



AN ACT GENERALLY REVISING LAWS RELATED TO DOMESTIC VIOLENCE, INCLUDING STALKING AND ORDERS OF PROTECTION; PROVIDING DEFINITIONS; PROVIDING PENALTIES; PROVIDING A LIST OF VICTIMS WHO MAY PETITION FOR AN ORDER OF PROTECTION; AMENDING SECTIONS 40-15-102 AND 45-5-220, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

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

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

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

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

- (i) assault as defined in 45-5-201;
- (ii) aggravated assault as defined in 45-5-202;
- (iii) intimidation as defined in 45-5-203;
- (iv) partner or family member assault as defined in 45-5-206;
- (v) criminal endangerment as defined in 45-5-207;
- (vi) negligent endangerment as defined in 45-5-208;
- (vii) assault on a minor as defined in 45-5-212;
- (viii) assault with a weapon as defined in 45-5-213;
- (ix) strangulation of a partner or family member as defined in 45-5-215;
- (x) unlawful restraint as defined in 45-5-301;
- (xi) kidnapping as defined in 45-5-302;
- (xii) aggravated kidnapping as defined in 45-5-303; or
- (xiii) arson as defined in 45-6-103.

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

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

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

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

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

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

- (a) the petitioner reports the abuse to law enforcement;
- (b) charges are filed; or
- (c) the petitioner participates in a criminal prosecution.

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

Section 2. Section 45-5-220, MCA, is amended to read:

"45-5-220. Stalking -- exemption -- penalty. ~~(1) A person commits the offense of stalking if the person purposely or knowingly causes another person substantial emotional distress or reasonable apprehension of bodily injury or death by repeatedly:~~

- ~~— (a) following the stalked person; or~~
- ~~— (b) harassing, threatening, or intimidating the stalked person, in person or by mail, electronic communication, as defined in 45-8-213, or any other action, device, or method.~~

(1) A person commits the offense of stalking if the person purposely or knowingly engages in a course

of conduct directed at a specific person and knows or should know that the course of conduct would cause a reasonable person to:

(a) fear for the person's own safety or the safety of a third person; or

(b) suffer other substantial emotional distress.

(2) For the purposes of this section, the following definitions apply:

(a) "Course of conduct" means two or more acts, including but not limited to acts in which the offender directly or indirectly, by any action, method, communication, or physical or electronic devices or means, follows, monitors, observes, surveils, threatens, harasses, or intimidates a person or interferes with a person's property.

(b) "Reasonable person" means a reasonable person under similar circumstances as the victim. This is an objective standard.

(c) "Substantial emotional distress" means significant mental suffering or distress that may, but does not necessarily, require medical or other professional treatment or counseling.

~~(2)~~(3) This section does not apply to a constitutionally protected activity.

~~(3) For the first offense, a person convicted of stalking shall be imprisoned in the county jail for a term not to exceed 1 year or fined an amount not to exceed \$1,000, or both. For a second or subsequent offense or for a first offense against a victim who was under the protection of a restraining order directed at the offender, the offender shall be imprisoned in the state prison for a term not to exceed 5 years or fined an amount not to exceed \$10,000, or both.~~

(4) (a) Except as provided in subsection (4)(b), for the first offense, a person convicted of stalking shall be imprisoned in the county jail for a term not to exceed 1 year or fined an amount not to exceed \$1,000, or both.

(b) For a second or subsequent offense within 20 years or for a first offense when the offender violated any order of protection, when the offender used force or a weapon or threatened to use force or a weapon, or when the victim is a minor and the offender is at least 5 years older than the victim, the offender shall be imprisoned in the state prison for a term not to exceed 5 years or fined an amount not to exceed \$10,000, or both.

(c) A person convicted of stalking may be sentenced to pay all medical, counseling, and other costs incurred by or on behalf of the victim as a result of the offense.

~~(4)~~(5) Upon presentation of credible evidence of violation of this section, an order may be granted, as set forth in Title 40, chapter 15, restraining a person from engaging in the activity described in subsection (1).

~~(5)~~(6) For the purpose of determining the number of convictions under this section, "conviction" means:

- (a) a conviction, as defined in 45-2-101, in this state;
- (b) a conviction for a violation of a statute similar to this section in another state; or
- (c) a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state ~~or~~ or another state for a violation of a statute similar to this section, which forfeiture has not been vacated.

~~(6)~~(7) Attempts by the accused person to contact or follow the stalked person after the accused person has been given actual notice that the stalked person does not want to be contacted or followed constitutes prima facie evidence that the accused person purposely or knowingly followed, harassed, threatened, or intimidated the stalked person."

Section 3. Effective date. [This act] is effective on passage and approval.

- END -

I hereby certify that the within bill,
SB 0114, originated in the Senate.

President of the Senate

Signed this _____ day
of _____, 2019.

Secretary of the Senate

Speaker of the House

Signed this _____ day
of _____, 2019.

SENATE BILL NO. 114

INTRODUCED BY J. GROSS

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