

SENATE BILL NO. 449

INTRODUCED BY REGAN, JACOBSON, ECK, BENGTON, HARDING

IN THE SENATE

| | |
|-------------------|---|
| February 19, 1985 | Introduced and referred to Committee on Judiciary. |
| February 23, 1985 | Committee recommend bill do pass as amended. Report adopted. |
| February 25, 1985 | Bill printed and placed on members' desks. |
| February 26, 1985 | Second reading, do pass as amended. Correctly engrossed. |
| February 27, 1985 | Third reading, passed. Ayes, 50; Noes, 0. Transmitted to House. |

IN THE HOUSE

| | |
|----------------|---|
| March 7, 1985 | Introduced and referred to Committee on Judiciary. |
| March 28, 1985 | Committee recommend bill be concurrent in as amended. Report adopted. |
| March 30, 1985 | Second reading, pass consideration. |
| April 3, 1985 | Second reading, concurred in as amended. |
| April 5, 1985 | Third reading, concurred in. Returned to Senate with amendments. |

IN THE SENATE

April 13, 1985 On motion, rules suspended to accept. Motion adopted.

April 15, 1985 Received from House.

April 17, 1985 Second reading, amendments not concurred in.

April 19, 1985 On motion, Conference Committee requested and appointed.

April 22, 1985 Conference Committee dissolved.

 On motion, Free Conference Committee requested and appointed.

April 24, 1985 Free Conference Committee reported.

 Second reading, Free Conference Committee report adopted.

 Third reading, Free Conference Committee report adopted.

 Free Conference Committee dissolved.

 On motion, New Free Conference Committee requested and appointed.

April 25, 1985 New Free Conference Committee reported.

 Second reading, New Free Conference Committee report adopted.

 Third reading, New Free Conference Committee report adopted.

April 25, 1985

New Free Conference Committee
report adopted by House.

April 26, 1985

Sent to enrolling.

Reported correctly enrolled.

1 *Senate* BILL NO. 449
 2 INTRODUCED BY *Barbara Juddon Ech, Bengtson*
 3 *Harding*

4 A BILL FOR AN ACT ENTITLED: "AN ACT DEFINING "DOMESTIC
 5 ABUSE" AND PROVIDING THAT COMMISSION OF DOMESTIC ABUSE IS A
 6 CRIMINAL OFFENSE; REQUIRING ARREST IN CASES OF DOMESTIC
 7 ABUSE; PROVIDING AN ARRESTING OFFICER WITH IMMUNITY FROM
 8 CIVIL LIABILITY UNDER CERTAIN CIRCUMSTANCES; PROHIBITING A
 9 PEACE OFFICER FROM ACCEPTING BAIL ON BEHALF OF A JUSTICE OF
 10 THE PEACE WHEN A PERSON IS ARRESTED FOR DOMESTIC ABUSE;
 11 AMENDING SECTIONS 46-6-105, 46-6-401, AND 46-9-302, MCA."

12
 13 WHEREAS, one of every two women in the United States
 14 will be abused during her lifetime; and

15 WHEREAS, recent studies conducted in states that have
 16 adopted statutes requiring arrest in cases of domestic abuse
 17 show a reduced rate of repeat violence; and

18 WHEREAS, arrest removes the abuser from the home so the
 19 abuse will not continue.

20
 21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

22 NEW SECTION. Section 1. Domestic abuse. (1) A person
 23 commits the offense of domestic abuse if he:

24 (a) purposely or knowingly causes bodily injury to a
 25 family member or household member; or

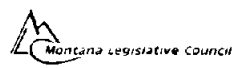
1 (b) purposely or knowingly causes reasonable
 2 apprehension of bodily injury in a family member or
 3 household member. The purpose to cause reasonable
 4 apprehension or the knowledge that reasonable apprehension
 5 would be caused shall be presumed in any case in which a
 6 person knowingly points a firearm at or in the direction of
 7 a family member or household member, whether or not the
 8 offender believes the firearm to be loaded.

9 (2) For the purposes of this section and 46-6-401,
 10 "family member or household member" means a spouse, former
 11 spouse, adult person related by blood or marriage, or adult
 12 person of the opposite sex residing with the defendant or
 13 who formerly resided with the defendant.

14 (3) A person convicted of domestic abuse for the first
 15 or second time shall be fined not to exceed \$500 or be
 16 imprisoned in the county jail not to exceed 6 months, or
 17 both. On a third or subsequent conviction for domestic
 18 abuse, the person convicted shall be fined not to exceed
 19 \$50,000 or be imprisoned in the state prison for a term not
 20 to exceed 5 years, or both.

21 NEW SECTION. Section 2. Immunity. Any peace officer
 22 acting in good faith in making an arrest pursuant to
 23 46-6-401(2) is immune from civil liability that might
 24 otherwise result by reason of his action.

25 NEW SECTION. Section 3. Notice of rights. Whenever a



1 peace officer arrests a person for domestic abuse, as
 2 defined in [section 1], if the victim is present, the
 3 officer shall advise the victim of the availability of a
 4 shelter or other services in the community and give the
 5 victim immediate notice of any legal rights and remedies
 6 available. The notice must include furnishing the victim
 7 with a copy of the following statement:

8 "IF YOU ARE THE VICTIM OF DOMESTIC ABUSE, the county
 9 attorney's office can file criminal charges against your
 10 abuser. You have the right to go to court and file a
 11 petition requesting any of the following orders for relief:

12 (1) an order restraining your abuser from abusing you;

13 (2) an order directing your abuser to leave your
 14 household;

15 (3) an order preventing your abuser from transferring
 16 any property except in the usual course of business;

17 (4) an order awarding you or the other parent custody
 18 of or visitation with a minor child or children;

19 (5) an order restraining your abuser from molesting or
 20 interfering with minor children in your custody; or

21 (6) an order directing the party not granted custody
 22 to pay support of minor children or to pay support of the
 23 other party if there is a legal obligation to do so".

24 Section 4. Section 46-6-105, MCA, is amended to read:

25 "46-6-105. Time of making arrest. An arrest may be

1 made on any day and at any time of the day or night, except
 2 that a person cannot be arrested in his home or private
 3 dwelling place at night for a misdemeanor committed at some
 4 other time and place unless upon the direction of a
 5 magistrate endorsed upon a warrant of arrest. However, a
 6 person may be arrested in his home or private dwelling at
 7 night if he is being arrested pursuant to 46-6-401(2) for
 8 the offense of domestic abuse or aggravated assault against
 9 a family member or household member."

10 Section 5. Section 46-6-401, MCA, is amended to read:

11 "46-6-401. Circumstances in which a peace officer may
 12 make-an-arrest makes arrests. (1) A peace officer may
 13 arrest a person when:

14 (1)(a) he has a warrant commanding that such person be
 15 arrested;

16 (2)(b) he believes on reasonable grounds that a
 17 warrant for the person's arrest has been issued in this
 18 state;

19 (3)(c) he believes on reasonable grounds that a felony
 20 warrant for the person's arrest has been issued in another
 21 jurisdiction; or

22 (4)(d) he believes on reasonable grounds that the
 23 person is committing an offense or that the person has
 24 committed an offense and the existing circumstances require
 25 his immediate arrest.

1 (2) A peace officer shall arrest a person anywhere,
 2 including his place of residence, if the peace officer has
 3 probable cause to believe the person is committing or has
 4 committed domestic abuse or aggravated assault against a
 5 family member or household member, even though the offense
 6 did not take place in the presence of the peace officer. A
 7 peace officer may not issue a notice to appear in lieu of
 8 arrest under this subsection."

9 Section 6. Section 46-9-302, MCA, is amended to read:

10 "46-9-302. Bail schedule for minor offenses --
 11 acceptance by peace officer. (1) A justice of the peace or
 12 city judge may, in his discretion, establish and post a
 13 schedule of cash bail for offenses ~~not amounting to a~~
 14 felony, except for offenses amounting to felonies and the
 15 offense of domestic abuse.

16 (2) A peace officer may accept bail in behalf of the
 17 justice of the peace or city judge in accordance with the
 18 schedule. In the event the peace officer accepts bail, he
 19 shall give a signed receipt to the offender setting forth
 20 the bail received. The peace officer shall then deliver the
 21 bail to the justice of the peace or city judge before whom
 22 the offender is to appear, and the justice of the peace or
 23 city judge shall give a receipt to the peace officer for the
 24 bail delivered."

25 NEW SECTION. Section 7. Severability. If a part of

1 this act is invalid, all valid parts that are severable from
 2 the invalid part remain in effect. If a part of this act is
 3 invalid in one or more of its applications, the part remains
 4 in effect in all valid applications that are severable from
 5 the invalid applications.

6 NEW SECTION. Section 8. Codification instruction.
 7 Section 1 is intended to be codified as an integral part of
 8 Title 45, and the provisions of Title 45 apply to section 1.

-End-

APPROVED BY COMMITTEE
ON JUDICIARY

SENATE BILL NO. 449

INTRODUCED BY REGAN, JACOBSON, ECK, BENGTON, HARDING

A BILL FOR AN ACT ENTITLED: "AN ACT DEFINING "DOMESTIC ABUSE" AND PROVIDING THAT COMMISSION OF DOMESTIC ABUSE IS A CRIMINAL OFFENSE; ~~REQUIRING AUTHORIZING~~ ARREST IN CASES OF DOMESTIC ABUSE; ~~PROVIDING AN ARRESTING OFFICER WITH IMMUNITY FROM CIVIL LIABILITY UNDER CERTAIN CIRCUMSTANCES;~~ PROHIBITING A PEACE OFFICER FROM ACCEPTING BAIL ON BEHALF OF A JUSTICE OF THE PEACE WHEN A PERSON IS ARRESTED FOR DOMESTIC ABUSE; AMENDING SECTIONS 46-6-105, 46-6-401, AND 46-9-302, MCA."

WHEREAS, one of every two women in the United States will be abused during her lifetime; and

WHEREAS, recent studies conducted in states that have adopted statutes requiring arrest in cases of domestic abuse show a reduced rate of repeat violence; and

WHEREAS, arrest removes the abuser from the home so the abuse will not continue.

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

NEW SECTION. Section 1. Domestic abuse. (1) A person commits the offense of domestic abuse if he:

(a) purposely or knowingly causes bodily injury to a

family member or household member; or

(b) purposely or knowingly causes reasonable apprehension of bodily injury in a family member or household member. The purpose to cause reasonable apprehension or the knowledge that reasonable apprehension would be caused shall be presumed in any case in which a person knowingly points a firearm at or in the direction of a family member or household member, whether or not the offender believes the firearm to be loaded.

(2) For the purposes of this section and 46-6-401, "family member or household member" means a spouse, former spouse, ~~adult person related by blood or marriage,~~ or adult person of the opposite sex residing with the defendant or who formerly resided with the defendant.

(3) A person convicted of domestic abuse for the first or second time shall be fined not to exceed \$500 or be imprisoned in the county jail not to exceed 6 months, or both. On a third or subsequent conviction for domestic abuse, the person convicted shall be fined not to exceed \$50,000 or be imprisoned in the state prison for a term not to exceed 5 years, or both.

~~NEW SECTION. SECTION 2. IMMUNITY. ANY PEACE OFFICER ACTING IN GOOD FAITH IN MAKING AN ARREST PURSUANT TO 46-6-401(2) IS IMMUNE FROM CIVIL LIABILITY THAT MIGHT OTHERWISE RESULT BY REASON OF HIS ACTION.~~

1 NEW SECTION. Section 2. Notice of rights. Whenever a
 2 peace officer arrests a person for domestic abuse, as
 3 defined in [section 1], if the victim is present, the
 4 officer shall advise the victim of the availability of a
 5 shelter or other services in the community and give the
 6 victim immediate notice of any legal rights and remedies
 7 available. The notice must include furnishing the victim
 8 with a copy of the following statement:

9 "IF YOU ARE THE VICTIM OF DOMESTIC ABUSE, the county
 10 attorney's office can file criminal charges against your
 11 abuser. You have the right to go to court and file a
 12 petition requesting any of the following orders for relief:

13 (1) an order restraining your abuser from abusing you;

14 (2) an order directing your abuser to leave your
 15 household;

16 (3) an order preventing your abuser from transferring
 17 any property except in the usual course of business;

18 (4) an order awarding you or the other parent custody
 19 of or visitation with a minor child or children;

20 (5) an order restraining your abuser from molesting or
 21 interfering with minor children in your custody; or

22 (6) an order directing the party not granted custody
 23 to pay support of minor children or to pay support of the
 24 other party if there is a legal obligation to do so".

25 Section 3. Section 46-6-105, MCA, is amended to read:

1 "46-6-105. Time of making arrest. An arrest may be
 2 made on any day and at any time of the day or night, except
 3 that a person cannot be arrested in his home or private
 4 dwelling place at night for a misdemeanor committed at some
 5 other time and place unless upon the direction of a
 6 magistrate endorsed upon a warrant of arrest. However, a
 7 person may be arrested in his home or private dwelling at
 8 night if he is being arrested pursuant to 46-6-401(2) for
 9 the offense of domestic abuse or aggravated assault against
 10 a family member or household member. A SUMMONS OF A PEACE
 11 OFFICER TO THE HOME OR PRIVATE DWELLING BY A FAMILY OR
 12 HOUSEHOLD MEMBER CONSTITUTES AN EXIGENT CIRCUMSTANCE FOR
 13 MAKING AN ARREST PURSUANT TO 46-6-401(2)."

14 Section 4. Section 46-6-401, MCA, is amended to read:

15 "46-6-401. Circumstances in which a peace officer may
 16 ~~make-an-arrest~~ makes arrests. (1) A peace officer may
 17 arrest a person when:

18 ~~{1}~~(a) he has a warrant commanding that such person be
 19 arrested;

20 ~~{2}~~(b) he believes on reasonable grounds that a
 21 warrant for the person's arrest has been issued in this
 22 state;

23 ~~{3}~~(c) he believes on reasonable grounds that a felony
 24 warrant for the person's arrest has been issued in another
 25 jurisdiction; or

1 ~~(d)~~ he believes on reasonable grounds that the
 2 person is committing an offense or that the person has
 3 committed an offense and the existing circumstances require
 4 his immediate arrest.

5 (2) A peace officer shall MAY arrest a person
 6 anywhere, including his place of residence, if the peace
 7 officer has probable cause to believe the person is
 8 committing or has committed domestic abuse or aggravated
 9 assault against a family member or household member, even
 10 though the offense did not take place in the presence of the
 11 peace officer. A peace officer may not issue a notice to
 12 appear in lieu of arrest under this subsection. A SUMMONS OF
 13 A PEACE OFFICER TO A PLACE OF RESIDENCE BY A FAMILY OR
 14 HOUSEHOLD MEMBER CONSTITUTES AN EXIGENT CIRCUMSTANCE FOR
 15 MAKING AN ARREST."

16 Section 5. Section 46-9-302, MCA, is amended to read:

17 "46-9-302. Bail schedule for minor offenses --
 18 acceptance by peace officer. (1) A justice of the peace or
 19 city judge may, in his discretion, establish and post a
 20 schedule of cash bail for offenses ~~not amounting to a~~
 21 felony, except for offenses amounting to felonies and the
 22 offense of domestic abuse.

23 (2) A peace officer may accept bail in behalf of the
 24 justice of the peace or city judge in accordance with the
 25 schedule. In the event the peace officer accepts bail, he

1 shall give a signed receipt to the offender setting forth
 2 the bail received. The peace officer shall then deliver the
 3 bail to the justice of the peace or city judge before whom
 4 the offender is to appear, and the justice of the peace or
 5 city judge shall give a receipt to the peace officer for the
 6 bail delivered."

7 NEW SECTION. Section 6. Severability. If a part of
 8 this act is invalid, all valid parts that are severable from
 9 the invalid part remain in effect. If a part of this act is
 10 invalid in one or more of its applications, the part remains
 11 in effect in all valid applications that are severable from
 12 the invalid applications.

13 NEW SECTION. Section 7. Codification instruction.
 14 Section 1 is intended to be codified as an integral part of
 15 Title 45, and the provisions of Title 45 apply to section 1.

-End-

1 SENATE BILL NO. 449

2 INTRODUCED BY REGAN, JACOBSON, ECK, BENGTSON, HARDING

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT DEFINING "DOMESTIC
5 ABUSE" AND PROVIDING THAT COMMISSION OF DOMESTIC ABUSE IS A
6 CRIMINAL OFFENSE; ~~REQUIRING AUTHORIZING~~ ARREST IN CASES OF
7 DOMESTIC ABUSE; ~~PROVIDING AN ARRESTING OFFICER WITH IMMUNITY~~
8 ~~FROM CIVIL LIABILITY UNDER CERTAIN CIRCUMSTANCES;~~
9 PROHIBITING A PEACE OFFICER FROM ACCEPTING BAIL ON BEHALF OF
10 A JUSTICE OF THE PEACE WHEN A PERSON IS ARRESTED FOR
11 DOMESTIC ABUSE; AMENDING SECTIONS 46-6-105, 46-6-401, AND
12 46-9-302, MCA."

13
14 WHEREAS, ~~one of every two women in the United States~~
15 ~~will be abused during her lifetime, and~~

16 WHEREAS, recent studies conducted in states that have
17 adopted statutes requiring arrest in cases of domestic abuse
18 show a reduced rate of repeat violence; and

19 WHEREAS, arrest removes the abuser from the home so the
20 abuse will not continue.

21
22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

23 NEW SECTION. Section 1. Domestic abuse. (1) A person
24 commits the offense of domestic abuse if he:

25 (a) purposely or knowingly causes bodily injury to a

1 family member or household member; or

2 (b) purposely or knowingly causes reasonable
3 apprehension of bodily injury in a family member or
4 household member. The purpose to cause reasonable
5 apprehension or the knowledge that reasonable apprehension
6 would be caused shall be presumed in any case in which a
7 person knowingly points a firearm at or in the direction of
8 a family member or household member, whether or not the
9 offender believes the firearm to be loaded.

10 (2) For the purposes of this section and 46-6-401,
11 "family member or household member" means a spouse, former
12 spouse, ~~adult person related by blood or marriage,~~ ADULT
13 PERSON RELATED BY BLOOD OR MARRIAGE, or adult person of the
14 opposite sex residing with the defendant or who formerly
15 resided with the defendant.

16 (3) A person convicted of domestic abuse for the first
17 or second time shall be fined not to exceed \$500 or be
18 imprisoned in the county jail not to exceed 6 months, or
19 both. On a third or subsequent conviction for domestic
20 abuse, the person convicted shall be fined not to exceed
21 \$50,000 or be imprisoned in the state prison for a term not
22 to exceed 5 years, or both.

23 ~~NEW SECTION. SECTION 2. IMMUNITY. ANY PEACE OFFICER~~
24 ~~ACTING IN GOOD FAITH IN MAKING AN ARREST PURSUANT TO~~
25 ~~46-6-401(2) IS IMMUNE FROM CIVIL LIABILITY THAT MIGHT~~

OTHERWISE-RESULT-BY-REASON-OF-HIS-ACTION.

NEW SECTION. Section 2. Notice of rights. Whenever a peace officer arrests a person for domestic abuse, as defined in [section 1], if the victim is present, the officer shall advise the victim of the availability of a shelter or other services in the community and give the victim immediate notice of any legal rights and remedies available. The notice must include furnishing the victim with a copy of the following statement:

"IF YOU ARE THE VICTIM OF DOMESTIC ABUSE, the county attorney's office can file criminal charges against your abuser. You have the right to go to court and file a petition requesting any of the following orders for relief:

(1) an order restraining your abuser from abusing you;

(2) an order directing your abuser to leave your household;

(3) an order preventing your abuser from transferring any property except in the usual course of business;

(4) an order awarding you or the other parent custody of or visitation with a minor child or children;

(5) an order restraining your abuser from molesting or interfering with minor children in your custody; or

(6) an order directing the party not granted custody to pay support of minor children or to pay support of the other party if there is a legal obligation to do so".

Section 3. Section 46-6-105, MCA, is amended to read:

"46-6-105. Time of making arrest. An arrest may be made on any day and at any time of the day or night, except that a person cannot be arrested in his home or private dwelling place at night for a misdemeanor committed at some other time and place unless upon the direction of a magistrate endorsed upon a warrant of arrest. However, a person may be arrested in his home or private dwelling at night if he is being arrested pursuant to 46-6-401(2) for the offense of domestic abuse or aggravated assault against a family member or household member. A SUMMONS OF A PEACE OFFICER TO THE HOME OR PRIVATE DWELLING BY A FAMILY OR HOUSEHOLD MEMBER CONSTITUTES AN EXIGENT CIRCUMSTANCE FOR MAKING AN ARREST PURSUANT TO 46-6-401(2)."

Section 4. Section 46-6-401, MCA, is amended to read:

"46-6-401. Circumstances in which a peace officer may make--an--arrest makes arrests. (1) A peace officer may arrest a person when:

(1)(a) he has a warrant commanding that such person be arrested;

(2)(b) he believes on reasonable grounds that a warrant for the person's arrest has been issued in this state;

(3)(c) he believes on reasonable grounds that a felony warrant for the person's arrest has been issued in another

1 jurisdiction; or

2 ~~(d)~~ he believes on reasonable grounds that the
3 person is committing an offense or that the person has
4 committed an offense and the existing circumstances require
5 his immediate arrest.

6 (2) A peace officer shall MAY arrest a person
7 anywhere, including his place of residence, if the peace
8 officer has probable cause to believe the person is
9 committing or has committed domestic abuse or aggravated
10 assault against a family member or household member, even
11 though the offense did not take place in the presence of the
12 peace officer. A--peace--officer--may--not--issue--a--notice--to
13 appear--in--lieu--of--arrest--under--this--subsection. A SUMMONS OF
14 A PEACE OFFICER TO A PLACE OF RESIDENCE BY A FAMILY OR
15 HOUSEHOLD MEMBER CONSTITUTES AN EXIGENT CIRCUMSTANCE FOR
16 MAKING AN ARREST."

17 Section 5. Section 46-9-302, MCA, is amended to read:

18 "46-9-302. Bail schedule for minor offenses --
19 acceptance by peace officer. (1) A justice of the peace or
20 city judge may, in his discretion, establish and post a
21 schedule of cash bail for offenses ~~not--amounting--to--a~~
22 felony, except for offenses amounting to felonies and the
23 offense of domestic abuse.

24 (2) A peace officer may accept bail in behalf of the
25 justice of the peace or city judge in accordance with the

1 schedule. In the event the peace officer accepts bail, he
2 shall give a signed receipt to the offender setting forth
3 the bail received. The peace officer shall then deliver the
4 bail to the justice of the peace or city judge before whom
5 the offender is to appear, and the justice of the peace or
6 city judge shall give a receipt to the peace officer for the
7 bail delivered."

8 NEW SECTION. Section 6. Severability. If a part of
9 this act is invalid, all valid parts that are severable from
10 the invalid part remain in effect. If a part of this act is
11 invalid in one or more of its applications, the part remains
12 in effect in all valid applications that are severable from
13 the invalid applications.

14 NEW SECTION. Section 7. Codification instruction.
15 Section 1 is intended to be codified as an integral part of
16 Title 45, and the provisions of Title 45 apply to section 1.

-End-

COMMITTEE OF THE WHOLE AMENDMENT

HOUSE

4-1-85
DATE
10:20 PM
TIME

MR. CHAIRMAN: I MOVE TO AMEND SENATE BILL No. 449

third reading copy (blue) as follows:
Color

AMENDING COMMITTEE OF THE WHOLE AMENDMENT - HANNAH 3-29 AT 7:30 PM:

- 1. Amendment #1, Insert instruction.
Following: "arrest,"
Insert: "and that there is a strong possibility of public danger if no arrest is made"

COMMITTEE OF THE WHOLE AMENDMENT

4010800L.C

4-1-85
DATE
8:00 AM
TIME

MR. CHAIRMAN: I MOVE TO AMEND SENATE BILL No. 449

third reading copy (blue) as follows:
Color

AMENDING HOUSE STANDING COMMITTEE REPORT OF 3-28-85:

- 1. Amendment #2, Insert instruction.
Following: "PROVIDING"
Insert: "AN EFFECTIVE DATE AND"
- 2. Amendment #8, Insert instruction.
Following: "Section 8."
Insert: "Effective date --"
Following: "date."
Insert: "This act is effective July 1, 1985."

AS
ADOPT
REJECT

Bradley
Rep. Bradley

AS
ADOPT
REJECT

Rep. Bergene
Rep. Bergene

COMMITTEE OF THE WHOLE AMENDMENT

3-29-85
DATE

7:30 p.m.
TIME

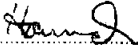
MR. CHAIRMAN: I MOVE TO AMEND Senate Bill No. 449

third reading copy (blue) as follows:
Color

1. Page 5, line 10.
Following: "1"
Insert: "anytime within a 4-hour period prior to the arrest,"

KAK

ADOPT
REJECT


Rep. Hannah

STANDING COMMITTEE REPORT

HOUSE

March 28 19 85

page 1 of 2

March 28 19 85

page 2 of 2 (SB 449)

MR. Speaker:.....

We, your committee on..... Judiciary

having had under consideration..... Senate Bill No. 449

Third reading copy (Blue color)

CREATES CRIME OF DOMESTIC ABUSE; REQUIRES ARREST FOR ITS VIOLATION

5. Page 4, line 10. Following: "abuse" Strike: "or aggravated" through "household member" on line 11.

5. Page 5, line 6. Strike: "MAY" Insert: "shall"

7. Page 5, line 9. Following: "abuse" Strike: "or aggravated" through "member."

8. Page 6, following line 16. Insert: "NEW SECTION. Section 8. Termination date. This act terminates July 1, 1987."

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

be amended as follows:

1. Title, line 6. Strike: "AUTHORIZING" Insert: "REQUIRING"

Following: "IN" Insert: "CERTAIN"

2. Title, line 12. Following: "MCA" Insert: "; AND PROVIDING A TERMINATION DATE"

3. Page 3, line 7. Following: "victim" Strike: "immediate" through "with" on line 9.

4. Page 3, line 9. Following: "following"

Strike: "statement" Insert: "notice"

(continued)

Chairman

Handwritten initials and numbers: AB, SK, 3/28

AND AS AMENDED, BE CONCURRED IN

Tom Hannah Chairman REP. TOM HANNAH

1 SENATE BILL NO. 449

2 INTRODUCED BY REGAN, JACOBSON, ECK, BENGTSON, HARDING

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT DEFINING "DOMESTIC
5 ABUSE" AND PROVIDING THAT COMMISSION OF DOMESTIC ABUSE IS A
6 CRIMINAL OFFENSE; ~~REQUIRING AUTHORIZING~~ REQUIRING ARREST IN
7 CERTAIN CASES OF DOMESTIC ABUSE; ~~PROVIDING-AN-ARRESTING~~
8 ~~OFFICER-WITH-IMMUNITY-FROM--CIVIL--LIABILITY--UNDER--CERTAIN~~
9 ~~CIRCUMSTANCES~~; PROHIBITING A PEACE OFFICER FROM ACCEPTING
10 BAIL ON BEHALF OF A JUSTICE OF THE PEACE WHEN A PERSON IS
11 ARRESTED FOR DOMESTIC ABUSE; AMENDING SECTIONS 46-6-105,
12 46-6-401, AND 46-9-302, MCA; AND PROVIDING AN EFFECTIVE DATE
13 AND A TERMINATION DATE."

14
15 ~~WHEREAS, one-of-every-two-women-in--the--United--States~~
16 ~~will-be-abused-during-her-lifetime, and~~

17 WHEREAS, recent studies conducted in states that have
18 adopted statutes requiring arrest in cases of domestic abuse
19 show a reduced rate of repeat violence; and

20 WHEREAS, arrest removes the abuser from the home so the
21 abuse will not continue.

22
23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

24 NEW SECTION. Section 1. Domestic abuse. (1) A person
25 commits the offense of domestic abuse if he:

1 (a) purposely or knowingly causes bodily injury to a
2 family member or household member; or

3 (b) purposely or knowingly causes reasonable
4 apprehension of bodily injury in a family member or
5 household member. The purpose to cause reasonable
6 apprehension or the knowledge that reasonable apprehension
7 would be caused shall be presumed in any case in which a
8 person knowingly points a firearm at or in the direction of
9 a family member or household member, whether or not the
10 offender believes the firearm to be loaded.

11 (2) For the purposes of this section and 46-6-401,
12 "family member or household member" means a spouse, former
13 spouse, ~~adult--person--related--by-blood-or-marriage~~; ADULT
14 PERSON RELATED BY BLOOD OR MARRIAGE, or adult person of the
15 opposite sex residing with the defendant or who formerly
16 resided with the defendant.

17 (3) A person convicted of domestic abuse for the first
18 or second time shall be fined not to exceed \$500 or be
19 imprisoned in the county jail not to exceed 6 months, or
20 both. On a third or subsequent conviction for domestic
21 abuse, the person convicted shall be fined not to exceed
22 \$50,000 or be imprisoned in the state prison for a term not
23 to exceed 5 years, or both.

24 ~~NEW-SECTION--SECTION-2--IMMUNITY--ANY-PEACE-OFFICER~~
25 ~~ACTING-IN-GOOD-FAITH--IN-MAKING--AN--ARREST--PURSUANT--TO~~

1 ~~46-6-401(2)--IS--IMMUNE--FROM--CIVIL--LIABILITY--THAT--MIGHT~~
 2 ~~OTHERWISE-RESULT-BY-REASON-OF-HIS-ACTION.~~

3 NEW SECTION. Section 2. Notice of rights. Whenever a
 4 peace officer arrests a person for domestic abuse, as
 5 defined in [section 1], if the victim is present, the
 6 officer shall advise the victim of the availability of a
 7 shelter or other services in the community and give the
 8 victim ~~immediate--notice--of--any--legal--rights--and--remedies~~
 9 ~~available--The--notice--must--include--furnishing--the--victim~~
 10 with a copy of the following statement NOTICE:

11 "IF YOU ARE THE VICTIM OF DOMESTIC ABUSE, the county
 12 attorney's office can file criminal charges against your
 13 abuser. You have the right to go to court and file a
 14 petition requesting any of the following orders for relief:

15 (1) an order restraining your abuser from abusing you;
 16 (2) an order directing your abuser to leave your
 17 household;

18 (3) an order preventing your abuser from transferring
 19 any property except in the usual course of business;

20 (4) an order awarding you or the other parent custody
 21 of or visitation with a minor child or children;

22 (5) an order restraining your abuser from molesting or
 23 interfering with minor children in your custody; or

24 (6) an order directing the party not granted custody
 25 to pay support of minor children or to pay support of the

1 other party if there is a legal obligation to do so".

2 Section 3. Section 46-6-105, MCA, is amended to read:

3 "46-6-105. Time of making arrest. An arrest may be
 4 made on any day and at any time of the day or night, except
 5 that a person cannot be arrested in his home or private
 6 dwelling place at night for a misdemeanor committed at some
 7 other time and place unless upon the direction of a
 8 magistrate endorsed upon a warrant of arrest. However, a
 9 person may be arrested in his home or private dwelling at
 10 night if he is being arrested pursuant to 46-6-401(2) for
 11 the offense of domestic abuse or aggravated assault against
 12 a family member or household member. A SUMMONS OF A PEACE
 13 OFFICER TO THE HOME OR PRIVATE DWELLING BY A FAMILY OR
 14 HOUSEHOLD MEMBER CONSTITUTES AN EXIGENT CIRCUMSTANCE FOR
 15 MAKING AN ARREST PURSUANT TO 46-6-401(2)."

16 Section 4. Section 46-6-401, MCA, is amended to read:

17 "46-6-401. Circumstances in which a peace officer may
 18 ~~make--an--arrest~~ makes arrests. (1) A peace officer may
 19 arrest a person when:

20 (1)(a) he has a warrant commanding that such person be
 21 arrested;

22 (2)(b) he believes on reasonable grounds that a
 23 warrant for the person's arrest has been issued in this
 24 state;

25 (3)(c) he believes on reasonable grounds that a felony

1 warrant for the person's arrest has been issued in another
2 jurisdiction; or

3 ~~†4(d)~~ he believes on reasonable grounds that the
4 person is committing an offense or that the person has
5 committed an offense and the existing circumstances require
6 his immediate arrest.

7 (2) A peace officer shall MAY SHALL arrest a person
8 anywhere, including his place of residence, if the peace
9 officer has probable cause to believe the person is
10 committing or has committed domestic abuse or aggravated
11 assault-against-a-family-member-or-household-member ANYTIME
12 WITHIN A 4-HOUR PERIOD PRIOR TO THE ARREST AND THAT THERE IS
13 A STRONG POSSIBILITY OF PUBLIC DANGER IF NO ARREST IS MADE,
14 even though the offense did not take place in the presence
15 of the peace officer. A-peace-officer-may-not-issue-a-notice
16 to-appear-in-lieu-of-arrest-under-this-subsection. A SUMMONS
17 OF A PEACE OFFICER TO A PLACE OF RESIDENCE BY A FAMILY OR
18 HOUSEHOLD MEMBER CONSTITUTES AN EXIGENT CIRCUMSTANCE FOR
19 MAKING AN ARREST."

20 Section 5. Section 46-9-302, MCA, is amended to read:

21 "46-9-302. Bail schedule for minor offenses --
22 acceptance by peace officer. (1) A justice of the peace or
23 city judge may, in his discretion, establish and post a
24 schedule of cash bail for offenses ~~not--amounting-to-a~~
25 felony, except for offenses amounting to felonies and the

1 offense of domestic abuse.

2 (2) A peace officer may accept bail in behalf of the
3 justice of the peace or city judge in accordance with the
4 schedule. In the event the peace officer accepts bail, he
5 shall give a signed receipt to the offender setting forth
6 the bail received. The peace officer shall then deliver the
7 bail to the justice of the peace or city judge before whom
8 the offender is to appear, and the justice of the peace or
9 city judge shall give a receipt to the peace officer for the
10 bail delivered."

11 NEW SECTION. Section 6. Severability. If a part of
12 this act is invalid, all valid parts that are severable from
13 the invalid part remain in effect. If a part of this act is
14 invalid in one or more of its applications, the part remains
15 in effect in all valid applications that are severable from
16 the invalid applications.

17 NEW SECTION. Section 7. Codification instruction.
18 Section 1 is intended to be codified as an integral part of
19 Title 45, and the provisions of Title 45 apply to section 1.

20 NEW SECTION. SECTION 8. EFFECTIVE DATE -- TERMINATION
21 TERMINATION DATE. THIS ACT IS EFFECTIVE JULY 1, 1985. THIS
22 ACT TERMINATES JULY 1, 1987.

-End-

CONFERENCE COMMITTEE REPORT

Report No. 1

APR. 23, 19.85

MR. SPEAKER

We, your FREE Conference Committee on

SENATE BILL NO. 449, reference COPY,

met and considered SENATE BILL NO. 449 in its entirety.

We recommend as follows:

1. Title, line 6. Strike: "REQUIRING" Insert: "PRESUMING"

2. Title, line 7. Strike: "CERTAIN"

3. Title, line 13. Strike: "AND A TERMINATION DATE"

4. Page 3. Following: line 2 Insert: "NEW SECTION. Section 2. Written report when no arrest made in domestic violence situation. When a peace officer is called to the scene of a reported incident of domestic violence but he does not make an arrest, he shall file a written report with the officer commanding the law enforcement agency employing him, setting forth the reason or reasons for his decision." Renumber: subsequent sections

Page 1 of 2 (CONTINUED)

And that this Conference Committee report be adopted.

FOR THE SENATE

REGAN CHM MAZUREK

GALT ADOPT REJECT

FOR THE HOUSE

BERGENE EUDAILY KEENAN WALDRON

Page 2 of 2 FCCSB 449

5. Page 3, line 10. Following: "with" Insert: "immediate notice of any legal rights and remedies available. The notice must include furnishing the victim with" Strike: "NOTICE" Insert: "statement"

6. Page 4, line 12. Following: "member" Insert: "or aggravated assault against a family member or household member"

7. Page 5, line 7. Strike: "SHALL" Insert: "may"

8. Page 5, lines 11 through 13. Strike: "ANYTIME WITHIN A 4-HOUR PERIOD PRIOR TO THE ARREST AND THAT THERE IS A STRONG POSSIBILITY OF PUBLIC DANGER IF NO ARREST IS MADE," Insert: "or aggravated assault against a family member or household member"

9. Page 5, line 19. Following: "ARREST." Insert: "Arrest is the preferred response in domestic abuse cases involving injury to the victim, use or threatened use of a weapon, violation of a restraining order, or other imminent danger to the victim."

10. Page 6, lines 20 through 22. Strike: section 8 in its entirety

FCCSB449

Handwritten signatures

CONFERENCE COMMITTEE REPORT

CORRECTS REPORT #4
Report No. 2

April 24 19 85

April 24 19 85

MR. SPEAKER

We, your FREE Conference Committee on

SENATE BILL NO. 449, reference copy - salmon

met and considered

SENATE BILL NO. 449 in its entirety

We recommend as follows:

1. Title, line 6.
Strike: "REQUIRING"
Insert: "PRESUMING"

2. Title, line 7.
Strike: "CERTAIN"

3. Title, line 13.
Strike: "AND A TERMINATION DATE"

4. Page 3, following line 2.
Insert: "NEW SECTION. Section 2. Written report when no arrest made in domestic violence situation. When a peace officer is called to the scene of a reported incident of domestic violence but he does not make an arrest, he shall file a written report with the officer commanding the law enforcement agency employing him, setting forth the reason or reasons for his decision."
Renumber: subsequent sections

CONTINUED
PAGE 1 OF 2

And that this Conference Committee report be adopted.

FOR THE SENATE

FOR THE HOUSE

[Signature]
Reagan, Chm.
[Signature]
Mazdrek
[Signature]
Galt

[Signature]
Bergene
[Signature]
Eudaily
[Signature]
Keenan
[Signature]
Waldron

ADOPT REJECT

FREE CONFERENCE COMMITTEE REPORT
SB 449
PAGE 2 OF 2

5. Page 3, line 10.
Following: "with"
Insert: "immediate notice of any legal rights and remedies available. The notice must include furnishing the victim with"
Strike: "NOTICE"
Insert: "statement"

6. Page 4, line 12.
Following: "member"
Insert: "or aggravated assault against a family member or household member"

7. Page 5, line 7.
Strike: "SHALL"
Insert: "may"

8. Page 5, lines 11 through 13.
Strike: "ANYTIME WITHIN A 4-HOUR PERIOD PRIOR TO THE ARREST AND THAT THERE IS A STRONG POSSIBILITY OF PUBLIC DANGER IF NO ARREST IS MADE,"
Insert: "or aggravated assault against a family member or household member"

9. Page 5, line 19.
Following: "ARREST."
Insert: "Arrest is the preferred response in domestic abuse cases involving injury to the victim, use or threatened use of a weapon, violation of a restraining order, or other imminent danger to the victim."

10. Page 6, line 20.
Strike: "-"

11. Page 6, lines 21 and 22.
Strike: "TERMINATION DATE"
Following: "1985."
Strike: "THIS" through "1987." on line 22.

1 SENATE BILL NO. 449

2 INTRODUCED BY REGAN, JACOBSON, ECK, BENGTSON, HARDING

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT DEFINING "DOMESTIC
5 ABUSE" AND PROVIDING THAT COMMISSION OF DOMESTIC ABUSE IS A
6 CRIMINAL OFFENSE; ~~REQUIRING AUTHORIZING~~ ~~REQUIRING~~ ~~PRESUMING~~
7 ARREST IN CERTAIN CASES OF DOMESTIC ABUSE; ~~PROVIDING-AN~~
8 ~~ARRESTING-OFFICER-WITH-IMMUNITY-FROM-CIVIL--LIABILITY--UNDER~~
9 ~~CERTAIN--CIRCUMSTANCES~~; PROHIBITING A PEACE OFFICER FROM
10 ACCEPTING BAIL ON BEHALF OF A JUSTICE OF THE PEACE WHEN A
11 PERSON IS ARRESTED FOR DOMESTIC ABUSE; AMENDING SECTIONS
12 46-6-105, 46-6-401, AND 46-9-302, MCA; AND PROVIDING AN
13 EFFECTIVE DATE AND-A-TERMINATION-DATE."

14
15 ~~WHEREAS, one of every two women in the United States~~
16 ~~will be abused during her lifetime; and~~

17 WHEREAS, recent studies conducted in states that have
18 adopted statutes requiring arrest in cases of domestic abuse
19 show a reduced rate of repeat violence; and

20 WHEREAS, arrest removes the abuser from the home so the
21 abuse will not continue.

22
23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

24 NEW SECTION. Section 1. Domestic abuse. (1) A person
25 commits the offense of domestic abuse if he:

1 (a) purposely or knowingly causes bodily injury to a
2 family member or household member; or

3 (b) purposely or knowingly causes reasonable
4 apprehension of bodily injury in a family member or
5 household member. The purpose to cause reasonable
6 apprehension or the knowledge that reasonable apprehension
7 would be caused shall be presumed in any case in which a
8 person knowingly points a firearm at or in the direction of
9 a family member or household member, whether or not the
10 offender believes the firearm to be loaded.

11 (2) For the purposes of this section and 46-6-401,
12 "family member or household member" means a spouse, former
13 spouse, ~~adult-person-related-by--blood--or--marriage~~, ADULT
14 PERSON RELATED BY BLOOD OR MARRIAGE, or adult person of the
15 opposite sex residing with the defendant or who formerly
16 resided with the defendant.

17 (3) A person convicted of domestic abuse for the first
18 or second time shall be fined not to exceed \$500 or be
19 imprisoned in the county jail not to exceed 6 months, or
20 both. On a third or subsequent conviction for domestic
21 abuse, the person convicted shall be fined not to exceed
22 \$50,000 or be imprisoned in the state prison for a term not
23 to exceed 5 years, or both.

24 ~~NEW SECTION, SECTION 2, IMMUNITY, ANY PEACE OFFICER~~
25 ~~ACTING IN GOOD FAITH IN MAKING AN ARREST PURSUANT TO~~



1 ~~46-6-401(2) IS IMMUNE FROM CIVIL LIABILITY THAT MIGHT~~
 2 ~~OTHERWISE RESULT BY REASON OF HIS ACTION.~~

3 NEW SECTION. SECTION 2. WRITTEN REPORT WHEN NO ARREST
 4 MADE IN DOMESTIC VIOLENCE SITUATION. WHEN A PEACE OFFICER
 5 IS CALLED TO THE SCENE OF A REPORTED INCIDENT OF DOMESTIC
 6 VIOLENCE BUT HE DOES NOT MAKE AN ARREST, HE SHALL FILE A
 7 WRITTEN REPORT WITH THE OFFICER COMMANDING THE LAW
 8 ENFORCEMENT AGENCY EMPLOYING HIM, SETTING FORTH THE REASON
 9 OR REASONS FOR HIS DECISION.

10 NEW SECTION. Section 3. Notice of rights. Whenever a
 11 peace officer arrests a person for domestic abuse, as
 12 defined in [section 1], if the victim is present, the
 13 officer shall advise the victim of the availability of a
 14 shelter or other services in the community and give the
 15 victim immediate--notice--of--any--legal--rights--and--remedies
 16 available. The notice must include--furnishing--the--victim
 17 with IMMEDIATE NOTICE OF ANY LEGAL RIGHTS AND REMEDIES
 18 AVAILABLE. THE NOTICE MUST INCLUDE FURNISHING THE VICTIM
 19 WITH a copy of the following statement NOTICE STATEMENT:

20 "IF YOU ARE THE VICTIM OF DOMESTIC ABUSE, the county
 21 attorney's office can file criminal charges against your
 22 abuser. You have the right to go to court and file a
 23 petition requesting any of the following orders for relief:
 24 (1) an order restraining your abuser from abusing you;
 25 (2) an order directing your abuser to leave your

1 household;

2 (3) an order preventing your abuser from transferring
 3 any property except in the usual course of business;

4 (4) an order awarding you or the other parent custody
 5 of or visitation with a minor child or children;

6 (5) an order restraining your abuser from molesting or
 7 interfering with minor children in your custody; or

8 (6) an order directing the party not granted custody
 9 to pay support of minor children or to pay support of the
 10 other party if there is a legal obligation to do so".

11 Section 4. Section 46-6-105, MCA, is amended to read:

12 "46-6-105. Time of making arrest. An arrest may be
 13 made on any day and at any time of the day or night, except
 14 that a person cannot be arrested in his home or private
 15 dwelling place at night for a misdemeanor committed at some
 16 other time and place unless upon the direction of a
 17 magistrate endorsed upon a warrant of arrest. However, a
 18 person may be arrested in his home or private dwelling at
 19 night if he is being arrested pursuant to 46-6-401(2) for
 20 the offense of domestic abuse or aggravated assault against
 21 a family member or household member OR AGGRAVATED ASSAULT
 22 AGAINST A FAMILY MEMBER OR HOUSEHOLD MEMBER. A SUMMONS OF A
 23 PEACE OFFICER TO THE HOME OR PRIVATE DWELLING BY A FAMILY OR
 24 HOUSEHOLD MEMBER CONSTITUTES AN EXIGENT CIRCUMSTANCE FOR
 25 MAKING AN ARREST PURSUANT TO 46-6-401(2)."

1 Section 5. Section 46-6-401, MCA, is amended to read:

2 "46-6-401. Circumstances in which a peace officer may
3 ~~make--an--arrest~~ makes arrests. (1) A peace officer may
4 arrest a person when:

5 {1}(a) he has a warrant commanding that such person be
6 arrested;

7 {2}(b) he believes on reasonable grounds that a
8 warrant for the person's arrest has been issued in this
9 state;

10 {3}(c) he believes on reasonable grounds that a felony
11 warrant for the person's arrest has been issued in another
12 jurisdiction; or

13 {4}(d) he believes on reasonable grounds that the
14 person is committing an offense or that the person has
15 committed an offense and the existing circumstances require
16 his immediate arrest.

17 (2) A peace officer shall MAY SHABB MAY arrest a
18 person anywhere, including his place of residence, if the
19 peace officer has probable cause to believe the person is
20 committing or has committed domestic abuse or aggravated
21 assault against a family member or household member ANYTIME
22 WITHIN A 4 HOUR PERIOD PRIOR TO THE ARREST AND THAT THERE IS
23 A STRONG POSSIBILITY OF PUBLIC DANGER IF NO ARREST IS MADE
24 OR AGGRAVATED ASSAULT AGAINST A FAMILY MEMBER OR HOUSEHOLD
25 MEMBER even though the offense did not take place in the

1 presence of the peace officer. A peace officer may not issue
2 a notice to appear in lieu of arrest under this subsection.
3 A SUMMONS OF A PEACE OFFICER TO A PLACE OF RESIDENCE BY A
4 FAMILY OR HOUSEHOLD MEMBER CONSTITUTES AN EXIGENT
5 CIRCUMSTANCE FOR MAKING AN ARREST. ARREST IS THE PREFERRED
6 RESPONSE IN DOMESTIC ABUSE CASES INVOLVING INJURY TO THE
7 VICTIM, USE OR THREATENED USE OF A WEAPON, VIOLATION OF A
8 RESTRAINING ORDER, OR OTHER IMMINENT DANGER TO THE VICTIM."

9 Section 6. Section 46-9-302, MCA, is amended to read:

10 "46-9-302. Bail schedule for minor offenses --
11 acceptance by peace officer. (1) A justice of the peace or
12 city judge may, in his discretion, establish and post a
13 schedule of cash bail for offenses not--amounting-to-a
14 felony, except for offenses amounting to felonies and the
15 offense of domestic abuse.

16 (2) A peace officer may accept bail in behalf of the
17 justice of the peace or city judge in accordance with the
18 schedule. In the event the peace officer accepts bail, he
19 shall give a signed receipt to the offender setting forth
20 the bail received. The peace officer shall then deliver the
21 bail to the justice of the peace or city judge before whom
22 the offender is to appear, and the justice of the peace or
23 city judge shall give a receipt to the peace officer for the
24 bail delivered."

25 NEW SECTION. Section 7. Severability. If a part of

1 this act is invalid, all valid parts that are severable from
2 the invalid part remain in effect. If a part of this act is
3 invalid in one or more of its applications, the part remains
4 in effect in all valid applications that are severable from
5 the invalid applications.

6 NEW SECTION. Section 8. Codification instruction.
7 Section 1 is intended to be codified as an integral part of
8 Title 45, and the provisions of Title 45 apply to section 1.

9 NEW SECTION. SECTION 9. EFFECTIVE DATE ---TERMINATION
10 TERMINATION-DATE. THIS ACT IS EFFECTIVE JULY 1, 1985. THIS
11 ACT-TERMINATES-JULY-17-1987.

-End-