## 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

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MARCH 10, 1989

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RECEIVED FROM SENATE.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

LC 0629/01

House BILL NO. 97 1 2 INTRODUCED BY 3

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, 40-4-122 THROUGH 40-4-125, MCA."

9

10 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:

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 involving the title to or possession of the real property; 22 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,

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criminal conversation, seduction, malicious prosecution,
 determination of paternity, and abduction, the justice of
 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<u>;</u>

(h) to issue temporary restraining orders as provided
 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

-2- INTRODUCED BILL H& 97

#### LC 0629/01

and petition and order forms necessary for allowing an 1 2 applicant to obtain a temporary restraining order under 3 40-4-121 and uniform sample affidavits and orders of inability to pay filing fees or other costs. The attorney 4 5 general shall distribute samples of the restraining order and the inability-to-pay-filing-fees order forms to the 6 7 clerk of the district court in each county and to justice, city, and municipal courts. The clerk of the district court, 8 9 justices of the peace, city, and municipal courts shall make forms available to the public at no charge." 10

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 16 city court judge shall on motion suspend all further 17 proceedings in the action and certify the pleading and any 18 19 orders to the clerk of the district court of the county where the action was begun if an action for declaration of 20 21 invalidity of a marriage, legal separation, or dissolution 22 of marriage, or child custody is pending between the 23 parties. From the time of the certification of such pleadings and any orders to the clerk, the district court 24 25 has the same jurisdiction over the action as if it had been 1 commenced therein.

2 (3) An action brought under 40-4-121(3) may be tried
3 in the county in which either party resides or in which the
4 physical abuse was committed.

5 (4) The right to petition for relief may not be denied 6 because the plaintiff has vacated the residence or household 7 to avoid abuse."

Section 4. Section 40-4-124, MCA, is amended to read: 8 "40-4-124. Review or removal -- district court. (1) An 9 order issued by a municipal court, or justice court, or city 10 court pursuant to 40-4-121(3) is immediately reviewable by 11 the judge of the district court at chambers upon the filing 12 of a notice of appeal. The district judge may affirm, 13 dissolve, or modify an order of a municipal court, or 14 justice court, or city court made pursuant to 40-4-121(3). 15 (2) Any case in which an order has been issued by a 16 municipal court, or justice court, or city court pursuant to 17 40-4-121(3) may be removed to district court upon filing of 18 a notice of removal." 19

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
<u>city court judge</u> 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

LC 0629/01

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

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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-

#### 51st Legislature

HB 0097/02

## APPROVED BY COMMITTEE ON JUDICIARY

1	HOUSE BILL NO. 97	
2	INTRODUCED BY KILPATRICK, SPAETH	
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	3-10-3017 AND 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,	

HOUCE BLL NO 07

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

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

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

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

(g) to take and enter judgment for the recovery of 15 money on the confession of a defendant when the amount 16 17 confessed does not exceed \$3,500, exclusive of court costs; (h) to issue temporary restraining orders as provided 18

19 in 40-4-121(3).

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

Section 2. Section 40-4-122, MCA, is amended to read: 23 "40-4-122. Forms -- distribution -- filing. The 24 attorney general shall prepare uniform sample instructions 25



-2-

SECOND READING

HB 97

1 and petition and order forms necessary for allowing an 2 applicant to obtain a temporary restraining order under 3 40-4-121 and uniform sample affidavits and orders of 4 inability to pay filing fees or other costs. The attorney 5 general shall distribute samples of the restraining order and the inability-to-pay-filing-fees order forms to the 6 7 clerk of the district court in each county and to justice, 8 city, and municipal courts. The clerk of the district court, 9 justices of the peace, city, and municipal courts shall make 10 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).

16 (2) The municipal judge, or justice of the peace, or 17 city court judge shall on motion suspend all further 18 proceedings in the action and certify the pleading and any 19 orders to the clerk of the district court of the county 20 where the action was begun if an action for declaration of 21 invalidity of a marriage, legal separation, or dissolution 22 of marriage, or child custody is pending between the 23 parties. From the time of the certification of such pleadings and any orders to the clerk, the district court 24 25 has the same jurisdiction over the action as if it had been HB 0097/02

1 commenced therein.

2 (3) An action brought under 40-4-121(3) may be tried
3 in the county in which either party resides or in which the
4 physical abuse was committed.

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

8 Section 4. Section 40-4-124, MCA, is amended to read: 9 "40-4-124. Review or removal -- district court. (1) An 10 order issued by a municipal court, or justice court, or city 11 court pursuant to 40-4-121(3) is immediately reviewable by 12 the judge of the district court at chambers upon the filing 13 of a notice of appeal. The district judge may affirm, 14 dissolve, or modify an order of a municipal court, or 15 justice court, or city court made pursuant to 40-4-121(3). 16 (2) Any case in which an order has been issued by a 17 municipal court, or justice court, or city court pursuant to 18 40-4-121(3) may be removed to district court upon filing of 19 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.

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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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1	HOUSE BILL NO. 97	1	criminal conversation, seduction, malicious prosecution,
2	INTRODUCED BY KILPATRICK, SPAETH	2	determination of paternity, and abduction, the justice of
3		3	the peace does not have jurisdiction;
4	A BILL FOR AN ACT ENTITLED: "AN ACT TO GRANT CITY COURTS	4	(d) in actions to recover the possession of personal
5	JURISDICTION TO ISSUE TEMPORARY RESTRAINING ORDERS WHEN A	5	property if the value of the property does not exceed
6	PETITIONER ALLEGES PHYSICAL ABUSE, HARM, OR BODILY INJURY BY	б	\$3,500;
7	A FAMILY OR HOUSEHOLD MEMBER; AND AMENDING SECTIONS	7	(e) in actions for a fine, penalty, or forfeiture not
8	3-10-3017 AND 40-4-122 THROUGH 40-4-125, MCA."	8	exceeding \$3,500, imposed by a statute or an ordinance of an
9		9	incorporated city or town when no issue is raised by the
10	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:	10	answer involving the legality of any tax, impost,
11	Section 1. Section 3-10-301, MCA, is amended to read:	11	assessment, toll, or municipal fine;
12	"3-10-301. Civil jurisdiction. (1) Except as provided	12	(f) in actions upon bonds or undertakings conditioned
13	in subsection (2) and in 3-11-103, the justices' courts have	13	for the payment of money when the sum claimed does not
14	jurisdiction:	14	exceed \$3,500, though the penalty may exceed that sum;
15	(a) in actions arising on contract for the recovery of	15	(g) to take and enter judgment for the recovery of
16	money only if the sum claimed does not exceed \$3,500,	16	money on the confession of a defendant when the amount
17	exclusive of court costs;	17	confessed does not exceed \$3,500, exclusive of court costs;
18	(b) in actions for damages not exceeding \$3,500,	18	(h) to issue temporary restraining orders as provided
19	exclusive of court costs, for taking, detaining, or injuring	19	<u>in 40-4-121(3)</u> .
20	personal property or for injury to real property when no	20	(2) Justices' courts do not have jurisdiction in civil
21	issue is raised by the verified answer of the defendant	21	actions that might result in a judgment against the state
22	involving the title to or possession of the real property;	22	for the payment of money."
23	(c) in actions for damages not exceeding \$3,500,	23	Section 2. Section 40-4-122, MCA, is amended to read:
24	exclusive of court costs, for injury to the person, except	24	"40-4-122. Forms distribution filing. The
25	that, in actions for false imprisonment, libel, slander,	25	attorney general shall prepare uniform sample instructions

tana Legislative Council

- 2 -

THIRD READING

HB 97

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HB 0097/02

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-End-

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1 HOUSE BILL NO. 97 2 INTRODUCED BY KILPATRICK, SPAETH 3 A BILL FOR AN ACT ENTITLED: "AN ACT TO GRANT CITY COURTS 4 JURISDICTION TO ISSUE TEMPORARY RESTRAINING ORDERS WHEN A 5 PETITIONER ALLEGES PHYSICAL ABUSE, HARM, OR BODILY INJURY BY б A FAMILY OR HOUSEHOLD MEMBER; AND AMENDING 7 SECTIONS 8 3-10-3017 AND 40-4-122 THROUGH 40-4-125, MCA." 9 10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: Section 1. Section 3-10-301, MCA, is amended to read: 11 "3-10-301. Civil jurisdiction. (1) Except as provided 12 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 money only if the sum claimed does not exceed \$3,500, 16 17 exclusive of court costs; 18 (b) in actions for damages not exceeding \$3,500, exclusive of court costs, for taking, detaining, or injuring 19 personal property or for injury to real property when no 20 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,

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-2-

HB 97

REFERENCE BILL

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-End-

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