

SENATE BILL NO. 37

INTRODUCED BY TOWE, S. RICE, FRANKLIN, RYE, VOGEL, WHALEN,  
SIMON, MILLS, DRISCOLL, BACHINI, TUSS, COCCHIARELLA,  
BARNHART, REAM, MCCAFFREE, WYATT, ELLIOTT, RUSSELL,  
DOLEZAL, GALVIN, GERVAIS, HARPER

IN THE SENATE

DECEMBER 22, 1992	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
JANUARY 4, 1993	FIRST READING.
JANUARY 5, 1993	SPONSORS ADDED.
JANUARY 6, 1993	SPONSORS ADDED.
JANUARY 26, 1993	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
JANUARY 27, 1993	PRINTING REPORT.  SECOND READING, DO PASS.
JANUARY 28, 1993	ENGROSSING REPORT.  THIRD READING, PASSED. AYES, 44; NOES, 1.  TRANSMITTED TO HOUSE.

IN THE HOUSE

JANUARY 30, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.  FIRST READING.
MARCH 18, 1993	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 27, 1993	SECOND READING, CONCURRED IN.
MARCH 30, 1993	THIRD READING, CONCURRED IN. AYES, 98; NOES, 1.
MARCH 31, 1993	RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

APRIL 2, 1993

SECOND READING, AMENDMENTS  
CONCURRED IN.

APRIL 3, 1993

THIRD READING, AMENDMENTS  
CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

## SENATE BILL NO. 37

## INTRODUCED BY TOWE

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE OFFENSE OF STALKING; PROVIDING FOR RESTRAINING ORDERS; AND PROVIDING AN EFFECTIVE DATE."

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

NEW SECTION. **Section 1. Stalking -- exemption -- penalty.** (1) A person commits the offense of stalking if it is possible to communicate a request to the person to stop and if the person, after being asked to stop by the stalked person or someone acting at the stalked person's request, causes the stalked person substantial emotional distress or reasonable apprehension of bodily injury or death by:

(a) knowingly and repeatedly following the stalked person; or

(b) knowingly and repeatedly harassing, threatening, intimidating, alarming, or annoying the stalked person, in person or by phone, by mail, or by other action, device, or method.

(2) This section does not apply to constitutionally protected activity, legitimate law enforcement investigations, or organized labor activities.

(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. 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) Upon presentation of credible evidence of violation of this section, an order may be granted restraining a person from engaging in the activity described in subsection (1).

(5) For purposes of this section, "emotional distress" means mental or emotional suffering or irritation caused by fear, worry, anxiety, nervousness, shock, anger, or insomnia.

NEW SECTION. **Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 45, chapter 5, and the provisions of Title 45 apply to [section 1].

NEW SECTION. **Section 3. Effective date.** [This act] is effective 30 days after passage and approval.

-End-  
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**SB 37**  
**INTRODUCED BILL**

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0037, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act creating the offense of stalking.

ASSUMPTIONS:

1. The bill may increase the number of court cases and imprisonments in county jails and the caseload of county attorneys. The potential fiscal impact is unknown and not subject to reasonable estimate.
2. The bill may increase the number of sentences made to the state prison. The potential fiscal impact is unknown and not subject to reasonable estimate.

FISCAL IMPACT:

Unknown.

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

The bill may increase the caseload of county attorneys, the number of district court cases, and the number of imprisonments in county jails.

Dave Lewis 1-9-93  
DAVE LEWIS, BUDGET DIRECTOR DATE  
Office of Budget and Program Planning

Thomas E. Towe 1/12/93  
SENATOR TOM TOWE, PRIMARY SPONSOR DATE

Fiscal Note for SB0037, as introduced

**SB 37**

APPROVED BY COMMITTEE  
ON JUDICIARY

## SENATE BILL NO. 37

INTRODUCED BY TOWE, S. RICE, FRANKLIN, RYE, VOGEL, WHALEN,  
SIMON, MILLS, DRISCOLL, BACHINI, TUSS, COCCHIARELLA,  
BARNHART, REAM, MCCAFFREE, WYATT, ELLIOTT, RUSSELL,  
DOLEZAL, GALVIN, GERVAIS, HARPER

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE OFFENSE OF  
STALKING; PROVIDING FOR RESTRAINING ORDERS; REQUIRING  
NOTIFICATION OF VICTIMS WHEN ACCUSED STALKERS ARE RELEASED  
ON BAIL; EXEMPTING THE OFFENSE OF STALKING FROM BAIL  
SCHEDULES; AMENDING SECTIONS 40-4-121, 46-9-108, AND  
46-9-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

STATEMENT OF INTENT

THE LEGISLATURE FINDS THAT THERE ARE NOT ADEQUATE  
PROVISIONS IN EXISTING STATE LAW TO PROTECT STALKING  
VICTIMS. CIVIL RESTRAINING ORDERS ARE OFTEN DIFFICULT TO  
OBTAIN AND ALONE ARE OFTEN INADEQUATE TO DETER A STALKER  
FROM COMMITTING AN ACT OF VIOLENCE. IT IS THE INTENT OF THE  
LEGISLATURE TO CRIMINALIZE AND PUNISH THE ACTIVITIES OF  
PEOPLE WHO REPEATEDLY WATCH, FOLLOW, HARASS, OR THREATEN  
SOMEONE WHEN SUCH ACTIVITY CAUSES THE VICTIM SUBSTANTIAL  
EMOTIONAL DISTRESS OR REASONABLE APPREHENSION OF BODILY  
INJURY OR DEATH. IT IS THE INTENT OF THE LEGISLATURE TO GIVE  
LAW ENFORCEMENT PERSONNEL RECOURSE BEFORE AN ATTACK TAKES

PLACE. FURTHER, IT IS THE INTENT OF THE LEGISLATURE THAT THE  
OFFENSE NOT APPLY TO AN OTHERWISE LAWFUL ACTIVITY. IN  
PARTICULAR, THE LEGISLATURE DOES NOT WANT TO PLACE A CHILL  
ON CONSTITUTIONALLY PROTECTED RIGHTS, SUCH AS THE RIGHT TO  
DEMONSTRATE, TO ASSEMBLE, AND TO PICKET OR ON THE FULL  
EXERCISE OF FREEDOM OF SPEECH AND FREEDOM OF THE PRESS.

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

NEW SECTION. Section 1. Stalking -- exemption --

penalty. (1) A person commits the offense of stalking if it  
~~is--possible--to--communicate--a--request--to--the--person--to--stop~~  
~~and--if--the--person--after--being--asked--to--stop--by--the--stalked~~  
~~person--or--someone--acting--at--the--stalked--person's--request,~~  
THE PERSON PURPOSELY OR KNOWINGLY causes the-stalked ANOTHER  
person substantial emotional distress or reasonable  
apprehension of bodily injury or death by REPEATEDLY:

(a) ~~knowingly--and--repeatedly~~ following the stalked  
person; or

(b) ~~knowingly--and--repeatedly~~ harassing, threatening, OR  
intimidating, ~~--alarming--or--annoying~~ the stalked person, in  
person or by phone, by mail, or by other action, device, or  
method.

~~{2}--This--section--does--not--apply--to--constitutionally~~  
~~protected----activity,----legitimate----law----enforcement~~  
~~investigations,--or--organized--labor--activities.~~

~~{3}~~(2) 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. 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}~~(3) Upon presentation of credible evidence of violation of this section, an order may be granted, AS SET FORTH IN 40-4-121, restraining a person from engaging in the activity described in subsection (1).

~~{5}--For purposes of this section, "emotional--distress" means--mental or emotional suffering or irritation caused by fear, worry, anxiety, nervousness, shock, anger, or insomnia.~~

(4) 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 ANOTHER STATE FOR A VIOLATION OF A STATUTE SIMILAR TO THIS SECTION, WHICH FORFEITURE HAS NOT BEEN VACATED.

(5) 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 2. SECTION 40-4-121, MCA, IS AMENDED TO READ:

"40-4-121. Temporary order or temporary injunction. (1)  
In a proceeding for dissolution of marriage or for legal separation or in a proceeding for disposition of property or for maintenance or support following dissolution of the marriage by a court which lacked personal jurisdiction over the absent spouse, either party may move for temporary maintenance or temporary support of a child of the marriage entitled to support. The motion shall be accompanied by an affidavit setting forth the factual basis for the motion and the amounts requested.

(2) As a part of a motion for temporary maintenance or support or by independent motion accompanied by affidavit, either party may request the court to issue a temporary

injunction for any of the following relief:

(a) restraining any person from transferring, encumbering, concealing, or otherwise disposing of any property except in the usual course of business or for the necessities of life and, if so restrained, requiring him to notify the moving party of any proposed extraordinary expenditures made after the order is issued;

(b) enjoining a party from molesting or disturbing the peace of the other party or of any child or from stalking, as defined in [section 1];

(c) excluding a party from the family home or from the home of the other party upon a showing that physical or emotional harm would otherwise result;

(d) enjoining a party from removing a child from the jurisdiction of the court; and

(e) providing other injunctive relief proper in the circumstances.

(3) A person may seek the relief provided for in subsection (2) of this section without filing a petition under this part for a dissolution of marriage or legal separation by filing a verified petition:

(a) (i) alleging physical abuse, harm, or bodily injury against the petitioner by a family or household member or the threat of physical abuse, harm, or bodily injury against the petitioner by a family or household member that causes

the petitioner to reasonably believe that the offender has the present ability to execute the threat; and or  
(ii) alleging a violation of [section 1]; and

(b) requesting relief under Title 27, chapter 19, part 3. Any preliminary injunction entered under this subsection must be for a fixed period of time, not to exceed 1 year, and may be modified as provided in Title 27, chapter 19, part 4, and 40-4-208, as appropriate. Persons who may request relief under this subsection include spouses, former spouses, and persons cohabiting or who have cohabited with the other party within 1 year immediately preceding the filing of the petition, and persons alleging a violation of [section 1].

(4) The court may issue a temporary restraining order for a period not to exceed 20 days without requiring notice to the other party only if it finds on the basis of the moving affidavit or other evidence that irreparable injury will result to the moving party if no order is issued until the time for responding has elapsed.

(5) A response may be filed within 20 days after service of notice of motion or at the time specified in the temporary restraining order.

(6) On the basis of the showing made and in conformity with 40-4-203 and 40-4-204, the court may issue a temporary injunction and an order for temporary maintenance or support

in amounts and on terms just and proper in the circumstance.

(7) A temporary order or temporary injunction:

(a) does not prejudice the rights of the parties or the child which are to be adjudicated at subsequent hearings in the proceeding;

(b) may be revoked or modified before final decree on a showing by affidavit of the facts necessary to revocation or modification of a final decree under 40-4-208;

(c) terminates upon order of the court or when a final decree is entered or when a petition for dissolution or legal separation is voluntarily dismissed; and

(d) when issued under this section must conspicuously bear the following: "Violation of this order is a criminal offense under 45-5-626 or [section 1]."

(8) When the petitioner has fled the parties' residence, notice of petitioner's new residence must be withheld except by order of the court for good cause shown."

**SECTION 3. SECTION 46-9-108, MCA, IS AMENDED TO READ:**

"46-9-108. Conditions upon defendant's release -- notice to victim of stalker's release. (1) The court may impose any condition that will reasonably ensure the appearance of the defendant as required or that will ensure the safety of any person or the community, including but not limited to the following conditions:

(a) the defendant may not commit an offense during the

period of release;

(b) the defendant shall remain in the custody of a designated person who agrees to supervise the defendant and report any violation of a release condition to the court, if the designated person is reasonably able to assure the court that the defendant will appear as required and will not pose a danger to the safety of any person or the community;

(c) the defendant shall maintain employment or, if unemployed, actively seek employment;

(d) the defendant shall abide by specified restrictions on the defendant's personal associations, place of abode, and travel;

(e) the defendant shall avoid all contact with an alleged victim of the crime and any potential witness who may testify concerning the offense;

(f) the defendant shall report on a regular basis to a designated agency or individual, pretrial services agency, or other appropriate individual;

(g) the defendant shall comply with a specified curfew;

(h) the defendant may not possess a firearm, destructive device, or other dangerous weapon;

(i) the defendant may not use or possess alcohol, or any dangerous drug or other controlled substance without a legal prescription;

(j) the defendant shall furnish bail in accordance with



1 46-9-401; or

2 (k) the defendant shall return to custody for specified  
3 hours following release from employment, schooling, or other  
4 approved purposes.

5 (2) The court may not impose an unreasonable condition  
6 that results in pretrial detention of the defendant and  
7 shall subject the defendant to the least restrictive  
8 condition or combination of conditions that will ensure the  
9 defendant's appearance and provide for protection of any  
10 person or the community. At any time, the court may, upon a  
11 reasonable basis, amend the order to impose additional or  
12 different conditions of release upon its own motion or upon  
13 the motion of either party.

14 (3) Whenever a person accused of a violation of  
15 [section 1] is admitted to bail, the prosecuting attorney,  
16 or the court in the absence of the prosecuting attorney,  
17 shall immediately notify the alleged victim or, if the  
18 alleged victim is a minor, the alleged victim's parent or  
19 guardian of the accused's release."

20 **SECTION 4. SECTION 46-9-302, MCA, IS AMENDED TO READ:**

21 "46-9-302. Bail schedule -- acceptance by peace  
22 officer. (1) A judge may establish and post a schedule of  
23 bail for offenses over which the judge has original  
24 jurisdiction. A person may not be released on bail without  
25 first appearing before the judge when the offense is

1 domestic abuse or, any assault against a family member or a  
2 household member, or stalking, as defined in [section 1].

3 (2) A peace officer may accept bail on behalf of a  
4 judge:

5 (a) in accordance with the bail schedule established  
6 under subsection (1); or

7 (b) whenever the warrant of arrest specifies the amount  
8 of bail.

9 (3) Whenever a peace officer accepts bail, the officer  
10 shall give a signed receipt to the offender setting forth  
11 the bail received. The peace officer shall then deliver the  
12 bail to the judge before whom the offender is to appear, and  
13 the judge shall give a receipt to the peace officer for the  
14 bail delivered."

15 **NEW SECTION. Section 5. Codification instruction.**  
16 [Section 1] is intended to be codified as an integral part  
17 of Title 45, chapter 5, and the provisions of Title 45 apply  
18 to [section 1].

19 **NEW SECTION. Section 6. Effective date.** [This act] is  
20 effective 30-days-after ON passage and approval.

-End-

## SENATE BILL NO. 37

INTRODUCED BY TOWE, S. RICE, FRANKLIN, RYE, VOGEL, WHALEN,  
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A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE OFFENSE OF  
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SCHEDULES; AMENDING SECTIONS 40-4-121, 46-9-108, AND  
46-9-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

STATEMENT OF INTENT

THE LEGISLATURE FINDS THAT THERE ARE NOT ADEQUATE  
PROVISIONS IN EXISTING STATE LAW TO PROTECT STALKING  
VICTIMS. CIVIL RESTRAINING ORDERS ARE OFTEN DIFFICULT TO  
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PLACE. FURTHER, IT IS THE INTENT OF THE LEGISLATURE THAT THE  
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DEMONSTRATE, TO ASSEMBLE, AND TO PICKET OR ON THE FULL  
EXERCISE OF FREEDOM OF SPEECH AND FREEDOM OF THE PRESS.

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

NEW SECTION. Section 1. Stalking -- exemption --  
penalty. (1) A person commits the offense of stalking if it  
is--possible--to-communicate-a-request-to-the-person-to-stop  
and-if-the-person--after-being-asked-to-stop-by-the--stalked  
person--or--someone--acting-at-the-stalked-person's-request,  
THE PERSON PURPOSELY OR KNOWINGLY causes the-stalked ANOTHER  
person substantial emotional distress or reasonable  
apprehension of bodily injury or death by REPEATEDLY:

(a) knowingly--and--repeatedly following the stalked  
person; or

(b) knowingly-and-repeatedly harassing, threatening, OR  
intimidating,--alarming,--or--annoying the stalked person, in  
person or by phone, by mail, or by other action, device, or  
method.

(2)--This--section--does--not--apply-to-constitutionally  
protected----activity,----legitimate----law-----enforcement  
investigations,--or--organized-labor-activities.

~~(3)~~(2) 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. 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)~~(3) Upon presentation of credible evidence of violation of this section, an order may be granted, AS SET FORTH IN 40-4-121, restraining a person from engaging in the activity described in subsection (1).

~~(5)--For purposes of this section, "emotional--distress" means--mental or emotional suffering or irritation caused by fear,--worry,--anxiety,--nervousness,--shock,--anger,--or insomnia.~~

(4) 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 ANOTHER STATE FOR A VIOLATION OF A STATUTE SIMILAR TO THIS SECTION, WHICH FORFEITURE HAS NOT BEEN VACATED.

(5) 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 2. SECTION 40-4-121, MCA, IS AMENDED TO READ:

"40-4-121. Temporary order or temporary injunction. (1)  
In a proceeding for dissolution of marriage or for legal separation or in a proceeding for disposition of property or for maintenance or support following dissolution of the marriage by a court which lacked personal jurisdiction over the absent spouse, either party may move for temporary maintenance or temporary support of a child of the marriage entitled to support. The motion shall be accompanied by an affidavit setting forth the factual basis for the motion and the amounts requested.

(2) As a part of a motion for temporary maintenance or support or by independent motion accompanied by affidavit, either party may request the court to issue a temporary

1 injunction for any of the following relief:

2 (a) restraining any person from transferring,  
3 encumbering, concealing, or otherwise disposing of any  
4 property except in the usual course of business or for the  
5 necessities of life and, if so restrained, requiring him to  
6 notify the moving party of any proposed extraordinary  
7 expenditures made after the order is issued;

8 (b) enjoining a party from molesting or disturbing the  
9 peace of the other party or of any child or from stalking,  
10 as defined in [section 1];

11 (c) excluding a party from the family home or from the  
12 home of the other party upon a showing that physical or  
13 emotional harm would otherwise result;

14 (d) enjoining a party from removing a child from the  
15 jurisdiction of the court; and

16 (e) providing other injunctive relief proper in the  
17 circumstances.

18 (3) A person may seek the relief provided for in  
19 subsection (2) of this section without filing a petition  
20 under this part for a dissolution of marriage or legal  
21 separation by filing a verified petition:

22 (a) (i) alleging physical abuse, harm, or bodily injury  
23 against the petitioner by a family or household member or  
24 the threat of physical abuse, harm, or bodily injury against  
25 the petitioner by a family or household member that causes

1 the petitioner to reasonably believe that the offender has  
2 the present ability to execute the threat; and or

3 (ii) alleging a violation of [section 1]; and

4 (b) requesting relief under Title 27, chapter 19, part  
5 3. Any preliminary injunction entered under this subsection  
6 must be for a fixed period of time, not to exceed 1 year,  
7 and may be modified as provided in Title 27, chapter 19,  
8 part 4, and 40-4-208, as appropriate. Persons who may  
9 request relief under this subsection include spouses, former  
10 spouses, and persons cohabiting or who have cohabited with  
11 the other party within 1 year immediately preceding the  
12 filing of the petition, and persons alleging a violation of  
13 [section 1].

14 (4) The court may issue a temporary restraining order  
15 for a period not to exceed 20 days without requiring notice  
16 to the other party only if it finds on the basis of the  
17 moving affidavit or other evidence that irreparable injury  
18 will result to the moving party if no order is issued until  
19 the time for responding has elapsed.

20 (5) A response may be filed within 20 days after  
21 service of notice of motion or at the time specified in the  
22 temporary restraining order.

23 (6) On the basis of the showing made and in conformity  
24 with 40-4-203 and 40-4-204, the court may issue a temporary  
25 injunction and an order for temporary maintenance or support

in amounts and on terms just and proper in the circumstance.

(7) A temporary order or temporary injunction:

(a) does not prejudice the rights of the parties or the child which are to be adjudicated at subsequent hearings in the proceeding;

(b) may be revoked or modified before final decree on a showing by affidavit of the facts necessary to revocation or modification of a final decree under 40-4-208;

(c) terminates upon order of the court or when a final decree is entered or when a petition for dissolution or legal separation is voluntarily dismissed; and

(d) when issued under this section must conspicuously bear the following: "Violation of this order is a criminal offense under 45-5-626 or [section 1]."

(8) When the petitioner has filed the parties' residence, notice of petitioner's new residence must be withheld except by order of the court for good cause shown."

**SECTION 3. SECTION 46-9-108, MCA, IS AMENDED TO READ:**

"46-9-108. Conditions upon defendant's release -- notice to victim of stalker's release. (1) The court may impose any condition that will reasonably ensure the appearance of the defendant as required or that will ensure the safety of any person or the community, including but not limited to the following conditions:

(a) the defendant may not commit an offense during the

period of release;

(b) the defendant shall remain in the custody of a designated person who agrees to supervise the defendant and report any violation of a release condition to the court, if the designated person is reasonably able to assure the court that the defendant will appear as required and will not pose a danger to the safety of any person or the community;

(c) the defendant shall maintain employment or, if unemployed, actively seek employment;

(d) the defendant shall abide by specified restrictions on the defendant's personal associations, place of abode, and travel;

(e) the defendant shall avoid all contact with an alleged victim of the crime and any potential witness who may testify concerning the offense;

(f) the defendant shall report on a regular basis to a designated agency or individual, pretrial services agency, or other appropriate individual;

(g) the defendant shall comply with a specified curfew;

(h) the defendant may not possess a firearm, destructive device, or other dangerous weapon;

(i) the defendant may not use or possess alcohol, or any dangerous drug or other controlled substance without a legal prescription;

(j) the defendant shall furnish bail in accordance with

1 46-9-401; or

2 (k) the defendant shall return to custody for specified  
3 hours following release from employment, schooling, or other  
4 approved purposes.

5 (2) The court may not impose an unreasonable condition  
6 that results in pretrial detention of the defendant and  
7 shall subject the defendant to the least restrictive  
8 condition or combination of conditions that will ensure the  
9 defendant's appearance and provide for protection of any  
10 person or the community. At any time, the court may, upon a  
11 reasonable basis, amend the order to impose additional or  
12 different conditions of release upon its own motion or upon  
13 the motion of either party.

14 (3) Whenever a person accused of a violation of  
15 [section 1] is admitted to bail, the prosecuting attorney,  
16 or the court in the absence of the prosecuting attorney,  
17 shall immediately notify the alleged victim or, if the  
18 alleged victim is a minor, the alleged victim's parent or  
19 guardian of the accused's release."

20 **SECTION 4. SECTION 46-9-302, MCA, IS AMENDED TO READ:**

21 "46-9-302. Bail schedule -- acceptance by peace  
22 officer. (1) A judge may establish and post a schedule of  
23 bail for offenses over which the judge has original  
24 jurisdiction. A person may not be released on bail without  
25 first appearing before the judge when the offense is

1 domestic abuse or, any assault against a family member or a  
2 household member, or stalking, as defined in [section 1].

3 (2) A peace officer may accept bail on behalf of a  
4 judge:

5 (a) in accordance with the bail schedule established  
6 under subsection (1); or

7 (b) whenever the warrant of arrest specifies the amount  
8 of bail.

9 (3) Whenever a peace officer accepts bail, the officer  
10 shall give a signed receipt to the offender setting forth  
11 the bail received. The peace officer shall then deliver the  
12 bail to the judge before whom the offender is to appear, and  
13 the judge shall give a receipt to the peace officer for the  
14 bail delivered."

15 **NEW SECTION. Section 5. Codification instruction.**  
16 [Section 1] is intended to be codified as an integral part  
17 of Title 45, chapter 5, and the provisions of Title 45 apply  
18 to [section 1].

19 **NEW SECTION. Section 6. Effective date.** [This act] is  
20 effective 30-days-after ON passage and approval.

-End-

HOUSE STANDING COMMITTEE REPORT

March 18, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that Senate Bill 37 (third reading copy -- blue) be concurred in as amended .

Signed: Russell C. Fagg  
Russ Fagg, ~~Chair~~

And, that such amendments read:

Carried by: Rep. S. Rice

1. Page 2, line 5.

Strike: "AND"

Following: "PICKET"

Insert: ", to peacefully protest, to distribute literature, and to lawfully communicate with persons in public places,"

2. Page 2.

Following: line 25

Insert: "(2) This section does not apply to a constitutionally protected activity."

Renumber: subsequent subsections

3. Page 9, lines 15 and 16.

Strike: "prosecuting" on line 15 through "or the" on line 16

Strike: "in the absence of the prosecuting attorney," on line 16

4. Page 9, line 17.

Strike: "immediately"

Insert: ", as soon as possible under the circumstances, make one and if necessary more reasonable attempts, by means that include but are not limited to certified mail, to "

Committee Vote:  
Yes 18, No 0.

HOUSE

SB 37

611118SC.Hss

## SENATE BILL NO. 37

INTRODUCED BY TOWE, S. RICE, FRANKLIN, RYE, VOGEL, WHALEN,  
SIMON, MILLS, DRISCOLL, BACHINI, TUSS, COCCHIARELLA,  
BARNHART, REAM, MCCAFFREE, WYATT, ELLIOTT, RUSSELL,  
DOLEZAL, GALVIN, GERVAIS, HARPER

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE OFFENSE OF  
STALKING; PROVIDING FOR RESTRAINING ORDERS; REQUIRING  
NOTIFICATION OF VICTIMS WHEN ACCUSED STALKERS ARE RELEASED  
ON BAIL; EXEMPTING THE OFFENSE OF STALKING FROM BAIL  
SCHEDULES; AMENDING SECTIONS 40-4-121, 46-9-108, AND  
46-9-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

STATEMENT OF INTENT

THE LEGISLATURE FINDS THAT THERE ARE NOT ADEQUATE  
PROVISIONS IN EXISTING STATE LAW TO PROTECT STALKING  
VICTIMS. CIVIL RESTRAINING ORDERS ARE OFTEN DIFFICULT TO  
OBTAIN AND ALONE ARE OFTEN INADEQUATE TO DETER A STALKER  
FROM COMMITTING AN ACT OF VIOLENCE. IT IS THE INTENT OF THE  
LEGISLATURE TO CRIMINALIZE AND PUNISH THE ACTIVITIES OF  
PEOPLE WHO REPEATEDLY WATCH, FOLLOW, HARASS, OR THREATEN  
SOMEONE WHEN SUCH ACTIVITY CAUSES THE VICTIM SUBSTANTIAL  
EMOTIONAL DISTRESS OR REASONABLE APPREHENSION OF BODILY  
INJURY OR DEATH. IT IS THE INTENT OF THE LEGISLATURE TO GIVE  
LAW ENFORCEMENT PERSONNEL RECOURSE BEFORE AN ATTACK TAKES

PLACE. FURTHER, IT IS THE INTENT OF THE LEGISLATURE THAT THE  
OFFENSE NOT APPLY TO AN OTHERWISE LAWFUL ACTIVITY. IN  
PARTICULAR, THE LEGISLATURE DOES NOT WANT TO PLACE A CHILL  
ON CONSTITUTIONALLY PROTECTED RIGHTS, SUCH AS THE RIGHT TO  
DEMONSTRATE, TO ASSEMBLE, AND TO PICKET, TO PEACEFULLY  
PROTEST, TO DISTRIBUTE LITERATURE, AND TO LAWFULLY  
COMMUNICATE WITH PERSONS IN PUBLIC PLACES, OR ON THE FULL  
EXERCISE OF FREEDOM OF SPEECH AND FREEDOM OF THE PRESS.

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

NEW SECTION. Section 1. Stalking -- exemption --  
penalty. (1) A person commits the offense of stalking if it  
is--possible--to--communicate--a--request--to--the--person--to--stop  
and--if--the--person--after--being--asked--to--stop--by--the--stalked  
person--or--someone--acting--at--the--stalked--person's--request,  
THE PERSON PURPOSELY OR KNOWINGLY causes the--stalked ANOTHER  
person substantial emotional distress or reasonable  
apprehension of bodily injury or death by REPEATEDLY:

(a) knowingly--and--repeatedly following the stalked  
person; or

(b) knowingly--and--repeatedly harassing, threatening, OR  
intimidating--or--annoying the stalked person, in  
person or by phone, by mail, or by other action, device, or  
method.

(2)--This--section--does--not--apply--to--constitutionally



~~protected---activity,---legitimate---law---enforcement  
investigations,or-organized-labor-activities;~~

(2) THIS SECTION DOES NOT APPLY TO A CONSTITUTIONALLY  
PROTECTED ACTIVITY.

~~(3)(2)(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. 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)(3)(4)~~ Upon presentation of credible evidence of  
violation of this section, an order may be granted, AS SET  
FORTH IN 40-4-121, restraining a person from engaging in the  
activity described in subsection (1).

~~(5)--For--purposes-of-this-section,--"emotional-distress"--  
means-mental-or-emotional-suffering-or-irritation-caused--by  
fear,---worry,---anxiety,---nervousness,---shock,---anger,---or  
insomnia-~~

(4)(5) 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  
ANOTHER STATE FOR A VIOLATION OF A STATUTE SIMILAR TO THIS  
SECTION, WHICH FORFEITURE HAS NOT BEEN VACATED.

(5)(6) 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 2. SECTION 40-4-121, MCA, IS AMENDED TO READ:

"40-4-121. Temporary order or temporary injunction. (1)  
In a proceeding for dissolution of marriage or for legal  
separation or in a proceeding for disposition of property or  
for maintenance or support following dissolution of the  
marriage by a court which lacked personal jurisdiction over  
the absent spouse, either party may move for temporary  
maintenance or temporary support of a child of the marriage  
entitled to support. The motion shall be accompanied by an  
affidavit setting forth the factual basis for the motion and

1 the amounts requested.

2 (2) As a part of a motion for temporary maintenance or  
3 support or by independent motion accompanied by affidavit,  
4 either party may request the court to issue a temporary  
5 injunction for any of the following relief:

6 (a) restraining any person from transferring,  
7 encumbering, concealing, or otherwise disposing of any  
8 property except in the usual course of business or for the  
9 necessities of life and, if so restrained, requiring him to  
10 notify the moving party of any proposed extraordinary  
11 expenditures made after the order is issued;

12 (b) enjoining a party from molesting or disturbing the  
13 peace of the other party or of any child or from stalking,  
14 as defined in [section 1];

15 (c) excluding a party from the family home or from the  
16 home of the other party upon a showing that physical or  
17 emotional harm would otherwise result;

18 (d) enjoining a party from removing a child from the  
19 jurisdiction of the court; and

20 (e) providing other injunctive relief proper in the  
21 circumstances.

22 (3) A person may seek the relief provided for in  
23 subsection (2) of this section without filing a petition  
24 under this part for a dissolution of marriage or legal  
25 separation by filing a verified petition:

1 (a) (i) alleging physical abuse, harm, or bodily injury  
2 against the petitioner by a family or household member or  
3 the threat of physical abuse, harm, or bodily injury against  
4 the petitioner by a family or household member that causes  
5 the petitioner to reasonably believe that the offender has  
6 the present ability to execute the threat; and or

7 (ii) alleging a violation of [section 1]; and

8 (b) requesting relief under Title 27, chapter 19, part  
9 3. Any preliminary injunction entered under this subsection  
10 must be for a fixed period of time, not to exceed 1 year,  
11 and may be modified as provided in Title 27, chapter 19,  
12 part 4, and 40-4-208, as appropriate. Persons who may  
13 request relief under this subsection include spouses, former  
14 spouses, and persons cohabiting or who have cohabited with  
15 the other party within 1 year immediately preceding the  
16 filing of the petition, and persons alleging a violation of  
17 [section 1].

18 (4) The court may issue a temporary restraining order  
19 for a period not to exceed 20 days without requiring notice  
20 to the other party only if it finds on the basis of the  
21 moving affidavit or other evidence that irreparable injury  
22 will result to the moving party if no order is issued until  
23 the time for responding has elapsed.

24 (5) A response may be filed within 20 days after  
25 service of notice of motion or at the time specified in the

1 temporary restraining order.

2 (6) On the basis of the showing made and in conformity  
3 with 40-4-203 and 40-4-204, the court may issue a temporary  
4 injunction and an order for temporary maintenance or support  
5 in amounts and on terms just and proper in the circumstance.

6 (7) A temporary order or temporary injunction:

7 (a) does not prejudice the rights of the parties or the  
8 child which are to be adjudicated at subsequent hearings in  
9 the proceeding;

10 (b) may be revoked or modified before final decree on a  
11 showing by affidavit of the facts necessary to revocation or  
12 modification of a final decree under 40-4-208;

13 (c) terminates upon order of the court or when a final  
14 decree is entered or when a petition for dissolution or  
15 legal separation is voluntarily dismissed; and

16 (d) when issued under this section must conspicuously  
17 bear the following: "Violation of this order is a criminal  
18 offense under 45-5-626 or [section 1]."

19 (8) When the petitioner has fled the parties'  
20 residence, notice of petitioner's new residence must be  
21 withheld except by order of the court for good cause shown."

22 **SECTION 3. SECTION 46-9-108, MCA, IS AMENDED TO READ:**

23 "46-9-108. Conditions upon defendant's release --  
24 notice to victim of stalker's release. (1) The court may  
25 impose any condition that will reasonably ensure the

1 appearance of the defendant as required or that will ensure  
2 the safety of any person or the community, including but not  
3 limited to the following conditions:

4 (a) the defendant may not commit an offense during the  
5 period of release;

6 (b) the defendant shall remain in the custody of a  
7 designated person who agrees to supervise the defendant and  
8 report any violation of a release condition to the court, if  
9 the designated person is reasonably able to assure the court  
10 that the defendant will appear as required and will not pose  
11 a danger to the safety of any person or the community;

12 (c) the defendant shall maintain employment or, if  
13 unemployed, actively seek employment;

14 (d) the defendant shall abide by specified restrictions  
15 on the defendant's personal associations, place of abode,  
16 and travel;

17 (e) the defendant shall avoid all contact with an  
18 alleged victim of the crime and any potential witness who  
19 may testify concerning the offense;

20 (f) the defendant shall report on a regular basis to a  
21 designated agency or individual, pretrial services agency,  
22 or other appropriate individual;

23 (g) the defendant shall comply with a specified curfew;

24 (h) the defendant may not possess a firearm,  
25 destructive device, or other dangerous weapon;

(i) the defendant may not use or possess alcohol, or any dangerous drug or other controlled substance without a legal prescription;

(j) the defendant shall furnish bail in accordance with 46-9-401; or

(k) the defendant shall return to custody for specified hours following release from employment, schooling, or other approved purposes.

(2) The court may not impose an unreasonable condition that results in pretrial detention of the defendant and shall subject the defendant to the least restrictive condition or combination of conditions that will ensure the defendant's appearance and provide for protection of any person or the community. At any time, the court may, upon a reasonable basis, amend the order to impose additional or different conditions of release upon its own motion or upon the motion of either party.

(3) Whenever a person accused of a violation of [section 1] is admitted to bail, the prosecuting attorney, or the court in the absence of the prosecuting attorney, shall immediately, AS SOON AS POSSIBLE UNDER THE CIRCUMSTANCES, MAKE ONE AND IF NECESSARY MORE REASONABLE ATTEMPTS, BY MEANS THAT INCLUDE BUT ARE NOT LIMITED TO CERTIFIED MAIL, TO notify the alleged victim or, if the alleged victim is a minor, the alleged victim's parent or

guardian of the accused's release."

#### **SECTION 4. SECTION 46-9-302, MCA, IS AMENDED TO READ:**

"46-9-302. Bail schedule -- acceptance by peace officer. (1) A judge may establish and post a schedule of bail for offenses over which the judge has original jurisdiction. A person may not be released on bail without first appearing before the judge when the offense is domestic abuse or, any assault against a family member or a household member, or stalking, as defined in [section 1].

(2) A peace officer may accept bail on behalf of a judge:

(a) in accordance with the bail schedule established under subsection (1); or

(b) whenever the warrant of arrest specifies the amount of bail.

(3) Whenever a peace officer accepts bail, the officer shall give a signed receipt to the offender setting forth the bail received. The peace officer shall then deliver the bail to the judge before whom the offender is to appear, and the judge shall give a receipt to the peace officer for the bail delivered."

**NEW SECTION. Section 5. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 45, chapter 5, and the provisions of Title 45 apply to [section 1].

SB 0037/03

- 1        NEW SECTION.   **Section 6.**   **Effective date.** [This act]   is
- 2        effective ~~30-days-after~~ ON passage and approval.

-End-