

SENATE BILL NO. 318

INTRODUCED BY N. SWANDAL

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO NO CONTACT ORDERS; PROVIDING THAT A NO CONTACT ORDER MAY BE ISSUED FOR AGGRAVATED ASSAULT OR ASSAULT WITH A WEAPON COMMITTED AGAINST A PARTNER OR FAMILY MEMBER; PROVIDING THAT A PERSON MAY NOT BE RELEASED ON BAIL WITHOUT APPEARING BEFORE A JUDGE WHEN THE PERSON IS CHARGED WITH VIOLATING A NO CONTACT ORDER; AND AMENDING SECTIONS 45-5-209, 46-6-311, AND 46-9-302, MCA."

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

Section 1. Section 45-5-209, MCA, is amended to read:

"45-5-209. Partner or family member assault -- no contact order -- notice -- violation of order -- penalty. (1) A court may issue a standing no contact order and direct law enforcement to serve the order on ~~all defendants~~ a defendant charged with or arrested for a violation of 45-5-206 or, if the victim is a partner or family member of the defendant, a violation of 45-5-202 or 45-5-213. The court order may specify conditions necessary to enhance the safety of any protected person. The court-ordered conditions may include prohibiting the defendant from contacting the protected person in person, by a third party, by telephone, by electronic communication, as defined in 45-8-213, and in writing. The court may impose up to a 1,500-foot restriction on the defendant to stay away from the protected person's location.

(2) Notice of the no contact order must be given orally and in writing by a peace officer at the time that the offender is charged with or arrested for a violation of 45-5-206 or, if the victim is a partner or family member of the defendant, a violation of 45-5-202 or 45-5-213. One copy of the order must be given to the defendant, and one copy must be filed with the court.

(3) The charge of a violation of 45-5-206 or, if the victim is a partner or family member of the defendant, a violation of 45-5-202 or 45-5-213 must be supported by a peace officer's affidavit of probable cause.

(4) The no contact order issued at the time that the defendant is charged with or arrested for a violation of 45-5-206 or, if the victim is a partner or family member of the defendant, a violation of 45-5-202 or 45-5-213 is effective for 72 hours or until the defendant makes the first appearance in court.

1 (5) The court order must state:

2 "You have been charged with or arrested for an assault on a partner or family member. You are not
3 allowed to have contact with _____
4 (list names). You may not _____. Violation of this no contact order is a
5 criminal offense under 45-5-209, MCA, and may result in your arrest. You may be arrested even if the person
6 protected by the no contact order invites or allows you to violate the prohibitions. This order lasts 72 hours or until
7 the court continues or changes the order."

8 (6) The court shall review and amend, if appropriate, the no contact order at the defendant's first
9 appearance.

10 (7) A no contact order may be issued by a court with jurisdiction over violations of 45-5-206 or, if the
11 victim is a partner or family member of the defendant, violations of 45-5-202 or 45-5-213 at the time of the
12 defendant's arraignment or at any other appearance of the defendant, including sentencing. The no contact order
13 must be in writing. A copy of the no contact order must be given to the defendant when it is issued by the court.
14 The court order shall specify protected persons and prohibited contact, including but not limited to the restriction
15 mentioned in subsection (1).

16 (8) (a) A person commits the offense of violation of a no contact order if the person, with knowledge of
17 the order, purposely or knowingly violates any provision of any order issued under this section.

18 (b) Each contact or attempt to make contact with each protected person, directly or indirectly, is a
19 separate offense. Consent of the protected person to prohibited contact is not a defense. A protected person may
20 not be charged with a violation of a no contact order.

21 (c) An offender convicted of violation of a no contact order shall be fined an amount not to exceed \$500
22 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

23 (9) As used in this section, the following definitions apply:

24 (a) "No contact order" means a court order that prohibits a defendant charged with or convicted of an
25 assault on a partner or family member from contacting a protected person.

26 (b) "Partner" or "family member" has the meaning provided in 45-5-206.

27 (c) "Protected person" means a victim of a partner or family member assault listed in a no contact order."
28

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

30 **"46-6-311. Basis for arrest without warrant -- arrest of predominant aggressor -- no contact order.**

1 (1) A peace officer may arrest a person when a warrant has not been issued if the officer has probable cause to
2 believe that the person is committing an offense or that the person has committed an offense and existing
3 circumstances require immediate arrest.

4 (2) (a) The summoning of a peace officer to a place of residence by a partner or family member
5 constitutes an exigent circumstance for making an arrest. Arrest is the preferred response in partner or family
6 member assault cases involving injury to the victim, use or threatened use of a weapon, violation of a restraining
7 order, or other imminent danger to the victim.

8 (b) When a peace officer responds to a partner or family member assault complaint and if it appears that
9 the parties were involved in mutual aggression, the officer shall evaluate the situation to determine who is the
10 predominant aggressor. If, based on the officer's evaluation, the officer determines that one person is the
11 predominant aggressor, the officer may arrest only the predominant aggressor. A determination of who the
12 predominant aggressor is must be based on but is not limited to the following considerations, regardless of who
13 was the first aggressor:

14 (i) the prior history of violence between the partners or family members, if information about the prior
15 history is available to the officer;

16 (ii) the relative severity of injuries received by each person;

17 (iii) whether an act of or threat of violence was taken in self-defense;

18 (iv) the relative sizes and apparent strength of each person;

19 (v) the apparent fear or lack of fear between the partners or family members; and

20 (vi) statements made by witnesses.

21 (3) If a judge has issued a standing order as provided in 45-5-209, a peace officer shall give a defendant
22 charged with or arrested for partner or family member assault or a violation of 45-5-202 or 45-5-213, if the victim
23 is a partner or family member of the defendant, both written and verbal notice of the no contact order issued
24 pursuant to 45-5-209. The notice must include specific conditions as ordered by the court."
25

26 **Section 3.** Section 46-9-302, MCA, is amended to read:

27 **"46-9-302. Bail schedule -- acceptance by peace officer.** (1) A judge may establish and post a
28 schedule of bail for offenses over which the judge has original jurisdiction. A person may not be released on bail
29 without first appearing before the judge when the offense is:

30 (a) any assault on a partner or family member, as partner or family member is defined in 45-5-206;

- 1 (b) stalking, as defined in 45-5-220; ~~or~~
2 (c) violation of an order of protection, as defined in 45-5-626; or
3 (d) violation of a no contact order, as defined in 45-5-209.
- 4 (2) A peace officer may:
5 (a) accept bail on behalf of a judge:
6 (i) in accordance with the bail schedule established under subsection (1); or
7 (ii) whenever the warrant of arrest specifies the amount of bail; or
8 (b) with the offender's permission, accept an unexpired driver's license in lieu of bail for a violation of any
9 offense in Title 61, chapters 3 through 10, except chapter 8, part 4, as provided in subsection (4).
- 10 (3) Whenever a peace officer accepts bail, the officer shall give a signed receipt to the offender setting
11 forth the bail received. The peace officer shall then deliver the bail to the judge before whom the offender is to
12 appear, and the judge shall give a receipt to the peace officer for the bail delivered.
- 13 (4) Whenever a peace officer accepts an unexpired driver's license in lieu of bail, the peace officer shall
14 give the offender a signed driving permit, in a form prescribed by the department. The permit must acknowledge
15 the officer's acceptance of the offender's driver's license and serves as a valid temporary driving permit
16 authorizing the operation of a motor vehicle by the offender. The permit is effective as of the date the permit is
17 signed and remains in effect through the date of the appearance listed on the permit. The peace officer shall
18 deliver the driver's license to the judge before whom the offender is to appear, and the judge shall give the peace
19 officer a receipt acknowledging delivery of the offender's driver's license to the court. After the filing of the
20 complaint and the appearance of the defendant, the judge shall assume jurisdiction and may extend the date of
21 the driving permit for a period of up to 6 months from the defendant's initial appearance date.
- 22 (5) The judge shall return a driver's license that has been accepted in lieu of bail to a defendant:
23 (a) after the required bail has been posted or there has been a final determination of the charge; and
24 (b) if the defendant pleaded guilty or was convicted, after a \$25 administrative fee has been paid to the
25 court."

26

- END -