

## 1 SENATE BILL NO. 114

2 INTRODUCED BY J. GROSS

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4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO DOMESTIC  
5 VIOLENCE, INCLUDING STALKING AND ORDERS OF PROTECTION; PROVIDING DEFINITIONS;  
6 PROVIDING PENALTIES; PROVIDING A LIST OF VICTIMS WHO MAY PETITION FOR AN ORDER OF  
7 PROTECTION; AND AMENDING SECTIONS 40-15-102 AND 45-5-220, MCA."

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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 protection  
13 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

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

30 (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)~~ EXCEPT AS PROVIDED IN SUBSECTION (4)(C), FOR the first offense, a person convicted of stalking  
 19 shall be imprisoned in the county jail for a term not to exceed 1 year or fined an amount not to exceed \$1,000,  
 20 or both.

21 ~~(B)~~ EXCEPT AS PROVIDED IN SUBSECTION (4)(C), FOR A SECOND OR SUBSEQUENT OFFENSE, THE OFFENDER  
 22 SHALL BE IMPRISONED IN THE STATE PRISON FOR A TERM NOT TO EXCEED 5 YEARS OR FINED AN AMOUNT NOT TO EXCEED  
 23 \$10,000, OR BOTH.

24 ~~(b)~~ For a second or subsequent offense, or for a first

25 (C) FOR A FIRST OR SUBSEQUENT offense when the offender violated any order of protection or any no  
 26 contact order under 45-5-209 prohibiting contact with the victim, the offender used force or a weapon or  
 27 threatened to use force or a weapon, or the victim is a minor, the offender shall be imprisoned in the state prison  
 28 for a term not to exceed 10 years or fined an amount not to exceed \$50,000, or both.

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

