

HOUSE BILL NO. 97  
INTRODUCED BY KILPATRICK, SPAETH

IN THE HOUSE

JANUARY 10, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
JANUARY 11, 1989	FIRST READING.
JANUARY 26, 1989	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
JANUARY 27, 1989	PRINTING REPORT.
JANUARY 28, 1989	SECOND READING, DO PASS.
JANUARY 30, 1989	ENGROSSING REPORT.
JANUARY 31, 1989	THIRD READING, PASSED. AYES, 95; NOES, 3.
	TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 2, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
MARCH 6, 1989	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
MARCH 7, 1989	SECOND READING, CONCURRED IN.
MARCH 9, 1989	THIRD READING, CONCURRED IN. AYES, 47; NOES, 0.
	RETURNED TO HOUSE.

IN THE HOUSE

MARCH 10, 1989

RECEIVED FROM SENATE.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 House BILL NO. 97  
2 INTRODUCED BY Reardon Smith  
3

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GRANT CITY COURTS  
5 JURISDICTION TO ISSUE TEMPORARY RESTRAINING ORDERS WHEN A  
6 PETITIONER ALLEGES PHYSICAL ABUSE, HARM, OR BODILY INJURY BY  
7 A FAMILY OR HOUSEHOLD MEMBER; AND AMENDING SECTIONS  
8 3-10-301, 40-4-122 THROUGH 40-4-125, MCA."  
9

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

11 **Section 1.** Section 3-10-301, MCA, is amended to read:

12 "3-10-301. Civil jurisdiction. (1) Except as provided  
13 in subsection (2) and in 3-11-103, the justices' courts have  
14 jurisdiction:

15 (a) in actions arising on contract for the recovery of  
16 money only if the sum claimed does not exceed \$3,500,  
17 exclusive of court costs;

18 (b) in actions for damages not exceeding \$3,500,  
19 exclusive of court costs, for taking, detaining, or injuring  
20 personal property or for injury to real property when no  
21 issue is raised by the verified answer of the defendant  
22 involving the title to or possession of the real property;

23 (c) in actions for damages not exceeding \$3,500,  
24 exclusive of court costs, for injury to the person, except  
25 that, in actions for false imprisonment, libel, slander,

1 criminal conversation, seduction, malicious prosecution,  
2 determination of paternity, and abduction, the justice of  
3 the peace does not have jurisdiction;

4 (d) in actions to recover the possession of personal  
5 property if the value of the property does not exceed  
6 \$3,500;

7 (e) in actions for a fine, penalty, or forfeiture not  
8 exceeding \$3,500, imposed by a statute or an ordinance of an  
9 incorporated city or town when no issue is raised by the  
10 answer involving the legality of any tax, impost,  
11 assessment, toll, or municipal fine;

12 (f) in actions upon bonds or undertakings conditioned  
13 for the payment of money when the sum claimed does not  
14 exceed \$3,500, though the penalty may exceed that sum;

15 (g) to take and enter judgment for the recovery of  
16 money on the confession of a defendant when the amount  
17 confessed does not exceed \$3,500, exclusive of court costs;

18 (h) to issue temporary restraining orders as provided  
19 in 40-4-121(3).

20 (2) Justices' courts do not have jurisdiction in civil  
21 actions that might result in a judgment against the state  
22 for the payment of money."

23 **Section 2.** Section 40-4-122, MCA, is amended to read:

24 "40-4-122. Forms -- distribution -- filing. The  
25 attorney general shall prepare uniform sample instructions

and petition and order forms necessary for allowing an applicant to obtain a temporary restraining order under 40-4-121 and uniform sample affidavits and orders of inability to pay filing fees or other costs. The attorney general shall distribute samples of the restraining order and the inability-to-pay-filing-fees order forms to the clerk of the district court in each county and to justice, city, and municipal courts. The clerk of the district court, justices of the peace, city, and municipal courts shall make forms available to the public at no charge."

**Section 3.** Section 40-4-123, MCA, is amended to read:

"40-4-123. Jurisdiction and venue. (1) District courts, municipal courts, and justices' courts, and city courts have concurrent jurisdiction to hear and issue orders under 40-4-121(3).

(2) The municipal judge, or justice of the peace, or city court judge 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 40-4-121(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."

**Section 4.** Section 40-4-124, MCA, is amended to read:

"40-4-124. Review or removal -- district court. (1) An order issued by a municipal court, or justice court, or city court pursuant to 40-4-121(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, or city court made pursuant to 40-4-121(3).

(2) Any case in which an order has been issued by a municipal court, or justice court, or city court pursuant to 40-4-121(3) may be removed to district court upon filing of a notice of removal."

**Section 5.** Section 40-4-125, MCA, is amended to read:

"40-4-125. Registration of orders. (1) The clerk of court, justice of the peace, or municipal court judge, or city court judge shall, within 24 hours of receiving proof of service of an order under 40-4-121, mail a copy of the order or any extension, modification, or termination thereof

1 along with a copy of the proof of service to the appropriate  
2 law enforcement agencies designated in the order.

3 (2) Law enforcement agencies shall establish  
4 procedures, using an existing system for warrant  
5 verification, to ensure that peace officers at the scene of  
6 an alleged violation of a protective order are informed of  
7 the existence and terms of such order."

-End-

APPROVED BY COMMITTEE  
ON JUDICIARY

## HOUSE BILL NO. 97

INTRODUCED BY KILPATRICK, SPAETH

A BILL FOR AN ACT ENTITLED: "AN ACT TO GRANT CITY COURTS JURISDICTION TO ISSUE TEMPORARY RESTRAINING ORDERS WHEN A PETITIONER ALLEGES PHYSICAL ABUSE, HARM, OR BODILY INJURY BY A FAMILY OR HOUSEHOLD MEMBER; AND AMENDING SECTIONS 3-10-301, AND 40-4-122 THROUGH 40-4-125, MCA."

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

**Section 1.** Section 3-10-301, MCA, is amended to read:

"3-10-301. Civil jurisdiction. (1) Except as provided in subsection (2) and in 3-11-103, the justices' courts have jurisdiction:

(a) in actions arising on contract for the recovery of money only if the sum claimed does not exceed \$3,500, exclusive of court costs;

(b) in actions for damages not exceeding \$3,500, exclusive of court costs, for taking, detaining, or injuring personal property or for injury to real property when no issue is raised by the verified answer of the defendant involving the title to or possession of the real property;

(c) in actions for damages not exceeding \$3,500, exclusive of court costs, for injury to the person, except that, in actions for false imprisonment, libel, slander,

criminal conversation, seduction, malicious prosecution, determination of paternity, and abduction, the justice of the peace does not have jurisdiction;

(d) in actions to recover the possession of personal property if the value of the property does not exceed \$3,500;

(e) in actions for a fine, penalty, or forfeiture not exceeding \$3,500, imposed by a statute or an ordinance of an incorporated city or town when no issue is raised by the answer involving the legality of any tax, impost, assessment, toll, or municipal fine;

(f) in actions upon bonds or undertakings conditioned for the payment of money when the sum claimed does not exceed \$3,500, though the penalty may exceed that sum;

(g) to take and enter judgment for the recovery of money on the confession of a defendant when the amount confessed does not exceed \$3,500, exclusive of court costs;

(h) to issue temporary restraining orders as provided in 40-4-121(3).

(2) Justices' courts do not have jurisdiction in civil actions that might result in a judgment against the state for the payment of money."

**Section 2.** Section 40-4-122, MCA, is amended to read:

"40-4-122. Forms -- distribution -- filing. The attorney general shall prepare uniform sample instructions

and petition and order forms necessary for allowing an applicant to obtain a temporary restraining order under 40-4-121 and uniform sample affidavits and orders of inability to pay filing fees or other costs. The attorney general shall distribute samples of the restraining order and the inability-to-pay-filing-fees order forms to the clerk of the district court in each county and to justice, city, and municipal courts. The clerk of the district court, justices of the peace, city, and municipal courts shall make forms available to the public at no charge."

**Section 3.** Section 40-4-123, MCA, is amended to read:

"40-4-123. Jurisdiction and venue. (1) District courts, municipal courts, and justices' courts, and city courts have concurrent jurisdiction to hear and issue orders under 40-4-121(3).

(2) The municipal judge, or justice of the peace, or city court judge 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 40-4-121(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."

**Section 4.** Section 40-4-124, MCA, is amended to read:

"40-4-124. Review or removal -- district court. (1) An order issued by a municipal court, or justice court, or city court pursuant to 40-4-121(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, or city court made pursuant to 40-4-121(3).

(2) Any case in which an order has been issued by a municipal court, or justice court, or city court pursuant to 40-4-121(3) may be removed to district court upon filing of a notice of removal."

**Section 5.** Section 40-4-125, MCA, is amended to read:

"40-4-125. Registration of orders. (1) The clerk of court, justice of the peace, or municipal court judge, or city court judge shall, within 24 hours of receiving proof of service of an order under 40-4-121, mail a copy of the order or any extension, modification, or termination thereof

1 along with a copy of the proof of service to the appropriate  
2 law enforcement agencies designated in the order.

3 (2) Law enforcement agencies shall establish  
4 procedures, using an existing system for warrant  
5 verification, to ensure that peace officers at the scene of  
6 an alleged violation of a protective order are informed of  
7 the existence and terms of such order."

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