

1 HOUSE BILL NO. 480

2 INTRODUCED BY B. MERCER

3

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."

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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
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."

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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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