

HOUSE BILL NO. 310
INTRODUCED BY WALDRON

IN THE HOUSE

January 22, 1985	Introduced and referred to Committee on Judiciary.
January 25, 1985	Fiscal Note requested.
January 29, 1985	Fiscal Note returned.
February 5, 1985	Committee recommend bill do pass as amended. Report adopted.
February 6, 1985	Bill printed and placed on members' desks.
February 7, 1985	Second reading, do pass as amended.
February 8, 1985	Correctly engrossed.
February 9, 1985	Third reading, passed. Transmitted to Senate.

IN THE SENATE

February 11, 1985	Introduced and referred to Committee on Judiciary.
March 22, 1985	Committee recommend bill be concurrent in as amended. Report adopted.
March 23, 1985	Second reading, concurred in.
March 26, 1985	Third reading, concurred in. Ayes, 47; Noes, 2. Returned to House with amendments.

IN THE HOUSE

March 27, 1985	Received from Senate.
April 4, 1985	Second reading, pass consideration.
April 5, 1985	Second reading, amendments concurrent in.
April 8, 1985	Third reading, amendments concurrent in.
	Sent to enrolling.
	Reported correctly enrolled.

1 HOUSE BILL NO. 310
2 INTRODUCED BY Walden

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING ABUSED FAMILY
5 OR HOUSEHOLD MEMBERS TO OBTAIN SELF-HELP TEMPORARY
6 RESTRAINING ORDERS; MAKING VIOLATION OF AN ORDER A CRIMINAL
7 OFFENSE; DIRECTING THE ATTORNEY GENERAL TO PREPARE AND
8 DISTRIBUTE FORMS AND INSTRUCTIONS FOR RESTRAINING ORDERS;
9 AMENDING SECTIONS 27-19-201, 27-19-315, 27-19-316, AND
10 40-4-106, MCA."

11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13 Section 1. Section 27-19-201, MCA, is amended to read:
14 "27-19-201. When preliminary injunction may be
15 granted. An injunction order may be granted in the following
16 cases:

17 (1) when it shall appear that the applicant is
18 entitled to the relief demanded and such relief or any part
19 thereof consists in restraining the commission or
20 continuance of the act complained of, either for a limited
21 period or perpetually;

22 (2) when it shall appear that the commission or
23 continuance of some act during the litigation would produce
24 a great or irreparable injury to the applicant;

25 (3) when it shall appear during the litigation that

1 the adverse party is doing or threatens or is about to do or
2 is procuring or suffering to be done some act in violation
3 of the applicant's rights, respecting the subject of the
4 action, and tending to render the judgment ineffectual;

5 (4) when it appears that the adverse party, during the
6 pendency of the action, threatens or is about to remove or
7 to dispose of his property with intent to defraud the
8 applicant, an injunction order may be granted to restrain
9 the removal or disposition;

10 (5) when it appears the applicant has suffered or may
11 suffer physical abuse by a spouse under the provisions of
12 40-4-106."

13 Section 2. Section 27-19-315, MCA, is amended to read:

14 "27-19-315. When restraining order may be granted
15 without notice. A temporary restraining order may be granted
16 without written or oral notice to the adverse party or his
17 attorney only if:

18 (1) it clearly appears from specific facts shown by
19 affidavit or by the verified complaint that a delay would
20 cause immediate and irreparable injury to the applicant
21 before the adverse party or his attorney could be heard in
22 opposition; and

23 (2) the applicant or the applicant's attorney
24 certifies to the court in writing the efforts, if any, which
25 have been made to give notice and the reasons supporting his



1 claim that notice should not be required."

2 Section 3. Section 27-19-316, MCA, is amended to read:

3 "27-19-316. Contents and filing of restraining order
4 granted without notice. Each temporary restraining order
5 granted without notice must:

6 (1) be endorsed with the date and hour of its
7 issuance;

8 (2) be filed immediately in the clerk's office and
9 entered in the record;

10 (3) define the injury and state why such injury is
11 irreparable and why the order was granted without notice;
12 and

13 (4) except as provided in 40-4-106, expire by its
14 terms within such time after entry, not to exceed 10 days,
15 as the court or judge fixes."

16 Section 4. Section 40-4-106, MCA, is amended to read:

17 "40-4-106. Temporary order or temporary injunction.

18 (1) In a proceeding for dissolution of marriage or for legal
19 separation or in a proceeding for disposition of property or
20 for maintenance or support following dissolution of the
21 marriage by a court which lacked personal jurisdiction over
22 the absent spouse, either party may move for temporary
23 maintenance or temporary support of a child of the marriage
24 entitled to support. The motion shall be accompanied by an
25 affidavit setting forth the factual basis for the motion and

1 the amounts requested.

2 (2) As a part of a motion for temporary maintenance or
3 support or by independent motion accompanied by affidavit,
4 either party may request the court to issue a temporary
5 injunction for any of the following relief:

6 (a) restraining any person from transferring,
7 encumbering, concealing, or otherwise disposing of any
8 property except in the usual course of business or for the
9 necessities of life and, if so restrained, requiring him to
10 notify the moving party of any proposed extraordinary
11 expenditures made after the order is issued;

12 (b) enjoining a party from molesting or disturbing the
13 peace of the other party or of any child;

14 (c) excluding a party from the family home or from the
15 home of the other party upon a showing that physical or
16 emotional harm would otherwise result;

17 (d) enjoining a party from removing a child from the
18 jurisdiction of the court; and

19 (e) ordering a party to pay the other party's
20 reasonable attorney fees incurred under this section; and

21 ~~(e)}~~(f) providing other injunctive relief proper in the
22 circumstances.

23 (3) A person may seek the relief provided for in
24 subsection (2) of this section without filing a petition
25 under this part for a dissolution of marriage or legal

1 separation by filing a verified petition;

2 (a) alleging physical abuse against the petitioner,
 3 including attempting to cause or causing bodily injury or
 4 causing the petitioner to engage in involuntary sexual
 5 relations by threat or force, by a spouse family or
 6 household member; and

7 (b) requesting injunctive relief under Title 27,
 8 chapter 19, part 3. Any preliminary injunction entered under
 9 this subsection must be for a fixed period of time, not to
 10 exceed 1 year, and may be modified as provided in Title 27,
 11 chapter 19, part 4, and 40-4-208. Persons who may request
 12 relief under this subsection include spouses, former
 13 spouses, adult persons related by blood or marriage, and
 14 persons cohabiting or who have cohabited with the other
 15 party within 1 year immediately preceding the filing of the
 16 petition.

17 (4) The court may issue a temporary restraining order
 18 for a period not to exceed 20 days without requiring notice
 19 to the other party only if it finds on the basis of the
 20 moving affidavit or other evidence that irreparable injury
 21 will result to the moving party if no order is issued until
 22 the time for responding has elapsed.

23 (5) A response may be filed within 20 days after
 24 service of notice of motion or at the time specified in the
 25 temporary restraining order.

1 (6) On the basis of the showing made and in conformity
 2 with 40-4-203 and 40-4-204, the court may issue a temporary
 3 injunction and an order for temporary maintenance or support
 4 in amounts and on terms just and proper in the circumstance.

5 (7) A temporary order or temporary injunction:

6 (a) does not prejudice the rights of the parties or
 7 the child which are to be adjudicated at subsequent hearings
 8 in the proceeding;

9 (b) may be revoked or modified before final decree on
 10 a showing by affidavit of the facts necessary to revocation
 11 or modification of a final decree under 40-4-208; and

12 ~~(c) terminates when the final decree is entered or~~
 13 ~~when the petition for dissolution or legal separation is~~
 14 ~~voluntarily dismissed; when issued under this section must~~
 15 conspicuously bear the following: "Violation of this order
 16 is a criminal offense under [section 8]."

17 (8) When the petitioner has fled the parties'
 18 residence, notice of petitioner's new residence must be
 19 withheld except by order of the court for good cause shown."

20 NEW SECTION. Section 5. Forms -- distribution --
 21 filing. The attorney general shall prepare instructions and
 22 petition and order forms necessary for allowing an applicant
 23 to obtain a temporary restraining order under 40-4-106. The
 24 attorney general shall distribute the restraining order
 25 forms to the clerk of the district court in each county and

1 to justice and municipal courts. The clerk of the district
 2 court, justices of the peace, and municipal courts shall
 3 make the forms available to the public at no charge, and no
 4 filing fee may be charged for a petition or order filed
 5 pursuant to 40-4-106 and [section 6].

6 NEW SECTION. Section 6. Jurisdiction and venue.
 7 (1) District courts, municipal courts, and justices' courts
 8 have concurrent jurisdiction to hear and issue orders under
 9 40-4-106(3).

10 (2) The municipal judge or justice of the peace shall,
 11 on motion, suspend all further proceedings in the action and
 12 certify the pleading and any orders to the clerk of the
 13 district court of the county where the action was begun if
 14 an action for declaration of invalidity of a marriage, legal
 15 separation, or dissolution of marriage, or child custody is
 16 pending between the parties. From the time of the
 17 certification of such pleadings and any orders to the clerk,
 18 the district court has the same jurisdiction over the action
 19 as if it had been commenced therein.

20 (3) An action brought under 40-4-106(3) may be tried
 21 in the county in which either party resides or in which the
 22 physical abuse was committed.

23 (4) The right to petition for relief may not be denied
 24 because the plaintiff has vacated the residence or household
 25 to avoid abuse.

1 NEW SECTION. Section 7. Registration of orders.
 2 (1) The clerk of court, justice of the peace, or municipal
 3 court judge shall, within 24 hours of receiving proof of
 4 service of an order under 40-4-106, mail a copy of the order
 5 or any extension, modification, or termination thereof along
 6 with a copy of the proof of service to the appropriate law
 7 enforcement agencies designated in the order.

8 (2) Law enforcement agencies shall establish
 9 procedures to ensure that peace officers at the scene of an
 10 alleged violation of a protective order are informed of the
 11 existence and terms of such order.

12 NEW SECTION. Section 8. Misdemeanor. (1) A person
 13 commits the offense of violation of a protective order if
 14 he, with knowledge of the order, purposely or knowingly
 15 violates a provision of any order provided for in 40-4-106.

16 (2) A person convicted of violation of a protective
 17 order shall be fined not to exceed \$500 or be imprisoned in
 18 the county jail for a term not to exceed 6 months, or both.

19 NEW SECTION. Section 9. Codification instruction.
 20 (1) Sections 5 through 7 are intended to be codified as an
 21 integral part of Title 40, chapter 4.

22 (2) Section 8 is intended to be codified as an
 23 integral part of Title 45.

-End-

STATE OF MONTANA
FISCAL NOTE

REQUEST NO. FNN 175-85

Form BD-15

In compliance with a written request received 01-25, 19 85, there is hereby submitted a Fiscal Note for House Bill 310 pursuant to Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA). Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

Description of Proposed Legislation:

House Bill 310 is an act allowing abused family or household members to obtain self-help temporary restraining orders; making violation of an order a criminal offense; directing the Attorney General to prepare and distribute forms and instructions for restraining orders.

Assumptions:

1. It will be necessary to contract with private counsel to develop instructions and forms.
2. Approximately 20,000 sets of instructions and forms will provide a two year supply.
3. A training session will be required for clerks of court to answer general questions from the public.

Fiscal Impact:

General Fund:	<u>FY 1986</u>	<u>FY 1987</u>
Operating Expenditures	\$ 10,500	-0-

David L Hunter

BUDGET DIRECTOR
Office of Budget and Program Planning

Date: Jan 27, 1985

HB 310

APPROVED BY COMMITTEE
ON JUDICIARY

HOUSE BILL NO. 310
INTRODUCED BY WALDRON

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING ABUSED FAMILY OR HOUSEHOLD MEMBERS TO OBTAIN SELF-HELP TEMPORARY RESTRAINING ORDERS; MAKING VIOLATION OF AN ORDER A CRIMINAL OFFENSE; DIRECTING THE ATTORNEY GENERAL TO PREPARE AND DISTRIBUTE FORMS AND INSTRUCTIONS FOR RESTRAINING ORDERS; AMENDING SECTIONS 27-19-201, 27-19-315, 27-19-316, AND 40-4-106, MCA."

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

Section 1. Section 27-19-201, MCA, is amended to read:

"27-19-201. When preliminary injunction may be granted. An injunction order may be granted in the following cases:

(1) when it shall appear that the applicant is entitled to the relief demanded and such relief or any part thereof consists in restraining the commission or continuance of the act complained of, either for a limited period or perpetually;

(2) when it shall appear that the commission or continuance of some act during the litigation would produce a great or irreparable injury to the applicant;

(3) when it shall appear during the litigation that

the adverse party is doing or threatens or is about to do or is procuring or suffering to be done some act in violation of the applicant's rights, respecting the subject of the action, and tending to render the judgment ineffectual;

(4) when it appears that the adverse party, during the pendency of the action, threatens or is about to remove or to dispose of his property with intent to defraud the applicant, an injunction order may be granted to restrain the removal or disposition;

(5) when it appears the applicant has suffered or may suffer physical abuse by a spouse under the provisions of 40-4-106."

Section 2. Section 27-19-315, MCA, is amended to read:

"27-19-315. When restraining order may be granted without notice. A temporary restraining order may be granted without written or oral notice to the adverse party or his attorney only if:

(1) it clearly appears from specific facts shown by affidavit or by the verified complaint that a delay would cause immediate and irreparable injury to the applicant before the adverse party or his attorney could be heard in opposition; and

(2) the applicant or the applicant's attorney certifies to the court in writing the efforts, if any, which have been made to give notice and the reasons supporting his

SECOND READING



1 claim that notice should not be required."

2 Section 3. Section 27-19-316, MCA, is amended to read:

3 "27-19-316. Contents and filing of restraining order
4 granted without notice. Each temporary restraining order
5 granted without notice must:

6 (1) be endorsed with the date and hour of its
7 issuance;

8 (2) be filed immediately in the clerk's office and
9 entered in the record;

10 (3) define the injury and state why such injury is
11 irreparable and why the order was granted without notice;
12 and

13 (4) except as provided in 40-4-106, expire by its
14 terms within such time after entry, not to exceed 10 days,
15 as the court or judge fixes."

16 Section 4. Section 40-4-106, MCA, is amended to read:

17 "40-4-106. Temporary order or temporary injunction.

18 (1) In a proceeding for dissolution of marriage or for legal
19 separation or in a proceeding for disposition of property or
20 for maintenance or support following dissolution of the
21 marriage by a court which lacked personal jurisdiction over
22 the absent spouse, either party may move for temporary
23 maintenance or temporary support of a child of the marriage
24 entitled to support. The motion shall be accompanied by an
25 affidavit setting forth the factual basis for the motion and

1 the amounts requested.

2 (2) As a part of a motion for temporary maintenance or
3 support or by independent motion accompanied by affidavit,
4 either party may request the court to issue a temporary
5 injunction for any of the following relief:

6 (a) restraining any person from transferring,
7 encumbering, concealing, or otherwise disposing of any
8 property except in the usual course of business or for the
9 necessities of life and, if so restrained, requiring him to
10 notify the moving party of any proposed extraordinary
11 expenditures made after the order is issued;

12 (b) enjoining a party from molesting or disturbing the
13 peace of the other party or of any child;

14 (c) excluding a party from the family home or from the
15 home of the other party upon a showing that physical or
16 emotional harm would otherwise result;

17 (d) enjoining a party from removing a child from the
18 jurisdiction of the court; and AND

19 ~~(e) ordering a party to pay the other party's~~
20 ~~reasonable attorney fees incurred under this section; and~~

21 ~~(e)}~~(E) providing other injunctive relief proper in
22 the circumstances.

23 (3) A person may seek the relief provided for in
24 subsection (2) of this section without filing a petition
25 under this part for a dissolution of marriage or legal

1 separation by filing a verified petition:

2 (a) alleging OR THREATENING physical abuse, HARM, OR
 3 BODILY INJURY against the petitioner, ~~including attempting~~
 4 ~~to cause or causing bodily injury or causing the petitioner~~
 5 ~~to engage in involuntary sexual relations by threat or~~
 6 ~~force~~, by a spouse family or household member; and

7 (b) requesting injunctive relief under Title 27,
 8 chapter 19, part 3. Any preliminary injunction entered under
 9 this subsection must be for a fixed period of time, not to
 10 exceed 1 year, and may be modified as provided in Title 27,
 11 chapter 19, part 4, and 40-4-208. Persons who may request
 12 relief under this subsection include spouses, former
 13 spouses, adult persons related by blood or marriage, and
 14 persons cohabiting or who have cohabited with the other
 15 party within 1 year immediately preceding the filing of the
 16 petition.

17 (4) The court may issue a temporary restraining order
 18 for a period not to exceed 20 days without requiring notice
 19 to the other party only if it finds on the basis of the
 20 moving affidavit or other evidence that irreparable injury
 21 will result to the moving party if no order is issued until
 22 the time for responding has elapsed.

23 (5) A response may be filed within 20 days after
 24 service of notice of motion or at the time specified in the
 25 temporary restraining order.

1 (6) On the basis of the showing made and in conformity
 2 with 40-4-203 and 40-4-204, the court may issue a temporary
 3 injunction and an order for temporary maintenance or support
 4 in amounts and on terms just and proper in the circumstance.

5 (7) A temporary order or temporary injunction:

6 (a) does not prejudice the rights of the parties or
 7 the child which are to be adjudicated at subsequent hearings
 8 in the proceeding;

9 (b) may be revoked or modified before final decree on
 10 a showing by affidavit of the facts necessary to revocation
 11 or modification of a final decree under 40-4-208; and

12 (c) ~~terminates when the final decree is entered or~~
 13 ~~when the petition for dissolution or legal separation is~~
 14 ~~voluntarily dismissed;~~ TERMINATES UPON ORDER OF THE COURT OR
 15 WHEN A FINAL DECREE IS ENTERED OR WHEN A PETITION FOR
 16 DISSOLUTION OR LEGAL SEPARATION IS VOLUNTARILY DISMISSED;

17 AND

18 (D) when issued under this section must conspicuously
 19 bear the following: "Violation of this order is a criminal
 20 offense under [section 8]."

21 (8) When the petitioner has fled the parties'
 22 residence, notice of petitioner's new residence must be
 23 withheld except by order of the court for good cause shown."

24 NEW SECTION. Section 5. Forms -- distribution --
 25 filing. The attorney general shall prepare instructions and

1 petition and order forms necessary for allowing an applicant
 2 to obtain a temporary restraining order under 40-4-106. The
 3 attorney general shall distribute the restraining order
 4 forms to the clerk of the district court in each county and
 5 to justice and municipal courts. The clerk of the district
 6 court, justices of the peace, and municipal courts shall
 7 make the forms available to the public at no charge, and no
 8 filing fee may be charged for a petition or order filed
 9 pursuant to 40-4-106 and [section 6].

10 ~~NEW SECTION. Section 6. Jurisdiction and venue.~~
 11 ~~{1} District courts, municipal courts, and justices' courts~~
 12 ~~have concurrent jurisdiction to hear and issue orders under~~
 13 ~~40-4-106(3).~~

14 ~~{2} The municipal judge or justice of the peace shall,~~
 15 ~~on motion, suspend all further proceedings in the action and~~
 16 ~~certify the pleading and any orders to the clerk of the~~
 17 ~~district court of the county where the action was begun if~~
 18 ~~an action for declaration of invalidity of a marriage, legal~~
 19 ~~separation, or dissolution of marriage, or child custody is~~
 20 ~~pending between the parties. From the time of the~~
 21 ~~certification of such pleadings and any orders to the clerk,~~
 22 ~~the district court has the same jurisdiction over the action~~
 23 ~~as if it had been commenced therein.~~

24 ~~{3} An action brought under 40-4-106(3) may be tried~~
 25 ~~in the county in which either party resides or in which the~~

1 ~~physical abuse was committed.~~

2 ~~{4} The right to petition for relief may not be denied~~
 3 ~~because the plaintiff has vacated the residence or household~~
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5 NEW SECTION. Section 6. Registration of orders. (1)
 6 The clerk of court, justice of the peace, or municipal court
 7 judge shall, within 24 hours of receiving proof of service
 8 of an order under 40-4-106, mail a copy of the order or any
 9 extension, modification, or termination thereof along with a
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 13 procedures to ensure that peace officers at the scene of an
 14 alleged violation of a protective order are informed of the
 15 existence and terms of such order.

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 17 commits the offense of violation of a protective order if
 18 he, with knowledge of the order, purposely or knowingly
 19 violates a provision of any order provided for in 40-4-106.

20 (2) A person convicted of violation of a protective
 21 order shall be fined not to exceed \$500 or be imprisoned in
 22 the county jail for a term not to exceed 6 months, or both.

23 NEW SECTION. Section 8. Codification instruction.
 24 (1) Sections 5 through 7 are intended to be codified as an
 25 integral part of Title 40, chapter 4.

1 (2) Section B is intended to be codified as an
2 integral part of Title 45.

-End-

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(2) when it shall appear that the commission or continuance of some act during the litigation would produce a great or irreparable injury to the applicant;

(3) when it shall appear during the litigation that

the adverse party is doing or threatens or is about to do or is procuring or suffering to be done some act in violation of the applicant's rights, respecting the subject of the action, and tending to render the judgment ineffectual;

(4) when it appears that the adverse party, during the pendency of the action, threatens or is about to remove or to dispose of his property with intent to defraud the applicant, an injunction order may be granted to restrain the removal or disposition;

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9 entered in the record;

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11 irreparable and why the order was granted without notice;
12 and

13 (4) except as provided in 40-4-106, expire by its
14 terms within such time after entry, not to exceed 10 days,
15 as the court or judge fixes."

16 Section 4. Section 40-4-106, MCA, is amended to read:

17 "40-4-106. Temporary order or temporary injunction.

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19 separation or in a proceeding for disposition of property or
20 for maintenance or support following dissolution of the
21 marriage by a court which lacked personal jurisdiction over
22 the absent spouse, either party may move for temporary
23 maintenance or temporary support of a child of the marriage
24 entitled to support. The motion shall be accompanied by an
25 affidavit setting forth the factual basis for the motion and

1 the amounts requested.

2 (2) As a part of a motion for temporary maintenance or
3 support or by independent motion accompanied by affidavit,
4 either party may request the court to issue a temporary
5 injunction for any of the following relief:

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7 encumbering, concealing, or otherwise disposing of any
8 property except in the usual course of business or for the
9 necessities of life and, if so restrained, requiring him to
10 notify the moving party of any proposed extraordinary
11 expenditures made after the order is issued;

12 (b) enjoining a party from molesting or disturbing the
13 peace of the other party or of any child;

14 (c) excluding a party from the family home or from the
15 home of the other party upon a showing that physical or
16 emotional harm would otherwise result;

17 (d) enjoining a party from removing a child from the
18 jurisdiction of the court; and AND

19 ~~(e) ordering a party to pay the other party's~~
20 ~~reasonable attorney fees incurred under this section; and~~

21 ~~(e)+(f)(E)~~ providing other injunctive relief proper in
22 the circumstances.

23 (3) A person may seek the relief provided for in
24 subsection (2) of this section without filing a petition
25 under this part for a dissolution of marriage or legal

1 separation by filing a verified petition:

2 (a) alleging ~~OR--THREATENING~~ physical abuse, HARM, OR
3 BODILY INJURY OR THE THREAT OF PHYSICAL ABUSE, HARM, OR
4 BODILY INJURY against the petitioner, ~~including attempting~~
5 ~~to cause or causing bodily injury or causing the petitioner~~
6 ~~to engage in involuntary sexual relations by threat or~~
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8 (b) requesting injunctive relief under Title 27,
9 chapter 19, part 3. Any preliminary injunction entered under
10 this subsection must be for a fixed period of time, not to
11 exceed 1 year, and may be modified as provided in Title 27,
12 chapter 19, part 4, and 40-4-208. Persons who may request
13 relief under this subsection include spouses, former
14 spouses, adult persons related by blood or marriage, and
15 persons cohabiting or who have cohabited with the other
16 party within 1 year immediately preceding the filing of the
17 petition.

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19 for a period not to exceed 20 days without requiring notice
20 to the other party only if it finds on the basis of the
21 moving affidavit or other evidence that irreparable injury
22 will result to the moving party if no order is issued until
23 the time for responding has elapsed.

24 (5) A response may be filed within 20 days after
25 service of notice of motion or at the time specified in the

1 temporary restraining order.

2 (6) On the basis of the showing made and in conformity
3 with 40-4-203 and 40-4-204, the court may issue a temporary
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5 in amounts and on terms just and proper in the circumstance.

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11 a showing by affidavit of the facts necessary to revocation
12 or modification of a final decree under 40-4-208; and

13 ~~(c) terminates when the final decree is entered or~~
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15 ~~voluntarily dismissed; TERMINATES UPON ORDER OF THE COURT OR~~
16 ~~WHEN A FINAL DECREE IS ENTERED OR WHEN A PETITION FOR~~
17 ~~DISSOLUTION OR LEGAL SEPARATION IS VOLUNTARILY DISMISSED;~~

18 AND

19 (D) when issued under this section must conspicuously
20 bear the following: "Violation of this order is a criminal
21 offense under [section 8 7]."

22 (8) When the petitioner has fled the parties'
23 residence, notice of petitioner's new residence must be
24 withheld except by order of the court for good cause shown."

25 NEW SECTION. Section 5. Forms -- distribution --

1 filing. The attorney general shall prepare UNIFORM SAMPLE
 2 instructions and petition and order forms necessary for
 3 allowing an applicant to obtain a temporary restraining
 4 order under 40-4-106. The attorney general shall distribute
 5 SAMPLES OF the restraining order forms to the clerk of the
 6 district court in each county and to justice and municipal
 7 courts. The clerk of the district court, justices of the
 8 peace, and municipal courts shall make the forms available
 9 to the public at no charge, and no filing fee may be charged
 10 for a petition or order filed pursuant to 40-4-106 and
 11 {section 6}.

12 NEW SECTION. Section 6. Jurisdiction and venue.
 13 (1) District courts, municipal courts, and justices' courts
 14 have concurrent jurisdiction to hear and issue orders under
 15 40-4-106(3).

16 (2) The municipal judge or justice of the peace shall,
 17 on motion, suspend all further proceedings in the action and
 18 certify the pleading and any orders to the clerk of the
 19 district court of the county where the action was begun if
 20 an action for declaration of invalidity of a marriage, legal
 21 separation, or dissolution of marriage, or child custody is
 22 pending between the parties. From the time of the
 23 certification of such pleadings and any orders to the clerk,
 24 the district court has the same jurisdiction over the action
 25 as if it had been commenced therein.

1 (3) An action brought under 40-4-106(3) may be tried
 2 in the county in which either party resides or in which the
 3 physical abuse was committed.

4 (4) The right to petition for relief may not be denied
 5 because the plaintiff has vacated the residence or household
 6 to avoid abuse.

7 NEW SECTION. Section 6. Registration of orders. (1)
 8 The clerk of court, justice of the peace, or municipal court
 9 judge shall, within 24 hours of receiving proof of service
 10 of an order under 40-4-106, mail a copy of the order or any
 11 extension, modification, or termination thereof along with a
 12 copy of the proof of service to the appropriate law
 13 enforcement agencies designated in the order.

14 (2) Law enforcement agencies shall establish
 15 procedures, USING AN EXISTING SYSTEM FOR WARRANT
 16 VERIFICATION, to ensure that peace officers at the scene of
 17 an alleged violation of a protective order are informed of
 18 the existence and terms of such order.

19 NEW SECTION. Section 7. Misdemeanor. (1) A person
 20 commits the offense of violation of a protective order if
 21 he, with knowledge of the order, purposely or knowingly
 22 violates a provision of any order provided for in 40-4-106.

23 (2) A person convicted of violation of a protective
 24 order shall be fined not to exceed \$500 or be imprisoned in
 25 the county jail for a term not to exceed 6 months, or both.

1 NEW SECTION. Section 8. Codification instruction.

2 (1) Sections 5 through 7 are intended to be codified as an
3 integral part of Title 40, chapter 4.

4 (2) Section 8 is intended to be codified as an
5 integral part of Title 45.

-End-

SENATE STANDING COMMITTEE REPORT

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March 21 19 85

MR. PRESIDENT

We, your committee on JUDICIARY

having had under consideration HOUSE BILL No. 310

third reading copy (blue color)

(Senator Towe)

ABUSED HOUSEHOLD MEMBERS TO OBTAIN SELF-HELP TEMPORARY RESTRAINING ORDER

Respectfully report as follows That HOUSE BILL No. 310

be amended as follows:

- 1. Page 5, lines 3 and 4. Following: "INJURY" on line 3 Strike: remainder of line 3 through "INJURY" on line 4
2. Page 7, line 4. Following: "40-4-106" Insert: ", and uniform sample affidavits and orders of inability to pay filing fees or other costs"
3. Page 7, line 5. Following: "order" Insert: "and the inability to pay filing fees order"

RR:000X

RR:00000000X

CONTINUED

Handwritten signature of Chairman

Chairman

March 21 19 85

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HOUSE BILL NO. 310

4. Page 8, line 7. Following: line 6 Insert: "NEW SECTION. Section 6. Jurisdiction and venue. (1) District courts, municipal courts, and justices' courts have concurrent jurisdiction to hear and issue orders under 40-4-106(3).

(2) The municipal judge or justice of the peace shall, on motion, suspend all further proceedings in the action and certify the pleading and any orders to the clerk of the district court of the county where the action was begun if an action for declaration of invalidity of a marriage, legal separation, or dissolution of marriage, or child custody is pending between the parties. From the time of the certification of such pleadings and any orders to the clerk, the district court has the same jurisdiction over the action as if it had been commenced therein.

(3) An action brought under 40-4-106(3) may be tried in the county in which either party resides or in which the physical abuse was committed.

(4) The right to petition for relief may not be denied because the plaintiff has vacated the residence or household to avoid abuse." Renumber: subsequent sections

5. Page 8, line 7. Following: line 6 Insert: "NEW SECTION. Section 7. Review or removal -- district court. (1) An order issued by a municipal court or justice court pursuant to 40-4-106(3) is immediately reviewable by the judge of the district court at chambers upon the filing of a notice of appeal. The district judge may affirm, dissolve, or modify an order of a municipal court or justice court made pursuant to 40-4-106(3).

(2) Any case in which an order has been issued by a municipal court or justice court pursuant to 40-4-106(3) may be removed to district court upon filing of a notice of removal." Renumber: subsequent sections

6. Page 8, line 9. Following: "judge" Insert: "justice of the peace, or municipal court judge"

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Handwritten signature of Senator Joe Mazurek

Senator Joe Mazurek, Chairman

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Page 3 of 3

HOUSE BILL NO. 310

7. Page 9, line 2.
Following: "through"
Strike: "7"
Insert: "8"

8. Page 9, line 4.
Following: "Section"
Strike: "8"
Insert: "9"

Jo
AND AS AMENDED

BE CONCURRED IN


.....
Senator Joe Mazurek, Chairman

1 HOUSE BILL NO. 310
 2 INTRODUCED BY WALDRON
 3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING ABUSED FAMILY
 5 OR HOUSEHOLD MEMBERS TO OBTAIN SELF-HELP TEMPORARY
 6 RESTRAINING ORDERS; MAKING VIOLATION OF AN ORDER A CRIMINAL
 7 OFFENSE; DIRECTING THE ATTORNEY GENERAL TO PREPARE AND
 8 DISTRIBUTE FORMS AND INSTRUCTIONS FOR RESTRAINING ORDERS;
 9 AMENDING SECTIONS 27-19-201, 27-19-315, 27-19-316, AND
 10 40-4-106, MCA."

11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13 Section 1. Section 27-19-201, MCA, is amended to read:
14 "27-19-201. When preliminary injunction may be
15 granted. An injunction order may be granted in the following
16 cases:

17 (1) when it shall appear that the applicant is
18 entitled to the relief demanded and such relief or any part
19 thereof consists in restraining the commission or
20 continuance of the act complained of, either for a limited
21 period or perpetually;

22 (2) when it shall appear that the commission or
23 continuance of some act during the litigation would produce
24 a great or irreparable injury to the applicant;

25 (3) when it shall appear during the litigation that

1 the adverse party is doing or threatens or is about to do or
2 is procuring or suffering to be done some act in violation
3 of the applicant's rights, respecting the subject of the
4 action, and tending to render the judgment ineffectual;

5 (4) when it appears that the adverse party, during the
6 pendency of the action, threatens or is about to remove or
7 to dispose of his property with intent to defraud the
8 applicant, an injunction order may be granted to restrain
9 the removal or disposition;

10 (5) when it appears the applicant has suffered or may
11 suffer physical abuse ~~by a spouse~~ under the provisions of
12 40-4-106."

13 Section 2. Section 27-19-315, MCA, is amended to read:

14 "27-19-315. When restraining order may be granted
15 without notice. A temporary restraining order may be granted
16 without written or oral notice to the adverse party or his
17 attorney only if:

18 (1) it clearly appears from specific facts shown by
19 affidavit or by the verified complaint that a delay would
20 cause immediate and irreparable injury to the applicant
21 before the adverse party or his attorney could be heard in
22 opposition; and

23 (2) the applicant or the applicant's attorney
24 certifies to the court in writing the efforts, if any, which
25 have been made to give notice and the reasons supporting his

REFERENCE BILL
HB 310



1 claim that notice should not be required."

2 Section 3. Section 27-19-316, MCA, is amended to read:

3 "27-19-316. Contents and filing of restraining order
4 granted without notice. Each temporary restraining order
5 granted without notice must:

6 (1) be endorsed with the date and hour of its
7 issuance;

8 (2) be filed immediately in the clerk's office and
9 entered in the record;

10 (3) define the injury and state why such injury is
11 irreparable and why the order was granted without notice;
12 and

13 (4) except as provided in 40-4-106, expire by its
14 terms within such time after entry, not to exceed 10 days,
15 as the court or judge fixes."

16 Section 4. Section 40-4-106, MCA, is amended to read:

17 "40-4-106. Temporary order or temporary injunction.

18 (1) In a proceeding for dissolution of marriage or for legal
19 separation or in a proceeding for disposition of property or
20 for maintenance or support following dissolution of the
21 marriage by a court which lacked personal jurisdiction over
22 the absent spouse, either party may move for temporary
23 maintenance or temporary support of a child of the marriage
24 entitled to support. The motion shall be accompanied by an
25 affidavit setting forth the factual basis for the motion and

1 the amounts requested.

2 (2) As a part of a motion for temporary maintenance or
3 support or by independent motion accompanied by affidavit,
4 either party may request the court to issue a temporary
5 injunction for any of the following relief:

6 (a) restraining any person from transferring,
7 encumbering, concealing, or otherwise disposing of any
8 property except in the usual course of business or for the
9 necessities of life and, if so restrained, requiring him to
10 notify the moving party of any proposed extraordinary
11 expenditures made after the order is issued;

12 (b) enjoining a party from molesting or disturbing the
13 peace of the other party or of any child;

14 (c) excluding a party from the family home or from the
15 home of the other party upon a showing that physical or
16 emotional harm would otherwise result;

17 (d) enjoining a party from removing a child from the
18 jurisdiction of the court; and AND

19 ~~(e) ordering a party to pay the other party's~~
20 ~~reasonable attorney fees incurred under this section; and~~

21 ~~(e)(f)(E)~~ providing other injunctive relief proper in
22 the circumstances.

23 (3) A person may seek the relief provided for in
24 subsection (2) of this section without filing a petition
25 under this part for a dissolution of marriage or legal

1 separation by filing a verified petition;

2 (a) alleging ~~OR--THREATENING~~ physical abuse, HARM, OR

3 ~~BODILY INJURY OR-THE-THREAT--OF--PHYSICAL--ABUSE--HARM--OR~~

4 ~~BODILY--INJURY~~ against the petitioner, ~~including-attempting~~

5 ~~to-cause-or-causing-bodily-injury-or-causing-the-petitioner~~

6 ~~to--engage--in--involuntary--sexual--relations--by-threat-or~~

7 ~~force~~, by a spouse family or household member; and

8 (b) requesting injunctive relief under Title 27,

9 chapter 19, part 3. Any preliminary injunction entered under

10 this subsection must be for a fixed period of time, not to

11 exceed 1 year, and may be modified as provided in Title 27,

12 chapter 19, part 4, and 40-4-208. Persons who may request

13 relief under this subsection include spouses, former

14 spouses, adult--persons--related--by-blood-or-marriage, and

15 persons cohabiting or who have cohabited with the other

16 party within 1 year immediately preceding the filing of the

17 petition.

18 (4) The court may issue a temporary restraining order

19 for a period not to exceed 20 days without requiring notice

20 to the other party only if it finds on the basis of the

21 moving affidavit or other evidence that irreparable injury

22 will result to the moving party if no order is issued until

23 the time for responding has elapsed.

24 (5) A response may be filed within 20 days after

25 service of notice of motion or at the time specified in the

1 temporary restraining order.

2 (6) On the basis of the showing made and in conformity

3 with 40-4-203 and 40-4-204, the court may issue a temporary

4 injunction and an order for temporary maintenance or support

5 in amounts and on terms just and proper in the circumstance.

6 (7) A temporary order or temporary injunction:

7 (a) does not prejudice the rights of the parties or

8 the child which are to be adjudicated at subsequent hearings

9 in the proceeding;

10 (b) may be revoked or modified before final decree on

11 a showing by affidavit of the facts necessary to revocation

12 or modification of a final decree under 40-4-208; and

13 (c) ~~terminates--when--the--final--decree--is--entered--or~~

14 ~~when-the-petition-for-dissolution--or--legal--separation--is~~

15 ~~voluntarily-dismissed.~~ TERMINATES UPON ORDER OF THE COURT OR

16 WHEN A FINAL DECREE IS ENTERED OR WHEN A PETITION FOR

17 DISSOLUTION OR LEGAL SEPARATION IS VOLUNTARILY DISMISSED;

18 AND

19 (D) when issued under this section must conspicuously

20 bear the following: "Violation of this order is a criminal

21 offense under [section 8 7 9]."

22 (8) When the petitioner has fled the parties'

23 residence, notice of petitioner's new residence must be

24 withheld except by order of the court for good cause shown."

25 NEW SECTION. Section 5. Forms -- distribution --

1 filing. The attorney general shall prepare UNIFORM SAMPLE
 2 instructions and petition and order forms necessary for
 3 allowing an applicant to obtain a temporary restraining
 4 order under 40-4-106 AND UNIFORM SAMPLE AFFIDAVITS AND
 5 ORDERS OF INABILITY TO PAY FILING FEES OR OTHER COSTS. The
 6 attorney general shall distribute SAMPLES OF the restraining
 7 order AND THE INABILITY-TO-PAY-FILING-FEES ORDER forms to
 8 the clerk of the district court in each county and to
 9 justice and municipal courts. The clerk of the district
 10 court, justices of the peace, and municipal courts shall
 11 make the forms available to the public at no charge, ~~and no~~
 12 ~~filing-fee may be charged for a petition or order filed~~
 13 ~~pursuant to 40-4-106 and {section 6}.~~

14 ~~NEW SECTION. Section 6. Jurisdiction and venue.~~
 15 ~~{1} District courts, municipal courts, and justices' courts~~
 16 ~~have concurrent jurisdiction to hear and issue orders under~~
 17 ~~40-4-106(3):~~

18 ~~{2} The municipal judge or justice of the peace shall~~
 19 ~~on motion suspend all further proceedings in the action and~~
 20 ~~certify the pleading and any orders to the clerk of the~~
 21 ~~district court of the county where the action was begun if~~
 22 ~~an action for declaration of invalidity of a marriage, legal~~
 23 ~~separation, or dissolution of marriage, or child custody is~~
 24 ~~pending between the parties. From the time of the~~
 25 ~~certification of such pleadings and any orders to the clerk,~~

1 ~~the district court has the same jurisdiction over the action~~
 2 ~~as if it had been commenced therein:~~

3 ~~{3} An action brought under 40-4-106(3) may be tried~~
 4 ~~in the county in which either party resides or in which the~~
 5 ~~physical abuse was committed:~~

6 ~~{4} The right to petition for relief may not be denied~~
 7 ~~because the plaintiff has vacated the residence or household~~
 8 ~~to avoid abuse:~~

9 NEW SECTION. SECTION 6. JURISDICTION AND VENUE. (1)
 10 DISTRICT COURTS, MUNICIPAL COURTS, AND JUSTICES' COURTS HAVE
 11 CONCURRENT JURISDICTION TO HEAR AND ISSUE ORDERS UNDER
 12 40-4-106(3).

13 (2) THE MUNICIPAL JUDGE OR JUSTICE OF THE PEACE SHALL,
 14 ON MOTION, SUSPEND ALL FURTHER PROCEEDINGS IN THE ACTION AND
 15 CERTIFY THE PLEADING AND ANY ORDERS TO THE CLERK OF THE
 16 DISTRICT COURT OF THE COUNTY WHERE THE ACTION WAS BEGUN IF
 17 AN ACTION FOR DECLARATION OF INVALIDITY OF A MARRIAGE, LEGAL
 18 SEPARATION, OR DISSOLUTION OF MARRIAGE, OR CHILD CUSTODY IS
 19 PENDING BETWEEN THE PARTIES. FROM THE TIME OF THE
 20 CERTIFICATION OF SUCH PLEADINGS AND ANY ORDERS TO THE CLERK,
 21 THE DISTRICT COURT HAS THE SAME JURISDICTION OVER THE ACTION
 22 AS IF IT HAD BEEN COMMENCED THEREIN.

23 (3) AN ACTION BROUGHT UNDER 40-4-106(3) MAY BE TRIED
 24 IN THE COUNTY IN WHICH EITHER PARTY RESIDES OR IN WHICH THE
 25 PHYSICAL ABUSE WAS COMMITTED.

1 (4) THE RIGHT TO PETITION FOR RELIEF MAY NOT BE DENIED
2 BECAUSE THE PLAINTIFF HAS VACATED THE RESIDENCE OR HOUSEHOLD
3 TO AVOID ABUSE.

4 NEW SECTION. SECTION 7. REVIEW OR REMOVAL -- DISTRICT
5 COURT. (1) AN ORDER ISSUED BY A MUNICIPAL COURT OR JUSTICE
6 COURT PURSUANT TO 40-4-106(3) IS IMMEDIATELY REVIEWABLE BY
7 THE JUDGE OF THE DISTRICT COURT AT CHAMBERS UPON THE FILING
8 OF A NOTICE OF APPEAL. THE DISTRICT JUDGE MAY AFFIRM,
9 DISSOLVE, OR MODIFY AN ORDER OF A MUNICIPAL COURT OR JUSTICE
10 COURT MADE PURSUANT TO 40-4-106(3).

11 (2) ANY CASE IN WHICH AN ORDER HAS BEEN ISSUED BY A
12 MUNICIPAL COURT OR JUSTICE COURT PURSUANT TO 40-4-106(3) MAY
13 BE REMOVED TO DISTRICT COURT UPON FILING OF A NOTICE OF
14 REMOVAL.

15 NEW SECTION. Section 8. Registration of orders. (1)
16 The clerk of court, ~~justice of the peace, or municipal court~~
17 judge, JUSTICE OF THE PEACE, OR MUNICIPAL COURT JUDGE shall,
18 within 24 hours of receiving proof of service of an order
19 under 40-4-106, mail a copy of the order or any extension,
20 modification, or termination thereof along with a copy of
21 the proof of service to the appropriate law enforcement
22 agencies designated in the order.

23 (2) Law enforcement agencies shall establish
24 procedures, USING AN EXISTING SYSTEM FOR WARRANT
25 VERIFICATION, to ensure that peace officers at the scene of

1 an alleged violation of a protective order are informed of
2 the existence and terms of such order.

3 NEW SECTION. Section 9. Misdemeanor. (1) A person
4 commits the offense of violation of a protective order if
5 he, with knowledge of the order, purposely or knowingly
6 violates a provision of any order provided for in 40-4-106.

7 (2) A person convicted of violation of a protective
8 order shall be fined not to exceed \$500 or be imprisoned in
9 the county jail for a term not to exceed 6 months, or both.

10 NEW SECTION. Section 10. Codification instruction.
11 (1) Sections 5 through 7 8 are intended to be codified as an
12 integral part of Title 40, chapter 4.

13 (2) Section 8 9 is intended to be codified as an
14 integral part of Title 45.

-End-