

SENATE BILL NO. 114

INTRODUCED BY J. GROSS

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A BILL FOR AN ACT ENTITLED: "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; AND AMENDING SECTIONS 40-15-102 AND 45-5-220, MCA."

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

1 regardless of the individual's relationship to the offender:

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

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

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

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

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

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

16 (b) charges are filed; or

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

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

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

22 **"45-5-220. Stalking -- exemption -- penalty.** ~~(1) A person commits the offense of stalking if the person~~
23 ~~purposely or knowingly causes another person substantial emotional distress or reasonable apprehension of~~
24 ~~bodily injury or death by repeatedly:~~

25 ~~—— (a) following the stalked person; or~~

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

28 (1) A person commits the offense of stalking if the person purposely or knowingly engages in a course
29 of conduct directed at a specific person and knows or should know that the course of conduct would cause a
30 reasonable person to:

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

2 (b) suffer other substantial emotional distress.

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

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

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

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

12 ~~(2)(3)~~ This section does not apply to a constitutionally protected activity.

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

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

20 (b) For a second or subsequent offense, or for a first offense when the offender violated any order of
 21 protection or any no contact order under 45-5-209 prohibiting contact with the victim, the offender used force or
 22 a weapon or threatened to use force or a weapon, or the victim is a minor, the offender shall be imprisoned in
 23 the state prison for a term not to exceed 10 years or fined an amount not to exceed \$50,000, or both.

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

26 ~~(4)(5)~~ Upon presentation of credible evidence of violation of this section, an order may be granted, as
 27 set forth in Title 40, chapter 15, restraining a person from engaging in the activity described in subsection (1).

28 ~~(5)(6)~~ For the purpose of determining the number of convictions under this section, "conviction" means:

29 (a) a conviction, as defined in 45-2-101, in this state;

30 (b) a conviction for a violation of a statute or regulation similar to this section in another state or on a

1 federally recognized indian reservation; or
2 (c) a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state,
3 ~~or~~ another state, or on a federally recognized indian reservation for a violation of a statute similar to this section,
4 which forfeiture has not been vacated.
5 ~~(6)(7)~~ Attempts by the accused person to contact or follow the stalked person after the accused person
6 has been given actual notice that the stalked person does not want to be contacted or followed constitutes prima
7 facie evidence that the accused person purposely or knowingly followed, harassed, threatened, or intimidated
8 the stalked person."

9 - END -