

SENATE BILL NO. 406  
INTRODUCED BY BARTLETT

IN THE SENATE

FEBRUARY 15, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
FEBRUARY 20, 1993	COMMITTEE RECOMMEND BILL DO PASS. REPORT ADOPTED.
FEBRUARY 22, 1993	PRINTING REPORT.
	SECOND READING, DO PASS.
FEBRUARY 23, 1993	ENGROSSING REPORT.
	THIRD READING, PASSED. AYES, 48; NOES, 1.
	TRANSMITTED TO HOUSE.

IN THE HOUSE

FEBRUARY 23, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
MARCH 19, 1993	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 29, 1993	SECOND READING, CONCURRED IN AS AMENDED.
MARCH 31, 1993	THIRD READING, CONCURRED IN. AYES, 96; NOES, 2.
	RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

APRIL 6, 1993	SECOND READING, AMENDMENTS CONCURRED IN.
APRIL 7, 1993	THIRD READING, AMENDMENTS CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 Senate BILL NO. 406  
2 INTRODUCED BY Cortez  
3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT EXPANDING THE TEMPORARY  
5 RESTRAINING ORDER LAWS AND THE CRIMINAL LAWS THAT PROTECT  
6 PERSONS AGAINST DOMESTIC ABUSE; DEFINING "FAMILY MEMBER" FOR  
7 PURPOSES OF BOTH AREAS OF LAW; APPLYING BOTH AREAS OF LAW TO  
8 PARTNERS; DEFINING THE TERM "PARTNERS"; APPLYING THE  
9 PROTECTIONS IN THE TEMPORARY RESTRAINING ORDER LAWS TO ALL  
10 FAMILY MEMBERS; AND AMENDING SECTIONS 40-4-121, 45-5-206,  
11 46-6-311, 46-6-602, AND 46-9-302, MCA."

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

14 **Section 1.** Section 40-4-121, MCA, is amended to read:

15 "40-4-121. Temporary order or temporary injunction. (1)  
16 In a proceeding for dissolution of marriage or for legal  
17 separation or in a proceeding for disposition of property or  
18 for maintenance or support following dissolution of the  
19 marriage by a court which lacked personal jurisdiction over  
20 the absent spouse, either party may move for temporary  
21 maintenance or temporary support of a child of the marriage  
22 entitled to support. The motion ~~shall~~ must be accompanied by  
23 an affidavit setting forth the factual basis for the motion  
24 and the amounts requested.

25 (2) As a part of a motion for temporary maintenance or

1 support or by independent motion accompanied by affidavit,  
2 either party may request the court to issue a temporary  
3 injunction for any of the following relief:

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

10 (b) enjoining a party from molesting or disturbing the  
11 peace of the other party or of any child family member;

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

15 (d) enjoining a party from removing a child from the  
16 jurisdiction of the court; and

17 (e) ordering a party to complete counseling, including  
18 alcohol or chemical dependency counseling or treatment; and

19 ~~(e)(f)~~ (f) providing other injunctive relief proper in the  
20 circumstances.

21 (3) A person may seek the relief provided for in  
22 subsection (2) ~~of this section~~ without filing a petition  
23 under this part for a dissolution of marriage or legal  
24 separation by filing a verified petition:

25 (a) alleging physical abuse, harm, or bodily injury

1 against the petitioner by a family or--household member or  
 2 partner or the threat of physical abuse, harm, or bodily  
 3 injury against the petitioner by a family or--household  
 4 member or partner that causes the petitioner to reasonably  
 5 believe that the offender has the present ability to execute  
 6 the threat; and

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

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

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

25 (6) At the time of the hearing, the court shall

1 determine whether good cause exists for the injunction to  
 2 continue for 1 year.

3 (7) If the court determines on the basis of a party's  
 4 history of violence and the testimony presented at the  
 5 hearing that the other party needs permanent protection or  
 6 may otherwise suffer permanent injury or harm, the court may  
 7 order that the injunction be effective permanently.

8 (8) A permanent injunction may be issued by a district  
 9 court with jurisdiction over the parties to a dissolution  
 10 proceeding upon presentation of evidence of a party's  
 11 history of violence showing that the other party may suffer  
 12 permanent injury or harm if a permanent injunction is not  
 13 issued.

14 (9) Restraining orders issued under this section may  
 15 restrain the petitioner's actions only if the court finds  
 16 that the petitioner, in addition to the respondent, has  
 17 engaged in abusive or assaultive behavior as described by  
 18 subsection (3)(a).

19 (10) On the basis of the showing made and in  
 20 conformity with 40-4-203 and 40-4-204, the court may issue a  
 21 temporary injunction and an order for temporary maintenance  
 22 or support in amounts and on terms just and proper in the  
 23 circumstance.

24 (11) A temporary order or temporary injunction or  
 25 permanent injunction:

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

(b) may be revoked or modified before final decree on a showing by affidavit of the facts necessary to revocation or modification of a final decree under 40-4-208 or order under Title 27, chapter 19, part 3, as appropriate;

(c)(b) terminates upon order of the court or ~~when a final decree is entered or~~ when a the petition for ~~dissolution or legal separation~~ is voluntarily dismissed; and

(d)(c) when issued under this section must conspicuously bear the following: "Violation of this order is a criminal offense under 45-5-626."

(e)(12) When the petitioner has fled the parties' residence, notice of petitioner's new residence must be withheld except by order of the court for good cause shown.

(13) As used in this section the following definitions apply:

(a) "Bodily injury" means physical pain, illness, or any impairment of physical condition and includes mental illness or impairment.

(b) "Family member" means mothers, fathers, children, brothers, sisters, and other past or present family members of a household. These relationships include relationships

created by adoption and remarriage, including stepchildren, stepparents, and adoptive children and parents. These relationships continue regardless of the ages of the parties and whether the parties reside in the same household.

(c) "Partner" means spouses, former spouses, and persons who have been or are currently in a dating or ongoing intimate relationship with a person of the opposite sex."

**Section 2.** Section 45-5-206, MCA, is amended to read:

**"45-5-206. Domestic abuse.** (1) A person commits the offense of domestic abuse if he the person:

(a) purposely or knowingly causes bodily injury to a family member or ~~household-member partner;~~ or

(b) negligently causes bodily injury to a family member or partner with a weapon; or

(b)(c) purposely or knowingly causes reasonable apprehension of bodily injury in a family member or ~~household-member partner.~~ The purpose to cause reasonable apprehension or the knowledge that reasonable apprehension would be caused must 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 partner,~~ whether or not the offender believes the firearm to be loaded.

(2) For the purposes of 46-6-311 and this section, ~~"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; the following  
definitions apply:

(a) "Family member" means mothers, fathers, children,  
brothers, sisters, and other past or present family members  
of a household. These relationships include relationships  
created by adoption and remarriage, including stepchildren,  
stepparents, and adoptive children and parents. These  
relationships continue regardless of the ages of the parties  
and whether the parties reside in the same household.

(b) "Partner" means spouses, former spouses, and  
persons who have been or are currently in a dating or  
ongoing intimate relationship with a person of the opposite  
sex.

(3) A person convicted of domestic abuse for the first  
 or second time shall be fined not to exceed \$500 \$1,000 or  
 be imprisoned in the county jail not to exceed 6--months 1  
year, or both. On a third or subsequent conviction for  
 domestic abuse, the person convicted shall be fined not to  
 exceed less than \$500 and not more than \$50,000 or and be  
 imprisoned in the county jail or in the state prison for a  
 term not to--exceed less than 10 days and not more than 5  
 years, or both.

(4) (a) A person convicted of domestic abuse ~~for--the~~

first--or--second--time shall be required to pay for and  
 complete at least 6 months of counseling, totaling at least  
 25 hours:

(i) with a person licensed under Title 37, chapter 3,  
 17, 22, or 23;

(ii) with a professional person as defined in 53-21-102;  
 or

(iii) in a specialized domestic violence intervention  
 program.

(b) The counseling provided in subsection (4)(a) must  
 be directed to the violent conduct of the convicted person.  
 Subsection (4)(a) does not prohibit the placement of the  
 convicted person in other appropriate treatment if the court  
 determines there is no available treatment program directed  
 to the violent conduct of the convicted person.

(c) Upon completion of the minimum counseling  
requirements, the counselor shall notify the court that the  
defendant has completed the minimum counseling requirements  
and shall provide the court with a recommendation as to  
whether or not the defendant requires additional counseling.  
Upon recommendation of the counselor and direction of the  
court, the defendant may be required to pay for and complete  
additional counseling or treatment, such as chemical  
dependency treatment, or both.

(5) Willful failure to obtain or pay for counseling

ordered under this section is a civil contempt of court."

**Section 3.** Section 46-6-311, MCA, is amended to read:

"46-6-311. **Basis for arrest without warrant.** (1) A peace officer may arrest a person when no a warrant has not been issued if the officer has probable cause to believe that the person is committing an offense or that the person has committed an offense and existing circumstances require immediate arrest.

(2) The summoning of a peace officer to a place of residence by a family member or household-member partner constitutes an exigent circumstance for making an arrest. 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."

**Section 4.** Section 46-6-602, MCA, is amended to read:

"46-6-602. **Notice of rights to victim upon arrest in domestic violence situation.** Whenever a peace officer arrests a person for domestic abuse, as defined in 45-5-206, 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 a family member or partner, as defined in 45-5-206; 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 5.** Section 46-9-302, MCA, is amended to read:

"46-9-302. **Bail schedule -- acceptance by peace officer.** (1) A judge may establish and post a schedule of bail for offenses over which the judge has original jurisdiction. A person may not be released on bail without first appearing before the judge when the offense is domestic abuse or any assault against a family member or a household-member partner, as defined in 45-5-206.

1       (2) A peace officer may accept bail on behalf of a  
2 judge:  
3       (a) in accordance with the bail schedule established  
4 under subsection (1); or  
5       (b) whenever the warrant of arrest specifies the amount  
6 of bail.  
7       (3) Whenever a peace officer accepts bail, the officer  
8 shall give a signed receipt to the offender setting forth  
9 the bail received. The peace officer shall then deliver the  
10 bail to the judge before whom the offender is to appear, and  
11 the judge shall give a receipt to the peace officer for the  
12 bail delivered."

-End-



STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0406, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

Expands the temporary restraining order laws and the criminal laws that protect persons against domestic abuse; defining "family member" and "partners" for purposes of both areas of law; increases the maximum fine for first and second convictions of domestic abuse and increases the minimum fine for third and subsequent convictions.

ASSUMPTIONS:

1. The bill will have no material fiscal impact on state agencies.

FISCAL IMPACT:

No material impact for state agencies.

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

There may be an increase in fines and forfeitures revenue for local governments because of increases in minimum/maximum fines. The potential revenue impact is not subject to accurate estimate.

Dave Lewis 2.20.93  
DAVID LEWIS, BUDGET DIRECTOR DATE  
Office of Budget and Program Planning

Sue Bartlett 2/22/93  
SUE BARTLETT, PRIMARY SPONSOR DATE

Fiscal Note for SB0406, as introduced

SB 406

APPROVED BY COMMITTEE  
ON JUDICIARY

1 Senate BILL NO. 406  
2 INTRODUCED BY Cartel  
3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT EXPANDING THE TEMPORARY  
5 RESTRAINING ORDER LAWS AND THE CRIMINAL LAWS THAT PROTECT  
6 PERSONS AGAINST DOMESTIC ABUSE; DEFINING "FAMILY MEMBER" FOR  
7 PURPOSES OF BOTH AREAS OF LAW; APPLYING BOTH AREAS OF LAW TO  
8 PARTNERS; DEFINING THE TERM "PARTNERS"; APPLYING THE  
9 PROTECTIONS IN THE TEMPORARY RESTRAINING ORDER LAWS TO ALL  
10 FAMILY MEMBERS; AND AMENDING SECTIONS 40-4-121, 45-5-206,  
11 46-6-311, 46-6-602, AND 46-9-302, MCA."  
12  
13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
14 **Section 1.** Section 40-4-121, MCA, is amended to read:  
15 "40-4-121. Temporary order or temporary injunction. (1)  
16 In a proceeding for dissolution of marriage or for legal  
17 separation or in a proceeding for disposition of property or  
18 for maintenance or support following dissolution of the  
19 marriage by a court which lacked personal jurisdiction over  
20 the absent spouse, either party may move for temporary  
21 maintenance or temporary support of a child of the marriage  
22 entitled to support. The motion ~~shall~~ must be accompanied by  
23 an affidavit setting forth the factual basis for the motion  
24 and the amounts requested.  
25 (2) As a part of a motion for temporary maintenance or

1 support or by independent motion accompanied by affidavit,  
2 either party may request the court to issue a temporary  
3 injunction for any of the following relief:  
4 (a) restraining any person from transferring,  
5 encumbering, concealing, or otherwise disposing of any  
6 property except in the usual course of business or for the  
7 necessities of life and, if so restrained, requiring him the  
8 person to notify the moving party of any proposed  
9 extraordinary expenditures made after the order is issued;  
10 (b) enjoining a party from molesting or disturbing the  
11 peace of the other party or of any child family member;  
12 (c) excluding a party from the family home or from the  
13 home of the other party upon a showing that physical or  
14 emotional harm would otherwise result;  
15 (d) enjoining a party from removing a child from the  
16 jurisdiction of the court; and  
17 (e) ordering a party to complete counseling, including  
18 alcohol or chemical dependency counseling or treatment; and  
19 ~~(e)(f)~~ providing other injunctive relief proper in the  
20 circumstances.  
21 (3) A person may seek the relief provided for in  
22 subsection (2) ~~of--this--section~~ without filing a petition  
23 under this part for a dissolution of marriage or legal  
24 separation by filing a verified petition:  
25 (a) alleging physical abuse, harm, or bodily injury

against the petitioner by a family or--household member or partner or the threat of physical abuse, harm, or bodily injury against the petitioner by a family or--household member or partner that causes the petitioner to reasonably believe that the offender has the present ability to execute the threat; and

(b) requesting relief under Title 27, chapter 19, part 3. Any preliminary temporary injunction entered under this subsection must be for a fixed period of time, not to exceed 1 year, and may be modified as provided in Title 27, chapter 19, part 4, and 40-4-208, as appropriate. Persons who may request relief under this subsection include spouses,--former spouses,--and--persons-cohabiting-or-who-have-cohabited-with-the-other-party-within--1--year--immediately--preceding--the-filing-of-the-petition family members or partners.

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

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

(6) At the time of the hearing, the court shall

determine whether good cause exists for the injunction to continue for 1 year.

(7) If the court determines on the basis of a party's history of violence and the testimony presented at the hearing that the other party needs permanent protection or may otherwise suffer permanent injury or harm, the court may order that the injunction be effective permanently.

(8) A permanent injunction may be issued by a district court with jurisdiction over the parties to a dissolution proceeding upon presentation of evidence of a party's history of violence showing that the other party may suffer permanent injury or harm if a permanent injunction is not issued.

(9) Restraining orders issued under this section may restrain the petitioner's actions only if the court finds that the petitioner, in addition to the respondent, has engaged in abusive or assaultive behavior as described by subsection (3)(a).

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

(11) A temporary order or temporary injunction or permanent injunction:

1 (a) ~~does not prejudice the rights of the parties or the~~  
 2 ~~child which are to be adjudicated at subsequent hearings in~~  
 3 ~~the proceeding;~~

4 ~~(b)~~ may be revoked or modified ~~before final decree~~ on a  
 5 showing by affidavit of the facts necessary to revocation or  
 6 modification of a final decree under 40-4-208 or order under  
 7 Title 27, chapter 19, part 3, as appropriate;

8 ~~(c)~~ (b) terminates upon order of the court or when a  
 9 ~~final decree is entered or~~ when a the petition for  
 10 ~~dissolution or legal separation~~ is voluntarily dismissed;  
 11 and

12 ~~(d)~~ (c) when issued under this section must  
 13 conspicuously bear the following: "Violation of this order  
 14 is a criminal offense under 45-5-626."

15 ~~(8)~~ (12) When the petitioner has fled the parties'  
 16 residence, notice of petitioner's new residence must be  
 17 withheld except by order of the court for good cause shown.

18 (13) As used in this section the following definitions  
 19 apply:

20 (a) "Bodily injury" means physical pain, illness, or  
 21 any impairment of physical condition and includes mental  
 22 illness or impairment.

23 (b) "Family member" means mothers, fathers, children,  
 24 brothers, sisters, and other past or present family members  
 25 of a household. These relationships include relationships

1 created by adoption and remarriage, including stepchildren,  
 2 stepparents, and adoptive children and parents. These  
 3 relationships continue regardless of the ages of the parties  
 4 and whether the parties reside in the same household.

5 (c) "Partner" means spouses, former spouses, and  
 6 persons who have been or are currently in a dating or  
 7 ongoing intimate relationship with a person of the opposite  
 8 sex."

9 **Section 2.** Section 45-5-206, MCA, is amended to read:

10 **"45-5-206. Domestic abuse.** (1) A person commits the  
 11 offense of domestic abuse if he the person:

12 (a) purposely or knowingly causes bodily injury to a  
 13 family member or household-member partner; or

14 (b) negligently causes bodily injury to a family member  
 15 or partner with a weapon; or

16 (b)(c) purposely or knowingly causes reasonable  
 17 apprehension of bodily injury in a family member or  
 18 household-member partner. The purpose to cause reasonable  
 19 apprehension or the knowledge that reasonable apprehension  
 20 would be caused must be presumed in any case in which a  
 21 person knowingly points a firearm at or in the direction of  
 22 a family member or household-member partner, whether or not  
 23 the offender believes the firearm to be loaded.

24 (2) For the purposes of 46-6-311 and this section,  
 25 "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. the following  
definitions apply:

(a) "Family member" means mothers, fathers, children,  
 brothers, sisters, and other past or present family members  
of a household. These relationships include relationships  
created by adoption and remarriage, including stepchildren,  
stepparents, and adoptive children and parents. These  
relationships continue regardless of the ages of the parties  
and whether the parties reside in the same household.

(b) "Partner" means spouses, former spouses, and  
persons who have been or are currently in a dating or  
ongoing intimate relationship with a person of the opposite  
sex.

(3) A person convicted of domestic abuse for the first  
 or second time shall be fined not to exceed \$500 \$1,000 or  
 be imprisoned in the county jail not to exceed 6--months 1  
year, or both. On a third or subsequent conviction for  
 domestic abuse, the person convicted shall be fined not to  
 exceed less than \$500 and not more than \$50,000 or and be  
 imprisoned in the county jail or in the state prison for a  
 term not to--exceed less than 10 days and not more than 5  
 years, or both.

(4) (a) A person convicted of domestic abuse for--the

first--or--second--time shall be required to pay for and  
 complete at least 6 months of counseling, totaling at least  
 25 hours:

(i) with a person licensed under Title 37, chapter 3,  
 17, 22, or 23;

(ii) with a professional person as defined in 53-21-102;  
 or

(iii) in a specialized domestic violence intervention  
 program.

(b) The counseling provided in subsection (4)(a) must  
 be directed to the violent conduct of the convicted person.  
 Subsection (4)(a) does not prohibit the placement of the  
 convicted person in other appropriate treatment if the court  
 determines there is no available treatment program directed  
 to the violent conduct of the convicted person.

(c) Upon completion of the minimum counseling  
requirements, the counselor shall notify the court that the  
defendant has completed the minimum counseling requirements  
and shall provide the court with a recommendation as to  
whether or not the defendant requires additional counseling.  
Upon recommendation of the counselor and direction of the  
court, the defendant may be required to pay for and complete  
additional counseling or treatment, such as chemical  
dependency treatment, or both.

(5) Willful failure to obtain or pay for counseling

1 ordered under this section is a civil contempt of court."

2 **Section 3.** Section 46-6-311, MCA, is amended to read:

3 "46-6-311. **Basis for arrest without warrant.** (1) A  
4 peace officer may arrest a person when no a warrant has not  
5 been issued if the officer has probable cause to believe  
6 that the person is committing an offense or that the person  
7 has committed an offense and existing circumstances require  
8 immediate arrest.

9 (2) The summoning of a peace officer to a place of  
10 residence by a family member or household-member partner  
11 constitutes an exigent circumstance for making an arrest.  
12 Arrest is the preferred response in domestic abuse cases  
13 involving injury to the victim, use or threatened use of a  
14 weapon, violation of a restraining order, or other imminent  
15 danger to the victim."

16 **Section 4.** Section 46-6-602, MCA, is amended to read:

17 "46-6-602. **Notice of rights to victim upon arrest in**  
18 **domestic violence situation.** Whenever a peace officer  
19 arrests a person for domestic abuse, as defined in 45-5-206,  
20 if the victim is present, the officer shall advise the  
21 victim of the availability of a shelter or other services in  
22 the community and give the victim immediate notice of any  
23 legal rights and remedies available. The notice must include  
24 furnishing the victim with a copy of the following  
25 statement:

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

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

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

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

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

12 (5) an order restraining your abuser from molesting or  
13 interfering with minor children in your custody or a family  
14 member or partner, as defined in 45-5-206; or

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

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

19 "46-9-302. **Bail schedule -- acceptance by peace**  
20 **officer.** (1) A judge may establish and post a schedule of  
21 bail for offenses over which the judge has original  
22 jurisdiction. A person may not be released on bail without  
23 first appearing before the judge when the offense is  
24 domestic abuse or any assault against a family member or a  
25 household-member partner, as defined in 45-5-206.

1       (2) A peace officer may accept bail on behalf of a  
2 judge:

3       (a) in accordance with the bail schedule established  
4 under subsection (1); or

5       (b) whenever the warrant of arrest specifies the amount  
6 of bail.

7       (3) Whenever a peace officer accepts bail, the officer  
8 shall give a signed receipt to the offender setting forth  
9 the bail received. The peace officer shall then deliver the  
10 bail to the judge before whom the offender is to appear, and  
11 the judge shall give a receipt to the peace officer for the  
12 bail delivered."

-End-

1 *Senan* BILL NO. *406*  
2 INTRODUCED BY *Carth*  
3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT EXPANDING THE TEMPORARY  
5 RESTRAINING ORDER LAWS AND THE CRIMINAL LAWS THAT PROTECT  
6 PERSONS AGAINST DOMESTIC ABUSE; DEFINING "FAMILY MEMBER" FOR  
7 PURPOSES OF BOTH AREAS OF LAW; APPLYING BOTH AREAS OF LAW TO  
8 PARTNERS; DEFINING THE TERM "PARTNERS"; APPLYING THE  
9 PROTECTIONS IN THE TEMPORARY RESTRAINING ORDER LAWS TO ALL  
10 FAMILY MEMBERS; AND AMENDING SECTIONS 40-4-121, 45-5-206,  
11 46-6-311, 46-6-602, AND 46-9-302, MCA."  
12  
13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
14 **Section 1.** Section 40-4-121, MCA, is amended to read:  
15 "40-4-121. Temporary order or temporary injunction. (1)  
16 In a proceeding for dissolution of marriage or for legal  
17 separation or in a proceeding for disposition of property or  
18 for maintenance or support following dissolution of the  
19 marriage by a court which lacked personal jurisdiction over  
20 the absent spouse, either party may move for temporary  
21 maintenance or temporary support of a child of the marriage  
22 entitled to support. The motion shall must be accompanied by  
23 an affidavit setting forth the factual basis for the motion  
24 and the amounts requested.  
25 (2) As a part of a motion for temporary maintenance or

1 support or by independent motion accompanied by affidavit,  
2 either party may request the court to issue a temporary  
3 injunction for any of the following relief:  
4 (a) restraining any person from transferring,  
5 encumbering, concealing, or otherwise disposing of any  
6 property except in the usual course of business or for the  
7 necessities of life and, if so restrained, requiring him the  
8 person to notify the moving party of any proposed  
9 extraordinary expenditures made after the order is issued;  
10 (b) enjoining a party from molesting or disturbing the  
11 peace of the other party or of any child family member;  
12 (c) excluding a party from the family home or from the  
13 home of the other party upon a showing that physical or  
14 emotional harm would otherwise result;  
15 (d) enjoining a party from removing a child from the  
16 jurisdiction of the court; and  
17 (e) ordering a party to complete counseling, including  
18 alcohol or chemical dependency counseling or treatment; and

THERE ARE NO CHANGES IN THIS BILL  
AND WILL NOT BE REPRINTED. PLEASE  
REFER TO YELLOW COPY FOR COMPLETE TEXT.



HOUSE STANDING COMMITTEE REPORT

March 19, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that  
Senate Bill 406 (third reading copy -- blue) be concurred in as  
amended .

Signed: Russell C. Fagg  
Russ Fagg, ~~Chair~~

And, that such amendments read:

Carried by: Rep. Vogel

1. Page 6, line 15.

Following: "weapon"

Insert: "during or in connection with a quarrel, fight, or  
abusive behavior"

-END-

SB 406

Committee Vote:  
Yes 17, No 1.

HOUSE

# 1

HOUSE COMMITTEE OF THE WHOLE AMENDMENT  
Senate Bill 406  
Representative S. Rice

March 27, 1993 10:56 am  
Page 1 of 1

Mr. Chairman: I move to amend Senate Bill 406 (third reading copy -- blue).

Signed:   
Representative S. Rice

And, that such amendments to Senate Bill 406 read as follows:

1. Page 4, line 3.

Following: "determines"

Insert: ", "

2. Page 4, line 5.

Following: "hearing"

Insert: "or on the basis of credible evidence that a party has violated [section 1 of Senate Bill No. 37],"

3. Page 4, line 13.

Following: "issued."

Insert: "A permanent injunction may also be issued enjoining a party from stalking upon presentation of credible evidence that the party has violated [section 1 of Senate Bill No. 37] if the court determines that the stalked party needs permanent protection."

4. Page 4, line 14.

Strike: "Restraining"

Insert: "Except when the alleged conduct to be restrained is a violation of [section 1 of Senate Bill No. 37], restraining"

-END-

ADOPT

REJECT

SB 406

HOUSE

SENATE BILL NO. 406  
INTRODUCED BY BARTLETT

A BILL FOR AN ACT ENTITLED: "AN ACT EXPANDING THE TEMPORARY RESTRAINING ORDER LAWS AND THE CRIMINAL LAWS THAT PROTECT PERSONS AGAINST DOMESTIC ABUSE; DEFINING "FAMILY MEMBER" FOR PURPOSES OF BOTH AREAS OF LAW; APPLYING BOTH AREAS OF LAW TO PARTNERS; DEFINING THE TERM "PARTNERS"; APPLYING THE PROTECTIONS IN THE TEMPORARY RESTRAINING ORDER LAWS TO ALL FAMILY MEMBERS; AND AMENDING SECTIONS 40-4-121, 45-5-206, 46-6-311, 46-6-602, AND 46-9-302, MCA."

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

**Section 1.** Section 40-4-121, MCA, is amended to read:

**"40-4-121. Temporary order or temporary injunction. (1)**

In a proceeding for dissolution of marriage or for legal separation or in a proceeding for disposition of property or for maintenance or support following dissolution of the marriage by a court which lacked personal jurisdiction over the absent spouse, either party may move for temporary maintenance or temporary support of a child of the marriage entitled to support. The motion ~~shall~~ must be accompanied by an affidavit setting forth the factual basis for the motion and the amounts requested.

(2) As a part of a motion for temporary maintenance or

support or by independent motion accompanied by affidavit, either party may request the court to issue a temporary injunction for any of the following relief:

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

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

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

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

(e) ordering a party to complete counseling, including alcohol or chemical dependency counseling or treatment; and

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

(3) A person may seek the relief provided for in subsection (2) ~~of--this--section~~ without filing a petition under this part for a dissolution of marriage or legal separation by filing a verified petition:

(a) alleging physical abuse, harm, or bodily injury

1 against the petitioner by a family or--household member or  
2 partner or the threat of physical abuse, harm, or bodily  
3 injury against the petitioner by a family or--household  
4 member or partner that causes the petitioner to reasonably  
5 believe that the offender has the present ability to execute  
6 the threat; and

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

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

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

25 (6) At the time of the hearing, the court shall

1 determine whether good cause exists for the injunction to  
2 continue for 1 year.

3 (7) If the court determines, on the basis of a party's  
4 history of violence and the testimony presented at the  
5 hearing OR ON THE BASIS OF CREDIBLE EVIDENCE THAT A PARTY  
6 HAS VIOLATED [SECTION 1 OF SENATE BILL NO. 37], that the  
7 other party needs permanent protection or may otherwise  
8 suffer permanent injury or harm, the court may order that  
9 the injunction be effective permanently.

10 (8) A permanent injunction may be issued by a district  
11 court with jurisdiction over the parties to a dissolution  
12 proceeding upon presentation of evidence of a party's  
13 history of violence showing that the other party may suffer  
14 permanent injury or harm if a permanent injunction is not  
15 issued. A PERMANENT INJUNCTION MAY ALSO BE ISSUED ENJOINING  
16 A PARTY FROM STALKING UPON PRESENTATION OF CREDIBLE EVIDENCE  
17 THAT THE PARTY HAS VIOLATED [SECTION 1 OF SENATE BILL NO.  
18 37] IF THE COURT DETERMINES THAT THE STALKED PARTY NEEDS  
19 PERMANENT PROTECTION.

20 (9) Restraining EXCEPT WHEN THE ALLEGED CONDUCT TO BE  
21 RESTRAINED IS A VIOLATION OF [SECTION 1 OF SENATE BILL NO.  
22 37], RESTRAINING orders issued under this section may  
23 restrain the petitioner's actions only if the court finds  
24 that the petitioner, in addition to the respondent, has  
25 engaged in abusive or assaultive behavior as described by

subsection (3)(a).

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

(7)(11) A temporary order or temporary injunction or permanent injunction:

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

(b) may be revoked or modified before final decree on a showing by affidavit of the facts necessary to revocation or modification of a final decree under 40-4-208 or order under Title 27, chapter 19, part 3, as appropriate;

(c)(b) terminates upon order of the court or when a final decree is entered or when a the petition for dissolution or legal separation is voluntarily dismissed; and

(d)(c) when issued under this section must conspicuously bear the following: "Violation of this order is a criminal offense under 45-5-626."

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

(13) As used in this section the following definitions apply:

(a) "Bodily injury" means physical pain, illness, or any impairment of physical condition and includes mental illness or impairment.

(b) "Family member" means mothers, fathers, children, brothers, sisters, and other past or present family members of a household. These relationships include relationships created by adoption and remarriage, including stepchildren, stepparents, and adoptive children and parents. These relationships continue regardless of the ages of the parties and whether the parties reside in the same household.

(c) "Partner" means spouses, former spouses, and persons who have been or are currently in a dating or ongoing intimate relationship with a person of the opposite sex."

**Section 2.** Section 45-5-206, MCA, is amended to read:

"45-5-206. Domestic abuse. (1) A person commits the offense of domestic abuse if he the person:

(a) purposely or knowingly causes bodily injury to a family member or household-member partner; or

(b) negligently causes bodily injury to a family member or partner with a weapon DURING OR IN CONNECTION WITH A QUARREL, FIGHT, OR ABUSIVE BEHAVIOR; or

(c) purposely or knowingly causes reasonable

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

8 (2) For the purposes of 46-6-311 and this section,  
 9 "family-member-or-household-member" means a--spouse,--former  
 10 spouse,--adult-person-related-by-blood-or-marriage,--or-adult  
 11 person-of-the-opposite-sex-residing-with--the--defendant--or  
 12 who--formerly--resided--with--the--defendant. the following  
 13 definitions apply:

14 (a) "Family member" means mothers, fathers, children,  
 15 brothers, sisters, and other past or present family members  
 16 of a household. These relationships include relationships  
 17 created by adoption and remarriage, including stepchildren,  
 18 stepparents, and adoptive children and parents. These  
 19 relationships continue regardless of the ages of the parties  
 20 and whether the parties reside in the same household.

21 (b) "Partner" means spouses, former spouses, and  
 22 persons who have been or are currently in a dating or  
 23 ongoing intimate relationship with a person of the opposite  
 24 sex.

25 (3) A person convicted of domestic abuse for the first

1 or second time shall be fined not to exceed \$500 \$1,000 or  
 2 be imprisoned in the county jail not to exceed 6--months 1  
 3 year, or both. On a third or subsequent conviction for  
 4 domestic abuse, the person convicted shall be fined not to  
 5 exceed less than \$500 and not more than \$50,000 or and be  
 6 imprisoned in the county jail or in the state prison for a  
 7 term not to--exceed less than 10 days and not more than 5  
 8 years, or both.

9 (4) (a) A person convicted of domestic abuse ~~for--the~~  
 10 ~~first--or--second--time~~ shall be required to pay for and  
 11 complete at least 6 months of counseling, totaling at least  
 12 25 hours:

13 (i) with a person licensed under Title 37, chapter 3,  
 14 17, 22, or 23;

15 (ii) with a professional person as defined in 53-21-102;  
 16 or

17 (iii) in a specialized domestic violence intervention  
 18 program.

19 (b) The counseling provided in subsection (4)(a) must  
 20 be directed to the violent conduct of the convicted person.  
 21 Subsection (4)(a) does not prohibit the placement of the  
 22 convicted person in other appropriate treatment if the court  
 23 determines there is no available treatment program directed  
 24 to the violent conduct of the convicted person.

25 (c) Upon completion of the minimum counseling

requirements, the counselor shall notify the court that the defendant has completed the minimum counseling requirements and shall provide the court with a recommendation as to whether or not the defendant requires additional counseling. Upon recommendation of the counselor and direction of the court, the defendant may be required to pay for and complete additional counseling or treatment, such as chemical dependency treatment, or both.

(5) Willful failure to obtain or pay for counseling ordered under this section is a civil contempt of court."

**Section 3.** Section 46-6-311, MCA, is amended to read:

"46-6-311. Basis for arrest without warrant. (1) A peace officer may arrest a person when no a warrant has not been issued if the officer has probable cause to believe that the person is committing an offense or that the person has committed an offense and existing circumstances require immediate arrest.

(2) The summoning of a peace officer to a place of residence by a family member or household-member partner constitutes an exigent circumstance for making an arrest. 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."

**Section 4.** Section 46-6-602, MCA, is amended to read:

"46-6-602. Notice of rights to victim upon arrest in domestic violence situation. Whenever a peace officer arrests a person for domestic abuse, as defined in 45-5-206, 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 a family member or partner, as defined in 45-5-206; or
- (6) an order directing the party not granted custody to pay support of minor children or to pay support of the other

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

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

3 "46-9-302. Bail schedule -- acceptance by peace  
4 officer. (1) A judge may establish and post a schedule of  
5 bail for offenses over which the judge has original  
6 jurisdiction. A person may not be released on bail without  
7 first appearing before the judge when the offense is  
8 domestic abuse or any assault against a family member or a  
9 household-member partner, as defined in 45-5-206.

10 (2) A peace officer may accept bail on behalf of a  
11 judge:

12 (a) in accordance with the bail schedule established  
13 under subsection (1); or

14 (b) whenever the warrant of arrest specifies the amount  
15 of bail.

16 (3) Whenever a peace officer accepts bail, the officer  
17 shall give a signed receipt to the offender setting forth  
18 the bail received. The peace officer shall then deliver the  
19 bail to the judge before whom the offender is to appear, and  
20 the judge shall give a receipt to the peace officer for the  
21 bail delivered."

-End-