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# BATTERED WOMEN

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RIGHTS AND OPTIONS  
IN MONTANA



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**Dear Reader,**

This booklet is yours to use as an aid — to give you information to help you make the choices you need to make.

There are other alternatives that may be more helpful to you. Counseling for you and your mate are good choices for many women. Try to understand all of your options and where you can go for help.

Battered women encounter a series of obstacles when they pursue legal alternatives available through the courts and justice system. Such barriers include:

- lack of information
- the wrong information or myths
- “the runaround”
- time involved in getting through a case
- traditional lack of womens civil and legal rights
- high priced attorneys

All these result in frustration and anger, and a feeling of helplessness. Since helplessness is what keeps battered women in a battering relationship and from pursuing legal alternatives, we want to do all we can to get rid of it, and to get through this difficult time to a safer life.

Every attempt was made to assure accuracy of the information in the booklet. Sometimes, however, you may encounter slightly different opinions re: the legal information, or other interpretations. Please do not despair, but ASK QUESTIONS or seek assistance from advocates available through battered women’s programs or shelters.

This booklet was written for you, to help you and to end some of your confusion.

Remember: **YOU ARE NOT ALONE.**

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## PLACES TO CALL IF YOU ARE A VICTIM OF BATTERING

**Women's Resource Centers and Crisis Lines** (Women — or sometimes men — who are experienced in crisis intervention will answer your call)

Billings	259-8100	Battered Spouse Support Line (24 hr.)
	259-6506	Rape Task Force (24 hr.)
	245-6879	YWCA Women's Center
Bozeman	586-4111	24 hour crisis line
	586-3333	Helpline (emergencies)
Butte	782-8511	Safe Space (Shelter—24 hr. line)
	723-8262 Ext 224	Crisis Line (24 hr.)
Conrad	278-7542	Crisis Line—Triangle Transition (24 hr.)
Dillon	683-4817	Women's Resource Center (24 hr.)
Glasgow	228-9349	Mental Health Line for Spouse Abuse
Glendive	365-2412	Crisis Line (24 hr.)
Great Falls	453-6511	24 hr. Crisis Line or direct referral to MERCY HOME, the shelter
	761-2100	Mental Health
Hi Line area (serves Hill, Liberty, and Blaine Cts)	759-5170	Chester Sherrif's Office— <b>Call Collect</b>
Helena	443-5353	Women's Center Crisis Line (24 hr.)
	442-6800	Friendship Center (24 hr.)
Kalispell	755-5067	Rape Crisis Line (24 hr.)
	755-5222	Women's Center of Flathead Valley (8-5 p.m.)
Lewistown	911 Emergency	Spouse Abuse Emergency Services (SAVES)
	538-7468	Fergus Ct. Welfare for Information & Referral
Libby	293-3223	Lincoln Ct. Womens Help Line (24 hr.—resi- dents of Eureka and Troy, <b>Call Collect</b> )
Miles City	232-1688	Mental Health 24 hr. Crisis Line
Missoula	543-8277	Crisis Line (24 hr. & referral to YWCA Battered Women & Children's Shelter)
	543-6691	YWCA
	543-7606	Women's Place—24 hr. Advocacy
	243-4153	Women's Resource Center— University of Montana
	549-2064	Victim to Victim Support—Rape Counseling
Ronan	676-2770	Family Crisis Center
Shelby	434-5504	Crisis Line—Triangle Transition
Twin Bridges	684-5400	24 hr. Crisis Line/Information
Whitehall	287-3282	Information & Referral (Monday thru Friday, 8-5 only)
	287-5440	Jefferson Ct. Spouse Abuse Program

**Montana Legal Services Association** (may take your case if you have low income or may refer you; however, Legal Services will not help you obtain a temporary restraining order unless a divorce is involved. Neither will Legal Services assist with a divorce unless you have children, either from a previous marriage or the present.)

Billings	248-7113	Helena	442-9830
Browning	338-7623	Kalispell	755-9660
Butte	723-4612	Missoula	543-8343
Cut Bank	873-2704	Warm Springs	693-2221
Great Falls	453-6589	Wolf Point	653-1405
Havre	265-9314		

**County Attorney** — Handles criminal cases ONLY. His office does not file divorces, or assist in custody actions, though he may become involved if there is abuse or neglect of children of custodial interference. His office will not assist in obtaining temporary restraining orders (TRO) — they must be obtained with the use of a private attorney. The role of the county attorney is to prosecute crime and criminals. The office will be involved if criminal charges are filed for assault.

**Police/Sheriff** — If you live within a city or town, call the city police or town marshall's office. If you live outside of a city or town, call the county sheriff's office. The proper telephone number can be found in the telephone book under the name of the city, town, or county.

**Montana Mental Health Centers** (general counseling on a sliding fee basis)

Anaconda	563-3413	Havre	265-9639
Big Timber	932-2608	Helena	442-0640
Billings	252-5658	Kalispell	755-6262or 755-5300
Bozeman	586-5493	Livingston	222-3332
Bridger	662-3469	Libby	293-6513
Butte	723-5489	Lewistown	538-7483
Chester	759-5410	Malta	654-1599
Chinook	357-3364	Miles City	232-1687
Choteau	466-5681	Missoula	543-5177
Columbus	322-5834	Plentywood	765-2550
Conrad	278-3205	Red Lodge	446-2500
Colstrip	748-3600	Ronan	676-8500
Dillon	683-2200	Roundup	323-1142
Forsyth	356-7654	Scobey	487-5442
Glasgow	228-9349	Shelby	434-5285
Glendive	365-2922	Sidney	482-4635
Great Falls	761-2100	Superior	822-4093
Hamilton	363-1051	Thompson Falls	827-3641
Hardin	665-1049	Wolf Point	653-1872
Harlowton	632-4508		

**County Welfare Department Directory** (Information & Referral; possible financial resource for women & children; offers counseling particularly for the protection of children)

County	County Seat	Telephone No.	County	County Seat	Telephone No.
Beaverhead	Dillon	683-2142	Meagher	White Sul. Spr.	547-3752
Big Horn	Hardin	665-1907	Mineral	Superior	822-4551
Blaine	Chinook	357-2276	Missoula	Missoula	721-5700
Broadwater	Townsend	266-3447	Musselshell	Roundup	323-2101
Carbon	Red Lodge	446-1302	Park	Livingston	222-6120
Carter	Ekalaka	775-8751	Petroleum	Winnett	429-5311
Cascade	Great Falls	761-6605	Phillips	Malta	654-2252
Chouteau	Fort Benton	622-5432	Pondera	Conrad	278-5222
Custer	Miles City	232-1247	Powder River	Broadus	436-2621
Daniels	Scobey	487-2721	Powell	Deer Lodge	846-3680
Dawson	Glendive	365-4314	Prairie	Terry	637-5570
Deer Lodge	Anaconda	563-3448	Ravalli	Hamilton	363-1944
Fallon	Baker	778-3324	Richland	Sidney	482-2015
Fergus	Lewistown	538-7468	Roosevelt	Wolf Point	653-1512
Flathead	Kalispell	755-5300	Rosebud	Forsyth	356-2563
Gallatin	Bozeman	587-3193		Lame Deer	477-6251
Garfield	Jordan	557-2297	Sanders	Thompson Falls	827-3581
Glacier	Cut Bank	873-5534	Sheridan	Plentywood	765-1370
"NO MAIL"	Browning	338-5151	Silver Bow	Butte	782-2351
Golden Valley	Ryegate	568-2231			782-0436
Granite	Philipsburg	859-3671			723-6002
Hill	Havre	265-4348			723-6054
Jefferson	Boulder	225-3327	Stillwater	Columbus	322-5331
Judith Basin	Stanford	566-2461	Sweet Grass	Big Timber	932-2566
Lake	Polson	883-6211	Teton	Choteau	466-5721
Lewis & Clark	Helena	442-2020	Toole	Shelby	434-2371
Liberty	Chester	334-3841	Treasure	Hysham	342-5547
Lincoln	Libby	293-7781	Valley	Glasgow	228-2489
	Eureka	296-2722			228-8281
Madison	Virginia City	843-5361	Wheatland	Harlowton	632-5611
McCone	Circle	485-3425	Wibaux	Wibaux	795-2403
			Yellowstone	Billings	248-1691

## AFTER THE VIOLENCE

Immediately after the violent encounter with your husband or boyfriend, you will need to decide what course of action you want to take. Five options you may want to consider are:

1. Call the closest crisis line (see listings in front of booklet)
2. Leave the house immediately
3. Go to the hospital
4. Call the police
5. Seek professional counseling

In deciding what is best for you to do, you should consider how seriously you have been injured, whether you are still in immediate danger of being attacked and whether your children's safety is being threatened.

1. **Call The Local Crisis Line Or Women's Center** (refer to list of hone numbers and crisis lines in front of booklet) if any such service is available in your area. You should contact them (it is possible that an answering service will receive and put you through immediately to the crisis worker) and tell the person who answers the phone exactly what has happened to you and where you are now. The center may be able to give you moral support, emergency housing, information about your legal rights and the names of other agencies which can be contacted for further assistance. Ask crisis line worker if pictures can be taken of your injuries.
2. **Leave the house immediately**

If possible, try to take any important documents and available cash with you.

You should take your children unless it is impossible for you to do so. It is very important to get your children with you immediately.

If you do not have transportation or any place to go and it is late at night, you may want to stay in the house until morning and then leave immediately after your husband goes out for the day.

If you leave the house without taking any possessions or papers, you may ask the police to escort you to the house for the sole purpose of getting your personal belongings.

If you know someone who is trustworthy and who will understand your situation, you may want to call him/her and ask for temporary housing or money for a motel.

If you go to a friend's house, tell him/her exactly what happened and ask them, if possible, to take pictures of your injuries.

3. **Go To The Hospital**

You might want to take a friend or a crisis line worker along for support when you go to the hospital.

The hospital's emergency room is open all night and should not turn anyone away due to lack of money. Ask hospital personnel about the Hill-Burton Act which provides funds for people who cannot afford to pay. You might also consider billing your husband or boyfriend for medical costs. The 1979 legislature passed a law giving a person the right to sue a spouse for medical damages.

Tell the doctor exactly what happened to you. It is in your best interests to be completely honest with the doctor concerning the source of your injuries.

The hospital should make a record of your injuries which can be used later in court. Ask to have pictures taken of your injuries so you will have evidence if you later decide to go to court.

#### 4. Call The Police

If you are afraid of further attack or are restrained from leaving the house, call the police or sheriff's office and ask that they send an officer to assist you to leave and protect you.

Do not expect the policeman/woman or sheriff's deputy to arbitrate arguments, admonish or threaten your spouse, or arrest your spouse and take him away on the spot.

At this point your physical safety and that of your children is paramount.

If you call the police, ask them to make a written report of the incident and be prepared to cooperate in the prosecution of your spouse. There are not enough police or sheriff's deputies, or time in the day, for them to aid in saving your marriage. Continued calls for assistance over long periods of time without any prosecution will eventually result in slow or no response and that will be the time when you need it.

If the police or sheriff's deputies come to your house, ask them to stand by while you pack a few things. They will understand this, but please remember they will not settle disputes over ownership of property.

The police or sheriff's deputies will assist you in finding a place of refuge.

Within three (3) days of the incident, you should contact the police station or sheriff's office and indicate that you wish to have criminal charges filed. Depending on the county and the particular department, you may be asked to make a written statement, sign a complaint, or be asked to see the city or county attorney. **Please cooperate with the police or sheriff's office in this matter.** You may feel that they are unsympathetic or that you are being given the runaround, but remember that many persons who wish to file complaints do not follow through with the prosecution of those complaints.

If you are asked to see the county or city attorney, see that a copy of the police report has been referred to that office or obtain a copy of the report and bring it with you.

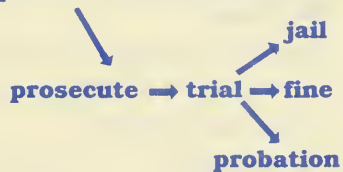
After a complaint is filed, a warrant of arrest is issued for the apprehension of the person accused. The arrest may take some time — depending on the available personnel and the difficulty of locating the accused. If there are further threats or some particular reason for wishing an earlier arrest, please make the reasons known.

#### 5. Professional Counseling

Call the closest mental health center. See listings in front of this booklet, or ask your crisis line worker for the name of a local counselor sensitive to the problem of domestic violence. **Remember — It is up to you to seek help and support.**

# YOUR CHOICES:

- **Remain at home**
- **Call the nearest crisis line (see front page)**
- **File a report with the police → don't prosecute**



- **Go to the hospital for medical treatment**
- **Talk to and/or stay with friends or relatives**
- **Consult your minister, priest, or rabbi**

- **See a lawyer**  **divorce**  
**separation**  
**annulment**

- **Call a helping agency (welfare, etc.) for emergency food, housing, etc.**
- **Seek professional counseling**
- \* **See the front section for names & phone numbers**
- \* **Please consider this: calling the police may be the best way to get out of immediate danger.**

## PREPARING TO LEAVE

Many women who are in a physically abusive relationship find it difficult to leave the home and end the relationship permanently. You may wish to seek advice and support from a crisis line or counselor.

If you are mentally and emotionally unable to leave at this time, you can still protect your own interests by doing certain things which will make it easier to leave, if necessary, at a later time. Also remember that **you may have to leave** in order to get your spouse/mate **to seek help with his problem.**

1. Get originals or copies of important documents such as:

Birth certificates for yourself and your children

Prior divorce or custody papers

Your marriage license

The lease or deed to your house

Tax returns

Bank book(s)

Rent receipts or loan papers on the house

Telephone and utility bills

Medical and dental bills

Car registration

Credit cards

Insurance premiums

Many of these documents will be necessary in order for you to obtain free or inexpensive legal services, housing, or public assistance from welfare. Written proof of your income and expenses is particularly important for getting your court fees waived. This information may also be used by the court to compute your child support award, if one is granted.

You should not feel guilty or uncomfortable about gathering family records. These documents are yours as much as your husband's and you have every right to have a copy of them.

2. If you are unemployed and taking care of your children, you may want to begin thinking about your job skills and the possibility of day care for your children.

Check with friends, local job service, the newspaper and local women's center (if any) about job possibilities.

Check your local county welfare department for information re: food stamps, housing, day care, etc. (See directory in the front of this book.)

Ask your friends, social services and local schools about day care facilities in the area.

3. Try to keep track of your family's income and expenses so that you will know if your husband's paycheck, if any, is being used to pay for family needs and will have a realistic idea of what it costs to run your household.

4. Try to get either a joint bank account or a bank account **in your name**. Once you leave, do not put or leave money in a joint account. Put all money in an account in your name only.
5. If you are thinking seriously about a divorce, do not negotiate with your husband regarding child support or property settlements before seeing an attorney. Negotiations of this nature are not in your best interest and may result in useless fighting between you and your husband.

If you need legal advice, ask a divorced friend, legal services (see listing in front of this booklet), a local women's center, a local bar association or lawyer referral service to recommend an attorney. Do not use your husband's attorney or anyone recommended by your husband's attorney.

\* \* \* \*

**YOU ARE NOT POWERLESS OR LOCKED IN A BATTERING RELATIONSHIP FOREVER BECAUSE YOU ARE PREPARING TO LEAVE AND WILL BE READY TO SET OUT ON YOUR OWN AT THE RIGHT TIME.**

\* \* \* \*

## **YOUR CIVIL REMEDIES:**

**Fees** — If you are low income or unemployed, you may be able to seek assistance at Legal Services (see listings in front of booklet for phone numbers). If you don't qualify for Legal Services, and have to obtain a lawyer on your own, the court can order your husband to pay your court and legal fees if he is able to and you can't. An uncontested divorce usually costs from \$300-\$500. A contested divorce can cost much more.

**Divorce** — A divorce is now called a "dissolution of marriage". It is a legal request to end a marriage. You may file for a divorce immediately upon making Montana your home. The divorce cannot be final until you have resided in Montana for 90 days. The only grounds for divorce is that the marriage is "irretrievably broken". The two basic guides to determining "irretrievable breakdown" are 1. that the parties have been separated for 180 days prior to beginning divorce proceedings or 2. there is "a serious marital discord adversely affecting the attitude of one or both of the parties towards marriage".

**Legal Separation** — This is somewhat like a divorce, but there is no request to end the marriage. It may be for an indefinite period of time. If you get a separation and later want a divorce, you may need to pay separate legal fees. After a legal separation is granted, you cannot get a divorce for six months. Both parties may be liable for maintaining the household.

**Annulment** — This is a court decree that you were never married because your marriage was invalid from the beginning. Some recognized grounds are that your husband was married to someone else when he married you, that you were forced into marriage against your will, or that you did not consent to the marriage because you were under the influence of drugs or alcohol, or that you were mentally incapable of consenting. In Montana, annulment is now called Declaration of Invalidity.

**Formalities** — You should have your husband's proper address and the length of time he has been in Montana if he is a resident. You should know the date and place of your marriage, the date when you and your husband separated, and the names, ages and addresses of any living children of the marriage. You should have some idea of what you want and what you need from your husband, for example, how much child support or what property. There is no residency requirement for filing for assault. Once again, you must live in Montana 90 days before the divorce is granted — not before filing such an action.

**Temporary Restraining Order (T.R.O.)** — A temporary restraining order can be granted by the District Court if “not granting one would cause immediate, irreparable injury to the applicant”. The TRO will set forth the reasons for its issuance and be specific in describing the acts to be restrained. A TRO will not expire in 10 days as some people believe; however, there does need to be a hearing at some time to continue it. Such an order might deter your husband or boyfriend from molesting or disturbing you or destroying or taking any property.

A TRO can order your husband or boyfriend out of **your** home, but probably not out of a house he co-owns or co-rents without a hearing.

If your husband or boyfriend is the kind of person who respects a Court order, a TRO may offer you some protection. If he is not, commencement of a criminal action may be what you need to do. Once under arrest, the Court can release him upon the condition that he leave you and the children alone. If he fails to do so, he can be put in jail.

If you need to keep your boyfriend away from your home, and you own or rent the house, and he does not stay away, you can simply give him notice that he is not to come to your house. If necessary, move his property out. Then call the police and tell them that he is trespassing if he does come onto your property.

**Commitment** — You cannot commit a spouse to a mental hospital involuntarily. You must contact the County Attorney's office to proceed with involuntary commitment proceedings in District Court. It is the State of Montana which commits any person to the mental hospital — not you as an individual. It is a difficult process.

## **CRIMINAL CHARGES:**

If you have been assaulted by your spouse or boyfriend or various other criminal acts have been committed, you should, as any other citizen, report this to the police or sheriff's office. In the case of crimes by one spouse against the other, reporting crimes and cooperating in their prosecution will help prevent the commission of further crimes by the spouse against you or against some other person.

Reporting may also bring about forced rehabilitation, for example, the treatment of alcoholism, which the person will not do voluntarily. Though conviction of a crime can be punished by imprisonment or fine, most persons who are convicted are placed on probation, required to seek treatment or counseling, and imprisoned only if they continue to violate the laws. Sometimes the only way to bring a situation and its causes to a head is for charges to be filed, however difficult that may be.

If you do report a crime against you by your spouse, remember first you have only reported a crime. The final decision whether or not criminal charges will be filed, what kind of charges will be filed, and how far the prosecution will go is up to the prosecutor not to you. While the prosecuting attorney should, and will consider your wishes and interests in these matters, you are not responsible for the charges being made nor can you, of your own accord, have them dismissed. If pressure is brought upon you to dismiss the charges, tell the person pressuring you that it is the prosecutor who dismisses charges, not you, and inform the prosecutor of whom is pressuring you.

Please be honest and candid with the law enforcement officials and the prosecutor, however embarrassing or intimate the matter may be. Do not omit matters to make yourself look better or someone else look worse. The police, deputy sheriffs, and prosecutors are not easily shocked and are quite familiar with people. They will be unhappy, to say the least, if they find you have lied or left out significant facts. Remember, you are not the first battered spouse they have seen, and you will, unfortunately, not be the last.

Do not attempt to have charges filed so that your spouse will be arrested and spend the night in jail. Do not attempt to have charges filed so that your spouse will be arrested so that you may re-enter the house in his absence. Do not attempt to have charges filed in the belief that it will help you in a dissolution proceeding or child custody case. All of these have been attempted before; the prosecutors, police and deputy sheriffs are wise to it, and someday you may really need their assistance. Always remember the little boy who cried "WOLF" and the trouble that happened to him.

Remember you are not alone. The police, deputy sheriffs, and prosecutors are familiar with various groups and agencies who can offer advice and counseling, and go with you to court. Do not be afraid to ask questions and ask for help if you do not understand or need assistance. **Ask your local Women's Resource Center for support. They will be willing to accompany you to court.**

Below are some of the crimes committed by one spouse against another. They are taken from the Montana Code Annotated (MCA). **Please note that Montana does not recognize spousal rape or spousal sexual assault unless the couple is separated:**

#### **Assault.**

- (1) A person commits the offense of assault if he:
  - (a) purposely or knowingly causes bodily injury to another;
  - (b) negligently causes bodily injury to another with a weapon;
  - (c) purposely or knowingly makes physical contact of an insulting or provoking nature with any individual; or
  - (d) purposely or knowingly causes reasonable apprehension of bodily injury in another. The purpose to cause reasonable apprehension of 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 another, whether or not the offender believes the firearm to be loaded.

### **Aggravated Assault.**

- (1) A person commits the offense of aggravated assault if he purposely or knowingly causes:
  - (a) serious bodily injury to another;
  - (b) bodily injury to another with a weapon;
  - (c) reasonable apprehension of serious bodily injury in another by use of a weapon; or
  - (d) bodily injury to a peace officer.

### **Sexual intercourse without consent.**

- (1) A person who knowingly has sexual intercourse without consent with a person of the opposite sex not his spouse commits the offense of sexual intercourse without consent.

NOTE: If you **live apart** from your spouse under a decree of separation or otherwise, and he has sexual intercourse with you without your consent, he can be charged with crime of Sexual Intercourse without Consent.

### **Sexual assault.**

- (1) A person who knowingly subjects another not his spouse to any sexual contact without consent commits the offense of sexual assault.

### **Intimidation.**

- (1) A person commits the offense of intimidation when, with the purpose to cause another to perform or to omit the performance of any act, he communicates to another a threat to perform without lawful authority any of the following acts:
  - (a) inflict physical harm on the person threatened or any other person or on property;
  - (b) subject any person to physical confinement or restraint;
  - (c) commit any criminal offense;
  - (d) accuse any person of an offense;
  - (e) expose any person to hatred, contempt, or ridicule; or
  - (f) take action as a public official against anyone or anything, withhold official action, or cause such action or withholding.
- (2) A person commits the offense of intimidation if he knowingly communicates a threat or false report of a pending fire, explosion, or disaster which would endanger life or property.

### **Criminal trespass to property.**

- (1) A person commits the offense of criminal trespass to property if he knowingly:
  - (a) enters or remains unlawfully in an occupied structure; or
  - (b) enters or remains unlawfully in or upon the premises of another.

NOTE: A person enters or remains unlawfully in an occupied structure or premises of another when he is not licensed, invited, or otherwise privileged to do so. This would not apply if you are residing with your spouse, but it does apply if you are living apart.

## **Theft.**

- (1) A person commits the offense of theft when he purposely or knowingly obtains or exerts unauthorized control over property of the owner and:
  - (a) has the purpose of depriving the owner of the property;
  - (b) purposely or knowingly uses, conceals, or abandons the property in such manner as to deprive the owner of the property; or
  - (c) uses, conceals, or abandons the property knowing such use, concealment, or abandonment probably will deprive the owner of the property.
- (2) A person commits the offense of theft when he purposely or knowingly obtains by threat or deception control over property of the owner and:
  - (a) has the purpose of depriving the owner of the property;
  - (b) purposely or knowingly uses, conceals, or abandons the property in such manner as to deprive the owner of the property; or
  - (c) uses, conceals, or abandons the property knowing such use, concealment, or abandonment probably will deprive the owner of the property.
- (3) A person commits the offense of theft when he purposely or knowingly obtains control over stolen property knowing the property to have been stolen by another and:
  - (a) has the purpose of depriving the owner of the property;
  - (b) purposely or knowingly uses, conceals, or abandons the property in such manner as to deprive the owner of the property; or
  - (c) uses, conceals, or abandons the property knowing such use, concealment, or abandonment probably will deprive the owner of the property.

**NOTE:** Your spouse cannot take or dispose of property which is in your name without your consent. However, he or she can take and dispose of household and personal effects while you are living together. If you have ceased living together, taking, and disposing of household and personal effects normally accessible to both of you is theft.

## **Violation of Privacy in Communications.**

- (1) A person commits the offense of violating privacy in communications if he knowingly or purposely:
  - (a) with the purpose to terrify, intimidate, threaten, harass, annoy, or offend, communicates with any person by telephone and uses any obscene, lewd, or profane language, suggests any lewd or lascivious act, or threatens to inflict injury or physical harm to the person or property of any person (the use of obscene, lewd, or profane language or the making of a threat or lewd or lascivious suggestions in prima facie evidence of an intent to terrify, intimidate, threaten, harass, annoy, or offend).

## YOUR CHILDREN:

### Endangering the welfare of children.

- (1) A parent, guardian, or other person supervising the welfare of a child less than 16 years old commits the offense of endangering the welfare of children if he knowingly endangers the child's welfare by violating a duty of care, protection, or support.
- (2) A parent or guardian or any person who is 18 years of age or older, whether or not he is supervising the welfare of the child, commits the offense of endangering the welfare of children if he knowingly contributes to the delinquency of a child less than 16 years old by:
  - (a) supplying or encouraging the use of intoxicating substances by the child; or
  - (b) assisting, promoting, or encouraging the child to:
    - (i) abandon his place of residence without the consent of his parents or guardian;
    - (ii) enter a place of prostitution; or
    - (iii) engage in sexual conduct.
- (4) On the issue of whether there has been a violation of the duty of care, protection, and support, the following, in addition to all other admissible evidence, is admissible: cruel treatment; abuse; infliction of unnecessary and cruel abandonment; neglect, lack of proper medical care, clothing, shelter, and food; and evidence of past bodily injury.
- (5) The Court may order, in its discretion, any fine levied or any bond forfeited upon a charge of endangering the welfare of children paid to or for the benefit of the person or persons whose welfare the defendant has endangered.

NOTE: If your husband has ever been charged with endangering the welfare of children be sure to tell the police.

### Custodial interference.

- (1) A person commits the offense of custodial interference if, knowing that he has no legal right to do so, he takes, entices, or withholds from lawful custody any child, incompetent person, or other person entrusted by authority of law to the custody of another person or institution.
- (2) A person convicted of the offense of custodial interference shall be imprisoned in the state prison for any term not to exceed 10 years.
- (3) A person who has not left the state does not commit an offense under this section if he voluntarily returns such person to lawful custody prior to arraignment. A person who has left the state does not commit an offense under this section if he voluntarily returns such person to lawful custody prior to arrest.

NOTE: Montana, along with 49 other states, have adopted the Uniform Child Custody Jurisdiction Act. The purpose of the Act is to set standards for determining which state has jurisdiction, (the legal authority), to determine who gets custody of the children. Under the Act, if your state has been your child's home state within the six months before you began custody proceedings your state has jurisdiction to decide who gets custody, even if their father has taken them to another state.

## LEGAL DEFINITIONS

1. **Preliminary Hearing:** A hearing held before a justice of the peace to determine if there is probable cause to believe a felony has been committed and the person accused has committed it. If this is found, information is filed in the district court.
2. **Arraignment:** A court proceedings at which the defendant is formally charged and he/she enters a plea of guilty or not guilty. No evidence is presented at this time. The victim may be present.
3. **Plea Bargaining:** A process whereby the defendant agrees to plead guilty and the prosecutor agrees (1) to reduce the charge to another carrying a lesser penalty; (2) to dismiss some of the charges; or (3) to recommend a particular sentence to the judge. A prosecutor should consult with the victim concerning any plea arrangement.
4. **Arrest Warrant:** After a complaint or information has been filed, the judge or justice of the peace issues an order for the police or sheriff's deputies to find, detain and bring the person accused to answer the charges. Within 24 hours after arrest, the accused person is brought before the court for an initial appearance where the accused is advised of the charge, advised of his rights, bail is set, and an attorney is appointed if necessary. An arraignment is set at this time.
5. **Continuance:** This simply means a postponement to a later date or time or a court action. Continuance may be granted for any of several reasons, for example, an overcrowded court calendar, an attorney who has not had time to prepare, an essential witness who cannot be in Court at the scheduled time for a valid reason, and so forth.
6. **Deferred Prosecution:** After an arrest and even after a charge has been filed, the prosecutor may agree to defer prosecuting the charge further upon the defendant agreeing to obey certain conditions. If the defendant obeys the conditions, the charge is dismissed, but if not, he is tried.
7. **Sentence:** After a person has been convicted by a jury or pleaded guilty, the judge or justice of the peace imposes a sentence. The court has several options. The judge or justice of the peace may require imprisonment up to the legal maximum and/or execution of the sentence, in whole or in part, for a period of time upon the performance by the defendant of certain conditions. If the defendant does not obey the conditions, he is arrested and the sentence is executed.

Finally, the judge or justice of the peace may choose to defer or put off imposing a sentence for a period of time during which the defendant must obey certain conditions. If the defendant performs the conditions, he can appear at the end of the deferment and ask that the charges against him be dismissed which is done. If he violates the conditions, he is arrested and a sentence is pronounced. Generally, persons who have not violated the law before have deferred impositions of sentence.

## CASE STUDY

Mrs. R., 31 years old, is four months pregnant. She has spent the evening with her two small children worrying about her husband who hasn't come home. It's 10:00 on a Friday night, March 19.

She turns off the news, hears a knock, opens the door and sees her husband. Before she can get to the back door he is coming at her, drunk and angry, accusing her of being with another man. He searches the house waking the children. The two little boys scream as they see their father kick Mrs. R. in the stomach and hold a butcher knife at her throat. He then stabs a chair several times, threatening suicide. Finally he pushes Mrs. R. against the refrigerator, bumps her head against it several times. She passes out on the floor while he chokes her.

She calls the crisis line and the police and eleven minutes later the police arrive and send her to the hospital in an ambulance. Mr. R. is taken to jail and charged with the misdemeanor of simple assault.

He is out of jail the next day. Later Mrs. R. hears he is threatening to kill her. She obtains a Temporary Restraining Order (TRO) and decides to get a divorce. After some financial difficulties she gets a lawyer on April 13, 1977 and on April 15 files a criminal complaint of assault and destruction of private property against her husband for the March 19 incident.

She alternately wants her husband back and hates him. He contributes nothing in terms of support — she leaves a good paying job — and goes on welfare — 8 months pregnant. He demands to see the children, finally kidnapping the oldest. The child is later rescued from a bar where his father had taken him.

One and a half years later the divorce is final. She has custody of her children and child support payment. She has been to court five times accompanied by crisis line advocates from the local woman's center.

Mrs. R. was in supportive counseling. Counseling was also available for her husband, though he did not utilize it. She received the advocacy and help she needed to pursue court process, and create a safer life for herself and her children. She states she could not have done this without outside assistance.

**BUT SHE IS HAPPY, INDEPENDENT AND SAFE — HER STRUGGLE IS PRINTED HERE BECAUSE PERHAPS SHE IS NOT UNLIKE YOU — YOU MAY HAVE TO LEAVE SEVERAL TIMES BEFORE YOU CAN "MAKE IT", YOU MAY HAVE TO GO INTO COUNSELING WITH OR WITHOUT YOUR MATE TO LEARN TO LIVE A NEW LIFE. DOMESTIC VIOLENCE IS THE FASTEST GROWING CRIME IN THE COUNTRY — YOU ARE ONE OF THOUSANDS. BE STRONG — OPTIONS AND RIGHTS ARE YOURS TO EXPLORE AND USE.**

This handbook was edited by staff from Community Services Division, SRS. Special thanks to attorneys Carol Mitchell, Randi Hood, Leslie Taylor and Carroll Blend for their valuable legal consultation.

## NOTES

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