

1 \_\_\_\_\_ BILL NO. \_\_\_\_\_

2 INTRODUCED BY \_\_\_\_\_  
3 (Primary Sponsor)

4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING ORDER OF PROTECTION LAWS TO ALLOW A  
5 GUARDIAN, CONSERVATOR, OR AGENT TO ACT ON BEHALF OF AN INCAPACITATED ADULT IN  
6 PETITIONING FOR AN ORDER OF PROTECTION OR FOR THE SUBSTITUTE ADDRESS PROGRAM;  
7 AMENDING SECTIONS 40-15-102 AND 40-15-116, MCA; AND PROVIDING AN EFFECTIVE DATE."

8  
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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11 **Section 1.** Section 40-15-102, MCA, is amended to read:

12 **"40-15-102. Eligibility for order of protection.** (1) A person may file a petition for an order of  
13 protection if:

14 (a) the petitioner is in reasonable apprehension of bodily injury by the petitioner's partner or family  
15 member as defined in 45-5-206; or

16 (b) the petitioner is a victim of one of the following offenses committed by a partner or family member:

17 (i) assault as defined in 45-5-201;

18 (ii) aggravated assault as defined in 45-5-202;

19 (iii) intimidation as defined in 45-5-203;

20 (iv) partner or family member assault as defined in 45-5-206;

21 (v) criminal endangerment as defined in 45-5-207;

22 (vi) negligent endangerment as defined in 45-5-208;

23 (vii) assault on a minor as defined in 45-5-212;

24 (viii) assault with a weapon as defined in 45-5-213;

25 (ix) strangulation of a partner or family member as defined in 45-5-215;

26 (x) unlawful restraint as defined in 45-5-301;

27 (xi) kidnapping as defined in 45-5-302;

28 (xii) aggravated kidnapping as defined in 45-5-303; or

1 (xiii) arson as defined in 45-6-103.

2 (2) The following individuals are eligible to file a petition for an order of protection against the offender  
3 regardless of the individual's relationship to the offender:

4 (a) a victim of assault as defined in 45-5-201, aggravated assault as defined in 45-5-202, assault on a  
5 minor as defined in 45-5-212, stalking as defined in 45-5-220, incest as defined in 45-5-507, sexual assault as  
6 defined in 45-5-502, sexual intercourse without consent as defined in 45-5-503, sexual abuse of children as  
7 defined in 45-5-625, or human trafficking as defined in 45-5-701; or

8 (b) a partner or family member of a victim of deliberate homicide as defined in 45-5-102 or mitigated  
9 deliberate homicide as defined in 45-5-103.

10 (3) A parent, guardian ad litem, or other representative of the petitioner may file a petition for an order  
11 of protection on behalf of a minor petitioner against the petitioner's abuser. At its discretion, a court may appoint  
12 a guardian ad litem for a minor petitioner.

13 (4) The following persons may file a petition for an order of protection on behalf of an adult:

14 (a) a guardian appointed pursuant to Title 72, chapter 5, part 3, on behalf of an incapacitated person;

15 (b) a conservator appointed pursuant to Title 72, chapter 5, part 4, on behalf of a protected person; or

16 (c) an agent on behalf of an incapacitated principal. For the purposes of this subsection (4)(c),

17 "incapacitated" has the same meaning as "incapacitated person" provided in 72-5-101.

18 ~~(4)(5)~~ A guardian must be appointed for a minor respondent when required by Rule 17(c), Montana  
19 Rules of Civil Procedure, or by 25-31-602. An order of protection is effective against a respondent regardless of  
20 the respondent's age.

21 ~~(5)(6)~~ A petitioner is eligible for an order of protection whether or not:

22 (a) the petitioner reports the abuse to law enforcement;

23 (b) charges are filed; or

24 (c) the petitioner participates in a criminal prosecution.

25 ~~(6)(7)~~ If a petitioner is otherwise entitled to an order of protection, the length of time between the  
26 abusive incident and the petitioner's application for an order of protection is irrelevant."  
27

28 **Section 2.** Section 40-15-116, MCA, is amended to read:

- 1           **"40-15-116. Definitions.** As used in 40-15-115 through 40-15-121, the following definitions apply:
- 2           (1) "Applicant" means a victim and includes a parent or guardian of a minor or a person described in
- 3 40-15-102(4) who acts on behalf of ~~a~~the victim.
- 4           (2) "Department" means the department of justice.
- 5           (3) "Participant" means an applicant who has submitted an application pursuant to 40-15-117 that has
- 6 been approved by the department.
- 7           (4) "Partner or family member assault" has the meaning provided in 45-5-206.
- 8           (5) "Sexual assault" means sexual assault as defined in 45-5-502, sexual intercourse without consent
- 9 as defined in 45-5-503, incest as defined in 45-5-507, or sexual abuse of children as defined in 45-5-625.
- 10          (6) "Stalking" has the meaning provided in 45-5-220.
- 11          (7) "Victim" means an individual who has been a victim of partner or family member assault, sexual
- 12 assault, or stalking or who is otherwise eligible to file a petition for an order of protection under 40-15-102."

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14           NEW SECTION. Section 3. Effective date. [This act] is effective July 1, 2021.

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- END -