREN IN MONTANA WHO QUALIFY TO FALL VICTIM TO THIS LAW IN THE FUTURE SHOULD THERE ALSO BE FLAWS IN THEIR PARENTS DIVORCE SETTLEMENTS. DO THOSE CHILDREN DESERVE TO SUFFER THE CONSEQUENCES? NO! LET'S GIVE OUR CHILDREN THE BEST CHANCE WE CAN FOR A FUTURE BY MAKING PROVISIONS IN THE LAW NOW TO GUARANTEE THEM THE SUPPORT THEY DESERVE UNTIL THEIR HIGH SCHOOL EDUCATIONS ARE COMPLETE. LET'S MAKE BOTH PARENTS RESPONSIBLE FOR THE WELFARE OF THE CHILDREN THEY BOTH BROUGHT INTO THE WORLD. AND TO FURTHER PROTECT OUR CHILDREN, SHOULD YOU AGREE THIS AMENDMENT TO THE EXISTING LAW IS IMPORTANT, I URGE YOU TO ALSO PROTECT THE CHILDREN WHO ARE ALREADY VICTIMS OF DIVORCE AND WHO HAVE NOT YET REACHED THE AGE OF 18 AS OF THE EFFECTIVE DATE OF THIS NEW LAW, BY INCLUDING THEM IN THE PROTECTION OF THIS LAW. A CHILD WHOSE PARENTS HAVE ALREADY BEEN DIVORCED FOR SEVERAL YEARS MAY NOW STILL BE A TODDLER, BUT HE SHOULD BE PROTECTED NOW TO ENSURE HIS WELFARE THEN, IF POSSIBLE.

HOUSE BILL 284 IS VITALLY IMPORTANT TO THOSE OF US WHO DO FEEL A DEEP MORALE OBLIGATION TO GIVE OUR CHILDREN A BETTER LIFE. IT WOULD ALSO RELIEVE SOME RESPONSIBILITY OFF THE SHOULDERS OF DIVORCE LAWYERS WHO HAVE SO MANY THINGS TO CONSIDER TO BEST SERVE THEIR CLIENTS, THAT IF THIS ONE ISSUE WERE OVERLOOKED, THE CHILD WOULD NOT SUFFER YEARS DOWN THE ROAD AS RESULT OF THE OVERSIGHT, AS IT WOULD ALREADY HAVE BEEN

Ex. 5
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HB 284

TAKEN CARE OF BY THE MONTANA LAW, AS IT SHOULD BE.

I SUPPORT HOUSE BILL 284, AND PRAYERFULLY URGE YOU TO DO THE SAME. THANK YOU FOR YOUR TIME.

EXHIBIT #6
13 Mar
HB 920

HB BILL NO. 920

A Bill for an Act entitled: "An Act amending the paternity statute of limitations to retroactively revive actions which were barred or could have been barred by a shorter limitation period; amending section 40-6-108, MCA."

COMMITTEE TESTIMONY

By: John M. McRae
Staff Attorney
Child Support Enforcement Division
Department of SRS

Date: 3/13/91

Before the SENATE JUDICIAL Committee.

In 1987 the legislature amended the paternity statute of limitations to permit the Department to determine paternity "at any time" before a child's 18th birthday. This proposed Bill amends the same statute to clarify that use of the phrase "at any time" is to have retroactive application. That is, to show legislative intent to revive paternity actions barred by earlier limitation periods.

By way of background, In 1975 Congress established in Title IV-D of the Social Security Act. That Act requires the various states to have and operate child support enforcement programs. In 1984, to improve the effectiveness and efficiency of the state programs, Congress enacted Pubic Law 98-378, better known as the Child Support Enforcement Amendments. The federal Amendments

mandated the States to adopt and use various techniques, and enforcement mechanisms. In addition, the federal Amendments required States to be able to bring paternity actions "at any time" before a child's 18th birthday.

Before amendment of the statute of limitations in 1987, there was a 2 year limitations period. The period began with the date of first application for Department services. After the 2 year period, the statutory bar prevented any further action on the case. Although the limitation statute applied to any child 18 years and under, it did not meet federal requirements. Federal auditors held that the statute did not permit determination of paternity "at any time" before a child's 18th birthday. A still earlier version of the statute of limitations barred actions 3 years after the child was born. Under both of those early limitation periods, the Department closed hundreds of cases because of the bar.

After the 1987 amendment, a controversy arose over its intent. An Attorney General's opinion held that the 1987 amendment did not revive actions barred under earlier limitation periods. Because of this opinion, federal auditors contended that Montana was not in compliance with the mandates of the 1984 Amendments. The State's position was that federal law did not expressly or impliedly require the State to revive barred actions. Other States had the same problem with federal auditors.

Congress clarified the issue of retroactivity with passage of the Family Support Act of 1988, P.L. 100-485. Section 111(e) of the FSA clarified that the 1984 Amendments did intend to revive all the barred paternity actions. The FSA made this clarification

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3-13-91
HB 920

retroactive back to the date of the 1984 Amendments. Because of the FSA clarification, Montana is now in non-compliance with federal requirements and federal sanctions are a distinct hazard. See attached letter. As a result, the Department now proposes to amend §40-6-108, MCA to include an expression of legislative intent which corresponds with the federal requirement. That is, to revive all of the barred and closed paternity actions.

Montana needs this law to remain in compliance with federal law. Compliance is a prerequisite for federal reimbursement of the costs of operating the state's child support enforcement programs. If the legislature does not adopt this bill, the federal government could impose sanctions, and disallow federal reimbursement. The current federal reimbursement rate is 66%. For the last quarter, federal reimbursement amounted to about $470.000.00.

After revival of a barred paternity action, the father may coincidentally become liable for child support. That is, a bar on the paternity actions coincidentally also bars an action for support. Removal of the paternity bar could therefore in some cases also revive the father's support liability. If this happens, there could be a violation of Article XIII, Section 1(3), of the Montana Constitution. That Section provides "[t]he legislature shall pass no law retrospective in its operation which imposes on the people a new liability in respect to transactions or consideration already passed." Because of Article XIII, if the proposed bill does revive a paternity action, the proposed bill will not coincidentally revive the father's liability for support.

Please note that the entire question of barred paternity

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3-13-91
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actions and revival of support liability applies only to the Department. Under State v. Wilson, ___ Mont. ___, 631 P.2d 1273 (1981), the earlier statute of limitation periods (those periods of less than 18 years) did not apply to the child. Therefore, because the bar did not apply to the child, the bar never prevented the child from pursuing the father for support. In short, the Department may not hold the father responsible for support. However, after the Department has established paternity, the child can independently hold the father liable for support.

By these reasons and considerations, the Department urges the committee to pass this Bill, thank you.

HB 920
Copies

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of Child Support Enforcement

Region VIII
Federal Office Building
1961 Stout St.
Denver CO 80294

RECEIVED
DEC 24 1990
CHILD SUPPORT
ENFORCEMENT—HELENA

18 DEC 1990

RECEIVED
DEC 29 1990
CHILD SUPPORT
ENFORCEMENT-MISSOULA

Julia E. Robinson
Director
Department of Social and
Rehabilitation Services
P.O. Box 4210
Helena, Montana 59604

Dear Ms. Robinson:

Enclosed is the State's copy of OCSE-21-U4, Transmittal Number 89-03. Interim approval has been given to the portion of this Transmittal related to genetic testing, which we have designated as Attachment 2.12-5A. Based on information available at this time, this office has concluded that your State is in conformance with the requirements contained in section 111(b) of the Family Support Act of 1988. Per our conversation with Montana's State IV-D Administrator, Jon Meredith, on November 29, 1990, we have separated the provisions included on the original pre-print page in order to provide interim approval for the genetic testing portion of this Transmittal.

As stated in our letter dated December 8, 1989, new plan pre-print pages related to the Family Support Act of 1988 would not be issued until final regulations governing provisions of section 111(b), mandatory genetic testing, and 111(e), paternity establishment to age 18, retroactive to August 16, 1984, are released. In the interim, the State was directed to submit the appropriate current pre-print page attesting to compliance with these two Federal requirements of the Family Support Act. In our subsequent letter, dated April 3, 1990, we stated that we could not recommend approval of TN 89-03 because of a current Montana Attorney General opinion that was clearly inconsistent with the requirements of Section 111(e) of the Family support Act of 1988. However, we agreed to defer our action on Plan Amendment 89-03 in light of the State's agreement to obtain a revision to the State law regarding paternity during Montana's 1991 legislative session.

Comments regarding Montana's recent draft legislation related to Paternity Statute of Limitations were provided in our letter dated October 24, 1990. In this letter, we stated that if the proposed amendment to § 40-6-108(3)(b) is enacted, section 111(e) of the Family Support Act of 1988 would be satisfied. In addition we agreed that this amendment would overrule the 1988 Montana Attorney General opinion that the 1987 extension of the Montana statute of limitations did not revive any paternity actions brought by the State IV-D agency, but were previously barred by operation of the 1985 two-year statute of limitations.

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3-13-91
HB 920

However, if State legislation is not enacted during the next legislative session to comply with the statute of limitations provision (section 111(e) of the Family Support Act of 1988), we would have to recommend disapproval of the State plan. A determination that a State IV-D plan is disapproved will result in immediate suspension of all Federal payments for the State's child support enforcement program, and such payments will continue to be withheld until the State IV-D plan can be approved by OCSE.

As provided in program instructions issued in OCSE-AT-86-21, prior to issuance of a final determination to disapprove your State plan, you have the option to request a hearing under procedures at 45 CFR Part 213. Election of administrative review prior to the final decision to approve or disapprove the State IV-D plan will constitute a waiver of reconsideration hearing rights contained in 45 CFR 301.14. If a State declines the opportunity for a pre-decision review, a determination will be made whether the IV-D plan must be disapproved for failure to conform with the requirements of Section 454 of the Social Security Act. If the State is dissatisfied with the Director's decision, reconsideration may be requested pursuant to 45 CFR 301.14. Withholding of Federal payments cannot be stayed pending reconsideration.

Revised State plan pre-print pages will be issued when final regulations are published for State use in certifying compliance with requirements of the Family Support Act of 1988 and implementing regulations. Interim approval will be superseded by approval or disapproval of failure to submit plan amendments certifying compliance with all Federal requirements.

The effective date of Transmittal 89-03 related to genetic testing only is October 1, 1989. This date is in accordance with 45 CFR 301.13(g), which prescribes that the effective date cannot be earlier than the first day of the quarter in which the State plan was submitted.

If you have any questions, please contact Doreen McNicholas at (303) 844-5594.

Sincerely,

Guadalupe Salinas
Regional Representative
OCSE/FSA

Enclosures

Exhibit #1
13 Mar 91
HB 922

HB BILL NO. 922

A BILL FOR AN ACT ENTITLED: "AN ACT TO CREATE AN ADMINISTRATIVE PROCEDURE FOR PERIODICALLY MODIFYING CHILD SUPPORT ORDERS; AND AMENDING SECTIONS 40-4-204, 40-5-201, 40-5-226, AND 40-6-116, MCA."

COMMITTEE TESTIMONY

By: John M. McRae
Staff Attorney
Child Support Enforcement Division
Department of SRS

Date: 3/13/91

Before the SENATE JUDICIARY Committee.

The Family Support Act of 1985 (P.L. 100-485) created a new subsection within Title IV-D of the Social Security Act. In short, State child support enforcement agencies must have procedures for reviewing and modifying all child support orders enforceable by the Department. Within certain general guidelines proposed at 55 Fed. Reg. 33, 414 (1990), the States are free to develop their own procedures to accomplish this purpose.

Under the new provisions, either the obligor or obligee parent or a State IV-D agency may request a review of the support order. Upon receipt of the request the Department will review the support order for possible modification. If the review shows that a modification is proper under existing child support guidelines, the Department must take steps to accomplish the modification. This requirement became effective October, 1990. By October, 1993, the

Ex. 7
3/13/91
HB 922

Department must review all cases for potential modification at 36 month intervals.

The department now has authority under §40-5-226, MCA to modify its own support orders. However, the Department cannot administratively modify a Montana District Court order. To do so the Department needs to file motion for modification in the proper District Court. For foreign court orders, the Department needs to first register the order in a District Court under of the Uniform Enforcement of Foreign Judgments Act. Once registered the Department may then proceed in that court to modify the order. No procedure exists, either through CSED administrative processes or through a District Court action, to register or modify a foreign administrative child support order.

There are about 24,000 child support orders potentially subject to review and modification. Although actual numbers are unknown, most of those orders are modifiable only in the District Courts. With only 5 CSED attorneys state wide the Department cannot as a practical matter accomplish this task. The travel time alone, to and from 56 different possible districts would eat up available attorney time. Rather than propose increased staff, the Department proposes the administrative procedures set out in this Bill. The registration, review and modification process will permit the Department to meet the provision of the FSA without a significant increase in costs.

The process would work as follows. The Department will set up its own registry for support orders. The Department will then register all District Court orders, out-of-state Court orders and

Ex. 7
3-13-91
HB 922

all foreign administrative support orders. Once registered, those orders would become modifiable by the Department the same as we are doing now for our administrative orders. Further, parties appearing without attorneys may effectively use the process. That is, the design of the process reduces the need for attorney involvement. The parties, however may appear with an attorney if they choose to do so. This process will work for those who cannot afford the legal costs or the time required in congested District Courts. The child support guidelines will set the standard for the modifications. During the modification process a party, can show that variance from the guidelines is proper.

As stated before, the federal law does not mandate the procedures established in this Bill. Under the federal law the Department must review and modify if necessary all the support orders enforceable by the Department. The procedure for doing this is for the State to determine. The proposed bill is the least costly process to accomplish this task. The process will not increase the District Court burden. For those parents who need modifications this process will have little if any financial impact.

For the above reason, the Department urges passage of this Bill.

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3-13-91
HB 922

HB 922- ISSUES

1. Why is HB 922 needed?

The FSA of 1988 requires the states, at three year intervals, to review all support orders for possible modifications. The states must also provide review and modifications process at the request of an obligor or obligee.

2. On what standard are the modifications, if any, made?

The FSA of 1988 provides that the modifications are to be made in accordance with the state's child support guidelines.

3. Does the CSED have the ability to modify support orders without this bill?

Except in one instance, yes. The review and modification requirement applies to all support orders whether in state or out-of-state. The out-of-state orders may be either court orders or orders rendered by an administrative agency. The out-of-state court orders may be registered with a District court and thereafter be modified. <u>There is, however, no process in Montana for registering a foreign administrative support order</u>. All court originated orders may be modified in the court which rendered the order or in which the order is registered, Administrative orders rendered by the CSED may be modified by existing administrative procedures.

4. What are the existing standards for modification and does this

bill change those standards?

The standards for district court modifications are set out in MCA Section 40-4-208. Those standards are:

(a) upon a change of circumstances so substantial and continuous as to be unconscionable;

(b) upon agreement by the parties; and

(c) upon application by the CSED.

Therefore, under the existing law, the CSED is not required to show a substantial change of circumstances. The CSED only needs to make an application based on the guidelines. The new procedure, although administrative, does not change these existing standards.

5. **Why doesn't the CSED continue to modify the cases in court?**

- First, the CSED has no ability to modify administrative support orders of another state and a new procedure is necessary to permit this.
- Second, the modifications, except on a limited basis are not presently being undertaken because of insufficient resources.
- Third, modifications in court can only be performed by the CSED's staff attorneys. There are only five CSED attorneys in the entire state. The travel time alone would make this prohibitive. For example, to modify a case in Libby, Montana, the nearest staff attorney is in Missoula. It is a 4 hour drive to and a 4 hour drive from Libby. That's 8 hours of non productive time. Given the volume of cases, the limited number of staff attorneys and the possibility of travel to 56 possible District Courts, modification in District Courts is

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beyond the CSED's present resources.

- Fourth, some of the modifications may be at the request of an obligor parent. Generally, the obligor parent will want a downward modification. This puts the CSED and the CSED staff atttorney in a conflict of interest situation. That is, the CSED is rated on its performance by the amount of its collections. Consequently, the CSED may have no interest in downward modifications which could reduce collections;
- Fifth, in the courts, the parent opposed to a modification generally must have an attorney. It is also necessary for both parents to take a full day off from work to appear in court. For many of the parents this will cause a severe financial hardship. The consequence of the existing procedure is that few parents will request a modification even though one may be appropriate.

6. **How does this bill cure the above problems?**

- First, by permitting the CSED to register all support orders, even those out-of-state orders may be reviewed and modified.
- Second, the administrative process is designed to work without the need for attorneys. Travel is minimized because the hearings are by telephone. The administrative process presently used to enforce and establish support orders is generally faster than equivalent court actions. The administrative process also helps take the burden off crowded court calendars.
- Third, to avoid conflict of interest situations, the

administrative modification procedures are designed around the model of small claims courts. That is, with the use of pre-prepared forms parents may represent themselves without attorneys. The CSED would not appear except as an informationa source. The Hearing Officer is directed to question pro-se parents to gain sufficient facts to determine if a modification is appropriate.

- Fourth, this is a low cost or no cost procedure for use by parents seeking modification. Only a minimum time away from work is necessary for telephone hearings. Attorneys are not needed unless the parent wants one.

7. Are the proposed administrative procedures expressly required by the Feds?

No, the CSED is only required to perform the review and modification duties. How the duties are accomplished is left to the state. However this administrative procedure is the only viable low cost, low impact method to accomplish the federal mandate. The other alternatives are a significant increase in CSED resources or federal sanctions.

Exhibit #8
14 Mar 91
HB 284

Amendments to House Bill No. 284
Third Reading Copy (BLUE)

For the Committee on Judiciary

Prepared by Valencia Lane
March 13, 1991

1. Page 3, lines 11 and 12.
Following: "(5)" on line 11
Strike: remainder of line 11 through "provisions" on line 12
Insert: "Provisions"

2. Page 3, line 14.
Following: "school"
Insert: "if the child is enrolled in high school"

3. Page 3, line 16.
Following: "BIRTHDAY"
Insert: ", unless the termination date is extended or knowingly waived by written agreement or by an express provision of the decree"

4. Page 3, lines 16 and 17.
Following: "." on line 16
Strike: remainder of line 16 through "PROVIDED." on line 17

Exhibit #9
13 Mar 91
HB 311

Amendments to House Bill No. 311
Third Reading Copy (Blue)

Requested by Senator Towe
For the Committee on Judiciary

Prepared by Valencia Lane
March 9, 1991

1. Title, line 5.
Following: "FORFEITURES"
Insert: "COLLECTED BY JUSTICES' COURTS"

2. Title, line 6.
Strike: "ACCOUNTS USED TO COMBAT DRUG CRIMES"
Insert: "THE DRUG FORFEITURE ACCOUNT; CLARIFYING DISTRIBUTION OF MONEY COLLECTED BY DISTRICT COURTS AND JUSTICES' COURTS"

3. Page 2, lines 24 and 25.
Following: "court" on line 24
Strike: remainder of line 24 through "court," on line 25

4. Page 3, line 2.
Following: "paid"
Insert: ":
(1) by a district court"

5. Page 3, line 5.
Strike: "(1)"
Insert: "(a)"

6. Page 3, line 10.
Strike: "(2)"
Insert: "(b)"

7. Page 3, line 11.
Strike: "district or justice's"

8. Page 3, line 16.
Strike: "(3)"
Insert: "(c)"

9. Page 3, lines 17 through 19.
Following: "collected" on line 17
Strike: remainder of line 17 through "3-10-601," on line 19

Ex 9
3-13-91
HB 311

HOUSE BILL NO. 311

INTRODUCED BY Hoffman Van Valkenburg

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING FINES, COLLECTED BY JUSTICES' COURTS PENALTIES, AND FORFEITURES FOR VIOLATIONS OF DRUG LAWS TO BE PAID INTO THE DRUG FORFEITURE ACCOUNT; CLARIFYING DISTRIBUTION OF ~~ACCOUNTS USED TO COMBAT DRUG CRIMES~~; AND AMENDING MONEY COLLECTED BY DISTRICT COURTS AND JUSTICES' COURTS SECTIONS 3-10-601 AND 46-18-235, MCA."

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

Section 1. Section 3-10-601, MCA, is amended to read:

"3-10-601. Collection and disposition of fines, penalties, forfeitures, and fees. (1) Each justice of the peace shall collect the fees prescribed by law for justices' courts and shall pay them into the county treasury of the county wherein he holds office, on or before the 10th day of each month, to be credited to the general fund of the county.

(2) All fines, penalties, and forfeitures that this code requires to be imposed, collected, or paid in a justice's court must, for each calendar month, be paid by the justice's court on or before the 5th day of the following month to the treasurer of the county in which the justice's court is situated, except that they may be distributed as provided in 44-12-206 if imposed, collected, or paid for a violation of Title 45, chapter 9 or 10.

(3) The county treasurer shall, in the manner provided in 15-1-504, distribute money received under subsection (2) as follows:

(a) 50% to the state treasurer; and

(b) 50% to the county general fund.

(4) The state treasurer shall distribute money received under subsection (3) as follows:

(a) 23% to the state general fund;

(b) 10% to the fish and game account in the state special revenue fund;

(c) 12.5% to the state highway account in the state special revenue fund;

(d) 36% to the traffic education account in the state special revenue fund;

(e) 0.6% to the department of livestock account in the state special revenue fund;

(f) 16.9% to the crime victims compensation account in the state special revenue fund; and

(g) 1% to the department of family services special revenue account for the battered spouses and domestic violence grant program."

Section 2. Section 46-18-235, MCA, is amended to read:

"46-18-235. Disposition of money collected as fines and costs. The money collected by a court, ~~except money collected by a justice's court,~~ as a result of the

THIRD READING
HB 311

DATE 13 March 21

COMMITTEE ON Senate Judiciary Committee

284 920 581

VISITORS' REGISTER H.B. 675 922 286

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppos
JOHN McRAE	DEPT OF SRS/CSED	920 922	✓	
K. Amy Pfeifer	Dept. of SRS/CSED	920 922	✓	
Pat Bradley	Mt Magistrate Assoc.	675	X	
John L. Ortwein	MT Catholic Conference	675	X	
Hugh Crist	Juvenile Prob.	~~286~~ 286	X	
Michael F. Offe	Juvenile Prob	286	X	
Russ Seabard	Juv. Prob.	286	X	
Dick Meeker	Juv. Prob. officer	286	X	
Bruce Johnson	Juv Prob Home	286	X	
ESTHER HAHN	MONTANA'S CHILDREN	284	X	
Mona Jamison	Mt. Juv. Prob. Officer	286	X	