

SENATE BILL NO. 278

INTRODUCED BY *Debbie James, Chad Feland, Hargrove, Eck, Kallyan, Harding, Bishop, Lynch*

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO DOMESTIC VIOLENCE; CHANGING THE NAME OF THE OFFENSE OF DOMESTIC ABUSE TO PARTNER OR FAMILY MEMBER ASSAULT; AUTHORIZING LOCAL GOVERNMENTS TO ESTABLISH MISDEMEANOR PROBATION OFFICES; PROVIDING FOR A NOTICE OF RIGHTS TO VICTIMS, AUTHORIZING THE SEIZURE OF WEAPONS BY A POLICE OFFICER IN A PARTNER OR FAMILY MEMBER ASSAULT SITUATION; REQUIRING HEALTH CARE PROVIDERS TO PROVIDE SUSPECTED VICTIMS WITH A NOTICE OF RIGHTS; PROVIDING FOR TEMPORARY ORDERS OF PROTECTION, ORDERS OF PROTECTION, AND A PROCEDURE FOR ISSUANCE OF THOSE ORDERS; AND AMENDING SECTIONS 3-10-301, 7-32-2227, 27-19-201, 27-19-316, 40-4-121, 40-4-123, 40-4-124, 40-4-217, 40-4-219, 45-5-206, 45-5-220, 45-5-626, 46-6-105, 46-6-311, 46-6-602, 46-9-302, AND 46-18-202, MCA."

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

Section 1. Section 3-10-301, MCA, is amended to read:

"3-10-301. Civil jurisdiction. (1) Except as provided in ~~subsection (2) and in 3-11-103 and in~~ subsection (2) of this section, the justices' courts have jurisdiction:

- (a) in actions arising on contract for the recovery of money only if the sum claimed does not exceed \$5,000, exclusive of court costs;
- (b) in actions for damages not exceeding \$5,000, exclusive of court costs, for taking, detaining, or injuring personal property or for injury to real property when no issue is raised by the verified answer of the defendant involving the title to or possession of the real property;
- (c) in actions for damages not exceeding \$5,000, exclusive of court costs, for injury to the person, except that, in actions for false imprisonment, libel, slander, criminal conversation, seduction, malicious prosecution, determination of paternity, and abduction, the justice of the peace does not have jurisdiction;
- (d) in actions to recover the possession of personal property if the value of the property does not exceed \$5,000;
- (e) in actions for a fine, penalty, or forfeiture not exceeding \$5,000, imposed by a statute or an

1 ordinance of an incorporated city or town when no issue is raised by the answer involving the legality of
2 any tax, impost, assessment, toll, or municipal fine;

3 (f) in actions upon bonds or undertakings conditioned for the payment of money when the sum
4 claimed does not exceed \$5,000, though the penalty may exceed that sum;

5 (g) to take and enter judgment for the recovery of money on the confession of a defendant when
6 the amount confessed does not exceed \$5,000, exclusive of court costs;

7 (h) to issue temporary restraining orders, as provided in 40-4-121(3), and orders of protection, as
8 provided in [sections 21 through 29].

9 (2) Justices' courts do not have jurisdiction in civil actions that might result in a judgment against
10 the state for the payment of money."

11

12 **Section 2.** Section 7-32-2227, MCA, is amended to read:

13 **"7-32-2227. Inmate eligibility for participation.** A person may be permitted to participate in a
14 county jail work program if ~~he~~ the person:

15 (1) has been sentenced to the county jail for an offense and is not confined in the county jail upon
16 process in a civil action or prior to examination or trial;

17 (2) is not serving a sentence for homicide, robbery, sexual intercourse without consent, arson,
18 burglary, kidnapping, escape, assault, ~~domestic abuse~~ partner or family member assault, incest, or any
19 other offense in which violence is an element of the crime or for an offense during the course of which
20 bodily injury occurred;

21 (3) was not prohibited from participating in the county work program by the sentencing judge,
22 magistrate, or justice of the peace, or ~~his~~ by the judge's, magistrate's, or justice's successor; and

23 (4) has applied to participate to the county sheriff and the sheriff, pursuant to written policy, has
24 approved the participation."

25

26 **Section 3.** Section 27-19-201, MCA, is amended to read:

27 **"27-19-201. When preliminary injunction may be granted.** An injunction order may be granted in
28 the following cases:

29 (1) when it ~~shall appear~~ appears that the applicant is entitled to the relief demanded and ~~such~~ the
30 relief or any part ~~thereof~~ of the relief consists in restraining the commission or continuance of the act

1 complained of, either for a limited period or perpetually;

2 (2) when it ~~shall appear~~ appears that the commission or continuance of some act during the
3 litigation would produce a great or irreparable injury to the applicant;

4 (3) when it ~~shall appear~~ appears during the litigation that the adverse party is doing or threatens
5 or is about to do or is procuring or suffering to be done some act in violation of the applicant's rights,
6 respecting the subject of the action, and tending to render the judgment ineffectual;

7 (4) when it appears that the adverse party, during the pendency of the action, threatens or is about
8 to remove or to dispose of ~~his~~ the adverse party's property with intent to defraud the applicant, an
9 injunction order may be granted to restrain the removal or disposition;

10 (5) when it appears that the applicant has ~~suffered or may suffer physical abuse~~ applied for an
11 order under the provisions of 40-4-121 or an order of protection under [sections 21 through 29]."

12

13 **Section 4.** Section 27-19-316, MCA, is amended to read:

14 **"27-19-316. Contents and filing of restraining order granted without notice.** Each temporary
15 restraining order granted without notice must:

16 (1) be endorsed with the date and hour of its issuance;

17 (2) be filed immediately in the clerk's office and entered in the record;

18 (3) define the injury and state why ~~such~~ the injury is irreparable and why the order was granted
19 without notice; and

20 (4) except as provided in 40-4-121 or [sections 21 through 29], expire by its terms within ~~such~~
21 the time after entry, not to exceed 10 days, as the court or judge fixes."

22

23 **Section 5.** Section 40-4-121, MCA, is amended to read:

24 **"40-4-121. Temporary order or temporary injunction.** (1) In a proceeding for dissolution of
25 marriage or for legal separation or in a proceeding for disposition of property or for maintenance or support
26 following dissolution of the marriage by a court ~~which~~ that lacked personal jurisdiction over the absent
27 spouse, either party may move for temporary maintenance or temporary support of a child of the marriage
28 entitled to support. The motion must be accompanied by an affidavit setting forth the factual basis for the
29 motion and the amounts requested.

30 (2) As a part of a motion for temporary maintenance or support or by independent motion

1 accompanied by affidavit, either party may request the court to issue a temporary injunction for any of the
2 following relief:

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

7 (b) enjoining a party from molesting or disturbing the peace of the other party or of any family
8 member or from stalking, as defined in 45-5-220;

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

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

12 (e) ordering a party to complete counseling, including alcohol or chemical dependency counseling
13 or treatment; ~~and~~

14 (f) providing other injunctive relief proper in the circumstances; and

15 (g) providing additional relief available under [sections 21 through 29].

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

18 ~~(a) (i) alleging physical abuse, harm, or bodily injury against the petitioner by a family member or~~
19 ~~partner or the threat of physical abuse, harm, or bodily injury against the petitioner by a family member or~~
20 ~~partner that causes the petitioner to reasonably believe that the offender has the present ability to execute~~
21 ~~the threat; or~~

22 ~~(ii) alleging a violation of 45-5-220; and~~

23 ~~(b) requesting relief under Title 27, chapter 19, part 3. Any temporary injunction entered under this~~
24 ~~subsection must be for a fixed period of time, not to exceed 1 year, and may be modified as provided in~~
25 ~~Title 27, chapter 19, part 4, and 40-4-208, as appropriate. Persons who may request relief under this~~
26 ~~subsection include family members, partners, and persons alleging a violation of 45-5-220.~~

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

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

3 (6) At the time of the hearing, the court shall determine whether good cause exists for the
4 injunction to continue for 1 year.

5 ~~(7) If the court determines, on the basis of a party's history of violence and the testimony~~
6 ~~presented at the hearing or on the basis of credible evidence that a party has violated 45-5-220, that the~~
7 ~~other party needs permanent protection or may otherwise suffer permanent injury or harm, the court may~~
8 ~~order that the injunction be effective permanently.~~

9 ~~(8) A permanent injunction may be issued by a district court with jurisdiction over the parties to~~
10 ~~a dissolution proceeding upon presentation of evidence of a party's history of violence showing that the~~
11 ~~other party may suffer permanent injury or harm if a permanent injunction is not issued. A permanent~~
12 ~~injunction may also be issued enjoining a party from stalking upon presentation of credible evidence that~~
13 ~~the party has violated 45-5-220 if the court determines that the stalked party needs permanent protection.~~

14 ~~(9) Except when the alleged conduct to be restrained is a violation of 45-5-220, restraining orders~~
15 ~~issued under this section may restrain the petitioner's actions only if the court finds that the petitioner, in~~
16 ~~addition to the respondent, has engaged in abusive or assaultive behavior as described by subsection (3)(a).~~

17 ~~(10)(7)~~ On the basis of the showing made and in conformity with 40-4-203 and 40-4-204, the
18 court may issue a temporary injunction and an order for temporary maintenance or support in amounts and
19 on terms just and proper in the circumstance.

20 ~~(11)(8)~~ A temporary order or injunction ~~or permanent injunction,~~ entered pursuant to this section
21 or [sections 21 through 29]:

22 (a) may be revoked or modified on a showing by affidavit of the facts necessary to revocation or
23 modification of a final decree under 40-4-208 ~~or order under Title 27, chapter 19, part 3, as appropriate;~~

24 (b) terminates upon order of the court or when the petition is voluntarily dismissed; and

25 (c) when issued under this section, must conspicuously bear the following: "Violation of this order
26 is a criminal offense under 45-5-220 or 45-5-626."

27 ~~(12)(9)~~ When the petitioner has fled the parties' residence, notice of the petitioner's new residence
28 must be withheld except by order of the court for good cause shown.

29 ~~(13) As used in this section, the following definitions apply:~~

30 (a) ~~"Bodily injury" means physical pain, illness, or any impairment of physical condition and~~

1 ~~includes mental illness or impairment.~~

2 ~~(b) "Family member" means mothers, fathers, children, brothers, sisters, and other past or present~~
3 ~~family members of a household. These relationships include relationships created by adoption and~~
4 ~~remarriage, including stepchildren, stepparents, and adoptive children and parents. These relationships~~
5 ~~continue regardless of the ages of the parties and whether the parties reside in the same household.~~

6 ~~(c) "Partner" means spouses, former spouses, and persons who have been or are currently in a~~
7 ~~dating or ongoing intimate relationship with a person of the opposite sex."~~

8

9 **Section 6.** Section 40-4-123, MCA, is amended to read:

10 **"40-4-123. Jurisdiction and venue.** (1) District courts, municipal courts, justices' courts, and city
11 courts have concurrent jurisdiction to hear and issue orders under 40-4-121~~(3)~~.

12 (2) The municipal judge, justice of the peace, or city court judge shall on motion suspend all further
13 proceedings in the action and certify the pleading and any orders to the clerk of the district court of the
14 county where the action was begun if an action for declaration of invalidity of a marriage, legal separation,
15 or dissolution of marriage, or for child custody is pending between the parties. From the time of the
16 certification of ~~such~~ the pleadings and any orders to the clerk, the district court has the same jurisdiction
17 over the action as if it had been commenced ~~therein~~ in district court.

18 (3) An action brought under 40-4-121~~(3)~~ may be tried in the county in which either party resides
19 or in which the physical abuse was committed.

20 (4) The right to petition for relief may not be denied because the plaintiff has vacated the residence
21 or household to avoid abuse."

22

23 **Section 7.** Section 40-4-124, MCA, is amended to read:

24 **"40-4-124. Review or removal -- district court.** (1) An order issued by a municipal court, ~~justice~~
25 justice's court, or city court pursuant to 40-4-121~~(3)~~ is immediately reviewable by the judge of the district
26 court at chambers upon the filing of a notice of appeal. The district judge may affirm, dissolve, or modify
27 an order of a municipal court, ~~justice~~ justice's court, or city court made pursuant to 40-4-121~~(3)~~.

28 (2) Any case in which an order has been issued by a municipal court, ~~justice~~ justice's court, or city
29 court pursuant to 40-4-121~~(3)~~ may be removed to district court upon filing of a notice of removal."

30

1 **Section 8.** Section 40-4-217, MCA, is amended to read:

2 **"40-4-217. Visitation.** (1) A parent not granted custody of the child is entitled to reasonable
3 visitation rights unless the court finds, after a hearing, that visitation would endanger seriously the child's
4 physical, mental, moral, or emotional health.

5 (2) In a proceeding for dissolution of marriage or legal separation, the court may, upon the petition
6 of a grandparent, grant reasonable visitation rights to the grandparent of the child if the court finds, after
7 a hearing, that the visitation would be in the best interest of the child.

8 (3) The court may modify an order granting or denying visitation rights whenever modification
9 would serve the best interest of the child; ~~but~~ however, the court may not restrict a parent's visitation
10 rights unless it finds that the visitation would endanger seriously the child's physical, mental, moral, or
11 emotional health or unless the provisions of subsection (6) apply.

12 (4) So long as a noncustodial parent who has visitation rights under a decree or a custody
13 agreement remains a resident of this state, a resident custodial parent shall, before changing the child's
14 residence to another state and unless the noncustodial parent has given written consent, give written notice
15 to the noncustodial parent, as provided in subsection (5).

16 (5) The written notice required by subsection (4) must be served personally or given by certified
17 mail not less than 30 days before the proposed change in residence. Proof of service must be filed with
18 the court that issued the custody order. The purpose of the notice is to allow the noncustodial parent to
19 seek a modification of ~~his~~ the parent's visitation schedule.

20 (6) (a) If a noncustodial parent has been convicted of any of the crimes listed in subsection (6)(c),
21 the custodial parent or any other person who has been granted custody of the child pursuant to court order
22 may file an objection to visitation with the court. The custodial parent or other person having custody shall
23 give notice to the noncustodial parent of the objection as provided by the Montana Rules of Civil Procedure,
24 and the noncustodial parent ~~shall have~~ has 20 days from the notice to respond. If the noncustodial parent
25 fails to respond within 20 days, the visitation rights of the noncustodial parent are suspended until further
26 order of the court. If the noncustodial parent responds and objects, a hearing must be held within 30 days
27 of the response.

28 (b) The noncustodial parent has the burden at the hearing to prove that visitation by the
29 noncustodial parent does not seriously endanger the child's physical, mental, moral, or emotional health
30 and that the modification of visitation is not in the best interest of the child.

1 (c) This subsection (6) applies to the following crimes:

2 (i) deliberate homicide, as described in 45-5-102;

3 (ii) mitigated deliberate homicide, as described in 45-5-103;

4 (iii) sexual assault, as described in 45-5-502;

5 (iv) sexual intercourse without consent, as described in 45-5-503;

6 (v) incest, as described in 45-5-507;

7 (vi) aggravated promotion of prostitution of a child, as described in 45-5-603(1)(b);

8 (vii) endangering the welfare of children, as described in 45-5-622;

9 (viii) ~~domestic abuse~~ partner or family member assault of the type described in 45-5-206(1)(a);

10 (ix) sexual abuse of children, as described in 45-5-625."

11
12 **Section 9.** Section 40-4-219, MCA, is amended to read:

13 **"40-4-219. Modification.** (1) The court may in its discretion modify a prior custody decree if it
14 finds, upon the basis of facts that have arisen since the prior decree or that were unknown to the court at
15 the time of entry of the prior decree, that a change has occurred in the circumstances of the child or ~~his~~
16 the child's custodian and that the modification is necessary to serve the best interest of the child and if it
17 further finds that:

18 (a) the custodian agrees to the modification;

19 (b) the child has been integrated into the family of the petitioner with consent of the custodian;

20 (c) the child's present environment endangers seriously ~~his~~ the child's physical, mental, moral, or
21 emotional health and that the harm likely to be caused by a change of environment is outweighed by its
22 advantages to ~~him~~ the child;

23 (d) the child is 14 years of age or older and desires the modification;

24 (e) the custodian willfully and consistently:

25 (i) refuses to allow the child to have any contact with the noncustodial parent; or

26 (ii) attempts to frustrate or deny the noncustodial parent's exercise of visitation rights; or

27 (f) the custodial parent has changed or intends to change the child's residence to another state.

28 (2) A court may modify a de facto custody arrangement in accordance with the factors set forth
29 in 40-4-212.

30 (3) The court shall presume the custodian is not acting in the child's best interest if the custodian

1 does any of the acts specified in subsection (1)(e) or (8).

2 (4) The court may modify the prior decree based on subsection (1)(f) to provide a new visitation
3 schedule and to apportion transportation costs between the parents.

4 (5) Attorney fees and costs ~~shall~~ must be assessed against a party seeking modification if the court
5 finds that the modification action is vexatious and constitutes harassment.

6 (6) A custody decree may be modified upon the death of the custodial parent pursuant to
7 40-4-221.

8 (7) As used in this section, "prior custody decree" means a custody determination contained in a
9 judicial decree or order made in a custody proceeding.

10 (8) (a) If a parent has been convicted of any of the crimes listed in subsection (8)(c), the other
11 parent or any other person who has been granted custody of the child pursuant to court order may file an
12 objection to the current custody order with the court. The parent or other person having custody shall give
13 notice to the convicted parent of the objection as provided by the Montana Rules of Civil Procedure, and
14 the convicted parent ~~shall have~~ has 20 days from the notice to respond. If the convicted parent fails to
15 respond within 20 days, the custody rights of the convicted parent are suspended until further order of the
16 court. If the convicted parent responds and objects, a hearing must be held within 30 days of the
17 response.

18 (b) The convicted parent has the burden at the hearing to prove that custody by the convicted
19 parent does not seriously endanger the child's physical, mental, moral, or emotional health and that the
20 modification of custody is not in the best interest of the child.

21 (c) This subsection (8) applies to the following crimes:

22 (i) deliberate homicide, as described in 45-5-102;

23 (ii) mitigated deliberate homicide, as described in 45-5-103;

24 (iii) sexual assault, as described in 45-5-502;

25 (iv) sexual intercourse without consent, as described in 45-5-503;

26 (v) incest, as described in 45-5-507;

27 (vi) aggravated promotion of prostitution of a child, as described in 45-5-603(1)(b);

28 (vii) endangering the welfare of children, as described in 45-5-622;

29 (viii) ~~domestic abuse~~ partner or family member assault of the type described in 45-5-206(1)(a);

30 (ix) sexual abuse of children, as described in 45-5-625."

1 **Section 10.** Section 45-5-206, MCA, is amended to read:

2 "**45-5-206. ~~Domestic abuse~~ Partner or family member assault -- penalty.** (1) A person commits
3 the offense of ~~domestic abuse~~ partner or family member assault if the person:

4 (a) purposely or knowingly causes bodily injury to a ~~family member or partner or family member;~~

5 (b) negligently causes bodily injury to a ~~family member or partner or family member~~ with a weapon
6 ~~during or in connection with a quarrel, fight, or abusive behavior;~~ or

7 (c) purposely or knowingly causes reasonable apprehension of bodily injury in a partner or family
8 ~~member or partner.~~ ~~The purpose to cause reasonable apprehension or the knowledge that reasonable~~
9 ~~apprehension would be caused must be presumed in any case in which a person knowingly points a firearm~~
10 ~~at or in the direction of a family member or partner, whether or not the offender believes the firearm to be~~
11 ~~loaded.~~

12 (2) For the purposes of 46-6-311, [sections 21 through 29], and this section, the following
13 definitions apply:

14 (a) "Family member" means mothers, fathers, children, brothers, sisters, and other past or present
15 family members of a household. These relationships include relationships created by adoption and
16 remarriage, including stepchildren, stepparents, in-laws, and adoptive children and parents. These
17 relationships continue regardless of the ages of the parties and whether the parties reside in the same
18 household.

19 (b) ~~"Partner"~~ "Partners" means spouses, former spouses, persons who have a child in common,
20 and persons who have been or are currently in a dating or ongoing intimate relationship with a person of
21 the opposite sex.

22 (3) ~~(a) A person~~ An offender convicted of ~~domestic abuse for the first or second time~~ partner or
23 family member assault shall be fined not ~~to exceed~~ less than \$100 or more than \$1,000 ~~or~~ and be
24 imprisoned in the county jail not to exceed 1 year, ~~or both~~ or not less than 24 hours for a first offense.
25 An offender convicted of a second offense under this section shall be fined not less than \$300 or more than
26 \$1,000 and be imprisoned in the county jail not less than 72 hours or more than 1 year. Upon a first or
27 second conviction, the offender may be ordered into misdemeanor probation as provided in [section 18].
28 On a third or subsequent conviction for ~~domestic abuse~~ partner or family member assault, the ~~person~~
29 ~~convicted~~ offender shall be fined not less than \$500 and not more than \$50,000 and be imprisoned in the
30 county jail or in the state prison for a term not less than ~~40~~ 30 days and not more than 5 years, or both.

1 **(b) For the purpose of determining the number of convictions under this section, a conviction**
 2 **means a conviction, as defined in 45-2-101, in this state, conviction for a violation of a similar statute in**
 3 **another state, or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court**
 4 **in this state or in another state for a violation of a similar statute, which forfeiture has not been vacated.**

5 **(4) (a) ~~A person~~ An offender convicted of domestic abuse partner or family member assault shall**
 6 **be required to pay for and complete at least 6 months of counseling, totaling at least 25 hours a counseling**
 7 **assessment with a focus on violence, dangerousness, and chemical dependency. The offender shall follow**
 8 **through on all recommendations made by the counseling provider. The counselor must be approved by the**
 9 **court. The counseling must include a counseling assessment and a minimum of 25 hours of counseling,**
 10 **in addition to the assessment. The assessment and the counseling must be:**

11 **(i) with a person licensed under Title 37, chapter ~~3~~, 17, 22, or 23;**

12 **(ii) with a professional person as defined in 53-21-102; or**

13 **(iii) in a specialized domestic violence intervention program.**

14 **(b) The counseling provided in subsection (4)(a) must be directed to the violent conduct of the**
 15 **~~convicted person~~ offender. Other issues indicated by the assessment may be addressed in additional**
 16 **counseling beyond the minimum 25 hours. Subsection (4)(a) does not prohibit the placement of the**
 17 **~~convicted person~~ offender in other appropriate treatment if the court determines that there is no available**
 18 **treatment program directed to the violent conduct of the ~~convicted person~~ offender.**

19 **~~(c) Upon completion of the minimum counseling requirements, the counselor shall notify the court~~**
 20 **~~that the defendant has completed the minimum counseling requirements and shall provide the court with~~**
 21 **~~a recommendation as to whether or not the defendant requires additional counseling. Upon~~**
 22 **~~recommendation of the counselor and direction of the court, the defendant may be required to pay for and~~**
 23 **~~complete additional counseling or treatment, such as chemical dependency treatment, or both.~~**

24 **~~(5) Willful failure to obtain or pay for counseling ordered under this section is a civil contempt of~~**
 25 **~~court.~~**

26 **(5) In addition to any sentence imposed under subsections (3) and (4), after determining the**
 27 **financial resources and future ability of the offender to pay restitution as provided for in 46-18-242, the**
 28 **court shall require the offender, if able, to pay the victim's reasonable actual medical, housing, wage loss,**
 29 **and counseling costs in addition to required counseling and fines.**

30 **(6) In addition to the requirements of subsection (5), if financially able, the offender shall be**

1 ordered to pay for the costs of the offender's probation, if probation is ordered by the court.

2 (7) The court may prohibit an offender charged or convicted under this section from possession
3 or use of a firearm. The court may revoke the offender's concealed weapon permit, if one was issued
4 under 45-8-321, for the duration of the sentence.

5 (8) At the time of sentencing, the court shall provide an offender a written copy of the offender's
6 sentence."

7
8 **Section 11.** Section 45-5-220, MCA, is amended to read:

9 **"45-5-220. Stalking -- exemption -- penalty.** (1) A person commits the offense of stalking if the
10 person purposely or knowingly causes another person substantial emotional distress or reasonable
11 apprehension of bodily injury or death by repeatedly:

12 (a) following the stalked person; or

13 (b) harassing, threatening, or intimidating the stalked person, in person or by phone, by mail, or
14 by other action, device, or method.

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

16 (3) For the first offense, a person convicted of stalking shall be imprisoned in the county jail for
17 a term not to exceed 1 year or fined an amount not to exceed \$1,000, or both. For a second or subsequent
18 offense or for a first offense against a victim who was under the protection of a restraining order directed
19 at the offender, the offender shall be imprisoned in the state prison for a term not to exceed 5 years or
20 fined an amount not to exceed \$10,000, or both. A person convicted of stalking may be sentenced to pay
21 all medical, counseling, and other costs incurred by or on behalf of the victim as a result of the offense.

22 (4) Upon presentation of credible evidence of violation of this section, an order may be granted,
23 as set forth in ~~40-4-124~~ [sections 21 through 29], restraining a person from engaging in the activity
24 described in subsection (1).

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

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

28 (b) a conviction for a violation of a statute similar to this section in another state; or

29 (c) a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this
30 state or another state for a violation of a statute similar to this section, which forfeiture has not been

1 vacated.

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

6

7 **Section 12.** Section 45-5-626, MCA, is amended to read:

8 **"45-5-626. Violation of protective order of protection —misdemeanor.** (1) A person commits the
9 offense of violation of a ~~a protective an~~ order of protection if ~~he the person~~, with knowledge of the order,
10 purposely or knowingly violates a provision of any order provided for in 40-4-121 or an order of protection
11 under [sections 21 through 29]. It may be inferred that the defendant had knowledge of an order at the
12 time of an offense if the defendant had been served with the order before the time of the offense. Service
13 of the order is not required upon a showing that the defendant had knowledge of the order and its content.

14 (2) Only the respondent under an order of protection may be cited for a violation of the order. The
15 petitioner who filed for an order of protection may not be cited for a violation of that order of protection.

16 ~~(2)(3) A person~~ An offender convicted of violation of a ~~protective an~~ order of protection shall be
17 fined not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both,
18 for a first offense. Upon conviction for a second offense, an offender shall be fined not less than \$200 and
19 not more than \$500 and be imprisoned in the county jail not less than 24 hours and not more than 6
20 months. Upon conviction for a third or subsequent offense, an offender shall be fined not less than \$500
21 and not more than \$2,000 and be imprisoned in the county jail or state prison for a term not less than 10
22 days and not more than 2 years."

23

24 **Section 13.** Section 46-6-105, MCA, is amended to read:

25 **"46-6-105. Time of making arrest.** An arrest may be made at any time of the day or night, except
26 that a person may not be arrested in the person's home or private dwelling place at night for a misdemeanor
27 committed at some other time and place unless upon the direction of a judge endorsed upon an arrest
28 warrant. However, a person may be arrested in the person's home or private dwelling at night if the person
29 is being arrested pursuant to 46-6-311 for the offense of ~~domestic abuse~~ partner or family member
30 assault."

1 **Section 14.** Section 46-6-311, MCA, is amended to read:

2 "**46-6-311. Basis for arrest without warrant.** (1) A peace officer may arrest a person when a
3 warrant has not been issued if the officer has probable cause to believe that the person is committing an
4 offense or that the person has committed an offense and existing circumstances require immediate arrest.

5 (2) The summoning of a peace officer to a place of residence by a ~~family member or partner or~~
6 family member constitutes an exigent circumstance for making an arrest. Arrest is the preferred response
7 in ~~domestic abuse~~ partner or family member assault cases involving injury to the victim, use or threatened
8 use of a weapon, violation of a restraining order, or other imminent danger to the victim."

9

10 **Section 15.** Section 46-6-602, MCA, is amended to read:

11 "**46-6-602. Notice of rights to victim ~~upon arrest in domestic violence situation~~ partner or family**
12 **member assault.** Whenever a peace officer arrests a person for ~~domestic abuse~~ partner or family member
13 assault, as defined in 45-5-206, ~~if the victim is present, or responds to a call in which partner or family~~
14 member assault is suspected, the officer, outside the presence of the offender, shall advise the victim of
15 the availability of a shelter or other services in the community and give the victim immediate notice of any
16 legal rights and remedies available. The notice must include furnishing the victim with a copy of the
17 following statement:

18 "~~IF YOU ARE THE VICTIM OF DOMESTIC ABUSE,~~ The city or county attorney's office can file
19 criminal charges against your abuser or an offender if the offender committed the offense of partner or family
20 member assault.

21 In addition to the criminal charges filed by the state of Montana, you are entitled to the following
22 civil remedies:

23 You ~~have the right to~~ may go to court and file a petition requesting any of the following orders for
24 relief:

25 (1) an order of protection ~~restraining your abuser~~ that prohibits the offender from abusing
26 threatening to hurt you or hurting you;

27 (2) an order of protection ~~directing your abuser~~ that directs the offender to leave your household
28 home and prohibits the offender from having any contact with you;

29 (3) an order of protection ~~preventing your abuser~~ that prevents the offender from transferring any
30 property except in the usual course of business;

1 (4) ~~an order awarding you or the other parent custody of or visitation with a minor child or children~~
 2 ~~of protection that prohibits the offender from being within 1,500 feet or other appropriate distance of you,~~
 3 ~~any named family member, and your worksite or other specified place;~~

4 ~~(5) an order restraining your abuser from molesting or interfering with minor children in your~~
 5 ~~custody or a family member or partner, as defined in 45-5-206; or~~

6 ~~(6) an order directing the party not granted custody to pay support of minor children or to pay~~
 7 ~~support of the other party if there is a legal obligation to do so"~~

8 (5) an order of protection that gives you possession of necessary personal property;

9 (6) an order of protection that prohibits the offender from possessing or using any firearm.

10 If you file a petition in district court, the district court may order all of the above and may award
 11 custody of your minor children to you or to the other parent. The district court may order visitation of your
 12 children between the parents. The district court may order the offender to pay support payments to you
 13 if the offender has a legal obligation to pay you support payments.

14 The forms that you need to obtain an order of protection are at _____ . You may call
 15 _____ at _____ for additional information about an order of protection.

16 You may file a petition in district court at _____.

17 You may be eligible for restitution payments from the offender (the offender would repay you for
 18 costs that you have had to pay as a result of the assault) or for crime victims compensation payments (a
 19 fund administered by the state of Montana for innocent victims of crime). You may call _____ at
 20 _____ for additional information about restitution or crime victims compensation.

21 The following agencies may be able to give you additional information or emergency help. (List
 22 telephone numbers and addresses of agencies other than shelters with secret locations and a brief summary
 23 of services that are available.)"

24
 25 **Section 16.** Section 46-9-302, MCA, is amended to read:

26 **"46-9-302. Bail schedule -- acceptance by peace officer.** (1) A judge may establish and post a
 27 schedule of bail for offenses over which the judge has original jurisdiction. A person may not be released
 28 on bail without first appearing before the judge when the offense is ~~domestic abuse~~ partner or family
 29 member assault, any assault against a family member or a partner, as defined in 45-5-206, or stalking, as
 30 defined in 45-5-220.

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

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

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

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

7
8 **Section 17.** Section 46-18-202, MCA, is amended to read:

9 **"46-18-202. Additional restrictions on sentence.** (1) The ~~district~~ court may also impose any of the
10 following restrictions or conditions on the sentence provided for in 46-18-201 that it considers necessary
11 to obtain the objectives of rehabilitation and the protection of society:

12 (a) prohibition of the defendant's holding public office;

13 (b) prohibition of the defendant's owning or carrying a dangerous weapon;

14 (c) restrictions on the defendant's freedom of association;

15 (d) restrictions on the defendant's freedom of movement;

16 (e) any other limitation reasonably related to the objectives of rehabilitation and the protection of
17 society.

18 (2) Whenever the district court imposes a sentence of imprisonment in the state prison for a term
19 exceeding 1 year, the court may also impose the restriction that the defendant be ineligible for parole and
20 participation in the supervised release program while serving that term. If ~~such a~~ the restriction is to be
21 imposed, the court shall state the reasons for it in writing. If the court finds that the restriction is necessary
22 for the protection of society, it shall impose the restriction as part of the sentence and the judgment ~~shall~~
23 must contain a statement of the reasons for the restriction.

24 ~~(3) The judge in a justice's, city, or municipal court does not have the authority to restrict an~~
25 ~~individual's rights as enumerated in subsection (1)(a).~~

26 ~~(4)~~(3) When the ~~district~~ court imposes a sentence of probation as defined in 46-23-1001, any
27 probation agreement signed by the defendant may contain a clause waiving extradition."

28
29 **NEW SECTION. Section 18. Misdemeanor probation offices -- officers -- costs.** (1) A local
30 government may establish a misdemeanor probation office associated with a justice's court, municipal

1 court, or city court. The misdemeanor probation office shall monitor offenders for misdemeanor sentence
2 compliance and restitution payments. An offender is considered a fugitive under the conditions provided
3 in 46-23-1014.

4 (2) A local government may appoint misdemeanor probation officers and other employees
5 necessary to administer this section. Misdemeanor probation officers:

6 (a) must have the minimum training required in 46-23-1003;

7 (b) shall follow the supervision guidelines required in 46-23-1011; and

8 (c) may order the arrest of an offender as provided in 46-23-1012.

9 (3) An offender who is convicted of the offense of partner or family member assault under
10 45-5-206 or of a violation of an order of protection under 45-5-626 and who is ordered to be supervised
11 by misdemeanor probation must be ordered to pay for the cost of the misdemeanor probation. The actual
12 cost of probation supervision over the offender's sentence must be paid by the offender unless the offender
13 can show that the offender is unable to pay those costs. The costs of misdemeanor probation are in
14 addition to any other fines, restitution, or counseling ordered.

15
16 **NEW SECTION. Section 19. Partner or family member assault -- seizure of weapon.** (1) A peace
17 officer who responds to a call relating to partner or family member assault shall seize any weapon used or
18 threatened to be used in the alleged assault.

19 (2) The responding officer may, as appropriate:

20 (a) take any action necessary to provide for the safety of a victim and any other member of the
21 household;

22 (b) transport or arrange for the transportation of the victim and any other member of the household
23 to a safe location; and

24 (c) assist a victim and any other member of the household to remove necessary personal items.

25 (3) A weapon seized under this section may not be returned to the offender until the return is
26 ordered by the court.

27
28 **NEW SECTION. Section 20. Notice of rights when partner or family member assault is suspected.**

29 (1) Whenever a patient seeks health care and the health care provider suspects that partner or family
30 member assault has occurred, the health care provider, outside the presence of the suspected offender,

1 shall advise the suspected victim of the availability of a shelter or other services in the community and give
 2 the suspected victim immediate notice of any legal rights and remedies available. The notice must include
 3 furnishing the suspected victim with a copy of the following statement:

4 "The city or county attorney's office can file criminal charges against the offender if the offender
 5 committed the offense of partner or family member assault.

6 In addition to the criminal charges filed by the state of Montana, you are entitled to the civil
 7 remedies listed below.

8 You may go to court and file a petition requesting any of the following orders for relief:

9 (1) an order of protection that prohibits the offender from threatening to hurt you or hurting you;
 10 (2) an order of protection that directs the offender to leave your home and prohibits the offender
 11 from having any contact with you;

12 (3) an order of protection that prevents the offender from transferring any property except in the
 13 usual course of business;

14 (4) an order of protection that prohibits the offender from being within 1,500 feet or other
 15 appropriate distance of you, any named family member, and your worksite or other specified place;

16 (5) an order of protection that gives you possession of necessary personal property;

17 (6) an order of protection that prohibits the offender from possessing or using any firearm.

18 If you file a petition in district court, the district court may order all of the above and may award
 19 custody of your minor children to you or the other parent. The district court may order visitation of your
 20 children between the parents. The district court may order the offender to pay support payments to you
 21 if the offender has a legal obligation to pay you support payments.

22 The forms that you need to obtain an order of protection are at _____. You may call
 23 _____ at _____ for additional information about an order of protection.

24 You may file a petition in district court at _____.

25 You may be eligible for restitution payments from the offender (the offender would repay you for
 26 costs that you have had to pay as a result of the assault) or for crime victims compensation payments (a
 27 fund administered by the state of Montana for innocent victims of crime). You may call _____ at
 28 _____ for additional information about restitution or crime victims compensation.

29 The following agencies may be able to give you additional information or emergency help. (List
 30 telephone numbers and addresses of agencies other than shelters with secret locations and a brief summary

1 of services that are available.)"

2 (2) Partner or family member assault may be suspected by health care workers in circumstances
3 in which a patient repeatedly seeks health care for trauma type injuries or a patient gives an explanation
4 for injuries that is not consistent with the injuries that are observed.

5 (3) For purposes of this section, "health care provider" has the meaning provided in 50-16-504.
6

7 **NEW SECTION. Section 21. Purpose.** The purpose of [sections 21 through 29] is to promote the
8 safety and protection of all victims of partner and family member assault, victims of sexual assault, and
9 victims of stalking.

10

11 **NEW SECTION. Section 22. Eligibility for order of protection.** (1) A person may file a petition for
12 an order of protection if:

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

15 (b) the petitioner is a victim of one of the following offenses committed by a partner or family
16 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) unlawful restraint as defined in 45-5-301;

24 (viii) kidnapping as defined in 45-5-302;

25 (ix) aggravated kidnapping as defined in 45-5-303; or

26 (x) arson as defined in 45-6-103.

27 (2) A victim of stalking as defined in 45-5-220, incest as defined in 45-5-507, sexual assault as
28 defined in 45-5-502, or sexual intercourse without consent as defined in 45-5-503 is eligible for an order
29 of protection against the offender regardless of the petitioner's relationship to the offender.

30 (3) A parent, guardian ad litem, or other representative of the petitioner may file a petition for an

1 order of protection on behalf of a minor petitioner against the petitioner's abuser. At its discretion, a court
2 may appoint a guardian ad litem for a minor petitioner.

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

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

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

8 (b) charges are filed; or

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

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

12

13 **NEW SECTION. Section 23. Temporary order of protection.** (1) A petitioner may seek a
14 temporary order of protection from a court listed in [section 27]. The petitioner shall file a sworn petition
15 that states that the petitioner is in reasonable apprehension of bodily injury or is a victim of one of the
16 offenses listed in [section 22], has a relationship to the respondent if required by [section 22], and is in
17 danger of harm if the court does not issue a temporary order of protection immediately.

18 (2) Upon a review of the petition and a finding that the petitioner is in danger of harm if the court
19 does not act immediately, the court shall issue a temporary order of protection that grants the petitioner
20 appropriate relief. The temporary order of protection may include any or all of the following orders:

21 (a) prohibiting the respondent from threatening to commit or committing acts of violence against
22 the petitioner and any designated family member;

23 (b) prohibiting the respondent from harassing, annoying, disturbing the peace of, telephoning,
24 contacting, or otherwise communicating, directly or indirectly, with the petitioner, any named family
25 member, any other victim of this offense, or a witness to the offense;

26 (c) prohibiting the respondent from removing a child from the jurisdiction of the court;

27 (d) directing the respondent to stay 1,500 feet or other appropriate distance away from the
28 petitioner, the petitioner's residence, the school or place of employment of the petitioner, or any specified
29 place frequented by the petitioner and by any other designated family or household member;

30 (e) removing and excluding the respondent from the residence of the petitioner, regardless of

1 ownership of the residence;

2 (f) prohibiting the respondent from possessing or using a firearm;

3 (g) prohibiting the respondent from transferring, encumbering, concealing, or otherwise disposing
4 of any property except in the usual course of business or for the necessities of life and, if so restrained,
5 requiring the respondent to notify the petitioner, through the court, of any proposed extraordinary
6 expenditures made after the order is issued;

7 (h) directing the transfer of possession and use of the residence, an automobile, and other essential
8 personal property, regardless of ownership of the residence, automobile, or essential personal property, and
9 directing an appropriate law enforcement officer to accompany the petitioner to the residence to ensure that
10 the petitioner safely obtains possession of the residence, automobile, or other essential personal property
11 or to supervise the petitioner's or respondent's removal of essential personal property;

12 (i) directing the respondent to complete violence counseling, which may include alcohol or chemical
13 dependency counseling or treatment, if appropriate;

14 (j) directing other relief considered necessary to provide for the safety and welfare of the petitioner
15 or other designated family member.

16 (3) If the petitioner has fled the parties' residence, notice of the petitioner's new residence must
17 be withheld, except by order of the court for good cause shown.

18 (4) The court may, without requiring prior notice to the respondent, issue an immediate temporary
19 order of protection for up to 20 days if the court finds, on the basis of the petitioner's sworn petition or
20 other evidence, that harm may result to the petitioner if an order is not issued before the 20-day period for
21 responding has elapsed.

22
23 **NEW SECTION. Section 24. Order of protection -- hearing.** (1) A hearing must be conducted
24 within 20 days from the date the court issues a temporary order of protection. At the hearing, the court
25 shall determine whether good cause exists for the temporary order of protection to be continued, amended,
26 or made permanent.

27 (2) The respondent may request an emergency hearing before the end of the 20-day period by filing
28 an affidavit that demonstrates that the respondent has an urgent need for the emergency hearing. An
29 emergency hearing must be set within 3 working days of the filing of the affidavit.

30 (3) The order of protection may not be made mutually effective by the court. The respondent may

1 obtain an order of protection from the petitioner only by filing an application for an order of protection and
2 following the procedure described in [sections 21 through 29].

3
4 **NEW SECTION. Section 25. Attorney general to provide forms.** The attorney general shall prepare
5 uniform sample instructions, petition forms, and order forms for temporary orders of protection and for
6 orders of protection. The attorney general shall distribute samples of the instructions, petitions, and forms
7 to the clerk of the district court in each county and to justices', municipal, and city courts. The clerk of the
8 district court, justices of the peace, and municipal and city court judges shall make forms available to the
9 public at no charge.

10
11 **NEW SECTION. Section 26. Written orders of protection.** (1) The court may determine, on the
12 basis of the respondent's history of violence, the severity of the offense at issue, and the evidence
13 presented at the hearing, that, to avoid further injury or harm, the petitioner needs permanent protection.
14 The court may order that the order of protection remain in effect permanently.

15 (2) In a dissolution proceeding, the district court may, upon request, issue either an order of
16 protection for an appropriate period of time or a permanent order of protection.

17 (3) An order of protection may include all of the relief listed in [section 23], when appropriate.

18 (4) An order of protection may include restraining the respondent from any other named family
19 member who is a minor. If this restriction is included, the respondent must be restrained from having
20 contact with the minor for an appropriate time period as directed by the court or permanently if the court
21 finds that the minor was a victim of abuse, a witness to abuse, or endangered by the environment of abuse.

22 (5) An order of protection issued under this section may continue for an appropriate time period
23 as directed by the court or be made permanent under subsection (1), (2), or (4). The order may be
24 terminated upon the petitioner's request that the order be dismissed.

25 (6) An order of protection must include a section that indicates whether there are any other civil
26 or criminal actions pending involving the parties, a brief description of the action, and the court in which
27 the action is filed.

28 (7) An amendment to a temporary order of protection or to an order of protection is effective only
29 after it has been served in writing on the opposing party.

30 (8) There is no cost for service of an order of protection.

1 (9) Any temporary order of protection or order of protection must conspicuously bear the following:

2 "Violation of this order is a criminal offense under 45-5-220 or 45-5-626 and may carry penalties
3 of up to \$10,000 in fines and up to a 5-year jail sentence.

4 This order is issued by the court, and the respondent is forbidden to do any act listed in the order,
5 even if invited by the petitioner or another person. This order may be amended only by further order of this
6 court or another court that assumes jurisdiction over this matter."
7

8 **NEW SECTION. Section 27. Jurisdiction and venue.** (1) District courts, justices' courts, municipal
9 courts, and city courts have concurrent jurisdiction to hear and issue orders under [section 23].

10 (2) When a divorce or custody action involving the parties is pending in district court, a person may
11 file a petition for an order of protection in a justice's, municipal, or city court only if the district court judge
12 assigned to that case is unavailable or if the petitioner, to escape further abuse, left the county where the
13 abuse occurred. The petitioner shall provide a copy of relevant district court documents to the justice's,
14 municipal, or city court, along with the petition. The justice of the peace, municipal court judge, or city
15 court judge shall immediately certify the pleadings to the original district court after signing an order of
16 protection under this subsection. If the district court is unable to conduct a hearing within 20 days of
17 receipt of the certified pleadings, it may conduct a hearing within 45 days of the receipt.

18 (3) An action brought under [sections 21 through 29] may be filed in the county where the
19 petitioner currently or temporarily resides, the county where the respondent resides, or the county where
20 the abuse occurred. There is no minimum length of residency required to file a petition under [sections 21
21 through 29].

22 (4) The right to petition for relief may not be denied because the petitioner has vacated the
23 residence or household to avoid abuse.

24 (5) An order of protection issued under this section is effective throughout the state. Courts and
25 law enforcement officials shall give full faith and credit to all orders of protection issued within the state.

26 (6) A certified copy of an order of protection from another state, along with proof of service, may
27 be filed in a Montana court with jurisdiction over orders of protection in the county where the petitioner
28 resides. If properly filed in Montana, an order of protection issued in another state must be enforced in the
29 same manner as an order of protection issued in Montana.
30

1 **NEW SECTION. Section 28. Appeal to district court.** (1) An order issued by a justice's court,
2 municipal court, or city court pursuant to [section 23] is immediately reviewable by the district judge upon
3 the filing of a notice of appeal. The district judge may affirm, dissolve, or modify an order of a justice's
4 court, municipal court, or city court made pursuant to [section 23 or section 26].

5 (2) A case in which an order has been issued by a justice's court, municipal court, or city court
6 pursuant to [section 23 or section 26] may be removed to district court upon filing of a notice of removal.

7
8 **NEW SECTION. Section 29. Registration of orders.** (1) The clerk of court, justice of the peace,
9 municipal court judge, or city court judge shall, within 24 hours of receiving proof of service of an order
10 under [section 23, section 26, or section 27], mail a copy of the order or any extension, modification, or
11 termination of the order, along with a copy of the proof of service, to the appropriate law enforcement
12 agencies designated in the order.

13 (2) Law enforcement agencies shall establish procedures, using an existing system for warrant
14 verification, to ensure that peace officers at the scene of an alleged violation of an order of protection are
15 informed of the existence and terms of the order.

16
17 **NEW SECTION. Section 30. Codification instruction.** (1) [Section 18] is intended to be codified
18 as an integral part of Title 46, chapter 23, and the provisions of Title 46, chapter 23, apply to [section 18].

19 (2) [Section 19] is intended to be codified as an integral part of Title 46, chapter 6, part 6, and the
20 provisions of Title 46, chapter 6, part 6, apply to [section 19].

21 (3) [Sections 20 through 29] are intended to be codified as an integral part of Title 40, and the
22 provisions of Title 40 apply to [sections 20 through 29].

23
24 **NEW SECTION. Section 31. Severability.** If a part of [this act] is invalid, all valid parts that are
25 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
26 applications, the part remains in effect in all valid applications that are severable from the invalid
27 applications.

28
29 **NEW SECTION. Section 32. Code commissioner instruction.** Unless inconsistent with [sections
30 1 through 29], any reference in the Montana Code Annotated or in legislation enacted by the 1995

1 legislature to "domestic abuse" is changed to "partner or family member assault". The code commissioner
2 shall conform internal references and grammar to these changes.

3 -END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0278, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

A bill generally revising the laws relating to domestic violence; changing the name of the offense of domestic abuse to partner or family member assault; authorizing local governments to establish misdemeanor probation offices; providing for a notice of rights to victims; authorizing the seizure of weapons by a police officer in a partner or family member assault situation; requiring health care providers to provide suspected victims with a notice of rights; providing for temporary orders of protection, orders of protection, and a procedure for issuance of those orders.

ASSUMPTIONS:

Crime Control Division:

1. The Board of Crime Control will have to revise the computer program used by local law enforcement agencies to capture offense/arrest data as it relates to partner or family member assaults. Revising the computer program may cost \$10,000.
2. The Board of Crime Control will have to revise the manual used in conjunction with the computer program for the capture of offense/arrest data. Rewriting the user manual, printing, and distribution may cost \$1,500.
3. The Board of Crime Control will have to provide minimal training to users for the input/output of the data relating to partner or family member assault. Providing additional training may cost \$1,500.
4. There is a possibility that the above revisions could be incorporated within the scope of the statewide criminal history record system improvement planning being initiated by a task force of the Board of Crime Control. There is also a possibility that the above costs could be covered by federal grant funds that are intended for future statewide criminal history record system improvement. Because the availability of grant funds specific to this purpose is not certain, the fiscal impact is shown as a general fund impact.

Department of Corrections and Human Services:

5. The bill should have no material impact on the size of the corrections population. The maximum penalties for the offenses defined in the bill were not increased nor were the preconditions for sentences weakened.
6. It is estimated that there will be no substantial impact on the corrections population for the violation of an order of protection.

Department of Family Services:

7. The bill will not change the duties or responsibilities of the department and will have no fiscal impact.

Department of Justice:

8. The Attorney General has previously drafted a pamphlet for orders of protection. It is assumed that the department can handle revisions in this bill with current department resources.

(continued)

Dave Lewis 2-4-95
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Vivian Brooke 2/7/95
VIVIAN BROOKE, PRIMARY SPONSOR DATE

Fiscal Note for SB0278, as introduced

SB 278

(continued)

FISCAL IMPACT:

Crime Control Division:

	<u>FY96</u>	<u>FY97</u>
<u>Expenditures:</u>	<u>Difference</u>	<u>Difference</u>
Operating Expenses	13,000	0
<u>Funding:</u>		
General Fund (01)	13,000	0

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

Several local law enforcement agencies have their own computer programs used to provide offense/arrest data to the Board of Crime Control. There is a possibility that the revisions in the domestic abuse statutes may result in increased costs relating to reprogramming these systems to comply with reporting requirements.

The overall impact on local law enforcement agencies, incarcerations in local detention centers, and court workloads, if any, is not subject to reasonable estimate.

1 SENATE BILL NO. 278

2 INTRODUCED BY BROOKE, GRIMES, CLARK, FELAND, HARGROVE, ECK, HALLIGAN, HARDING,
3 BISHOP, LYNCH, HARP, ELLINGSON, COCCHIARELLA, MCCULLOCH, LARSON, SQUIRES,
4 WENNEMAR, KADAS, CAREY, MCKEE, HIBBARD, GRINDE, TAYLOR, REAM, KOTTEL, STANG,
5 MCGEE, JACOBSON, DOHERTY, CRIPPEN, FRANKLIN, FOSTER, WATERMAN, QUILICI, MURDOCK
6

7 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO DOMESTIC
8 VIOLENCE; CHANGING THE NAME OF THE OFFENSE OF DOMESTIC ABUSE TO PARTNER OR FAMILY
9 MEMBER ASSAULT; AUTHORIZING LOCAL GOVERNMENTS TO ESTABLISH MISDEMEANOR PROBATION
10 OFFICES; PROVIDING FOR A NOTICE OF RIGHTS TO VICTIMS; AUTHORIZING THE SEIZURE OF WEAPONS
11 BY A POLICE OFFICER IN A PARTNER OR FAMILY MEMBER ASSAULT SITUATION; REQUIRING HEALTH
12 CARE PROVIDERS TO PROVIDE SUSPECTED VICTIMS WITH A NOTICE OF RIGHTS; PROVIDING FOR
13 TEMPORARY ORDERS OF PROTECTION, ORDERS OF PROTECTION, AND A PROCEDURE FOR ISSUANCE
14 OF THOSE ORDERS; AND AMENDING SECTIONS 3-10-301, 7-32-2227, 27-19-201, 27-19-316, 40-4-121,
15 40-4-123, 40-4-124, 40-4-217, 40-4-219, 45-5-206, 45-5-220, 45-5-626, 46-6-105, 46-6-311, 46-6-602,
16 46-9-302, AND 46-18-202, MCA."

17
18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
19

20 **Section 1.** Section 3-10-301, MCA, is amended to read:

21 **"3-10-301. Civil jurisdiction.** (1) Except as provided in ~~subsection (2) and in 3-11-103~~ and in
22 subsection (2) of this section, the justices' courts have jurisdiction:

23 (a) in actions arising on contract for the recovery of money only if the sum claimed does not
24 exceed \$5,000, exclusive of court costs;

25 (b) in actions for damages not exceeding \$5,000, exclusive of court costs, for taking, detaining,
26 or injuring personal property or for injury to real property when no issue is raised by the verified answer of
27 the defendant involving the title to or possession of the real property;

28 (c) in actions for damages not exceeding \$5,000, exclusive of court costs, for injury to the person,
29 except that, in actions for false imprisonment, libel, slander, criminal conversation, seduction, malicious
30 prosecution, determination of paternity, and abduction, the justice of the peace does not have jurisdiction;

1 (d) in actions to recover the possession of personal property if the value of the property does not
2 exceed \$5,000;

3 (e) in actions for a fine, penalty, or forfeiture not exceeding \$5,000, imposed by a statute or an
4 ordinance of an incorporated city or town when no issue is raised by the answer involving the legality of
5 any tax, impost, assessment, toll, or municipal fine;

6 (f) in actions upon bonds or undertakings conditioned for the payment of money when the sum
7 claimed does not exceed \$5,000, though the penalty may exceed that sum;

8 (g) to take and enter judgment for the recovery of money on the confession of a defendant when
9 the amount confessed does not exceed \$5,000, exclusive of court costs;

10 (h) to issue temporary restraining orders, as provided in 40-4-121(3), and orders of protection, as
11 provided in [sections 21 through 29].

12 (2) Justices' courts do not have jurisdiction in civil actions that might result in a judgment against
13 the state for the payment of money."

14
15 **Section 2.** Section 7-32-2227, MCA, is amended to read:

16 **"7-32-2227. Inmate eligibility for participation.** A person may be permitted to participate in a
17 county jail work program if ~~he~~ the person:

18 (1) has been sentenced to the county jail for an offense and is not confined in the county jail upon
19 process in a civil action or prior to examination or trial;

20 (2) is not serving a sentence for homicide, robbery, sexual intercourse without consent, arson,
21 burglary, kidnapping, escape, assault, ~~domestic abuse~~ partner or family member assault, incest, or any
22 other offense in which violence is an element of the crime or for an offense during the course of which
23 bodily injury occurred;

24 (3) was not prohibited from participating in the county work program by the sentencing judge,
25 magistrate, or justice of the peace, or ~~his~~ by the judge's, magistrate's, or justice's successor; and

26 (4) has applied to participate to the county sheriff and the sheriff, pursuant to written policy, has
27 approved the participation."

28
29 **Section 3.** Section 27-19-201, MCA, is amended to read:

30 **"27-19-201. When preliminary injunction may be granted.** An injunction order may be granted in

1 the following cases:

2 (1) when it ~~shall appear~~ appears that the applicant is entitled to the relief demanded and ~~such~~ the
3 relief or any part ~~thereof~~ of the relief consists in restraining the commission or continuance of the act
4 complained of, either for a limited period or perpetually;

5 (2) when it ~~shall appear~~ appears that the commission or continuance of some act during the
6 litigation would produce a great or irreparable injury to the applicant;

7 (3) when it ~~shall appear~~ appears during the litigation that the adverse party is doing or threatens
8 or is about to do or is procuring or suffering to be done some act in violation of the applicant's rights,
9 respecting the subject of the action, and tending to render the judgment ineffectual;

10 (4) when it appears that the adverse party, during the pendency of the action, threatens or is about
11 to remove or to dispose of ~~his~~ the adverse party's property with intent to defraud the applicant, an
12 injunction order may be granted to restrain the removal or disposition;

13 (5) when it appears that the applicant has ~~suffered or may suffer physical abuse~~ applied for an
14 order under the provisions of 40-4-121 or an order of protection under [sections 21 through 29]."

15

16 **Section 4.** Section 27-19-316, MCA, is amended to read:

17 **"27-19-316. Contents and filing of restraining order granted without notice.** Each temporary
18 restraining order granted without notice must:

19 (1) be endorsed with the date and hour of its issuance;

20 (2) be filed immediately in the clerk's office and entered in the record;

21 (3) define the injury and state why ~~such~~ the injury is irreparable and why the order was granted
22 without notice; and

23 (4) except as provided in 40-4-121 or [sections 21 through 29], expire by its terms within ~~such~~
24 the time after entry, not to exceed 10 days, as the court or judge fixes."

25

26 **Section 5.** Section 40-4-121, MCA, is amended to read:

27 **"40-4-121. Temporary order or temporary injunction.** (1) In a proceeding for dissolution of
28 marriage or for legal separation or in a proceeding for disposition of property or for maintenance or support
29 following dissolution of the marriage by a court ~~which~~ that lacked personal jurisdiction over the absent
30 spouse, either party may move for temporary maintenance or temporary support of a child of the marriage

1 entitled to support. The motion must be accompanied by an affidavit setting forth the factual basis for the
2 motion and the amounts requested.

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

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

10 (b) enjoining a party from molesting or disturbing the peace of the other party or of any family
11 member or from stalking, as defined in 45-5-220;

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

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

15 (e) ordering a party to complete counseling, including alcohol or chemical dependency counseling
16 or treatment; and

17 (f) providing other injunctive relief proper in the circumstances; and

18 (g) providing additional relief available under [sections 21 through 29].

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

21 ~~(a) (i) alleging physical abuse, harm, or bodily injury against the petitioner by a family member or~~
22 ~~partner or the threat of physical abuse, harm, or bodily injury against the petitioner by a family member or~~
23 ~~partner that causes the petitioner to reasonably believe that the offender has the present ability to execute~~
24 ~~the threat; or~~

25 ~~(ii) alleging a violation of 45-5-220; and~~

26 ~~(b) requesting relief under Title 27, chapter 19, part 3. Any temporary injunction entered under this~~
27 ~~subsection must be for a fixed period of time, not to exceed 1 year, and may be modified as provided in~~
28 ~~Title 27, chapter 19, part 4, and 40-4-208, as appropriate. Persons who may request relief under this~~
29 ~~subsection include family members, partners, and persons alleging a violation of 45-5-220.~~

30 (4) The court may issue a temporary restraining order for a period not to exceed 20 days without

1 requiring notice to the other party only if it finds on the basis of the moving affidavit or other evidence that
 2 irreparable injury will result to the moving party if no order is issued until the time for responding has
 3 elapsed.

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

6 (6) At the time of the hearing, the court shall determine whether good cause exists for the
 7 injunction to continue for 1 year.

8 ~~(7) If the court determines, on the basis of a party's history of violence and the testimony~~
 9 ~~presented at the hearing or on the basis of credible evidence that a party has violated 45-5-220, that the~~
 10 ~~other party needs permanent protection or may otherwise suffer permanent injury or harm, the court may~~
 11 ~~order that the injunction be effective permanently.~~

12 ~~(8) A permanent injunction may be issued by a district court with jurisdiction over the parties to~~
 13 ~~a dissolution proceeding upon presentation of evidence of a party's history of violence showing that the~~
 14 ~~other party may suffer permanent injury or harm if a permanent injunction is not issued. A permanent~~
 15 ~~injunction may also be issued enjoining a party from stalking upon presentation of credible evidence that~~
 16 ~~the party has violated 45-5-220 if the court determines that the stalked party needs permanent protection.~~

17 ~~(9) Except when the alleged conduct to be restrained is a violation of 45-5-220, restraining orders~~
 18 ~~issued under this section may restrain the petitioner's actions only if the court finds that the petitioner, in~~
 19 ~~addition to the respondent, has engaged in abusive or assaultive behavior as described by subsection (3)(a).~~

20 ~~(10)(7)~~ On the basis of the showing made and in conformity with 40-4-203 and 40-4-204, the
 21 court may issue a temporary injunction and an order for temporary maintenance or support in amounts and
 22 on terms just and proper in the circumstance.

23 ~~(11)(8)~~ A temporary order or injunction ~~or permanent injunction,~~ entered pursuant to this section
 24 or [sections 21 through 29]:

25 (a) may be revoked or modified on a showing by affidavit of the facts necessary to revocation or
 26 modification of a final decree under 40-4-208 ~~or order under Title 27, chapter 19, part 3, as appropriate;~~

27 (b) terminates upon order of the court or when the petition is voluntarily dismissed; and

28 (c) when issued under this section, must conspicuously bear the following: "Violation of this order
 29 is a criminal offense under 45-5-220 or 45-5-626."

30 ~~(12)(9)~~ When the petitioner has fled the parties' residence, notice of the petitioner's new residence

1 must be withheld except by order of the court for good cause shown.

2 ~~(13) As used in this section, the following definitions apply:~~

3 ~~(a) "Bodily injury" means physical pain, illness, or any impairment of physical condition and~~
4 ~~includes mental illness or impairment.~~

5 ~~(b) "Family member" means mothers, fathers, children, brothers, sisters, and other past or present~~
6 ~~family members of a household. These relationships include relationships created by adoption and~~
7 ~~remarriage, including stepchildren, stepparents, and adoptive children and parents. These relationships~~
8 ~~continue regardless of the ages of the parties and whether the parties reside in the same household.~~

9 ~~(c) "Partner" means spouses, former spouses, and persons who have been or are currently in a~~
10 ~~dating or ongoing intimate relationship with a person of the opposite sex."~~

11

12 **Section 6.** Section 40-4-123, MCA, is amended to read:

13 **"40-4-123. Jurisdiction and venue.** (1) District courts, municipal courts, justices' courts, and city
14 courts have concurrent jurisdiction to hear and issue orders under 40-4-121~~(3)~~.

15 (2) The municipal judge, justice of the peace, or city court judge shall on motion suspend all further
16 proceedings in the action and certify the pleading and any orders to the clerk of the district court of the
17 county where the action was begun if an action for declaration of invalidity of a marriage, legal separation,
18 or dissolution of marriage, or for child custody is pending between the parties. From the time of the
19 certification of ~~such~~ the pleadings and any orders to the clerk, the district court has the same jurisdiction
20 over the action as if it had been commenced ~~therein~~ in district court.

21 (3) An action brought under 40-4-121~~(3)~~ may be tried in the county in which either party resides
22 or in which the physical abuse was committed.

23 (4) The right to petition for relief may not be denied because the plaintiff has vacated the residence
24 or household to avoid abuse."

25

26 **Section 7.** Section 40-4-124, MCA, is amended to read:

27 **"40-4-124. Review or removal -- district court.** (1) An order issued by a municipal court, ~~justice~~
28 justice's court, or city court pursuant to 40-4-121~~(3)~~ is immediately reviewable by the judge of the district
29 court at chambers upon the filing of a notice of appeal. The district judge may affirm, dissolve, or modify
30 an order of a municipal court, ~~justice~~ justice's court, or city court made pursuant to 40-4-121~~(3)~~.

1 (2) Any case in which an order has been issued by a municipal court, ~~justice~~ justice's court, or city
2 court pursuant to 40-4-121~~(3)~~ may be removed to district court upon filing of a notice of removal."
3

4 **Section 8.** Section 40-4-217, MCA, is amended to read:

5 "**40-4-217. Visitation.** (1) A parent not granted custody of the child is entitled to reasonable
6 visitation rights unless the court finds, after a hearing, that visitation would endanger seriously the child's
7 physical, mental, moral, or emotional health.

8 (2) In a proceeding for dissolution of marriage or legal separation, the court may, upon the petition
9 of a grandparent, grant reasonable visitation rights to the grandparent of the child if the court finds, after
10 a hearing, that the visitation would be in the best interest of the child.

11 (3) The court may modify an order granting or denying visitation rights whenever modification
12 would serve the best interest of the child; ~~but~~ however, the court may not restrict a parent's visitation
13 rights unless it finds that the visitation would endanger seriously the child's physical, mental, moral, or
14 emotional health or unless the provisions of subsection (6) apply.

15 (4) So long as a noncustodial parent who has visitation rights under a decree or a custody
16 agreement remains a resident of this state, a resident custodial parent shall, before changing the child's
17 residence to another state and unless the noncustodial parent has given written consent, give written notice
18 to the noncustodial parent, as provided in subsection (5).

19 (5) The written notice required by subsection (4) must be served personally or given by certified
20 mail not less than 30 days before the proposed change in residence. Proof of service must be filed with
21 the court that issued the custody order. The purpose of the notice is to allow the noncustodial parent to
22 seek a modification of ~~his~~ the parent's visitation schedule.

23 (6) (a) If a noncustodial parent has been convicted of any of the crimes listed in subsection (6)(c),
24 the custodial parent or any other person who has been granted custody of the child pursuant to court order
25 may file an objection to visitation with the court. The custodial parent or other person having custody shall
26 give notice to the noncustodial parent of the objection as provided by the Montana Rules of Civil Procedure,
27 and the noncustodial parent ~~shall have~~ has 20 days from the notice to respond. If the noncustodial parent
28 fails to respond within 20 days, the visitation rights of the noncustodial parent are suspended until further
29 order of the court. If the noncustodial parent responds and objects, a hearing must be held within 30 days
30 of the response.

1 (b) The noncustodial parent has the burden at the hearing to prove that visitation by the
 2 noncustodial parent does not seriously endanger the child's physical, mental, moral, or emotional health
 3 and that the modification of visitation is not in the best interest of the child.

4 (c) This subsection (6) applies to the following crimes:

5 (i) deliberate homicide, as described in 45-5-102;

6 (ii) mitigated deliberate homicide, as described in 45-5-103;

7 (iii) sexual assault, as described in 45-5-502;

8 (iv) sexual intercourse without consent, as described in 45-5-503;

9 (v) incest, as described in 45-5-507;

10 (vi) aggravated promotion of prostitution of a child, as described in 45-5-603(1)(b);

11 (vii) endangering the welfare of children, as described in 45-5-622;

12 (viii) ~~domestic abuse~~ partner or family member assault of the type described in 45-5-206(1)(a);

13 (ix) sexual abuse of children, as described in 45-5-625."

14
 15 **Section 9.** Section 40-4-219, MCA, is amended to read:

16 "**40-4-219. Modification.** (1) The court may in its discretion modify a prior custody decree if it
 17 finds, upon the basis of facts that have arisen since the prior decree or that were unknown to the court at
 18 the time of entry of the prior decree, that a change has occurred in the circumstances of the child or ~~his~~
 19 the child's custodian and that the modification is necessary to serve the best interest of the child and if it
 20 further finds that:

21 (a) the custodian agrees to the modification;

22 (b) the child has been integrated into the family of the petitioner with consent of the custodian;

23 (c) the child's present environment endangers seriously ~~his~~ the child's physical, mental, moral, or
 24 emotional health and that the harm likely to be caused by a change of environment is outweighed by its
 25 advantages to ~~him~~ the child;

26 (d) the child is 14 years of age or older and desires the modification;

27 (e) the custodian willfully and consistently:

28 (i) refuses to allow the child to have any contact with the noncustodial parent; or

29 (ii) attempts to frustrate or deny the noncustodial parent's exercise of visitation rights; or

30 (f) the custodial parent has changed or intends to change the child's residence to another state.

1 (2) A court may modify a de facto custody arrangement in accordance with the factors set forth
2 in 40-4-212.

3 (3) The court shall presume the custodian is not acting in the child's best interest if the custodian
4 does any of the acts specified in subsection (1)(e) or (8).

5 (4) The court may modify the prior decree based on subsection (1)(f) to provide a new visitation
6 schedule and to apportion transportation costs between the parents.

7 (5) Attorney fees and costs ~~shall~~ must be assessed against a party seeking modification if the court
8 finds that the modification action is vexatious and constitutes harassment.

9 (6) A custody decree may be modified upon the death of the custodial parent pursuant to
10 40-4-221.

11 (7) As used in this section, "prior custody decree" means a custody determination contained in a
12 judicial decree or order made in a custody proceeding.

13 (8) (a) If a parent has been convicted of any of the crimes listed in subsection (8)(c), the other
14 parent or any other person who has been granted custody of the child pursuant to court order may file an
15 objection to the current custody order with the court. The parent or other person having custody shall give
16 notice to the convicted parent of the objection as provided by the Montana Rules of Civil Procedure, and
17 the convicted parent ~~shall have~~ has 20 days from the notice to respond. If the convicted parent fails to
18 respond within 20 days, the custody rights of the convicted parent are suspended until further order of the
19 court. If the convicted parent responds and objects, a hearing must be held within 30 days of the
20 response.

21 (b) The convicted parent has the burden at the hearing to prove that custody by the convicted
22 parent does not seriously endanger the child's physical, mental, moral, or emotional health and that the
23 modification of custody is not in the best interest of the child.

24 (c) This subsection (8) applies to the following crimes:

25 (i) deliberate homicide, as described in 45-5-102;

26 (ii) mitigated deliberate homicide, as described in 45-5-103;

27 (iii) sexual assault, as described in 45-5-502;

28 (iv) sexual intercourse without consent, as described in 45-5-503;

29 (v) incest, as described in 45-5-507;

30 (vi) aggravated promotion of prostitution of a child, as described in 45-5-603(1)(b);

1 (vii) endangering the welfare of children, as described in 45-5-622;

2 (viii) ~~domestic-abuse partner or family member assault~~ of the type described in 45-5-206(1)(a);

3 (ix) sexual abuse of children, as described in 45-5-625."

4
5 **Section 10.** Section 45-5-206, MCA, is amended to read:

6 **"45-5-206. ~~Domestic-abuse~~ Partner or family member assault -- penalty.** (1) A person commits
7 the offense of ~~domestic-abuse partner or family member assault~~ if the person:

8 (a) purposely or knowingly causes bodily injury to a ~~family member or partner~~ or family member;

9 (b) negligently causes bodily injury to a ~~family member or partner~~ or family member with a weapon
10 ~~during or in connection with a quarrel, fight, or abusive behavior~~; or

11 (c) purposely or knowingly causes reasonable apprehension of bodily injury in a partner or family
12 ~~member or partner~~. ~~The purpose to cause reasonable apprehension or the knowledge that reasonable~~
13 ~~apprehension would be caused must be presumed in any case in which a person knowingly points a firearm~~
14 ~~at or in the direction of a family member or partner, whether or not the offender believes the firearm to be~~
15 ~~loaded.~~

16 (2) For the purposes of 46-6-311, [sections 21 through 29], and this section, the following
17 definitions apply:

18 (a) "Family member" means mothers, fathers, children, brothers, sisters, and other past or present
19 family members of a household. These relationships include relationships created by adoption and
20 remarriage, including stepchildren, stepparents, in-laws, and adoptive children and parents. These
21 relationships continue regardless of the ages of the parties and whether the parties reside in the same
22 household.

23 (b) ~~"Partner"~~ "Partners" means spouses, former spouses, persons who have a child in common,
24 and persons who have been or are currently in a dating or ongoing intimate relationship with a person of
25 the opposite sex.

26 (3) ~~(a) A person~~ An offender convicted of ~~domestic-abuse for the first or second time~~ partner or
27 family member assault shall be fined not ~~to exceed~~ less than \$100 or more than \$1,000 ~~or~~ and be
28 imprisoned in the county jail not to exceed 1 year, or both or not less than 24 hours for a first offense.
29 An offender convicted of a second offense under this section shall be fined not less than \$300 or more than
30 \$1,000 and be imprisoned in the county jail not less than 72 hours or more than 1 year. Upon a first or

1 second conviction, the offender may be ordered into misdemeanor probation as provided in [section 18].

2 On a third or subsequent conviction for ~~domestic abuse partner or family member assault~~, the ~~person~~
 3 ~~convicted offender~~ shall be fined not less than \$500 and not more than \$50,000 and be imprisoned in the
 4 county jail or in the state prison for a term not less than ~~40~~ 30 days and not more than 5 years, or both.

5 (b) For the purpose of determining the number of convictions under this section, a conviction
 6 means a conviction, as defined in 45-2-101, in this state, conviction for a violation of a similar statute in
 7 another state, or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court
 8 in this state or in another state for a violation of a similar statute, which forfeiture has not been vacated.

9 (4) (a) ~~A person~~ An offender convicted of ~~domestic abuse partner or family member assault~~ shall
 10 be required to pay for and complete ~~at least 6 months of counseling, totaling at least 25 hours~~ a counseling
 11 assessment with a focus on violence, dangerousness, and chemical dependency. The offender shall follow
 12 through on all recommendations made by the counseling provider. The counselor must be approved by the
 13 court. The counseling must include a counseling assessment and a minimum of 25 hours of counseling,
 14 in addition to the assessment. The assessment and the counseling must be:

15 (i) with a person licensed under Title 37, chapter ~~3~~, 17, 22, or 23;

16 (ii) with a professional person as defined in 53-21-102; or

17 (iii) in a specialized domestic violence intervention program.

18 (b) The counseling provided in subsection (4)(a) must be directed to the violent conduct of the
 19 ~~convicted person~~ offender. Other issues indicated by the assessment may be addressed in additional
 20 counseling beyond the minimum 25 hours. Subsection (4)(a) does not prohibit the placement of the
 21 ~~convicted person~~ offender in other appropriate treatment if the court determines that there is no available
 22 treatment program directed to the violent conduct of the ~~convicted person~~ offender.

23 ~~(c) Upon completion of the minimum counseling requirements, the counselor shall notify the court~~
 24 ~~that the defendant has completed the minimum counseling requirements and shall provide the court with~~
 25 ~~a recommendation as to whether or not the defendant requires additional counseling. Upon~~
 26 ~~recommendation of the counselor and direction of the court, the defendant may be required to pay for and~~
 27 ~~complete additional counseling or treatment, such as chemical dependency treatment, or both.~~

28 ~~(5) Willful failure to obtain or pay for counseling ordered under this section is a civil contempt of~~
 29 ~~court.~~

30 (5) In addition to any sentence imposed under subsections (3) and (4), after determining the

1 financial resources and future ability of the offender to pay restitution as provided for in 46-18-242, the
 2 court shall require the offender, if able, to pay the victim's reasonable actual medical, housing, wage loss,
 3 and counseling costs in addition to required counseling and fines.

4 (6) In addition to the requirements of subsection (5), if financially able, the offender shall be
 5 ordered to pay for the costs of the offender's probation, if probation is ordered by the court.

6 (7) The court may prohibit an offender charged or convicted under this section from possession
 7 or use of a THE firearm USED IN THE ASSAULT. The court may revoke the offender's concealed weapon
 8 permit, if one was issued under 45-8-321, for the duration of the sentence ENFORCE 45-8-323 IF A
 9 FIREARM WAS USED IN THE ASSAULT.

10 (8) At the time of sentencing, the court shall provide an offender a written copy of the offender's
 11 sentence."

12
 13 **Section 11.** Section 45-5-220, MCA, is amended to read:

14 **"45-5-220. Stalking -- exemption -- penalty.** (1) A person commits the offense of stalking if the
 15 person purposely or knowingly causes another person substantial emotional distress or reasonable
 16 apprehension of bodily injury or death by repeatedly:

17 (a) following the stalked person; or
 18 (b) harassing, threatening, or intimidating the stalked person, in person or by phone, by mail, or
 19 by other action, device, or method.

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

21 (3) For the first offense, a person convicted of stalking shall be imprisoned in the county jail for
 22 a term not to exceed 1 year or fined an amount not to exceed \$1,000, or both. For a second or subsequent
 23 offense or for a first offense against a victim who was under the protection of a restraining order directed
 24 at the offender, the offender shall be imprisoned in the state prison for a term not to exceed 5 years or
 25 fined an amount not to exceed \$10,000, or both. A person convicted of stalking may be sentenced to pay
 26 all medical, counseling, and other costs incurred by or on behalf of the victim as a result of the offense.

27 (4) Upon presentation of credible evidence of violation of this section, an order may be granted,
 28 as set forth in ~~40-4-124~~ [sections 21 through 29], restraining a person from engaging in the activity
 29 described in subsection (1).

30 (5) For the purpose of determining the number of convictions under this section, "conviction"

1 means:

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

3 (b) a conviction for a violation of a statute similar to this section in another state; or

4 (c) a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this
5 state or another state for a violation of a statute similar to this section, which forfeiture has not been
6 vacated.

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

11

12 **Section 12.** Section 45-5-626, MCA, is amended to read:

13 **"45-5-626. Violation of protective order of protection —~~misdemeanor~~.** (1) A person commits the
14 offense of violation of ~~a protective~~ an order of protection if he the person, with knowledge of the order,
15 purposely or knowingly violates a provision of any order provided for in 40-4-121 or an order of protection
16 under [sections 21 through 29]. It may be inferred that the defendant had knowledge of an order at the
17 time of an offense if the defendant had been served with the order before the time of the offense. Service
18 of the order is not required upon a showing that the defendant had knowledge of the order and its content.

19 (2) Only the respondent under an order of protection may be cited for a violation of the order. The
20 petitioner who filed for an order of protection may not be cited for a violation of that order of protection.

21 ~~(2)(3)~~ (3) A person An offender convicted of violation of ~~a protective~~ an order of protection shall be
22 fined not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both,
23 for a first offense. Upon conviction for a second offense, an offender shall be fined not less than \$200 and
24 not more than \$500 and be imprisoned in the county jail not less than 24 hours and not more than 6
25 months. Upon conviction for a third or subsequent offense, an offender shall be fined not less than \$500
26 and not more than \$2,000 and be imprisoned in the county jail or state prison for a term not less than 10
27 days and not more than 2 years."

28

29 **Section 13.** Section 46-6-105, MCA, is amended to read:

30 **"46-6-105. Time of making arrest.** An arrest may be made at any time of the day or night, except

1 that a person may not be arrested in the person's home or private dwelling place at night for a misdemeanor
 2 committed at some other time and place unless upon the direction of a judge endorsed upon an arrest
 3 warrant. However, a person may be arrested in the person's home or private dwelling at night if the person
 4 is being arrested pursuant to 46-6-311 for the offense of ~~domestic abuse~~ partner or family member
 5 assault."

6
 7 **Section 14.** Section 46-6-311, MCA, is amended to read:

8 **"46-6-311. Basis for arrest without warrant.** (1) A peace officer may arrest a person when a
 9 warrant has not been issued if the officer has probable cause to believe that the person is committing an
 10 offense or that the person has committed an offense and existing circumstances require immediate arrest.

11 (2) The summoning of a peace officer to a place of residence by a ~~family member or partner or~~
 12 family member constitutes an exigent circumstance for making an arrest. Arrest is the preferred response
 13 in ~~domestic abuse~~ partner or family member assault cases involving injury to the victim, use or threatened
 14 use of a weapon, violation of a restraining order, or other imminent danger to the victim."

15
 16 **Section 15.** Section 46-6-602, MCA, is amended to read:

17 **"46-6-602. Notice of rights to victim upon arrest in ~~domestic violence situation~~ partner or family**
 18 **member assault.** Whenever a peace officer arrests a person for ~~domestic abuse~~ partner or family member
 19 assault, as defined in 45-5-206, ~~if the victim is present, or responds to a call in which partner or family~~
 20 member assault is suspected, the officer, outside the presence of the offender, shall advise the victim of
 21 the availability of a shelter or other services in the community and give the victim immediate notice of any
 22 legal rights and remedies available. The notice must include furnishing the victim with a copy of the
 23 following statement:

24 ~~"IF YOU ARE THE VICTIM OF DOMESTIC ABUSE, the~~ The city or county attorney's office can file
 25 criminal charges against your abuser or an offender if the offender committed the offense of partner or family
 26 member assault.

27 In addition to the criminal charges filed by the state of Montana, you are entitled to the following
 28 civil remedies:

29 You ~~have the right to~~ may go to court and file a petition requesting any of the following orders for
 30 relief:

1 (1) an order of protection ~~restraining your abuser~~ that prohibits the offender from abusing
2 threatening to hurt you or hurting you;

3 (2) an order of protection ~~directing your abuser~~ that directs the offender to leave your household
4 home and prohibits the offender from having any contact with you;

5 (3) an order of protection ~~preventing your abuser~~ that prevents the offender from transferring any
6 property except in the usual course of business;

7 (4) an order ~~awarding you or the other parent custody of or visitation with a minor child or children~~
8 of protection that prohibits the offender from being within 1,500 feet or other appropriate distance of you,
9 any named family member, and your worksite or other specified place;

10 ~~(5) an order restraining your abuser from molesting or interfering with minor children in your~~
11 ~~custody or a family member or partner, as defined in 45-5-206; or~~

12 ~~(6) an order directing the party not granted custody to pay support of minor children or to pay~~
13 ~~support of the other party if there is a legal obligation to do so"~~

14 (5) an order of protection that gives you possession of necessary personal property;

15 (6) an order of protection that prohibits the offender from possessing or using any THE firearm
16 USED IN THE ASSAULT.

17 If you file a petition in district court, the district court may order all of the above and may award
18 custody of your minor children to you or to the other parent. The district court may order visitation of your
19 children between the parents. The district court may order the offender to pay support payments to you
20 if the offender has a legal obligation to pay you support payments.

21 The forms that you need to obtain an order of protection are at _____ . You may call
22 _____ at _____ for additional information about an order of protection.

23 You may file a petition in district court at _____ .

24 You may be eligible for restitution payments from the offender (the offender would repay you for
25 costs that you have had to pay as a result of the assault) or for crime victims compensation payments (a
26 fund administered by the state of Montana for innocent victims of crime). You may call _____ at
27 _____ for additional information about restitution or crime victims compensation.

28 The following agencies may be able to give you additional information or emergency help. (List
29 telephone numbers and addresses of agencies other than shelters with secret locations and a brief summary
30 of services that are available.)"

1 **Section 16.** Section 46-9-302, MCA, is amended to read:

2 **"46-9-302. Bail schedule -- acceptance by peace officer.** (1) A judge may establish and post a
3 schedule of bail for offenses over which the judge has original jurisdiction. A person may not be released
4 on bail without first appearing before the judge when the offense is ~~domestic abuse~~ partner or family
5 member assault, ~~any assault against a family member or a partner~~, as defined in 45-5-206, or stalking, as
6 defined in 45-5-220.

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

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

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

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

13
14 **Section 17.** Section 46-18-202, MCA, is amended to read:

15 **"46-18-202. Additional restrictions on sentence.** (1) The ~~district~~ court may also impose any of the
16 following restrictions or conditions on the sentence provided for in 46-18-201 that it considers necessary
17 to obtain the objectives of rehabilitation and the protection of society:

18 (a) prohibition of the defendant's holding public office;

19 (b) prohibition of the defendant's owning or carrying a dangerous weapon;

20 (c) restrictions on the defendant's freedom of association;

21 (d) restrictions on the defendant's freedom of movement;

22 (e) any other limitation reasonably related to the objectives of rehabilitation and the protection of
23 society.

24 (2) Whenever the district court imposes a sentence of imprisonment in the state prison for a term
25 exceeding 1 year, the court may also impose the restriction that the defendant be ineligible for parole and
26 participation in the supervised release program while serving that term. If ~~such a~~ the restriction is to be
27 imposed, the court shall state the reasons for it in writing. If the court finds that the restriction is necessary
28 for the protection of society, it shall impose the restriction as part of the sentence and the judgment ~~shall~~
29 must contain a statement of the reasons for the restriction.

30 ~~(3) The judge in a justice's, city, or municipal court does not have the authority to restrict an~~

1 ~~individual's rights as enumerated in subsection (1)(a).~~

2 ~~(4)(3)~~ When the ~~district~~ court imposes a sentence of probation as defined in 46-23-1001, any
3 probation agreement signed by the defendant may contain a clause waiving extradition."
4

5 **NEW SECTION. Section 18. Misdemeanor probation offices -- officers -- costs.** (1) A local
6 government may establish a misdemeanor probation office associated with a justice's court, municipal
7 court, or city court. The misdemeanor probation office shall monitor offenders for misdemeanor sentence
8 compliance and restitution payments. An offender is considered a fugitive under the conditions provided
9 in 46-23-1014.

10 (2) A local government may appoint misdemeanor probation officers and other employees
11 necessary to administer this section. Misdemeanor probation officers:

- 12 (a) must have the minimum training required in 46-23-1003;
13 (b) shall follow the supervision guidelines required in 46-23-1011; and
14 (c) may order the arrest of an offender as provided in 46-23-1012.

15 (3) An offender who is convicted of the offense of partner or family member assault under
16 45-5-206 or of a violation of an order of protection under 45-5-626 and who is ordered to be supervised
17 by misdemeanor probation must be ordered to pay for the cost of the misdemeanor probation. The actual
18 cost of probation supervision over the offender's sentence must be paid by the offender unless the offender
19 can show that the offender is unable to pay those costs. The costs of misdemeanor probation are in
20 addition to any other fines, restitution, or counseling ordered.
21

22 **NEW SECTION. Section 19. Partner or family member assault -- seizure of weapon.** (1) A peace
23 officer who responds to a call relating to partner or family member assault shall seize ~~any~~ THE weapon used
24 or threatened to be used in the alleged assault.

25 (2) The responding officer may, as appropriate:

- 26 (a) take ~~any~~ REASONABLE action necessary to provide for the safety of a victim and any other
27 member of the household;
28 (b) transport or arrange for the transportation of the victim and any other member of the household
29 to a safe location; and
30 (c) assist a victim and any other member of the household to remove necessary personal items.

1 (3) A weapon seized under this section may not be returned to the offender until ACQUITTAL OR
 2 UNTIL the return is ordered by the court.

3
 4 **NEW SECTION. Section 20. Notice of rights when partner or family member assault is suspected.**

5 (1) Whenever a patient seeks health care and the health care provider suspects that partner or family
 6 member assault has occurred, the health care provider, outside the presence of the suspected offender,
 7 ~~shall~~ MAY advise the suspected victim of the availability of a shelter or other services in the community
 8 and give the suspected victim immediate notice of any legal rights and remedies available. The notice must
 9 include furnishing the suspected victim with a copy of the following statement:

10 "The city or county attorney's office can file criminal charges against the offender if the offender
 11 committed the offense of partner or family member assault.

12 In addition to the criminal charges filed by the state of Montana, you are entitled to the civil
 13 remedies listed below.

14 You may go to court and file a petition requesting any of the following orders for relief:

15 (1) an order of protection that prohibits the offender from threatening to hurt you or hurting you;

16 (2) an order of protection that directs the offender to leave your home and prohibits the offender
 17 from having any contact with you;

18 (3) an order of protection that prevents the offender from transferring any property except in the
 19 usual course of business;

20 (4) an order of protection that prohibits the offender from being within 1,500 feet or other
 21 appropriate distance of you, any named family member, and your worksite or other specified place;

22 (5) an order of protection that gives you possession of necessary personal property;

23 (6) an order of protection that prohibits the offender from possessing or using ~~any~~ THE firearm
 24 USED IN THE ASSAULT.

25 If you file a petition in district court, the district court may order all of the above and may award
 26 custody of your minor children to you or the other parent. The district court may order visitation of your
 27 children between the parents. The district court may order the offender to pay support payments to you
 28 if the offender has a legal obligation to pay you support payments.

29 The forms that you need to obtain an order of protection are at _____. You may call
 30 _____ at _____ for additional information about an order of protection.

1 You may file a petition in district court at _____.

2 You may be eligible for restitution payments from the offender (the offender would repay you for
3 costs that you have had to pay as a result of the assault) or for crime victims compensation payments (a
4 fund administered by the state of Montana for innocent victims of crime). You may call _____ at
5 _____ for additional information about restitution or crime victims compensation.

6 The following agencies may be able to give you additional information or emergency help. (List
7 telephone numbers and addresses of agencies other than shelters with secret locations and a brief summary
8 of services that are available.)"

9 (2) Partner or family member assault may be suspected by health care workers in circumstances
10 in which a patient repeatedly seeks health care for trauma type injuries or a patient gives an explanation
11 for injuries that is not consistent with the injuries that are observed.

12 (3) For purposes of this section, "health care provider" has the meaning provided in 50-16-504.

13

14 **NEW SECTION. Section 21. Purpose.** The purpose of [sections 21 through 29] is to promote the
15 safety and protection of all victims of partner and family member assault, victims of sexual assault, and
16 victims of stalking.

17

18 **NEW SECTION. Section 22. Eligibility for order of protection.** (1) A person may file a petition for
19 an order of protection if:

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

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

24 (i) assault as defined in 45-5-201;

25 (ii) aggravated assault as defined in 45-5-202;

26 (iii) intimidation as defined in 45-5-203;

27 (iv) partner or family member assault as defined in 45-5-206;

28 (v) criminal endangerment as defined in 45-5-207;

29 (vi) negligent endangerment as defined in 45-5-208;

30 (vii) unlawful restraint as defined in 45-5-301;

1 (viii) kidnapping as defined in 45-5-302;

2 (ix) aggravated kidnapping as defined in 45-5-303; or

3 (x) arson as defined in 45-6-103.

4 (2) A victim of stalking as defined in 45-5-220, incest as defined in 45-5-507, sexual assault as
5 defined in 45-5-502, or sexual intercourse without consent as defined in 45-5-503 is eligible for an order
6 of protection against the offender regardless of the petitioner's relationship to the offender.

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

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

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

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

15 (b) charges are filed; or

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

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

19
20 **NEW SECTION.** **Section 23. Temporary order of protection.** (1) A petitioner may seek a
21 temporary order of protection from a court listed in [section 27]. The petitioner shall file a sworn petition
22 that states that the petitioner is in reasonable apprehension of bodily injury or is a victim of one of the
23 offenses listed in [section 22], has a relationship to the respondent if required by [section 22], and is in
24 danger of harm if the court does not issue a temporary order of protection immediately.

25 (2) Upon a review of the petition and a finding that the petitioner is in danger of harm if the court
26 does not act immediately, the court shall issue a temporary order of protection that grants the petitioner
27 appropriate relief. The temporary order of protection may include any or all of the following orders:

28 (a) prohibiting the respondent from threatening to commit or committing acts of violence against
29 the petitioner and any designated family member;

30 (b) prohibiting the respondent from harassing, annoying, disturbing the peace of, telephoning,

1 contacting, or otherwise communicating, directly or indirectly, with the petitioner, any named family
2 member, any other victim of this offense, or a witness to the offense;

3 (c) prohibiting the respondent from removing a child from the jurisdiction of the court;

4 (d) directing the respondent to stay 1,500 feet or other appropriate distance away from the
5 petitioner, the petitioner's residence, the school or place of employment of the petitioner, or any specified
6 place frequented by the petitioner and by any other designated family or household member;

7 (e) removing and excluding the respondent from the residence of the petitioner, regardless of
8 ownership of the residence;

9 (f) prohibiting the respondent from possessing or using a THE firearm USED IN THE ASSAULT;

10 (g) prohibiting the respondent from transferring, encumbering, concealing, or otherwise disposing
11 of any property except in the usual course of business or for the necessities of life and, if so restrained,
12 requiring the respondent to notify the petitioner, through the court, of any proposed extraordinary
13 expenditures made after the order is issued;

14 (h) directing the transfer of possession and use of the residence, an automobile, and other essential
15 personal property, regardless of ownership of the residence, automobile, or essential personal property, and
16 directing an appropriate law enforcement officer to accompany the petitioner to the residence to ensure that
17 the petitioner safely obtains possession of the residence, automobile, or other essential personal property
18 or to supervise the petitioner's or respondent's removal of essential personal property;

19 (i) directing the respondent to complete violence counseling, which may include alcohol or chemical
20 dependency counseling or treatment, if appropriate;

21 (j) directing other relief considered necessary to provide for the safety and welfare of the petitioner
22 or other designated family member.

23 (3) If the petitioner has fled the parties' residence, notice of the petitioner's new residence must
24 be withheld, except by order of the court for good cause shown.

25 (4) The court may, without requiring prior notice to the respondent, issue an immediate temporary
26 order of protection for up to 20 days if the court finds, on the basis of the petitioner's sworn petition or
27 other evidence, that harm may result to the petitioner if an order is not issued before the 20-day period for
28 responding has elapsed.

29
30 **NEW SECTION. Section 24. Order of protection -- hearing.** (1) A hearing must be conducted

1 within 20 days from the date the court issues a temporary order of protection. At the hearing, the court
2 shall determine whether good cause exists for the temporary order of protection to be continued, amended,
3 or made permanent.

4 (2) The respondent may request an emergency hearing before the end of the 20-day period by filing
5 an affidavit that demonstrates that the respondent has an urgent need for the emergency hearing. An
6 emergency hearing must be set within 3 working days of the filing of the affidavit.

7 (3) The order of protection may not be made mutually effective by the court. The respondent may
8 obtain an order of protection from the petitioner only by filing an application for an order of protection and
9 following the procedure described in [sections 21 through 29].

10
11 **NEW SECTION. Section 25. Attorney general to provide forms.** The attorney general shall prepare
12 uniform sample instructions, petition forms, and order forms for temporary orders of protection and for
13 orders of protection. The attorney general shall distribute samples of the instructions, petitions, and forms
14 to the clerk of the district court in each county and to justices', municipal, and city courts. The clerk of the
15 district court, justices of the peace, and municipal and city court judges shall make forms available to the
16 public at no charge.

17
18 **NEW SECTION. Section 26. Written orders of protection.** (1) The court may determine, on the
19 basis of the respondent's history of violence, the severity of the offense at issue, and the evidence
20 presented at the hearing, that, to avoid further injury or harm, the petitioner needs permanent protection.
21 The court may order that the order of protection remain in effect permanently.

22 (2) In a dissolution proceeding, the district court may, upon request, issue either an order of
23 protection for an appropriate period of time or a permanent order of protection.

24 (3) An order of protection may include all of the relief listed in [section 23], when appropriate.

25 (4) An order of protection may include restraining the respondent from any other named family
26 member who is a minor. If this restriction is included, the respondent must be restrained from having
27 contact with the minor for an appropriate time period as directed by the court or permanently if the court
28 finds that the minor was a victim of abuse, a witness to abuse, or endangered by the environment of abuse.

29 (5) An order of protection issued under this section may continue for an appropriate time period
30 as directed by the court or be made permanent under subsection (1), (2), or (4). The order may be

1 terminated upon the petitioner's request that the order be dismissed.

2 (6) An order of protection must include a section that indicates whether there are any other civil
3 or criminal actions pending involving the parties, a brief description of the action, and the court in which
4 the action is filed.

5 (7) An amendment to a temporary order of protection or to an order of protection is effective only
6 after it has been served in writing on the opposing party.

7 (8) There is no cost for service of an order of protection.

8 (9) Any temporary order of protection or order of protection must conspicuously bear the following:

9 "Violation of this order is a criminal offense under 45-5-220 or 45-5-626 and may carry penalties
10 of up to \$10,000 in fines and up to a 5-year jail sentence.

11 This order is issued by the court, and the respondent is forbidden to do any act listed in the order,
12 even if invited by the petitioner or another person. This order may be amended only by further order of this
13 court or another court that assumes jurisdiction over this matter."
14

15 **NEW SECTION. Section 27. Jurisdiction and venue.** (1) District courts, justices' courts, municipal
16 courts, and city courts have concurrent jurisdiction to hear and issue orders under [section 23].

17 (2) When a divorce or custody action involving the parties is pending in district court, a person may
18 file a petition for an order of protection in a justice's, municipal, or city court only if the district court judge
19 assigned to that case is unavailable or if the petitioner, to escape further abuse, left the county where the
20 abuse occurred. The petitioner shall provide a copy of relevant district court documents to the justice's,
21 municipal, or city court, along with the petition. The justice of the peace, municipal court judge, or city
22 court judge shall immediately certify the pleadings to the original district court after signing an order of
23 protection under this subsection. If the district court is unable to conduct a hearing within 20 days of
24 receipt of the certified pleadings, it may conduct a hearing within 45 days of the receipt.

25 (3) An action brought under [sections 21 through 29] may be filed in the county where the
26 petitioner currently or temporarily resides, the county where the respondent resides, or the county where
27 the abuse occurred. There is no minimum length of residency required to file a petition under [sections 21
28 through 29].

29 (4) The right to petition for relief may not be denied because the petitioner has vacated the
30 residence or household to avoid abuse.

1 (5) An order of protection issued under this section is effective throughout the state. Courts and
2 law enforcement officials shall give full faith and credit to all orders of protection issued within the state.

3 (6) A certified copy of an order of protection from another state, along with proof of service, may
4 be filed in a Montana court with jurisdiction over orders of protection in the county where the petitioner
5 resides. If properly filed in Montana, an order of protection issued in another state must be enforced in the
6 same manner as an order of protection issued in Montana.

7
8 **NEW SECTION. Section 28. Appeal to district court.** (1) An order issued by a justice's court,
9 municipal court, or city court pursuant to [section 23] is immediately reviewable by the district judge upon
10 the filing of a notice of appeal. The district judge may affirm, dissolve, or modify an order of a justice's
11 court, municipal court, or city court made pursuant to [section 23 or section 26].

12 (2) A case in which an order has been issued by a justice's court, municipal court, or city court
13 pursuant to [section 23 or section 26] may be removed to district court upon filing of a notice of removal.

14
15 **NEW SECTION. Section 29. Registration of orders.** (1) The clerk of court, justice of the peace,
16 municipal court judge, or city court judge shall, within 24 hours of receiving proof of service of an order
17 under [section 23, section 26, or section 27], mail a copy of the order or any extension, modification, or
18 termination of the order, along with a copy of the proof of service, to the appropriate law enforcement
19 agencies designated in the order.

20 (2) Law enforcement agencies shall establish procedures, using an existing system for warrant
21 verification, to ensure that peace officers at the scene of an alleged violation of an order of protection are
22 informed of the existence and terms of the order.

23
24 **NEW SECTION. Section 30. Codification instruction.** (1) [Section 18] is intended to be codified
25 as an integral part of Title 46, chapter 23, and the provisions of Title 46, chapter 23, apply to [section 18].

26 (2) [Section 19] is intended to be codified as an integral part of Title 46, chapter 6, part 6, and the
27 provisions of Title 46, chapter 6, part 6, apply to [section 19].

28 (3) [Sections 20 through 29] are intended to be codified as an integral part of Title 40, and the
29 provisions of Title 40 apply to [sections 20 through 29].
30

1 SENATE BILL NO. 278

2 INTRODUCED BY BROOKE, GRIMES, CLARK, FELAND, HARGROVE, ECK, HALLIGAN, HARDING,
3 BISHOP, LYNCH, HARP, ELLINGSON, COCCHIARELLA, MCCULLOCH, LARSON, SQUIRES,
4 WENNEMAR, KADAS, CAREY, MCKEE, HIBBARD, GRINDE, TAYLOR, REAM, KOTTEL, STANG,
5 MCGEE, JACOBSON, DOHERTY, CRIPPEN, FRANKLIN, FOSTER, WATERMAN, QUILICI, MURDOCK
6

7 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO DOMESTIC
8 VIOLENCE; CHANGING THE NAME OF THE OFFENSE OF DOMESTIC ABUSE TO PARTNER OR FAMILY
9 MEMBER ASSAULT; AUTHORIZING LOCAL GOVERNMENTS TO ESTABLISH MISDEMEANOR PROBATION
10 OFFICES; PROVIDING FOR A NOTICE OF RIGHTS TO VICTIMS; AUTHORIZING THE SEIZURE OF WEAPONS
11 BY A POLICE OFFICER IN A PARTNER OR FAMILY MEMBER ASSAULT SITUATION; REQUIRING HEALTH
12 CARE PROVIDERS TO PROVIDE SUSPECTED VICTIMS WITH A NOTICE OF RIGHTS; PROVIDING FOR
13 TEMPORARY ORDERS OF PROTECTION, ORDERS OF PROTECTION, AND A PROCEDURE FOR ISSUANCE
14 OF THOSE ORDERS; AND AMENDING SECTIONS 3-10-301, 7-32-2227, 27-19-201, 27-19-316, 40-4-121,
15 40-4-123, 40-4-124, 40-4-217, 40-4-219, 45-5-206, 45-5-220, 45-5-626, 46-6-105, 46-6-311, 46-6-602,
16 46-9-302, AND 46-18-202, MCA."
17

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

THERE ARE NO CHANGES IN THIS BILL AND IT WILL
NOT BE REPRINTED. PLEASE REFER TO SECOND
READING COPY (YELLOW) FOR COMPLETE TEXT.

1 SENATE BILL NO. 278

2 INTRODUCED BY BROOKE, GRIMES, CLARK, FELAND, HARGROVE, ECK, HALLIGAN, HARDING,
3 BISHOP, LYNCH, HARP, ELLINGSON, COCCHIARELLA, MCCULLOCH, LARSON, SQUIRES,
4 WENNEMAR, KADAS, CAREY, MCKEE, HIBBARD, GRINDE, TAYLOR, REAM, KOTTEL, STANG,
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6

7 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO DOMESTIC
8 VIOLENCE; CHANGING THE NAME OF THE OFFENSE OF DOMESTIC ABUSE TO PARTNER OR FAMILY
9 MEMBER ASSAULT; AUTHORIZING LOCAL GOVERNMENTS TO ESTABLISH MISDEMEANOR PROBATION
10 OFFICES; PROVIDING FOR A NOTICE OF RIGHTS TO VICTIMS; AUTHORIZING THE SEIZURE OF WEAPONS
11 BY A POLICE OFFICER IN A PARTNER OR FAMILY MEMBER ASSAULT SITUATION; REQUIRING HEALTH
12 CARE PROVIDERS TO PROVIDE SUSPECTED VICTIMS WITH A NOTICE OF RIGHTS; PROVIDING FOR
13 TEMPORARY ORDERS OF PROTECTION, ORDERS OF PROTECTION, AND A PROCEDURE FOR ISSUANCE
14 OF THOSE ORDERS; AND AMENDING SECTIONS 3-10-301, 7-32-2227, 27-19-201, 27-19-316, 40-4-121,
15 40-4-123, 40-4-124, 40-4-217, 40-4-219, 45-5-206, 45-5-220, 45-5-626, 46-6-105, 46-6-311, 46-6-602,
16 46-9-302, AND 46-18-202, MCA."
17

18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
19

20 **Section 1.** Section 3-10-301, MCA, is amended to read:

21 **"3-10-301. Civil jurisdiction.** (1) Except as provided in ~~subsection (2) and in 3-11-103~~ and in
22 subsection (2) of this section, the justices' courts have jurisdiction:

23 (a) in actions arising on contract for the recovery of money only if the sum claimed does not
24 exceed \$5,000, exclusive of court costs;

25 (b) in actions for damages not exceeding \$5,000, exclusive of court costs, for taking, detaining,
26 or injuring personal property or for injury to real property when no issue is raised by the verified answer of
27 the defendant involving the title to or possession of the real property;

28 (c) in actions for damages not exceeding \$5,000, exclusive of court costs, for injury to the person,
29 except that, in actions for false imprisonment, libel, slander, criminal conversation, seduction, malicious
30 prosecution, determination of paternity, and abduction, the justice of the peace does not have jurisdiction;

1 (d) in actions to recover the possession of personal property if the value of the property does not
2 exceed \$5,000;

3 (e) in actions for a fine, penalty, or forfeiture not exceeding \$5,000, imposed by a statute or an
4 ordinance of an incorporated city or town when no issue is raised by the answer involving the legality of
5 any tax, impost, assessment, toll, or municipal fine;

6 (f) in actions upon bonds or undertakings conditioned for the payment of money when the sum
7 claimed does not exceed \$5,000, though the penalty may exceed that sum;

8 (g) to take and enter judgment for the recovery of money on the confession of a defendant when
9 the amount confessed does not exceed \$5,000, exclusive of court costs;

10 (h) to issue temporary restraining orders, as provided in 40-4-121(3), and orders of protection, as
11 provided in [sections 21 through 29].

12 (2) Justices' courts do not have jurisdiction in civil actions that might result in a judgment against
13 the state for the payment of money."

14
15 **Section 2. Section 7-32-2227, MCA, is amended to read:**

16 **"7-32-2227. Inmate eligibility for participation. A person may be permitted to participate in a**
17 **county jail work program if he the person:**

18 (1) has been sentenced to the county jail for an offense and is not confined in the county jail upon
19 process in a civil action or prior to examination or trial;

20 (2) is not serving a sentence for homicide, robbery, sexual intercourse without consent, arson,
21 burglary, kidnapping, escape, assault, ~~domestic abuse~~ partner or family member assault, incest, or any
22 other offense in which violence is an element of the crime or for an offense during the course of which
23 bodily injury occurred;

24 (3) was not prohibited from participating in the county work program by the sentencing judge,
25 magistrate, or justice of the peace, or ~~he~~ by the judge's, magistrate's, or justice's successor; and

26 (4) has applied to participate to the county sheriff and the sheriff, pursuant to written policy, has
27 approved the participation."

28
29 **Section 3. Section 27-19-201, MCA, is amended to read:**

30 **"27-19-201. When preliminary injunction may be granted. An injunction order may be granted in**

1 the following cases:

2 (1) when it ~~shall appear~~ appears that the applicant is entitled to the relief demanded and ~~such the~~
3 relief or any part ~~thereof~~ of the relief consists in restraining the commission or continuance of the act
4 complained of, either for a limited period or perpetually;

5 (2) when it ~~shall appear~~ appears that the commission or continuance of some act during the
6 litigation would produce a great or irreparable injury to the applicant;

7 (3) when it ~~shall appear~~ appears during the litigation that the adverse party is doing or threatens
8 or is about to do or is procuring or suffering to be done some act in violation of the applicant's rights,
9 respecting the subject of the action, and tending to render the judgment ineffectual;

10 (4) when it appears that the adverse party, during the pendency of the action, threatens or is about
11 to remove or to dispose of ~~his~~ the adverse party's property with intent to defraud the applicant, an
12 injunction order may be granted to restrain the removal or disposition;

13 (5) when it appears that the applicant has ~~suffered or may suffer physical abuse~~ applied for an
14 order under the provisions of 40-4-121 or an order of protection under [sections 21 through 29]."

15

16 **Section 4.** Section 27-19-316, MCA, is amended to read:

17 **"27-19-316. Contents and filing of restraining order granted without notice.** Each temporary
18 restraining order granted without notice must:

19 (1) be endorsed with the date and hour of its issuance;

20 (2) be filed immediately in the clerk's office and entered in the record;

21 (3) define the injury and state why ~~such the~~ the injury is irreparable and why the order was granted
22 without notice; and

23 (4) except as provided in 40-4-121 or [sections 21 through 29], expire by its terms within ~~such~~
24 the time after entry, not to exceed 10 days, as the court or judge fixes."

25

26 **Section 5.** Section 40-4-121, MCA, is amended to read:

27 **"40-4-121. Temporary order or temporary injunction.** (1) In a proceeding for dissolution of
28 marriage or for legal separation or in a proceeding for disposition of property or for maintenance or support
29 following dissolution of the marriage by a court ~~which that~~ that lacked personal jurisdiction over the absent
30 spouse, either party may move for temporary maintenance or temporary support of a child of the marriage

1 entitled to support. The motion must be accompanied by an affidavit setting forth the factual basis for the
2 motion and the amounts requested.

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

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

10 (b) enjoining a party from molesting or disturbing the peace of the other party or of any family
11 member or from stalking, as defined in 45-5-220;

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

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

15 (e) ordering a party to complete counseling, including alcohol or chemical dependency counseling
16 or treatment; and

17 (f) providing other injunctive relief proper in the circumstances; and

18 (g) providing additional relief available under [sections 21 through 29].

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

21 ~~(a) (i) alleging physical abuse, harm, or bodily injury against the petitioner by a family member or
22 partner or the threat of physical abuse, harm, or bodily injury against the petitioner by a family member or
23 partner that causes the petitioner to reasonably believe that the offender has the present ability to execute
24 the threat; or~~

25 ~~(ii) alleging a violation of 45-5-220; and~~

26 ~~(b) requesting relief under Title 27, chapter 19, part 3. Any temporary injunction entered under this
27 subsection must be for a fixed period of time, not to exceed 1 year, and may be modified as provided in
28 Title 27, chapter 19, part 4, and 40-4-208, as appropriate. Persons who may request relief under this
29 subsection include family members, partners, and persons alleging a violation of 45-5-220.~~

30 (4) The court may issue a temporary restraining order for a period not to exceed 20 days without

1 requiring notice to the other party only if it finds on the basis of the moving affidavit or other evidence that
 2 irreparable injury will result to the moving party if no order is issued until the time for responding has
 3 elapsed.

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

6 (6) At the time of the hearing, the court shall determine whether good cause exists for the
 7 injunction to continue for 1 year.

8 ~~(7) If the court determines, on the basis of a party's history of violence and the testimony~~
 9 ~~presented at the hearing or on the basis of credible evidence that a party has violated 45-5-220, that the~~
 10 ~~other party needs permanent protection or may otherwise suffer permanent injury or harm, the court may~~
 11 ~~order that the injunction be effective permanently.~~

12 ~~(8) A permanent injunction may be issued by a district court with jurisdiction over the parties to~~
 13 ~~a dissolution proceeding upon presentation of evidence of a party's history of violence showing that the~~
 14 ~~other party may suffer permanent injury or harm if a permanent injunction is not issued. A permanent~~
 15 ~~injunction may also be issued enjoining a party from stalking upon presentation of credible evidence that~~
 16 ~~the party has violated 45-5-220 if the court determines that the stalked party needs permanent protection.~~

17 ~~(9) Except when the alleged conduct to be restrained is a violation of 45-5-220, restraining orders~~
 18 ~~issued under this section may restrain the petitioner's actions only if the court finds that the petitioner, in~~
 19 ~~addition to the respondent, has engaged in abusive or assaultive behavior as described by subsection (3)(a).~~

20 ~~(10)(7)~~ On the basis of the showing made and in conformity with 40-4-203 and 40-4-204, the
 21 court may issue a temporary injunction and an order for temporary maintenance or support in amounts and
 22 on terms just and proper in the circumstance.

23 ~~(11)(8)~~ A temporary order or injunction ~~or permanent injunction~~, entered pursuant to this section
 24 or [sections 21 through 29]:

25 (a) may be revoked or modified on a showing by affidavit of the facts necessary to revocation or
 26 modification of a final decree under 40-4-208 ~~or order under Title 27, chapter 19, part 3, as appropriate;~~

27 (b) terminates upon order of the court or when the petition is voluntarily dismissed; and

28 (c) when issued under this section, must conspicuously bear the following: "Violation of this order
 29 is a criminal offense under 45-5-220 or 45-5-626."

30 ~~(12)(9)~~ When the petitioner has fled the parties' residence, notice of the petitioner's new residence

1 must be withheld except by order of the court for good cause shown.

2 ~~(13) As used in this section, the following definitions apply:~~

3 ~~(a) "Bodily injury" means physical pain, illness, or any impairment of physical condition and~~
4 ~~includes mental illness or impairment.~~

5 ~~(b) "Family member" means mothers, fathers, children, brothers, sisters, and other past or present~~
6 ~~family members of a household. These relationships include relationships created by adoption and~~
7 ~~remarriage, including stepchildren, stepparents, and adoptive children and parents. These relationships~~
8 ~~continue regardless of the ages of the parties and whether the parties reside in the same household.~~

9 ~~(c) "Partner" means spouses, former spouses, and persons who have been or are currently in a~~
10 ~~dating or ongoing intimate relationship with a person of the opposite sex."~~

11

12 **Section 6.** Section 40-4-123, MCA, is amended to read:

13 **"40-4-123. Jurisdiction and venue.** (1) District courts, municipal courts, justices' courts, and city
14 courts have concurrent jurisdiction to hear and issue orders under 40-4-121~~(3)~~.

15 (2) The municipal judge, justice of the peace, or city court judge shall on motion suspend all further
16 proceedings in the action and certify the pleading and any orders to the clerk of the district court of the
17 county where the action was begun if an action for declaration of invalidity of a marriage, legal separation,
18 or dissolution of marriage, or for child custody is pending between the parties. From the time of the
19 certification of ~~each~~ the pleadings and any orders to the clerk, the district court has the same jurisdiction
20 over the action as if it had been commenced ~~therein~~ in district court.

21 (3) An action brought under 40-4-121~~(3)~~ may be tried in the county in which either party resides
22 or in which the physical abuse was committed.

23 (4) The right to petition for relief may not be denied because the plaintiff has vacated the residence
24 or household to avoid abuse."

25

26 **Section 7.** Section 40-4-124, MCA, is amended to read:

27 **"40-4-124. Review or removal -- district court.** (1) An order issued by a municipal court, ~~justice~~
28 justice's court, or city court pursuant to 40-4-121~~(3)~~ is immediately reviewable by the judge of the district
29 court at chambers upon the filing of a notice of appeal. The district judge may affirm, dissolve, or modify
30 an order of a municipal court, ~~justice~~ justice's court, or city court made pursuant to 40-4-121~~(3)~~.

1 (2) Any case in which an order has been issued by a municipal court, ~~justice~~ justice's court, or city
2 court pursuant to 40-4-121~~(3)~~ may be removed to district court upon filing of a notice of removal."

3
4 **Section 8.** Section 40-4-217, MCA, is amended to read:

5 "**40-4-217. Visitation.** (1) A parent not granted custody of the child is entitled to reasonable
6 visitation rights unless the court finds, after a hearing, that visitation would endanger seriously the child's
7 physical, mental, moral, or emotional health.

8 (2) In a proceeding for dissolution of marriage or legal separation, the court may, upon the petition
9 of a grandparent, grant reasonable visitation rights to the grandparent of the child if the court finds, after
10 a hearing, that the visitation would be in the best interest of the child.

11 (3) The court may modify an order granting or denying visitation rights whenever modification
12 would serve the best interest of the child; ~~but~~ however, the court may not restrict a parent's visitation
13 rights unless it finds that the visitation would endanger seriously the child's physical, mental, moral, or
14 emotional health or unless the provisions of subsection (6) apply.

15 (4) So long as a noncustodial parent who has visitation rights under a decree or a custody
16 agreement remains a resident of this state, a resident custodial parent shall, before changing the child's
17 residence to another state and unless the noncustodial parent has given written consent, give written notice
18 to the noncustodial parent, as provided in subsection (5).

19 (5) The written notice required by subsection (4) must be served personally or given by certified
20 mail not less than 30 days before the proposed change in residence. Proof of service must be filed with
21 the court that issued the custody order. The purpose of the notice is to allow the noncustodial parent to
22 seek a modification of ~~his~~ the parent's visitation schedule.

23 (6) (a) If a noncustodial parent has been convicted of any of the crimes listed in subsection (6)(c),
24 the custodial parent or any other person who has been granted custody of the child pursuant to court order
25 may file an objection to visitation with the court. The custodial parent or other person having custody shall
26 give notice to the noncustodial parent of the objection as provided by the Montana Rules of Civil Procedure,
27 and the noncustodial parent ~~shall have~~ has 20 days from the notice to respond. If the noncustodial parent
28 fails to respond within 20 days, the visitation rights of the noncustodial parent are suspended until further
29 order of the court. If the noncustodial parent responds and objects, a hearing must be held within 30 days
30 of the response.

1 (b) The noncustodial parent has the burden at the hearing to prove that visitation by the
2 noncustodial parent does not seriously endanger the child's physical, mental, moral, or emotional health
3 and that the modification of visitation is not in the best interest of the child.

4 (c) This subsection (6) applies to the following crimes:

5 (i) deliberate homicide, as described in 45-5-102;

6 (ii) mitigated deliberate homicide, as described in 45-5-103;

7 (iii) sexual assault, as described in 45-5-502;

8 (iv) sexual intercourse without consent, as described in 45-5-503;

9 (v) incest, as described in 45-5-507;

10 (vi) aggravated promotion of prostitution of a child, as described in 45-5-603(1)(b);

11 (vii) endangering the welfare of children, as described in 45-5-622;

12 (viii) ~~domestic abuse~~ partner or family member assault of the type described in 45-5-206(1)(a);

13 (ix) sexual abuse of children, as described in 45-5-625."

14
15 **Section 9.** Section 40-4-219, MCA, is amended to read:

16 **"40-4-219. Modification.** (1) The court may in its discretion modify a prior custody decree if it
17 finds, upon the basis of facts that have arisen since the prior decree or that were unknown to the court at
18 the time of entry of the prior decree, that a change has occurred in the circumstances of the child or ~~his~~
19 the child's custodian and that the modification is necessary to serve the best interest of the child and if it
20 further finds that:

21 (a) the custodian agrees to the modification;

22 (b) the child has been integrated into the family of the petitioner with consent of the custodian;

23 (c) the child's present environment endangers seriously ~~his~~ the child's physical, mental, moral, or
24 emotional health and that the harm likely to be caused by a change of environment is outweighed by its
25 advantages to ~~him~~ the child;

26 (d) the child is 14 years of age or older and desires the modification;

27 (e) the custodian willfully and consistently:

28 (i) refuses to allow the child to have any contact with the noncustodial parent; or

29 (ii) attempts to frustrate or deny the noncustodial parent's exercise of visitation rights; or

30 (f) the custodial parent has changed or intends to change the child's residence to another state.

1 (2) A court may modify a de facto custody arrangement in accordance with the factors set forth
2 in 40-4-212.

3 (3) The court shall presume the custodian is not acting in the child's best interest if the custodian
4 does any of the acts specified in subsection (1)(e) or (8).

5 (4) The court may modify the prior decree based on subsection (1)(f) to provide a new visitation
6 schedule and to apportion transportation costs between the parents.

7 (5) Attorney fees and costs ~~shall~~ must be assessed against a party seeking modification if the court
8 finds that the modification action is vexatious and constitutes harassment.

9 (6) A custody decree may be modified upon the death of the custodial parent pursuant to
10 40-4-221.

11 (7) As used in this section, "prior custody decree" means a custody determination contained in a
12 judicial decree or order made in a custody proceeding.

13 (8) (a) If a parent has been convicted of any of the crimes listed in subsection (8)(c), the other
14 parent or any other person who has been granted custody of the child pursuant to court order may file an
15 objection to the current custody order with the court. The parent or other person having custody shall give
16 notice to the convicted parent of the objection as provided by the Montana Rules of Civil Procedure, and
17 the convicted parent ~~shall have~~ has 20 days from the notice to respond. If the convicted parent fails to
18 respond within 20 days, the custody rights of the convicted parent are suspended until further order of the
19 court. If the convicted parent responds and objects, a hearing must be held within 30 days of the
20 response.

21 (b) The convicted parent has the burden at the hearing to prove that custody by the convicted
22 parent does not seriously endanger the child's physical, mental, moral, or emotional health and that the
23 modification of custody is not in the best interest of the child.

24 (c) This subsection (8) applies to the following crimes:

25 (i) deliberate homicide, as described in 45-5-102;

26 (ii) mitigated deliberate homicide, as described in 45-5-103;

27 (iii) sexual assault, as described in 45-5-502;

28 (iv) sexual intercourse without consent, as described in 45-5-503;

29 (v) incest, as described in 45-5-507;

30 (vi) aggravated promotion of prostitution of a child, as described in 45-5-603(1)(b);

1 (vii) endangering the welfare of children, as described in 45-5-622;

2 (viii) ~~domestic abuse~~ partner or family member assault of the type described in 45-5-206(1)(a);

3 (ix) sexual abuse of children, as described in 45-5-625."

4
5 **Section 10.** Section 45-5-206, MCA, is amended to read:

6 **"45-5-206. ~~Domestic abuse~~ Partner or family member assault -- penalty.** (1) A person commits
7 the offense of ~~domestic abuse~~ partner or family member assault if the person:

8 (a) purposely or knowingly causes bodily injury to a ~~family member or~~ partner or family member;

9 (b) negligently causes bodily injury to a ~~family member or~~ partner or family member with a weapon
10 ~~during or in connection with a quarrel, fight, or abusive behavior~~; or

11 (c) purposely or knowingly causes reasonable apprehension of bodily injury in a partner or family
12 ~~member or partner. The purpose to cause reasonable apprehension or the knowledge that reasonable~~
13 ~~apprehension would be caused must be presumed in any case in which a person knowingly points a firearm~~
14 ~~at or in the direction of a family member or partner, whether or not the offender believes the firearm to be~~
15 ~~loaded.~~

16 (2) For the purposes of 46-6-311, [sections 21 through 29], and this section, the following
17 definitions apply:

18 (a) "Family member" means mothers, fathers, children, brothers, sisters, and other past or present
19 family members of a household. These relationships include relationships created by adoption and
20 remarriage, including stepchildren, stepparents, in-laws, and adoptive children and parents. These
21 relationships continue regardless of the ages of the parties and whether the parties reside in the same
22 household.

23 (b) ~~"Partner"~~ "Partners" means spouses, former spouses, persons who have a child in common,
24 and persons who have been or are currently in a dating or ongoing intimate relationship with a person of
25 the opposite sex.

26 (3) ~~(a) A person~~ An offender convicted of ~~domestic abuse for the first or second time~~ partner or
27 family member assault shall be fined not ~~to exceed~~ less than \$100 or more than \$1,000 ~~or~~ and be
28 imprisoned in the county jail not to exceed 1 year, ~~or both~~ or not less than 24 hours for a first offense.
29 An offender convicted of a second offense under this section shall be fined not less than \$300 or more than
30 \$1,000 and be imprisoned in the county jail not less than 72 hours or more than 1 year. Upon a first or

1 second conviction, the offender may be ordered into misdemeanor probation as provided in [section 18].
 2 On a third or subsequent conviction for ~~domestic-abuse~~ partner or family member assault, the ~~person~~
 3 ~~convicted~~ offender shall be fined not less than \$500 and not more than \$50,000 and be imprisoned in the
 4 county jail or in the state prison for a term not less than ~~40~~ 30 days and not more than 5 years, or both.

5 (b) For the purpose of determining the number of convictions under this section, a conviction
 6 means a conviction, as defined in 45-2-101, in this state, conviction for a violation of a similar statute in
 7 another state, or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court
 8 in this state or in another state for a violation of a similar statute, which forfeiture has not been vacated.

9 (4) (a) ~~A person~~ An offender convicted of ~~domestic-abuse~~ partner or family member assault shall
 10 be required to pay for and complete ~~at least 6 months of counseling, totaling at least 25 hours~~ a counseling
 11 assessment with a focus on violence, dangerousness, and chemical dependency. The offender shall follow
 12 through on all recommendations made by the counseling provider. The counselor must be approved by the
 13 court. The counseling must include a counseling assessment and a minimum of 25 hours of counseling,
 14 in addition to the assessment. The assessment and the counseling must be:

- 15 (i) with a person licensed under Title 37, chapter ~~3~~ 17, 22, or 23;
- 16 (ii) with a professional person as defined in 53-21-102; or
- 17 (iii) in a specialized domestic violence intervention program.

18 (b) The counseling provided in subsection (4)(a) must be directed to the violent conduct of the
 19 ~~convicted person~~ offender. Other issues indicated by the assessment may be addressed in additional
 20 counseling beyond the minimum 25 hours. Subsection (4)(a) does not prohibit the placement of the
 21 ~~convicted person~~ offender in other appropriate treatment if the court determines that there is no available
 22 treatment program directed to the violent conduct of the ~~convicted person~~ offender.

23 ~~(c) Upon completion of the minimum counseling requirements, the counselor shall notify the court~~
 24 ~~that the defendant has completed the minimum counseling requirements and shall provide the court with~~
 25 ~~a recommendation as to whether or not the defendant requires additional counseling. Upon~~
 26 ~~recommendation of the counselor and direction of the court, the defendant may be required to pay for and~~
 27 ~~complete additional counseling or treatment, such as chemical dependency treatment, or both.~~

28 ~~(5) Willful failure to obtain or pay for counseling ordered under this section is a civil contempt of~~
 29 ~~court.~~

30 (5) In addition to any sentence imposed under subsections (3) and (4), after determining the

1 financial resources and future ability of the offender to pay restitution as provided for in 46-18-242, the
 2 court shall require the offender, if able, to pay the victim's reasonable actual medical, housing, wage loss,
 3 and counseling costs in addition to required counseling and fines.

4 (6) In addition to the requirements of subsection (5), if financially able, the offender shall be
 5 ordered to pay for the costs of the offender's probation, if probation is ordered by the court.

6 (7) The court may prohibit an offender ~~charged or convicted~~ under this section from possession
 7 or use of a THE firearm USED IN THE ASSAULT. The court may ~~revoke the offender's concealed weapon~~
 8 permit, if one was issued under 45-8-321, for the duration of the sentence ENFORCE 45-8-323 IF A
 9 FIREARM WAS USED IN THE ASSAULT.

10 (8) At the time of sentencing, the court shall provide an offender a written copy of the offender's
 11 sentence."

12
 13 **Section 11. Section 45-5-220, MCA, is amended to read:**

14 **"45-5-220. Stalking -- exemption -- penalty. (1) A person commits the offense of stalking if the**
 15 **person purposely or knowingly causes another person substantial emotional distress or reasonable**
 16 **apprehension of bodily injury or death by repeatedly:**

17 (a) following the stalked person; or

18 (b) harassing, threatening, or intimidating the stalked person, in person or by phone, by mail, or
 19 by other action, device, or method.

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

21 (3) For the first offense, a person convicted of stalking shall be imprisoned in the county jail for
 22 a term not to exceed 1 year or fined an amount not to exceed \$1,000, or both. For a second or subsequent
 23 offense or for a first offense against a victim who was under the protection of a restraining order directed
 24 at the offender, the offender shall be imprisoned in the state prison for a term not to exceed 5 years or
 25 fined an amount not to exceed \$10,000, or both. A person convicted of stalking may be sentenced to pay
 26 all medical, counseling, and other costs incurred by or on behalf of the victim as a result of the offense.

27 (4) Upon presentation of credible evidence of violation of this section, an order may be granted,
 28 as set forth in ~~40-4-124~~ [sections 21 through 29], restraining a person from engaging in the activity
 29 described in subsection (1).

30 (5) For the purpose of determining the number of convictions under this section, "conviction"

1 means:

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

3 (b) a conviction for a violation of a statute similar to this section in another state; or

4 (c) a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this
5 state or another state for a violation of a statute similar to this section, which forfeiture has not been
6 vacated.

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

11

12 **Section 12.** Section 45-5-626, MCA, is amended to read:

13 **"45-5-626. Violation of protective order of protection — misdemeanor.** (1) A person commits the
14 offense of violation of ~~a protective~~ an order of protection if he the person, with knowledge of the order,
15 purposely or knowingly violates a provision of any order provided for in 40-4-121 or an order of protection
16 under [sections 21 through 29]. It may be inferred that the defendant had knowledge of an order at the
17 time of an offense if the defendant had been served with the order before the time of the offense. Service
18 of the order is not required upon a showing that the defendant had knowledge of the order and its content.

19 (2) Only the respondent under an order of protection may be cited for a violation of the order. The
20 petitioner who filed for an order of protection may not be cited for a violation of that order of protection.

21 ~~(2)(3) A person~~ An offender convicted of violation of ~~a protective~~ an order of protection shall be
22 fined not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both,
23 for a first offense. Upon conviction for a second offense, an offender shall be fined not less than \$200 and
24 not more than \$500 and be imprisoned in the county jail not less than 24 hours and not more than 6
25 months. Upon conviction for a third or subsequent offense, an offender shall be fined not less than \$500
26 and not more than \$2,000 and be imprisoned in the county jail or state prison for a term not less than 10
27 days and not more than 2 years."

28

29 **Section 13.** Section 46-6-105, MCA, is amended to read:

30 **"46-6-105. Time of making arrest.** An arrest may be made at any time of the day or night, except

1 that a person may not be arrested in the person's home or private dwelling place at night for a misdemeanor
 2 committed at some other time and place unless upon the direction of a judge endorsed upon an arrest
 3 warrant. However, a person may be arrested in the person's home or private dwelling at night if the person
 4 is being arrested pursuant to 46-6-311 for the offense of ~~domestic abuse~~ partner or family member
 5 assault."

6
 7 **Section 14.** Section 46-6-311, MCA, is amended to read:

8 **"46-6-311. Basis for arrest without warrant.** (1) A peace officer may arrest a person when a
 9 warrant has not been issued if the officer has probable cause to believe that the person is committing an
 10 offense or that the person has committed an offense and existing circumstances require immediate arrest.

11 (2) The summoning of a peace officer to a place of residence by a ~~family member or partner or~~
 12 family member constitutes an exigent circumstance for making an arrest. Arrest is the preferred response
 13 in ~~domestic abuse~~ partner or family member assault cases involving injury to the victim, use or threatened
 14 use of a weapon, violation of a restraining order, or other imminent danger to the victim."

15
 16 **Section 15.** Section 46-6-602, MCA, is amended to read:

17 **"46-6-602. Notice of rights to victim ~~upon arrest in domestic violence situation~~ partner or family**
 18 **member assault.** Whenever a peace officer arrests a person for ~~domestic abuse~~ partner or family member
 19 assault, as defined in 45-5-206, ~~if the victim is present, or responds to a call in which partner or family~~
 20 member assault is suspected, the officer, outside the presence of the offender, shall advise the victim of
 21 the availability of a shelter or other services in the community and give the victim immediate notice of any
 22 legal rights and remedies available. The notice must include furnishing the victim with a copy of the
 23 following statement:

24 ~~"IF YOU ARE THE VICTIM OF DOMESTIC ABUSE, the~~ The city or county attorney's office can file
 25 criminal charges against your abuser, an offender if the offender committed the offense of partner or family
 26 member assault.

27 In addition to the criminal charges filed by the state of Montana, you are entitled to the following
 28 civil remedies:

29 You ~~have the right to~~ may go to court and file a petition requesting any of the following orders for
 30 relief:

1 (1) an order of protection ~~restraining your abuser~~ that prohibits the offender from abusing
2 threatening to hurt you or hurting you;

3 (2) an order of protection ~~directing your abuser~~ that directs the offender to leave your household
4 home and prohibits the offender from having any contact with you;

5 (3) an order of protection ~~preventing your abuser~~ that prevents the offender from transferring any
6 property except in the usual course of business;

7 (4) an order ~~awarding you or the other parent custody of or visitation with a minor child or children~~
8 of protection that prohibits the offender from being within 1,500 feet or other appropriate distance of you,
9 any named family member, and your worksite or other specified place;

10 ~~(5) an order restraining your abuser from molesting or interfering with minor children in your~~
11 ~~custody or a family member or partner, as defined in 4E-5-206; or~~

12 ~~(6) an order directing the party not granted custody to pay support of minor children or to pay~~
13 ~~support of the other party if there is a legal obligation to do so"~~

14 (5) an order of protection that gives you possession of necessary personal property;

15 (6) an order of protection that prohibits the offender from possessing or using any THE firearm
16 USED IN THE ASSAULT.

17 If you file a petition in district court, the district court may order all of the above and may award
18 custody of your minor children to you or to the other parent. The district court may order visitation of your
19 children between the parents. The district court may order the offender to pay support payments to you
20 if the offender has a legal obligation to pay you support payments.

21 The forms that you need to obtain an order of protection are at _____. You may call
22 _____ at _____ for additional information about an order of protection.

23 You may file a petition in district court at _____.

24 You may be eligible for restitution payments from the offender (the offender would repay you for
25 costs that you have had to pay as a result of the assault) or for crime victims compensation payments (a
26 fund administered by the state of Montana for innocent victims of crime). You may call _____ at
27 _____ for additional information about restitution or crime victims compensation.

28 The following agencies may be able to give you additional information or emergency help. (List
29 telephone numbers and addresses of agencies other than shelters with secret locations and a brief summary
30 of services that are available.)"

1 **Section 16.** Section 46-9-302, MCA, is amended to read:

2 **"46-9-302. Bail schedule -- acceptance by peace officer.** (1) A judge may establish and post a
3 schedule of bail for offenses over which the judge has original jurisdiction. A person may not be released
4 on bail without first appearing before the judge when the offense is ~~domestic abuse~~ partner or family
5 member assault, ~~any assault against a family member or a partner~~, as defined in 45-5-206, or stalking, as
6 defined in 45-5-220.

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

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

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

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

13
14 **Section 17.** Section 46-18-202, MCA, is amended to read:

15 **"46-18-202. Additional restrictions on sentence.** (1) The ~~district~~ court may also impose any of the
16 following restrictions or conditions on the sentence provided for in 46-18-201 that it considers necessary
17 to obtain the objectives of rehabilitation and the protection of society:

18 (a) prohibition of the defendant's holding public office;

19 (b) prohibition of the defendant's owning or carrying a dangerous weapon;

20 (c) restrictions on the defendant's freedom of association;

21 (d) restrictions on the defendant's freedom of movement;

22 (e) any other limitation reasonably related to the objectives of rehabilitation and the protection of
23 society.

24 (2) Whenever the district court imposes a sentence of imprisonment in the state prison for a term
25 exceeding 1 year, the court may also impose the restriction that the defendant be ineligible for parole and
26 participation in the supervised release program while serving that term. If ~~such a~~ the restriction is to be
27 imposed, the court shall state the reasons for it in writing. If the court finds that the restriction is necessary
28 for the protection of society, it shall impose the restriction as part of the sentence and the judgment ~~shall~~
29 must contain a statement of the reasons for the restriction.

30 ~~(3) The judge in a justice's, city, or municipal court does not have the authority to restrict an~~

1 ~~individual's rights as enumerated in subsection (1)(a).~~

2 ~~(4)(3)~~ When the ~~district~~ court imposes a sentence of probation as defined in 46-23-1001, any
3 probation agreement signed by the defendant may contain a clause waiving extradition."

4
5 **NEW SECTION. Section 18. Misdemeanor probation offices -- officers -- costs.** (1) A local
6 government may establish a misdemeanor probation office associated with a justice's court, municipal
7 court, or city court. The misdemeanor probation office shall monitor offenders for misdemeanor sentence
8 compliance and restitution payments. An offender is considered a fugitive under the conditions provided
9 in 46-23-1014.

10 (2) A local government may appoint misdemeanor probation officers and other employees
11 necessary to administer this section. Misdemeanor probation officers:

- 12 (a) must have the minimum training required in 46-23-1003;
13 (b) shall follow the supervision guidelines required in 46-23-1011; and
14 (c) may order the arrest of an offender as provided in 46-23-1012.

15 (3) An offender who is convicted of the offense of partner or family member assault under
16 45-5-206 or of a violation of an order of protection under 45-5-626 and who is ordered to be supervised
17 by misdemeanor probation must be ordered to pay for the cost of the misdemeanor probation. The actual
18 cost of probation supervision over the offender's sentence must be paid by the offender unless the offender
19 can show that the offender is unable to pay those costs. The costs of misdemeanor probation are in
20 addition to any other fines, restitution, or counseling ordered.

21

22 **NEW SECTION. Section 19. Partner or family member assault -- seizure of weapon.** (1) A peace
23 officer who responds to a call relating to partner or family member assault shall seize ~~any~~ THE weapon used
24 or threatened to be used in the alleged assault.

25 (2) The responding officer may, as appropriate:

- 26 (a) take ~~any~~ REASONABLE action necessary to provide for the safety of a victim and any other
27 member of the household;
28 (b) transport or arrange for the transportation of the victim and any other member of the household
29 to a safe location; and
30 (c) assist a victim and any other member of the household to remove necessary personal items.

1 (3) A weapon seized under this section may not be returned to the offender until ACQUITTAL OR
 2 UNTIL the return is ordered by the court.

3
 4 NEW SECTION. **Section 20. Notice of rights when partner or family member assault is suspected.**

5 (1) Whenever a patient seeks health care and the health care provider suspects that partner or family
 6 member assault has occurred, the health care provider, outside the presence of the suspected offender,
 7 ~~shall~~ MAY advise the suspected victim of the availability of a shelter or other services in the community
 8 and give the suspected victim immediate notice of any legal rights and remedies available. The notice must
 9 include furnishing the suspected victim with a copy of the following statement:

10 "The city or county attorney's office can file criminal charges against the offender if the offender
 11 committed the offense of partner or family member assault.

12 In addition to the criminal charges filed by the state of Montana, you are entitled to the civil
 13 remedies listed below.

14 You may go to court and file a petition requesting any of the following orders for relief:

15 (1) an order of protection that prohibits the offender from threatening to hurt you or hurting you;

16 (2) an order of protection that directs the offender to leave your home and prohibits the offender
 17 from having any contact with you;

18 (3) an order of protection that prevents the offender from transferring any property except in the
 19 usual course of business;

20 (4) an order of protection that prohibits the offender from being within 1,500 feet or other
 21 appropriate distance of you, any named family member, and your worksite or other specified place;

22 (5) an order of protection that gives you possession of necessary personal property;

23 (6) an order of protection that prohibits the offender from possessing or using ~~any~~ THE firearm
 24 USED IN THE ASSAULT.

25 If you file a petition in district court, the district court may order all of the above and may award
 26 custody of your minor children to you or the other parent. The district court may order visitation of your
 27 children between the parents. The district court may order the offender to pay support payments to you
 28 if the offender has a legal obligation to pay you support payments.

29 The forms that you need to obtain an order of protection are at _____. You may call
 30 _____ at _____ for additional information about an order of protection.

1 You may file a petition in district court at _____.

2 You may be eligible for restitution payments from the offender (the offender would repay you for
3 costs that you have had to pay as a result of the assault) or for crime victims compensation payments (a
4 fund administered by the state of Montana for innocent victims of crime). You may call _____ at
5 _____ for additional information about restitution or crime victims compensation.

6 The following agencies may be able to give you additional information or emergency help. (List
7 telephone numbers and addresses of agencies other than shelters with secret locations and a brief summary
8 of services that are available.)"

9 (2) Partner or family member assault may be suspected by health care workers in circumstances
10 in which a patient repeatedly seeks health care for trauma type injuries or a patient gives an explanation
11 for injuries that is not consistent with the injuries that are observed.

12 (3) For purposes of this section, "health care provider" has the meaning provided in 50-16-504.

13

14 **NEW SECTION. Section 21. Purpose.** The purpose of [sections 21 through 29] is to promote the
15 safety and protection of all victims of partner and family member assault, victims of sexual assault, and
16 victims of stalking.

17

18 **NEW SECTION. Section 22. Eligibility for order of protection.** (1) A person may file a petition for
19 an order of protection if:

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

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

24 (i) assault as defined in 45-5-201;

25 (ii) aggravated assault as defined in 45-5-202;

26 (iii) intimidation as defined in 45-5-203;

27 (iv) partner or family member assault as defined in 45-5-206;

28 (v) criminal endangerment as defined in 45-5-207;

29 (vi) negligent endangerment as defined in 45-5-208;

30 (vii) unlawful restraint as defined in 45-5-301;

1 (viii) kidnapping as defined in 45-5-302;

2 (ix) aggravated kidnapping as defined in 45-5-303; or

3 (x) arson as defined in 45-6-103.

4 (2) A victim of stalking as defined in 45-5-220, incest as defined in 45-5-507, sexual assault as
5 defined in 45-5-502, or sexual intercourse without consent as defined in 45-5-503 is eligible for an order
6 of protection against the offender regardless of the petitioner's relationship to the offender.

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

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

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

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

15 (b) charges are filed; or

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

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

19
20 **NEW SECTION. Section 23. Temporary order of protection.** (1) A petitioner may seek a
21 temporary order of protection from a court listed in [section 27]. The petitioner shall file a sworn petition
22 that states that the petitioner is in reasonable apprehension of bodily injury or is a victim of one of the
23 offenses listed in [section 22], has a relationship to the respondent if required by [section 22], and is in
24 danger of harm if the court does not issue a temporary order of protection immediately.

25 (2) Upon a review of the petition and a finding that the petitioner is in danger of harm if the court
26 does not act immediately, the court shall issue a temporary order of protection that grants the petitioner
27 appropriate relief. The temporary order of protection may include any or all of the following orders:

28 (a) prohibiting the respondent from threatening to commit or committing acts of violence against
29 the petitioner and any designated family member;

30 (b) prohibiting the respondent from harassing, annoying, disturbing the peace of, telephoning,

1 contacting, or otherwise communicating, directly or indirectly, with the petitioner, any named family
2 member, any other victim of this offense, or a witness to the offense;

3 (c) prohibiting the respondent from removing a child from the jurisdiction of the court;

4 (d) directing the respondent to stay 1,500 feet or other appropriate distance away from the
5 petitioner, the petitioner's residence, the school or place of employment of the petitioner, or any specified
6 place frequented by the petitioner and by any other designated family or household member;

7 (e) removing and excluding the respondent from the residence of the petitioner, regardless of
8 ownership of the residence;

9 (f) prohibiting the respondent from possessing or using a THE firearm USED IN THE ASSAULT;

10 (g) prohibiting the respondent from transferring, encumbering, concealing, or otherwise disposing
11 of any property except in the usual course of business or for the necessities of life and, if so restrained,
12 requiring the respondent to notify the petitioner, through the court, of any proposed extraordinary
13 expenditures made after the order is issued;

14 (h) directing the transfer of possession and use of the residence, an automobile, and other essential
15 personal property, regardless of ownership of the residence, automobile, or essential personal property, and
16 directing an appropriate law enforcement officer to accompany the petitioner to the residence to ensure that
17 the petitioner safely obtains possession of the residence, automobile, or other essential personal property
18 or to supervise the petitioner's or respondent's removal of essential personal property;

19 (i) directing the respondent to complete violence counseling, which may include alcohol or chemical
20 dependency counseling or treatment, if appropriate;

21 (j) directing other relief considered necessary to provide for the safety and welfare of the petitioner
22 or other designated family member.

23 (3) If the petitioner has fled the parties' residence, notice of the petitioner's new residence must
24 be withheld, except by order of the court for good cause shown.

25 (4) The court may, without requiring prior notice to the respondent, issue an immediate temporary
26 order of protection for up to 20 days if the court finds, on the basis of the petitioner's sworn petition or
27 other evidence, that harm may result to the petitioner if an order is not issued before the 20-day period for
28 responding has elapsed.

29

30 NEW SECTION. **Section 24. Order of protection -- hearing.** (1) A hearing must be conducted

1 within 20 days from the date the court issues a temporary order of protection. At the hearing, the court
2 shall determine whether good cause exists for the temporary order of protection to be continued, amended,
3 or made permanent.

4 (2) The respondent may request an emergency hearing before the end of the 20-day period by filing
5 an affidavit that demonstrates that the respondent has an urgent need for the emergency hearing. An
6 emergency hearing must be set within 3 working days of the filing of the affidavit.

7 (3) The order of protection may not be made mutually effective by the court. The respondent may
8 obtain an order of protection from the petitioner only by filing an application for an order of protection and
9 following the procedure described in [sections 21 through 29].

10
11 **NEW SECTION. Section 25. Attorney general to provide forms.** The attorney general shall prepare
12 uniform sample instructions, petition forms, and order forms for temporary orders of protection and for
13 orders of protection. The attorney general shall distribute samples of the instructions, petitions, and forms
14 to the clerk of the district court in each county and to justices', municipal, and city courts. The clerk of the
15 district court, justices of the peace, and municipal and city court judges shall make forms available to the
16 public at no charge.

17
18 **NEW SECTION. Section 26. Written orders of protection.** (1) The court may determine, on the
19 basis of the respondent's history of violence, the severity of the offense at issue, and the evidence
20 presented at the hearing, that, to avoid further injury or harm, the petitioner needs permanent protection.
21 The court may order that the order of protection remain in effect permanently.

22 (2) In a dissolution proceeding, the district court may, upon request, issue either an order of
23 protection for an appropriate period of time or a permanent order of protection.

24 (3) An order of protection may include all of the relief listed in [section 23], when appropriate.

25 (4) An order of protection may include restraining the respondent from any other named family
26 member who is a minor. If this restriction is included, the respondent must be restrained from having
27 contact with the minor for an appropriate time period as directed by the court or permanently if the court
28 finds that the minor was a victim of abuse, a witness to abuse, or endangered by the environment of abuse.

29 (5) An order of protection issued under this section may continue for an appropriate time period
30 as directed by the court or be made permanent under subsection (1), (2), or (4). The order may be

1 terminated upon the petitioner's request that the order be dismissed.

2 (6) An order of protection must include a section that indicates whether there are any other civil
3 or criminal actions pending involving the parties, a brief description of the action, and the court in which
4 the action is filed.

5 (7) An amendment to a temporary order of protection or to an order of protection is effective only
6 after it has been served in writing on the opposing party.

7 (8) There is no cost for service of an order of protection.

8 (9) Any temporary order of protection or order of protection must conspicuously bear the following:

9 "Violation of this order is a criminal offense under 45-5-220 or 45-5-626 and may carry penalties
10 of up to \$10,000 in fines and up to a 5-year jail sentence.

11 This order is issued by the court, and the respondent is forbidden to do any act listed in the order,
12 even if invited by the petitioner or another person. This order may be amended only by further order of this
13 court or another court that assumes jurisdiction over this matter."

14

15 **NEW SECTION. Section 27. Jurisdiction and venue.** (1) District courts, justices' courts, municipal
16 courts, and city courts have concurrent jurisdiction to hear and issue orders under [section 23].

17 (2) When a divorce or custody action involving the parties is pending in district court, a person may
18 file a petition for an order of protection in a justice's, municipal, or city court only if the district court judge
19 assigned to that case is unavailable or if the petitioner, to escape further abuse, left the county where the
20 abuse occurred. The petitioner shall provide a copy of relevant district court documents to the justice's,
21 municipal, or city court, along with the petition. The justice of the peace, municipal court judge, or city
22 court judge shall immediately certify the pleadings to the original district court after signing an order of
23 protection under this subsection. If the district court is unable to conduct a hearing within 20 days of
24 receipt of the certified pleadings, it may conduct a hearing within 45 days of the receipt.

25 (3) An action brought under [sections 21 through 29] may be filed in the county where the
26 petitioner currently or temporarily resides, the county where the respondent resides, or the county where
27 the abuse occurred. There is no minimum length of residency required to file a petition under [sections 21
28 through 29].

29 (4) The right to petition for relief may not be denied because the petitioner has vacated the
30 residence or household to avoid abuse.

1 (5) An order of protection issued under this section is effective throughout the state. Courts and
2 law enforcement officials shall give full faith and credit to all orders of protection issued within the state.

3 (6) A certified copy of an order of protection from another state, along with proof of service, may
4 be filed in a Montana court with jurisdiction over orders of protection in the county where the petitioner
5 resides. If properly filed in Montana, an order of protection issued in another state must be enforced in the
6 same manner as an order of protection issued in Montana.

7
8 **NEW SECTION. Section 28. Appeal to district court.** (1) An order issued by a justice's court,
9 municipal court, or city court pursuant to [section 23] is immediately reviewable by the district judge upon
10 the filing of a notice of appeal. The district judge may affirm, dissolve, or modify an order of a justice's
11 court, municipal court, or city court made pursuant to [section 23 or section 26].

12 (2) A case in which an order has been issued by a justice's court, municipal court, or city court
13 pursuant to [section 23 or section 26] may be removed to district court upon filing of a notice of removal.

14
15 **NEW SECTION. Section 29. Registration of orders.** (1) The clerk of court, justice of the peace,
16 municipal court judge, or city court judge shall, within 24 hours of receiving proof of service of an order
17 under [section 23, section 26, or section 27], mail a copy of the order or any extension, modification, or
18 termination of the order, along with a copy of the proof of service, to the appropriate law enforcement
19 agencies designated in the order.

20 (2) Law enforcement agencies shall establish procedures, using an existing system for warrant
21 verification, to ensure that peace officers at the scene of an alleged violation of an order of protection are
22 informed of the existence and terms of the order.

23
24 **NEW SECTION. Section 30. Codification instruction.** (1) [Section 18] is intended to be codified
25 as an integral part of Title 46, chapter 23, and the provisions of Title 46, chapter 23, apply to [section 18].

26 (2) [Section 19] is intended to be codified as an integral part of Title 46, chapter 6, part 6, and the
27 provisions of Title 46, chapter 6, part 6, apply to [section 19].

28 (3) [Sections 20 through 29] are intended to be codified as an integral part of Title 40, and the
29 provisions of Title 40 apply to [sections 20 through 29].

30

