


1  
2 INTRODUCED BY

House BILL NO. 343  


3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO DOMESTIC  
5 VIOLENCE; ELIMINATING FILING FEES FOR ORDERS OF PROTECTION; INCREASING CERTAIN FEES TO  
6 OFFSET THE ELIMINATION OF FEES; CREATING AN ACCOUNT TO HELP FUND DOMESTIC VIOLENCE  
7 SHELTERS AND CRISIS LINES; PROVIDING THAT IN PARTNER OR FAMILY MEMBER ASSAULT  
8 SITUATIONS A PEACE OFFICER MAY ARREST THE PRIMARY AGGRESSOR; PROVIDING THAT IN ANY  
9 ASSAULT AGAINST A PARTNER OR FAMILY MEMBER AN OFFENDER MUST GO TO JAIL WITHOUT BAIL;  
10 PROVIDING THAT IN A HEARING FOR AN ORDER OF PROTECTION THE VICTIM'S PAST SEXUAL  
11 HISTORY MAY NOT BE PLACED INTO EVIDENCE; PROVIDING A PRIVILEGE FOR A VICTIM OF PARTNER  
12 OR FAMILY MEMBER ASSAULT FROM DISCLOSURE OF DISCUSSIONS WITH SHELTER WORKERS AND  
13 VOLUNTEERS; CLARIFYING THAT A CONVICTION UNDER THE FORMER DOMESTIC ABUSE STATUTE IS  
14 A CONVICTION UNDER THE CURRENT PARTNER OR FAMILY MEMBER ASSAULT STATUTE; AMENDING  
15 SECTIONS 25-1-201, 25-31-112, 40-15-201, 40-15-202, 40-15-302, 45-5-206, 46-6-311, AND 46-9-302,  
16 MCA; AND PROVIDING AN EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."  
17

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

20 **Section 1.** Section 25-1-201, MCA, is amended to read:

21 **"25-1-201. Fees of clerk of district court.** (1) The clerk of the district court shall collect the  
22 following fees:

23 (a) at the commencement of each action or proceeding, except a petition for dissolution of  
24 marriage, for a temporary order of protection, or for an order of protection, from the plaintiff or petitioner,  
25 \$80; for filing a complaint in intervention, from the intervenor, \$80; for filing a petition for dissolution of  
26 marriage, a fee of ~~\$120~~ \$150; and for filing a petition for legal separation, a fee of ~~\$120~~ \$150;

27 (b) from each defendant or respondent, on appearance, \$60;

28 (c) on the entry of judgment, from the prevailing party, \$45;

29 (d) for preparing copies of papers on file in the clerk's office, 50 cents per page for the first five  
30 pages of each file, per request, and 25 cents per additional page;

- 1 (e) for each certificate, with seal, \$2;
- 2 (f) for oath and jurat, with seal, \$1;
- 3 (g) for search of court records, 50 cents for each year searched, not to exceed a total of \$25;
- 4 (h) for filing and docketing a transcript of judgment or transcript of the docket from all other courts,
- 5 the fee for entry of judgment provided for in subsection (1)(c);
- 6 (i) for issuing an execution or order of sale on a foreclosure of a lien, \$5;
- 7 (j) for transmission of records or files or transfer of a case to another court, \$5;
- 8 (k) for filing and entering papers received by transfer from other courts, \$10;
- 9 (l) for issuing a marriage license, \$30;
- 10 (m) on the filing of an application for informal, formal, or supervised probate or for the appointment
- 11 of a personal representative or the filing of a petition for the appointment of a guardian or conservator, from
- 12 the applicant or petitioner, \$70, which includes the fee for filing a will for probate;
- 13 (n) on the filing of the items required in 72-4-303 by a domiciliary foreign personal representative
- 14 of the estate of a nonresident decedent, \$55;
- 15 (o) for filing a declaration of marriage without solemnization, \$30;
- 16 (p) for filing a motion for substitution of a judge, \$100.
- 17 (2) Except as provided in subsections (3) through (8), 32% of all fees collected by the clerk of the
- 18 district court must be deposited in and credited to the district court fund. If no district court fund exists,
- 19 that portion of the fees must be deposited in the general fund for district court operations. The remaining
- 20 portion of the fees must be remitted to the state to be deposited as provided in 19-5-404.
- 21 (3) In the case of a fee collected for issuing a marriage license or filing a declaration of marriage
- 22 without solemnization, \$14 must be deposited in and credited to the state general fund, \$6.40 must be
- 23 deposited in and credited to the county general fund, and \$9.60 must be remitted to the state to be
- 24 deposited as provided in 19-5-404.
- 25 (4) Of the fee for filing a petition for dissolution of marriage or legal separation, \$40 must be
- 26 deposited in the state general fund, \$35 must be remitted to the state to be deposited as provided in
- 27 19-5-404, \$5 must be deposited in the children's trust fund account established by 41-3-702, \$30 must
- 28 be deposited in the partner and family member assault intervention and treatment fund established by
- 29 [section 11], and \$20 must be deposited in and credited to the district court fund. If no district court fund
- 30 exists, the \$20 must be deposited in the general fund for district court operations.

1 (5) (a) Before the percentages contained in subsection (2) are applied and the fees deposited in the  
 2 district court fund or the county general fund or remitted to the state, the clerk of the district court shall  
 3 deduct from the following fees the amounts indicated:

4 (i) at the commencement of each action or proceeding and for filing a complaint in intervention as  
 5 provided in subsection (1)(a), \$35;

6 (ii) from each defendant or respondent, on appearance, as provided in subsection (1)(b), \$25;

7 (iii) on the entry of judgment as provided in subsection (1)(c), \$15; and

8 (iv) from the applicant or petitioner, on the filing of an application for probate or for the appointment  
 9 of a personal representative or on the filing of a petition for appointment of a guardian or conservator, as  
 10 provided in subsection (1)(m), \$15.

11 (b) The clerk of the district court shall deposit the money deducted in subsection (5)(a) in the  
 12 county general fund for district court operations unless the county has a district court fund. If the county  
 13 has a district court fund, the money must be deposited in that fund.

14 (6) The fee for filing a motion for substitution of a judge as provided in subsection (1)(p) must be  
 15 remitted to the state to be deposited as provided in 19-5-404.

16 (7) Fees collected under subsections (1)(d) through (1)(i) must be deposited in the district court  
 17 fund. If no district court fund exists, fees must be deposited in the general fund for district court operations.

18 (8) The clerk of the district court shall remit to the credit of the state general fund \$20 of each fee  
 19 collected under the provisions of subsections (1)(a) through (1)(c), (1)(m), and (1)(n) to fund a portion of  
 20 judicial salaries.

21 (9) There is no fee for filing a petition for a temporary order of protection or for an order of  
 22 protection under Title 40, chapter 15."

23  
 24 **Section 2.** Section 25-31-112, MCA, is amended to read:

25 "25-31-112. Fees. (1) The following is the schedule of fees ~~which~~ that, except as provided in  
 26 25-35-605, ~~shall~~ must be paid in every civil action in a justice's court:

27 ~~(1)(a)~~ \$25 ~~except as provided in subsection (2), \$26~~ when complaint is filed, to be paid by the  
 28 plaintiff;

29 ~~(2)(b)~~ \$10 when the defendant appears, to be paid by the defendant;

30 ~~(3)(c)~~ \$10 to be paid by the prevailing party when judgment is rendered. In cases ~~where~~ in which

1 judgment is entered by default, no charge except the \$25 for the filing of the complaint ~~shall~~ must be made  
 2 for any services, including issuing and return of execution.

3 ~~(4)(d)~~ \$10 for all services in an action ~~where~~ in which judgment is rendered by confession;

4 ~~(5)(e)~~ \$10 for filing notice of appeal and transcript on appeal, justifying and approving undertaking  
 5 on appeal, and transmitting papers to the district court with certificate.

6 (2) There is no fee for filing a petition for a temporary order of protection or for an order of  
 7 protection under Title 40, chapter 15."

8  
 9 NEW SECTION. **Section 3. Temporary order or temporary injunction -- continuing effect.** A  
 10 temporary order or temporary injunction issued under 40-4-121 before October 1, 1995, continues in full  
 11 force and effect as provided in the order or injunction.

12  
 13 **Section 4.** Section 40-15-201, MCA, is amended to read:

14 **"40-15-201. Temporary order of protection.** (1) A petitioner may seek a temporary order of  
 15 protection from a court listed in 40-15-301. The petitioner shall file a sworn petition that states that the  
 16 petitioner is in reasonable apprehension of bodily injury or is a victim of one of the offenses listed in  
 17 40-15-102, has a relationship to the respondent if required by 40-15-102, and is in danger of harm if the  
 18 court does not issue a temporary order of protection immediately.

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

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

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

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

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

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

3 (f) prohibiting the respondent from possessing or using the firearm used in the assault;

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

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

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

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

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

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

23 (5) There is no fee for filing a petition for a temporary order of protection or for an order of  
24 protection."

25  
26 **Section 5.** Section 40-15-202, MCA, is amended to read:

27 **"40-15-202. Order of protection -- hearing -- evidence.** (1) A hearing must be conducted within  
28 20 days from the date the court issues a temporary order of protection. At the hearing, the court shall  
29 determine whether good cause exists for the temporary order of protection to be continued, amended, or  
30 made permanent.

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

4 (3) The order of protection may not be made mutually effective by the court. The respondent may  
5 obtain an order of protection from the petitioner only by filing an application for an order of protection and  
6 following the procedure described in this chapter.

7 (4) (a) Except as provided in subsection (4)(b), evidence concerning a victim’s sexual conduct is  
8 not admissible in a hearing under this section.

9 (b) Evidence of a victim’s past sexual conduct with the offender or evidence of specific instances  
10 of the victim’s sexual activity to show the origin of semen, pregnancy, or disease may be admitted in a  
11 hearing under this section only if that sexual conduct is at issue in the hearing.

12 (5) If a respondent proposes to offer evidence subject to subsection (4)(b), the trial judge shall  
13 order a separate hearing to determine whether the proposed evidence is admissible under subsection  
14 (4)(b)."

15

16 **Section 6.** Section 40-15-302, MCA, is amended to read:

17 **"40-15-302. Appeal to district court -- order to remain in effect.** (1) An order issued by a justice’s  
18 court, municipal court, or city court pursuant to 40-15-201 is immediately reviewable by the district judge  
19 upon the filing of a notice of appeal. The district judge may affirm, dissolve, or modify an order of a  
20 justice’s court, municipal court, or city court made pursuant to 40-15-201 or 40-15-204.

21 (2) A case in which an order has been issued by a justice’s court, municipal court, or city court  
22 pursuant to 40-15-201 or 40-15-204 may be removed to district court upon filing of a notice of removal.

23 (3) If a temporary order of protection or an order of protection issued by a court of limited  
24 jurisdiction is appealed or removed to an appellate court, the order continues in full force and effect unless  
25 modified by the appellate court."

26

27 **Section 7.** Section 45-5-206, MCA, is amended to read:

28 **"45-5-206. Partner or family member assault -- penalty.** (1) A person commits the offense of  
29 partner or family member assault if the person:

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

1 (b) negligently causes bodily injury to a partner or family member with a weapon; or

2 (c) purposely or knowingly causes reasonable apprehension of bodily injury in a partner or family  
3 member.

4 (2) For the purposes of Title 40, chapter 15, 46-6-311, and this section, the following definitions  
5 apply:

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

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

14 (3) (a) An offender convicted of partner or family member assault shall be fined an amount not less  
15 than \$100 or more than \$1,000 and be imprisoned in the county jail for a term not to exceed 1 year or not  
16 less than 24 hours for a first offense. An offender convicted of a second offense under this section shall  
17 be fined not less than \$300 or more than \$1,000 and be imprisoned in the county jail not less than 72  
18 hours or more than 1 year. Upon a first or second conviction, the offender may be ordered into  
19 misdemeanor probation as provided in 46-23-1005. On a third or subsequent conviction for partner or  
20 family member assault, the offender shall be fined not less than \$500 and not more than \$50,000 and be  
21 imprisoned for a term not less than 30 days and not more than 5 years. If the term of imprisonment does  
22 not exceed 1 year, the person shall be imprisoned in the county jail. If the term of imprisonment exceeds  
23 1 year, the person shall be imprisoned in the state prison.

24 (b) For the purpose of determining the number of convictions under this section, a conviction  
25 means a conviction, as defined in 45-2-101, in this state, conviction for a violation of a similar statute in  
26 another state, or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court  
27 in this state or in another state for a violation of a similar statute, which forfeiture has not been vacated.  
28 A prior conviction for domestic abuse under this section is a prior conviction for purposes of subsection  
29 (3)(a).

30 (4) (a) An offender convicted of partner or family member assault ~~shall~~ must be required to pay for

1 and complete a counseling assessment with a focus on violence, dangerousness, and chemical dependency.  
2 The offender shall follow through on all recommendations made by the counseling provider. The ~~counselor~~  
3 counseling provider must be approved by the court. The counseling must include a counseling assessment  
4 and a minimum of 25 hours of counseling, in addition to the assessment. The assessment and the  
5 counseling must be:

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

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

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

9 (b) The counseling provided in subsection (4)(a) must be directed to the violent conduct of the  
10 offender. Other issues indicated by the assessment may be addressed in additional counseling beyond the  
11 minimum 25 hours. Subsection (4)(a) does not prohibit the placement of the offender in other appropriate  
12 treatment if the court determines that there is no available treatment program directed to the violent  
13 conduct of the offender.

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

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

20 (7) The court may prohibit an offender convicted under this section from possession or use of the  
21 firearm used in the assault. The court may enforce 45-8-323 if a firearm was used in the assault.

22 (8) At the time of sentencing, the court shall provide an offender a written copy of the offender's  
23 sentence."  
24

25 **Section 8.** Section 46-6-311, MCA, is amended to read:

26 "**46-6-311. Basis for arrest without warrant -- arrest of primary aggressor.** (1) A peace officer may  
27 arrest a person when a warrant has not been issued if the officer has probable cause to believe that the  
28 person is committing an offense or that the person has committed an offense and existing circumstances  
29 require immediate arrest.

30 (2) (a) The summoning of a peace officer to a place of residence by a partner or family member



1 constitutes an exigent circumstance for making an arrest. Arrest is the preferred response in partner or  
 2 family member assault cases involving injury to the victim, use or threatened use of a weapon, violation  
 3 of a restraining order, or other imminent danger to the victim.

4 (b) If a peace officer receives a complaint of violence or threat of violence from more than one  
 5 person who is a family member or partner, the officer shall evaluate the complaints separately to determine  
 6 who is the primary aggressor. If, based on the officer's evaluation, the officer determines that one person  
 7 is the primary aggressor, the officer may arrest only the primary aggressor. A determination of who the  
 8 primary aggressor is must be based on but is not limited to the following considerations, regardless of who  
 9 was the first aggressor:

10 (i) the prior history of violence between the partners or family members, if information about the  
 11 prior history is available to the officer;

12 (ii) the relative severity of injuries received by each person;

13 (iii) whether an act of or threat of violence was taken in self-defense;

14 (iv) the relative sizes and apparent strength of each person;

15 (v) the apparent fear or lack of fear between the partners or family members; and

16 (vi) statements made by witnesses."

17  
 18 **Section 9.** Section 46-9-302, MCA, is amended to read:

19 **"46-9-302. Bail schedule -- acceptance by peace officer.** (1) A judge may establish and post a  
 20 schedule of bail for offenses over which the judge has original jurisdiction. A person may not be released  
 21 on bail without first appearing before the judge when the offense is any assault on a partner or family  
 22 member assault, as partner or family member is defined in 45-5-206, or stalking, as defined in 45-5-220.

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

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

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

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

29  
 30 **NEW SECTION. Section 10. Advocate privilege.** (1) Unless a report is otherwise required by law,

1 an advocate may not, without consent of the victim, be examined as to any communication made to the  
2 advocate by a victim and may not divulge records kept during the course of providing shelter, counseling,  
3 or crisis intervention services.

4 (2) This privilege belongs to the victim and may not be waived, except by express consent. The  
5 privilege continues even if the victim is unreachable. Consent may not be implied because the victim is a  
6 party to a divorce or custody proceeding. The privilege terminates upon the death of the victim.

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

8 (a) "Advocate" means an employee or volunteer of a domestic violence shelter, crisis line, or  
9 victim's services provider that provides services for victims of sexual assault, stalking, or any assault on  
10 a partner or family member.

11 (b) "Victim" means a person seeking assistance because of partner or family member assault, any  
12 sexual assault, or stalking, whether or not the victim seeks or receives services within the criminal justice  
13 system.

14  
15 **NEW SECTION. Section 11. Partner and family member assault intervention and treatment fund**  
16 **account.** (1) There is a partner and family member assault intervention and treatment fund account in the  
17 state special revenue fund in the state treasury. The money in the account is allocated to the department  
18 of public health and human services to fund services to victims of partner or family member assault, as  
19 provided in subsections (2) and (3).

20 (2) The department shall distribute the money in the account, as provided in subsection (3), to  
21 agencies that provide direct services to victims of partner or family member assault, including but not  
22 limited to shelters, crisis lines, safe homes, and victim's counseling providers. A service provider is eligible  
23 to receive money under this section for services provided to a victim of partner or family member assault,  
24 whether or not the victim seeks or receives services within the criminal justice system.

25 (3) A service provider that provides direct services to victims of partner or family member assault  
26 shall apply to the department for distribution of money under this section. The department shall evaluate  
27 a provider's eligibility to receive money under this section based on available money, the needs of the  
28 provider, whether the provider includes programs focused on prevention of partner and family member  
29 assault, the quality of services provided by the provider, the need for services in the community, and the  
30 need for improved or continuing services in the community.



STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0343, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act generally revising domestic abuse laws; increasing the divorce filing and legal separation fees; creating a state special revenue account to help fund domestic violence shelters and crisis lines; and directing the Department of Public Health and Human Services to distribute funds in the state special revenue account to agencies that provide direct services to victims of domestic violence.

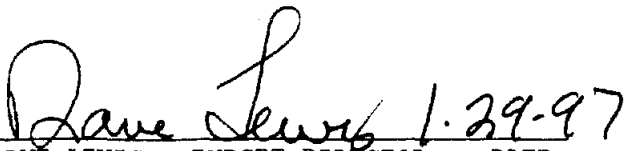
ASSUMPTIONS:

1. Current law collects \$120 for dissolution of a marriage or for filing a petition for legal separation.
2. This proposal would increase the filing fee for marriage dissolution or petition for legal separation to \$150.
3. The additional \$30 in the fee would be deposited in a special revenue fund account and allocated to the Department of Public Health and Human Services (DPHHS) for intervention and treatment services to victims of partner or family member assault.
4. DPHHS will distribute the money in the special revenue account to agencies that provide direct services to victims of partner or family member assault.
5. In fiscal 1997, DPHHS contracted with 20 domestic violence service providers at an annual average cost of \$16,000 per provider.
6. The average number of divorces is 4,220 per year, based on calendar years 1989 through 1995.
7. The \$30 increase in the dissolution of marriage and legal separation fees will result in \$126,600 additional annual state special revenue.

FISCAL IMPACT:

	<u>FY98</u>	<u>FY99</u>
<u>Expenditures:</u>	<u>Difference</u>	<u>Difference</u>
Benefits	\$126,600	\$126,600
 <u>Funding:</u>		
State Special Revenue (02)	\$126,600	\$126,600
 <u>Revenues:</u>		
Increased Fee Revenue (02)	\$126,600	\$126,600
 <u>Net Impact on Fund Balance:</u> (Revenues minus expenditures)		
State Special Revenue (02)	\$0	\$0

(Continued)

  
 DAVE LEWIS, BUDGET DIRECTOR      DATE  
 Office of Budget and Program Planning

DUANE GRIMES, PRIMARY SPONSOR      DATE

Fiscal Note for HB0343, as introduced

**HB 343**

DEDICATION OF REVENUE:

- a) Are there persons or entities that benefit from this dedicated revenue that do not pay?  
(Please explain)

Persons filing for divorce who are not victims of domestic violence would not benefit from this dedicated revenue. Conversely, victims of domestic violence who remain married may benefit from this revenue without contributing.

- b) What special information or other advantages exist as a result of using a state special revenue fund that could not be obtained if the revenue were allocated to the general fund?

Use of a state special revenue account could ensure that the increase in divorce filing fees is used to support domestic violence programs. If the revenue is deposited to the general fund, the increase in divorce fees could be appropriated for programs other than domestic violence.

- c) Is the source of revenue relevant to current use of the funds and adequate to fund the program/activity that is intended?  Yes  No (if no, explain)

To the extent that divorces may result due to domestic violence, the source of revenue is relevant to the use of funds.

- d) Does the need for this state special revenue provision still exist?  Yes  No (Explain)

This bill would create a new account.

- e) Does the dedicated revenue affect the legislature's ability to scrutinize budgets, control expenditures, or establish priorities for state spending? (Please explain)

All state revenue accounts may affect the legislature and executive's ability to scrutinize budgets, control expenditures, and establish priorities for state spending.

- f) Does the dedicated revenue fulfill a continuing, legislatively recognized need?  
(Please explain)

- g) How does the dedicated revenue provision result in accounting/auditing efficiencies or inefficiencies in your agency? (Please explain. Also, if the program/activity were general funded, could you adequately account for the program/activity?)

No impact.

APPROVED BY COM  
ON JUDICIARY

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26 marriage, a fee of ~~\$120~~ \$150; and for filing a petition for legal separation, a fee of ~~\$120~~ \$150;

27 (b) from each defendant or respondent, on appearance, \$60;

28 (c) on the entry of judgment, from the prevailing party, \$45;

29 (d) for preparing copies of papers on file in the clerk's office, 50 cents per page for the first five  
30 pages of each file, per request, and 25 cents per additional page;

- 1 (e) for each certificate, with seal, \$2;
- 2 (f) for oath and jurat, with seal, \$1;
- 3 (g) for search of court records, 50 cents for each year searched, not to exceed a total of \$25;
- 4 (h) for filing and docketing a transcript of judgment or transcript of the docket from all other courts,  
5 the fee for entry of judgment provided for in subsection (1)(c);
- 6 (i) for issuing an execution or order of sale on a foreclosure of a lien, \$5;
- 7 (j) for transmission of records or files or transfer of a case to another court, \$5;
- 8 (k) for filing and entering papers received by transfer from other courts, \$10;
- 9 (l) for issuing a marriage license, \$30;
- 10 (m) on the filing of an application for informal, formal, or supervised probate or for the appointment  
11 of a personal representative or the filing of a petition for the appointment of a guardian or conservator, from  
12 the applicant or petitioner, \$70, which includes the fee for filing a will for probate;
- 13 (n) on the filing of the items required in 72-4-303 by a domiciliary foreign personal representative  
14 of the estate of a nonresident decedent, \$55;
- 15 (o) for filing a declaration of marriage without solemnization, \$30;
- 16 (p) for filing a motion for substitution of a judge, \$100.
- 17 (2) Except as provided in subsections (3) through (8), 32% of all fees collected by the clerk of the  
18 district court must be deposited in and credited to the district court fund. If no district court fund exists,  
19 that portion of the fees must be deposited in the general fund for district court operations. The remaining  
20 portion of the fees must be remitted to the state to be deposited as provided in 19-5-404.
- 21 (3) In the case of a fee collected for issuing a marriage license or filing a declaration of marriage  
22 without solemnization, \$14 must be deposited in and credited to the state general fund, \$6.40 must be  
23 deposited in and credited to the county general fund, and \$9.60 must be remitted to the state to be  
24 deposited as provided in 19-5-404.
- 25 (4) Of the fee for filing a petition for dissolution of marriage or legal separation, \$40 must be  
26 deposited in the state general fund, \$35 must be remitted to the state to be deposited as provided in  
27 19-5-404, \$5 must be deposited in the children's trust fund account established by 41-3-702, \$30 must  
28 be deposited in the partner and family member assault intervention and treatment fund established by  
29 [section 41-9], and \$20 must be deposited in and credited to the district court fund. If no district court fund  
30 exists, the \$20 must be deposited in the general fund for district court operations.

1 (5) (a) Before the percentages contained in subsection (2) are applied and the fees deposited in the  
 2 district court fund or the county general fund or remitted to the state, the clerk of the district court shall  
 3 deduct from the following fees the amounts indicated:

4 (i) at the commencement of each action or proceeding and for filing a complaint in intervention as  
 5 provided in subsection (1)(a), \$35;

6 (ii) from each defendant or respondent, on appearance, as provided in subsection (1)(b), \$25;

7 (iii) on the entry of judgment as provided in subsection (1)(c), \$15; and

8 (iv) from the applicant or petitioner, on the filing of an application for probate or for the appointment  
 9 of a personal representative or on the filing of a petition for appointment of a guardian or conservator, as  
 10 provided in subsection (1)(m), \$15.

11 (b) The clerk of the district court shall deposit the money deducted in subsection (5)(a) in the  
 12 county general fund for district court operations unless the county has a district court fund. If the county  
 13 has a district court fund, the money must be deposited in that fund.

14 (6) The fee for filing a motion for substitution of a judge as provided in subsection (1)(p) must be  
 15 remitted to the state to be deposited as provided in 19-5-404.

16 (7) Fees collected under subsections (1)(d) through (1)(i) must be deposited in the district court  
 17 fund. If no district court fund exists, fees must be deposited in the general fund for district court operations.

18 (8) The clerk of the district court shall remit to the credit of the state general fund \$20 of each fee  
 19 collected under the provisions of subsections (1)(a) through (1)(c), (1)(m), and (1)(n) to fund a portion of  
 20 judicial salaries.

21 ~~(9) There is no fee for filing a petition for a temporary order of protection or for an order of~~  
 22 ~~protection under Title 40, chapter 15."~~

23  
 24 **Section 2.** ~~Section 25-31-112, MCA, is amended to read:~~

25 ~~"25-31-112. Fees. (1) The following is the schedule of fees which that, except as provided in~~  
 26 ~~25-35-605, shall must be paid in every civil action in a justice's court:~~

27 ~~(1)(a) \$25 except as provided in subsection (2), \$26 when complaint is filed, to be paid by the~~  
 28 ~~plaintiff;~~

29 ~~(2)(b) \$10 when the defendant appears, to be paid by the defendant;~~

30 ~~(3)(c) \$10 to be paid by the prevailing party when judgment is rendered. In cases where in which~~



1 judgment is entered by default, no charge except the \$25 for the filing of the complaint shall must be made  
 2 for any services, including issuing and return of execution.

3 ~~(4)(d) \$10 for all services in an action where in which judgment is rendered by confession;~~

4 ~~(5)(e) \$10 for filing notice of appeal and transcript on appeal, justifying and approving undertaking~~  
 5 ~~on appeal, and transmitting papers to the district court with certificate.~~

6 ~~(2) There is no fee for filing a petition for a temporary order of protection or for an order of~~  
 7 ~~protection under Title 40, chapter 15."~~

8  
 9 **NEW SECTION.** Section 2. Temporary order or temporary injunction -- continuing effect. A  
 10 temporary order or temporary injunction issued under 40-4-121 before October 1, 1995, continues in full  
 11 force and effect as provided in the order or injunction.

12  
 13 ~~Section 4. Section 40-15-201, MCA, is amended to read:~~

14 ~~"40-15-201. Temporary order of protection. (1) A petitioner may seek a temporary order of~~  
 15 ~~protection from a court listed in 40-15-301. The petitioner shall file a sworn petition that states that the~~  
 16 ~~petitioner is in reasonable apprehension of bodily injury or is a victim of one of the offenses listed in~~  
 17 ~~40-15-102, has a relationship to the respondent if required by 40-15-102, and is in danger of harm if the~~  
 18 ~~court does not issue a temporary order of protection immediately.~~

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

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

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

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

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

1 ~~(e) removing and excluding the respondent from the residence of the petitioner, regardless of~~  
 2 ~~ownership of the residence;~~

3 ~~(f) prohibiting the respondent from possessing or using the firearm used in the assault;~~

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

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

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

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

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

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

23 ~~(5) There is no fee for filing a petition for a temporary order of protection or for an order of~~  
 24 ~~protection.~~"

25  
 26 **Section 3.** Section 40-15-202, MCA, is amended to read:

27 **"40-15-202. Order of protection -- hearing -- evidence.** (1) A hearing must be conducted within  
 28 20 days from the date the court issues a temporary order of protection. At the hearing, the court shall  
 29 determine whether good cause exists for the temporary order of protection to be continued, amended, or  
 30 made permanent.

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

4           (3) The order of protection may not be made mutually effective by the court. The respondent may  
5 obtain an order of protection from the petitioner only by filing an application for an order of protection and  
6 following the procedure described in this chapter.

7           (4) (a) Except as provided in subsection (4)(b), evidence concerning a victim's sexual conduct is  
8 not admissible in a hearing under this section.

9           (b) Evidence of a victim's past sexual conduct with the offender or evidence of specific instances  
10 of the victim's sexual activity to show the origin of semen, pregnancy, or disease may be admitted in a  
11 hearing under this section only if that sexual conduct is at issue in the hearing.

12           (5) If a respondent proposes to offer evidence subject to subsection (4)(b), the trial judge shall  
13 order a separate hearing to determine whether the proposed evidence is admissible under subsection  
14 (4)(b)."

15  
16           **Section 4.** Section 40-15-302, MCA, is amended to read:

17           **"40-15-302. Appeal to district court -- order to remain in effect.** (1) An order issued by a justice's  
18 court, municipal court, or city court pursuant to 40-15-201 is immediately reviewable by the district judge  
19 upon the filing of a notice of appeal. The district judge may affirm, dissolve, or modify an order of a  
20 justice's court, municipal court, or city court made pursuant to 40-15-201 or 40-15-204.

21           (2) A case in which an order has been issued by a justice's court, municipal court, or city court  
22 pursuant to 40-15-201 or 40-15-204 may be removed to district court upon filing of a notice of removal.

23           (3) If a temporary order of protection or an order of protection issued by a court of limited  
24 jurisdiction is appealed or removed to an appellate court, the order continues in full force and effect unless  
25 modified by the appellate court."

26  
27           **Section 5.** Section 45-5-206, MCA, is amended to read:

28           **"45-5-206. Partner or family member assault -- penalty.** (1) A person commits the offense of  
29 partner or family member assault if the person:

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

- 1 (b) negligently causes bodily injury to a partner or family member with a weapon; or
- 2 (c) purposely or knowingly causes reasonable apprehension of bodily injury in a partner or family
- 3 member.
- 4 (2) For the purposes of Title 40, chapter 15, 46-6-311, and this section, the following definitions
- 5 apply:
- 6 (a) "Family member" means mothers, fathers, children, brothers, sisters, and other past or present
- 7 family members of a household. These relationships include relationships created by adoption and
- 8 remarriage, including stepchildren, stepparents, in-laws, and adoptive children and parents. These
- 9 relationships continue regardless of the ages of the parties and whether the parties reside in the same
- 10 household.
- 11 (b) "Partners" means spouses, former spouses, persons who have a child in common, and persons
- 12 who have been or are currently in a dating or ongoing intimate relationship with a person of the opposite
- 13 sex.
- 14 (3) (a) An offender convicted of partner or family member assault shall be fined an amount not less
- 15 than \$100 or more than \$1,000 and be imprisoned in the county jail for a term not to exceed 1 year or not
- 16 less than 24 hours for a first offense. An offender convicted of a second offense under this section shall
- 17 be fined not less than \$300 or more than \$1,000 and be imprisoned in the county jail not less than 72
- 18 hours or more than 1 year. Upon a first or second conviction, the offender may be ordered into
- 19 misdemeanor probation as provided in 46-23-1005. On a third or subsequent conviction for partner or
- 20 family member assault, the offender shall be fined not less than \$500 and not more than \$50,000 and be
- 21 imprisoned for a term not less than 30 days and not more than 5 years. If the term of imprisonment does
- 22 not exceed 1 year, the person shall be imprisoned in the county jail. If the term of imprisonment exceeds
- 23 1 year, the person shall be imprisoned in the state prison.
- 24 (b) For the purpose of determining the number of convictions under this section, a conviction
- 25 means a conviction, as defined in 45-2-101, in this state, conviction for a violation of a similar statute in
- 26 another state, or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court
- 27 in this state or in another state for a violation of a similar statute, which forfeiture has not been vacated.
- 28 A prior conviction for domestic abuse under this section is a prior conviction for purposes of subsection
- 29 (3)(a).
- 30 (4) (a) An offender convicted of partner or family member assault ~~shall~~ must be required to pay for

1 and complete a counseling assessment with a focus on violence, dangerousness, and chemical dependency.  
2 The offender shall follow through on all recommendations made by the counseling provider. The ~~counselor~~  
3 counseling provider must be approved by the court. The counseling must include a counseling assessment  
4 and a minimum of 25 hours of counseling, in addition to the assessment. The assessment and the  
5 counseling must be:

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

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

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

9 (b) The counseling provided in subsection (4)(a) must be directed to the violent conduct of the  
10 offender. Other issues indicated by the assessment may be addressed in additional counseling beyond the  
11 minimum 25 hours. Subsection (4)(a) does not prohibit the placement of the offender in other appropriate  
12 treatment if the court determines that there is no available treatment program directed to the violent  
13 conduct of the offender.

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

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

20 (7) The court may prohibit an offender convicted under this section from possession or use of the  
21 firearm used in the assault. The court may enforce 45-8-323 if a firearm was used in the assault.

22 (8) At the time of sentencing, the court shall provide an offender a written copy of the offender's  
23 sentence."  
24

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

26 "**46-6-311. Basis for arrest without warrant -- arrest of primary aggressor.** (1) A peace officer may  
27 arrest a person when a warrant has not been issued if the officer has probable cause to believe that the  
28 person is committing an offense or that the person has committed an offense and existing circumstances  
29 require immediate arrest.

30 (2) (a) The summoning of a peace officer to a place of residence by a partner or family member

1 constitutes an exigent circumstance for making an arrest. Arrest is the preferred response in partner or  
 2 family member assault cases involving injury to the victim, use or threatened use of a weapon, violation  
 3 of a restraining order, or other imminent danger to the victim.

4 (b) If a peace officer receives a complaint of violence or threat of violence from more than one  
 5 person who is a family member or partner, the officer shall evaluate the complaints separately to determine  
 6 who is the primary aggressor. If, based on the officer's evaluation, the officer determines that one person  
 7 is the primary aggressor, the officer may arrest only the primary aggressor. A determination of who the  
 8 primary aggressor is must be based on but is not limited to the following considerations, regardless of who  
 9 was the first aggressor:

10 (i) the prior history of violence between the partners or family members, if information about the  
 11 prior history is available to the officer;

12 (ii) the relative severity of injuries received by each person;

13 (iii) whether an act of or threat of violence was taken in self-defense;

14 (iv) the relative sizes and apparent strength of each person;

15 (v) the apparent fear or lack of fear between the partners or family members; and

16 (vi) statements made by witnesses."

17  
 18 **Section 7.** Section 46-9-302, MCA, is amended to read:

19 **"46-9-302. Bail schedule -- acceptance by peace officer.** (1) A judge may establish and post a  
 20 schedule of bail for offenses over which the judge has original jurisdiction. A person may not be released  
 21 on bail without first appearing before the judge when the offense is any assault on a partner or family  
 22 member assault, as partner or family member is defined in 45-5-206, or stalking, as defined in 45-5-220.

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

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

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

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

29  
 30 **NEW SECTION. Section 8. Advocate privilege.** (1) Unless a report is otherwise required by law,

1 an advocate may not, without consent of the victim, be examined as to any communication made to the  
2 advocate by a victim and may not divulge records kept during the course of providing shelter, counseling,  
3 or crisis intervention services.

4 (2) This privilege belongs to the victim and may not be waived, except by express consent. The  
5 privilege continues even if the victim is unreachable. Consent may not be implied because the victim is a  
6 party to a divorce or custody proceeding. The privilege terminates upon the death of the victim.

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

8 (a) "Advocate" means an employee or volunteer of a domestic violence shelter, crisis line, or  
9 victim's services provider that provides services for victims of sexual assault, stalking, or any assault on  
10 a partner or family member.

11 (b) "Victim" means a person seeking assistance because of partner or family member assault, any  
12 sexual assault, or stalking, whether or not the victim seeks or receives services within the criminal justice  
13 system.

14  
15 **NEW SECTION. Section 9. Partner and family member assault intervention and treatment fund**  
16 **account.** (1) There is a partner and family member assault intervention and treatment fund account in the  
17 state special revenue fund in the state treasury. The money in the account is allocated to the department  
18 of public health and human services to fund services to victims of partner or family member assault, as  
19 provided in subsections (2) and (3).

20 (2) The department shall distribute the money in the account, as provided in subsection (3), to  
21 agencies that provide direct services to victims of partner or family member assault, including but not  
22 limited to shelters, crisis lines, safe homes, and victim's counseling providers. A service provider is eligible  
23 to receive money under this section for services provided to a victim of partner or family member assault,  
24 whether or not the victim seeks or receives services within the criminal justice system.

25 (3) A service provider that provides direct services to victims of partner or family member assault  
26 shall apply to the department for distribution of money under this section. The department shall evaluate  
27 a provider's eligibility to receive money under this section based on available money, the needs of the  
28 provider, whether the provider includes programs focused on prevention of partner and family member  
29 assault, the quality of services provided by the provider, the need for services in the community, and the  
30 need for improved or continuing services in the community.

1            **NEW SECTION. Section 10. Codification instruction.** (1) [Section ~~40~~ 8] is intended to be codified  
2 as an integral part of Title 26, chapter 1, part 8, and the provisions of Title 26, chapter 1, part 8, apply to  
3 [section ~~40~~ 8].

4            (2) [Section ~~41~~ 9] is intended to be codified as an integral part of Title 40, chapter 15, part 1, and  
5 the provisions of Title 40, chapter 15, part 1, apply to [section ~~41~~ 9].  
6

7            **NEW SECTION. Section 11. Severability.** If a part of [this act] is invalid, all valid parts that are  
8 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its  
9 applications, the part remains in effect in all valid applications that are severable from the invalid  
10 applications.  
11

12            **NEW SECTION. Section 12. Retroactive applicability.** [Section ~~3~~ 2] applies retroactively to October  
13 1, 1995.  
14

15            **NEW SECTION. Section 13. Effective date.** [This act] is effective July 1, 1997.  
16

-END-



## 1 HOUSE BILL NO. 343

2 INTRODUCED BY GRIMES, NELSON

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO DOMESTIC  
5 VIOLENCE; ~~ELIMINATING FILING FEES FOR ORDERS OF PROTECTION;~~ INCREASING CERTAIN FILING FEES  
6 ~~TO OFFSET THE ELIMINATION OF FEES;~~ CREATING AN ACCOUNT TO HELP FUND DOMESTIC VIOLENCE  
7 SHELTERS AND CRISIS LINES; PROVIDING THAT IN PARTNER OR FAMILY MEMBER ASSAULT  
8 SITUATIONS A PEACE OFFICER MAY ARREST THE PRIMARY AGGRESSOR; PROVIDING THAT IN ANY  
9 ASSAULT AGAINST A PARTNER OR FAMILY MEMBER AN OFFENDER MUST GO TO JAIL WITHOUT BAIL;  
10 PROVIDING THAT IN A HEARING FOR AN ORDER OF PROTECTION THE VICTIM'S PAST SEXUAL  
11 HISTORY MAY NOT BE PLACED INTO EVIDENCE; PROVIDING A PRIVILEGE FOR A VICTIM OF PARTNER  
12 OR FAMILY MEMBER ASSAULT FROM DISCLOSURE OF DISCUSSIONS WITH SHELTER WORKERS AND  
13 VOLUNTEERS; CLARIFYING THAT A CONVICTION UNDER THE FORMER DOMESTIC ABUSE STATUTE IS  
14 A CONVICTION UNDER THE CURRENT PARTNER OR FAMILY MEMBER ASSAULT STATUTE; AMENDING  
15 SECTIONS 25-1-201, ~~25-31-112, 40-15-201, 40-15-202, 40-15-302, 45-5-206, 46-6-311, AND 46-9-302,~~  
16 MCA; AND PROVIDING AN EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

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.**

APPROVED BY COM  
ON JUDICIARY

HOUSE BILL NO. 343

INTRODUCED BY GRIMES, NELSON

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO DOMESTIC VIOLENCE; ~~ELIMINATING FILING FEES FOR ORDERS OF PROTECTION~~; INCREASING CERTAIN FILING FEES TO ~~OFFSET THE ELIMINATION OF FEES~~; CREATING AN ACCOUNT TO HELP FUND DOMESTIC VIOLENCE SHELTERS AND CRISIS LINES; PROVIDING THAT IN PARTNER OR FAMILY MEMBER ASSAULT SITUATIONS A PEACE OFFICER MAY ARREST THE PRIMARY AGGRESSOR; PROVIDING THAT IN ANY ASSAULT AGAINST A PARTNER OR FAMILY MEMBER AN OFFENDER MUST GO TO JAIL WITHOUT BAIL; PROVIDING THAT IN A HEARING FOR AN ORDER OF PROTECTION THE VICTIM'S PAST SEXUAL HISTORY MAY NOT BE PLACED INTO EVIDENCE; PROVIDING A PRIVILEGE FOR A VICTIM OF PARTNER OR FAMILY MEMBER ASSAULT FROM DISCLOSURE OF DISCUSSIONS WITH SHELTER WORKERS AND VOLUNTEERS; CLARIFYING THAT A CONVICTION UNDER THE FORMER DOMESTIC ABUSE STATUTE IS A CONVICTION UNDER THE CURRENT PARTNER OR FAMILY MEMBER ASSAULT STATUTE; AMENDING SECTIONS 25-1-201, ~~25-31-112, 40-15-201, 40-15-202, 40-15-302, 45-5-206, 46-6-311, AND 46-9-302,~~ MCA; AND PROVIDING AN EFFECTIVE DATE ~~AND, A RETROACTIVE APPLICABILITY DATE, AND A~~ TERMINATION DATE."

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

**Section 1.** Section 25-1-201, MCA, is amended to read:

**"25-1-201. Fees of clerk of district court.** (1) The clerk of the district court shall collect the following fees:

(a) at the commencement of each action or proceeding, except a petition for dissolution of marriage, ~~for a temporary order of protection, or for an order of protection,~~ from the plaintiff or petitioner, \$80; for filing a complaint in intervention, from the intervenor, \$80; for filing a petition for dissolution of marriage, a fee of ~~\$120~~ \$150; and for filing a petition for legal separation, a fee of ~~\$120~~ \$150;

(b) from each defendant or respondent, on appearance, \$60;

(c) on the entry of judgment, from the prevailing party, \$45;

(d) for preparing copies of papers on file in the clerk's office, 50 cents per page for the first five

1 pages of each file, per request, and 25 cents per additional page;

2 (e) for each certificate, with seal, \$2;

3 (f) for oath and jurat, with seal, \$1;

4 (g) for search of court records, 50 cents for each year searched, not to exceed a total of \$25;

5 (h) for filing and docketing a transcript of judgment or transcript of the docket from all other courts,  
6 the fee for entry of judgment provided for in subsection (1)(c);

7 (i) for issuing an execution or order of sale on a foreclosure of a lien, \$5;

8 (j) for transmission of records or files or transfer of a case to another court, \$5;

9 (k) for filing and entering papers received by transfer from other courts, \$10;

10 (l) for issuing a marriage license, \$30;

11 (m) on the filing of an application for informal, formal, or supervised probate or for the appointment  
12 of a personal representative or the filing of a petition for the appointment of a guardian or conservator, from  
13 the applicant or petitioner, \$70, which includes the fee for filing a will for probate;

14 (n) on the filing of the items required in 72-4-303 by a domiciliary foreign personal representative  
15 of the estate of a nonresident decedent, \$55;

16 (o) for filing a declaration of marriage without solemnization, \$30;

17 (p) for filing a motion for substitution of a judge, \$100.

18 (2) Except as provided in subsections (3) through (8), 32% of all fees collected by the clerk of the  
19 district court must be deposited in and credited to the district court fund. If no district court fund exists,  
20 that portion of the fees must be deposited in the general fund for district court operations. The remaining  
21 portion of the fees must be remitted to the state to be deposited as provided in 19-5-404.

22 (3) In the case of a fee collected for issuing a marriage license or filing a declaration of marriage  
23 without solemnization, \$14 must be deposited in and credited to the state general fund, \$6.40 must be  
24 deposited in and credited to the county general fund, and \$9.60 must be remitted to the state to be  
25 deposited as provided in 19-5-404.

26 (4) Of the fee for filing a petition for dissolution of marriage or legal separation, \$40 must be  
27 deposited in the state general fund, \$35 must be remitted to the state to be deposited as provided in  
28 19-5-404, \$5 must be deposited in the children's trust fund account established by 41-3-702, \$30 must  
29 be deposited in the partner and family member assault intervention and treatment fund established by  
30 [section 44 9], and \$20 must be deposited in and credited to the district court fund. If no district court fund

1 exists, the \$20 must be deposited in the general fund for district court operations.

2 (5) (a) Before the percentages contained in subsection (2) are applied and the fees deposited in the  
3 district court fund or the county general fund or remitted to the state, the clerk of the district court shall  
4 deduct from the following fees the amounts indicated:

5 (i) at the commencement of each action or proceeding and for filing a complaint in intervention as  
6 provided in subsection (1)(a), \$35;

7 (ii) from each defendant or respondent, on appearance, as provided in subsection (1)(b), \$25;

8 (iii) on the entry of judgment as provided in subsection (1)(c), \$15; and

9 (iv) from the applicant or petitioner, on the filing of an application for probate or for the appointment  
10 of a personal representative or on the filing of a petition for appointment of a guardian or conservator, as  
11 provided in subsection (1)(m), \$15.

12 (b) The clerk of the district court shall deposit the money deducted in subsection (5)(a) in the  
13 county general fund for district court operations unless the county has a district court fund. If the county  
14 has a district court fund, the money must be deposited in that fund.

15 (6) The fee for filing a motion for substitution of a judge as provided in subsection (1)(p) must be  
16 remitted to the state to be deposited as provided in 19-5-404.

17 (7) Fees collected under subsections (1)(d) through (1)(i) must be deposited in the district court  
18 fund. If no district court fund exists, fees must be deposited in the general fund for district court operations.

19 (8) The clerk of the district court shall remit to the credit of the state general fund \$20 of each fee  
20 collected under the provisions of subsections (1)(a) through (1)(c), (1)(m), and (1)(n) to fund a portion of  
21 judicial salaries.

22 ~~(9) There is no fee for filing a petition for a temporary order of protection or for an order of~~  
23 ~~protection under Title 40, chapter 15."~~

24

25 ~~Section 2. Section 25-31-112, MCA, is amended to read:~~

26 ~~"25-31-112. Fees. (1) The following is the schedule of fees which that, except as provided in~~  
27 ~~25-35-605, shall must be paid in every civil action in a justice's court:~~

28 ~~(1)(a) \$25 except as provided in subsection (2), \$26 when complaint is filed, to be paid by the~~  
29 ~~plaintiff;~~

30 ~~(2)(b) \$10 when the defendant appears, to be paid by the defendant;~~

1           ~~{3}(c) \$10 to be paid by the prevailing party when judgment is rendered. In cases where in which~~  
 2 judgment is entered by default, no charge except the \$25 for the filing of the complaint shall must be made  
 3 for any services, including issuing and return of execution.

4           ~~{4}(d) \$10 for all services in an action where in which judgment is rendered by confession;~~

5           ~~{5}(e) \$10 for filing notice of appeal and transcript on appeal, justifying and approving undertaking~~  
 6 on appeal, and transmitting papers to the district court with certificate.

7           ~~{2} There is no fee for filing a petition for a temporary order of protection or for an order of~~  
 8 protection under Title 40, chapter 16."

9  
 10           **NEW SECTION.** Section 2. Temporary order or temporary injunction -- continuing effect. A  
 11 temporary order or temporary injunction issued under 40-4-121 before October 1, 1995, continues in full  
 12 force and effect as provided in the order or injunction.

13  
 14           ~~Section 4. Section 40-15-201, MCA, is amended to read:~~

15           ~~"40-15-201. Temporary order of protection. (1) A petitioner may seek a temporary order of~~  
 16 protection from a court listed in 40-15-301. The petitioner shall file a sworn petition that states that the  
 17 petitioner is in reasonable apprehension of bodily injury or is a victim of one of the offenses listed in  
 18 40-15-102, has a relationship to the respondent if required by 40-15-102, and is in danger of harm if the  
 19 court does not issue a temporary order of protection immediately.

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

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

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

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

29           ~~(d) directing the respondent to stay 1,500 feet or other appropriate distance away from the~~  
 30 petitioner, the petitioner's residence, the school or place of employment of the petitioner, or any specified

1 ~~place frequented by the petitioner and by any other designated family or household member;~~

2 ~~(e) removing and excluding the respondent from the residence of the petitioner, regardless of~~  
 3 ~~ownership of the residence;~~

4 ~~(f) prohibiting the respondent from possessing or using the firearm used in the assault;~~

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

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

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

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

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

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

24 ~~(5) There is no fee for filing a petition for a temporary order of protection or for an order of~~  
 25 ~~protection."~~

26  
 27 **Section 3.** Section 40-15-202, MCA, is amended to read:

28 **"40-15-202. Order of protection -- hearing -- evidence.** (1) A hearing must be conducted within  
 29 20 days from the date the court issues a temporary order of protection. At the hearing, the court shall  
 30 determine whether good cause exists for the temporary order of protection to be continued, amended, or

1 made permanent.

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

5 (3) The order of protection may not be made mutually effective by the court. The respondent may  
6 obtain an order of protection from the petitioner only by filing an application for an order of protection and  
7 following the procedure described in this chapter.

8 (4) (a) Except as provided in subsection (4)(b), evidence concerning a victim's sexual conduct is  
9 not admissible in a hearing under this section.

10 (b) Evidence of a victim's past sexual conduct with the offender or evidence of specific instances  
11 of the victim's sexual activity to show the origin of semen, pregnancy, or disease may be admitted in a  
12 hearing under this section only if that sexual conduct is at issue in the hearing.

13 (5) If a respondent proposes to offer evidence subject to subsection (4)(b), the trial judge shall  
14 order a separate hearing to determine whether the proposed evidence is admissible under subsection  
15 (4)(b)."

16

17 **Section 4.** Section 40-15-302, MCA, is amended to read:

18 **"40-15-302. Appeal to district court -- order to remain in effect.** (1) An order issued by a justice's  
19 court, municipal court, or city court pursuant to 40-15-201 is immediately reviewable by the district judge  
20 upon the filing of a notice of appeal. The district judge may affirm, dissolve, or modify an order of a  
21 justice's court, municipal court, or city court made pursuant to 40-15-201 or 40-15-204.

22 (2) A case in which an order has been issued by a justice's court, municipal court, or city court  
23 pursuant to 40-15-201 or 40-15-204 may be removed to district court upon filing of a notice of removal.

24 (3) If a temporary order of protection or an order of protection issued by a court of limited  
25 jurisdiction is appealed or removed to an appellate court, the order continues in full force and effect unless  
26 modified by the appellate court."

27

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

29 **"45-5-206. Partner or family member assault -- penalty.** (1) A person commits the offense of  
30 partner or family member assault if the person:

- 1 (a) purposely or knowingly causes bodily injury to a partner or family member;  
2 (b) negligently causes bodily injury to a partner or family member with a weapon; or  
3 (c) purposely or knowingly causes reasonable apprehension of bodily injury in a partner or family  
4 member.

5 (2) For the purposes of Title 40, chapter 15, 46-6-311, and this section, the following definitions  
6 apply:

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

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

15 (3) (a) An offender convicted of partner or family member assault shall be fined an amount not less  
16 than \$100 or more than \$1,000 and be imprisoned in the county jail for a term not to exceed 1 year or not  
17 less than 24 hours for a first offense. An offender convicted of a second offense under this section shall  
18 be fined not less than \$300 or more than \$1,000 and be imprisoned in the county jail not less than 72  
19 hours or more than 1 year. Upon a first or second conviction, the offender may be ordered into  
20 misdemeanor probation as provided in 46-23-1005. On a third or subsequent conviction for partner or  
21 family member assault, the offender shall be fined not less than \$500 and not more than \$50,000 and be  
22 imprisoned for a term not less than 30 days and not more than 5 years. If the term of imprisonment does  
23 not exceed 1 year, the person shall be imprisoned in the county jail. If the term of imprisonment exceeds  
24 1 year, the person shall be imprisoned in the state prison.

25 (b) For the purpose of determining the number of convictions under this section, a conviction  
26 means a conviction, as defined in 45-2-101, in this state, conviction for a violation of a similar statute in  
27 another state, or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court  
28 in this state or in another state for a violation of a similar statute, which forfeiture has not been vacated.  
29 A prior conviction for domestic abuse under this section is a prior conviction for purposes of subsection  
30 (3)(a).



1 (4) (a) An offender convicted of partner or family member assault ~~shall~~ must be required to pay for  
2 and complete a counseling assessment with a focus on violence, dangerousness, and chemical dependency.  
3 The offender shall follow through on all recommendations made by the counseling provider. The ~~counselor~~  
4 counseling provider must be approved by the court. The counseling must include a counseling assessment  
5 and a minimum of 25 hours of counseling, in addition to the assessment. The assessment and the  
6 counseling must be:

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

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

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

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

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

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

21 (7) The court may prohibit an offender convicted under this section from possession or use of the  
22 firearm used in the assault. The court may enforce 45-8-323 if a firearm was used in the assault.

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

25  
26 **Section 6.** Section 46-6-311, MCA, is amended to read:

27 "**46-6-311. Basis for arrest without warrant -- arrest of primary aggressor.** (1) A peace officer may  
28 arrest a person when a warrant has not been issued if the officer has probable cause to believe that the  
29 person is committing an offense or that the person has committed an offense and existing circumstances  
30 require immediate arrest.

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

5 ~~(b) If a peace officer receives a complaint of violence or threat of violence from more than one~~  
 6 ~~person who is a family member or partner, the officer shall evaluate the complaints separately~~ WHEN A  
 7 PEACE OFFICER RESPONDS TO A PARTNER OR FAMILY MEMBER ASSAULT COMPLAINT AND IF IT  
 8 APPEARS THAT THE PARTIES WERE INVOLVED IN MUTUAL AGGRESSION, THE OFFICER SHALL  
 9 EVALUATE THE SITUATION to determine who is the primary aggressor. If, based on the officer's  
 10 evaluation, the officer determines that one person is the primary aggressor, the officer may arrest only the  
 11 primary aggressor. A determination of who the primary aggressor is must be based on but is not limited  
 12 to the following considerations, regardless of who was the first aggressor:

13 (i) the prior history of violence between the partners or family members, if information about the  
 14 prior history is available to the officer;

15 (ii) the relative severity of injuries received by each person;

16 (iii) whether an act of or threat of violence was taken in self-defense;

17 (iv) the relative sizes and apparent strength of each person;

18 (v) the apparent fear or lack of fear between the partners or family members; and

19 (vi) statements made by witnesses."

20  
 21 **Section 7.** Section 46-9-302, MCA, is amended to read:

22 **"46-9-302. Bail schedule -- acceptance by peace officer.** (1) A judge may establish and post a  
 23 schedule of bail for offenses over which the judge has original jurisdiction. A person may not be released  
 24 on bail without first appearing before the judge when the offense is any assault on a partner or family  
 25 member assault, as partner or family member is defined in 45-5-206, or stalking, as defined in 45-5-220.

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

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

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

29 (3) Whenever a peace officer accepts bail, the officer shall give a signed receipt to the offender  
 30 setting forth the bail received. The peace officer shall then deliver the bail to the judge before whom the

1 offender is to appear, and the judge shall give a receipt to the peace officer for the bail delivered."  
2

3 **NEW SECTION. Section 8. Advocate privilege.** (1) Unless a report is otherwise required by law,  
4 an advocate may not, without consent of the victim, be examined as to any communication made to the  
5 advocate by a victim and may not divulge records kept during the course of providing shelter, counseling,  
6 or crisis intervention services.

7 (2) This privilege belongs to the victim and may not be waived, except by express consent. The  
8 privilege continues even if the victim is unreachable. Consent may not be implied because the victim is a  
9 party to a divorce or custody proceeding. The privilege terminates upon the death of the victim.

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

11 (a) "Advocate" means an employee or volunteer of a domestic violence shelter, crisis line, or  
12 victim's services provider that provides services for victims of sexual assault, stalking, or any assault on  
13 a partner or family member.

14 (b) "Victim" means a person seeking assistance because of partner or family member assault, any  
15 sexual assault, or stalking, whether or not the victim seeks or receives services within the criminal justice  
16 system.  
17

18 **NEW SECTION. Section 9. Partner and family member assault intervention and treatment fund**  
19 **account.** (1) There is a partner and family member assault intervention and treatment fund account in the  
20 state special revenue fund in the state treasury. The money in the account is allocated to the department  
21 of public health and human services to fund services to victims of partner or family member assault, as  
22 provided in subsections (2) and (3).

23 (2) The department shall distribute the money in the account, as provided in subsection (3), to  
24 agencies that provide direct services to victims of partner or family member assault, including but not  
25 limited to shelters, crisis lines, safe homes, and victim's counseling providers. A service provider is eligible  
26 to receive money under this section for services provided to a victim of partner or family member assault,  
27 whether or not the victim seeks or receives services within the criminal justice system.

28 (3) A service provider that provides direct services to victims of partner or family member assault  
29 shall apply to the department for distribution of money under this section. The department shall evaluate  
30 a provider's eligibility to receive money under this section based on available money, the needs of the

1 provider, whether the provider includes programs focused on prevention of partner and family member  
2 assault, the quality of services provided by the provider, the need for services in the community, and the  
3 need for improved or continuing services in the community.

4  
5 NEW SECTION. Section 10. Codification instruction. (1) [Section ~~40~~ 8] is intended to be codified  
6 as an integral part of Title 26, chapter 1, part 8, and the provisions of Title 26, chapter 1, part 8, apply to  
7 [section ~~40~~ 8].

8 (2) [Section ~~44~~ 9] is intended to be codified as an integral part of Title 40, chapter 15, part 1, and  
9 the provisions of Title 40, chapter 15, part 1, apply to [section ~~44~~ 9].

10  
11 NEW SECTION. Section 11. Severability. If a part of [this act] is invalid, all valid parts that are  
12 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its  
13 applications, the part remains in effect in all valid applications that are severable from the invalid  
14 applications.

15  
16 NEW SECTION. Section 12. Retroactive applicability. [Section ~~3~~ 2] applies retroactively to October  
17 1, 1995.

18  
19 NEW SECTION. Section 13. Effective date. [This act] is effective July 1, 1997.

20  
21 NEW SECTION. SECTION 14. TERMINATION. [SECTIONS 1 AND 9] TERMINATE JUNE 30, 1999.

22 -END-

## HOUSE BILL NO. 343

INTRODUCED BY GRIMES, NELSON

1  
2  
3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO DOMESTIC  
5 VIOLENCE; ~~ELIMINATING FILING FEES FOR ORDERS OF PROTECTION;~~ INCREASING CERTAIN FILING FEES  
6 ~~TO OFFSET THE ELIMINATION OF FEES;~~ CREATING AN ACCOUNT TO HELP FUND DOMESTIC VIOLENCE  
7 SHELTERS AND CRISIS LINES; PROVIDING THAT IN PARTNER OR FAMILY MEMBER ASSAULT  
8 SITUATIONS A PEACE OFFICER MAY ARREST THE PRIMARY AGGRESSOR; PROVIDING THAT IN ANY  
9 ASSAULT AGAINST A PARTNER OR FAMILY MEMBER AN OFFENDER MUST GO TO JAIL WITHOUT BAIL;  
10 PROVIDING THAT IN A HEARING FOR AN ORDER OF PROTECTION THE VICTIM'S PAST SEXUAL  
11 HISTORY MAY NOT BE PLACED INTO EVIDENCE; PROVIDING A PRIVILEGE FOR A VICTIM OF PARTNER  
12 OR FAMILY MEMBER ASSAULT FROM DISCLOSURE OF DISCUSSIONS WITH SHELTER WORKERS AND  
13 VOLUNTEERS; CLARIFYING THAT A CONVICTION UNDER THE FORMER DOMESTIC ABUSE STATUTE IS  
14 A CONVICTION UNDER THE CURRENT PARTNER OR FAMILY MEMBER ASSAULT STATUTE; AMENDING  
15 SECTIONS 25-1-201, ~~25-31-112, 40-15-201, 40-15-202, 40-15-302, 45-5-206, 46-6-311, AND 46-9-302,~~  
16 MCA; AND PROVIDING AN EFFECTIVE DATE ~~AND, A RETROACTIVE APPLICABILITY DATE, AND A~~  
17 TERMINATION DATE."

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

20  
21 **Section 1.** Section 25-1-201, MCA, is amended to read:

22 **"25-1-201. Fees of clerk of district court.** (1) The clerk of the district court shall collect the  
23 following fees:

24 (a) at the commencement of each action or proceeding, except a petition for dissolution of  
25 marriage, ~~for a temporary order of protection, or for an order of protection,~~ from the plaintiff or petitioner,  
26 \$80; for filing a complaint in intervention, from the intervenor, \$80; for filing a petition for dissolution of  
27 marriage, a fee of ~~\$120~~ \$150; and for filing a petition for legal separation, a fee of ~~\$120~~ \$150;

28 (b) from each defendant or respondent, on appearance, \$60;

29 (c) on the entry of judgment, from the prevailing party, \$45;

30 (d) for preparing copies of papers on file in the clerk's office, 50 cents per page for the first five

- 1 pages of each file, per request, and 25 cents per additional page;
- 2 (e) for each certificate, with seal, \$2;
- 3 (f) for oath and jurat, with seal, \$1;
- 4 (g) for search of court records, 50 cents for each year searched, not to exceed a total of \$25;
- 5 (h) for filing and docketing a transcript of judgment or transcript of the docket from all other courts,
- 6 the fee for entry of judgment provided for in subsection (1)(c);
- 7 (i) for issuing an execution or order of sale on a foreclosure of a lien, \$5;
- 8 (j) for transmission of records or files or transfer of a case to another court, \$5;
- 9 (k) for filing and entering papers received by transfer from other courts, \$10;
- 10 (l) for issuing a marriage license, \$30;
- 11 (m) on the filing of an application for informal, formal, or supervised probate or for the appointment
- 12 of a personal representative or the filing of a petition for the appointment of a guardian or conservator, from
- 13 the applicant or petitioner, \$70, which includes the fee for filing a will for probate;
- 14 (n) on the filing of the items required in 72-4-303 by a domiciliary foreign personal representative
- 15 of the estate of a nonresident decedent, \$55;
- 16 (o) for filing a declaration of marriage without solemnization, \$30;
- 17 (p) for filing a motion for substitution of a judge, \$100.
- 18 (2) Except as provided in subsections (3) through (8), 32% of all fees collected by the clerk of the
- 19 district court must be deposited in and credited to the district court fund. If no district court fund exists,
- 20 that portion of the fees must be deposited in the general fund for district court operations. The remaining
- 21 portion of the fees must be remitted to the state to be deposited as provided in 19-5-404.
- 22 (3) In the case of a fee collected for issuing a marriage license or filing a declaration of marriage
- 23 without solemnization, \$14 must be deposited in and credited to the state general fund, \$6.40 must be
- 24 deposited in and credited to the county general fund, and \$9.60 must be remitted to the state to be
- 25 deposited as provided in 19-5-404.
- 26 (4) Of the fee for filing a petition for dissolution of marriage or legal separation, \$40 must be
- 27 deposited in the state general fund, \$35 must be remitted to the state to be deposited as provided in
- 28 19-5-404, \$5 must be deposited in the children's trust fund account established by 41-3-702, \$30 must
- 29 be deposited in the partner and family member assault intervention and treatment fund established by
- 30 [section 11-9], and \$20 must be deposited in and credited to the district court fund. If no district court fund

1 exists, the \$20 must be deposited in the general fund for district court operations.

2 (5) (a) Before the percentages contained in subsection (2) are applied and the fees deposited in the  
3 district court fund or the county general fund or remitted to the state, the clerk of the district court shall  
4 deduct from the following fees the amounts indicated:

5 (i) at the commencement of each action or proceeding and for filing a complaint in intervention as  
6 provided in subsection (1)(a), \$35;

7 (ii) from each defendant or respondent, on appearance, as provided in subsection (1)(b), \$25;

8 (iii) on the entry of judgment as provided in subsection (1)(c), \$15; and

9 (iv) from the applicant or petitioner, on the filing of an application for probate or for the appointment  
10 of a personal representative or on the filing of a petition for appointment of a guardian or conservator, as  
11 provided in subsection (1)(m), \$15.

12 (b) The clerk of the district court shall deposit the money deducted in subsection (5)(a) in the  
13 county general fund for district court operations unless the county has a district court fund. If the county  
14 has a district court fund, the money must be deposited in that fund.

15 (6) The fee for filing a motion for substitution of a judge as provided in subsection (1)(p) must be  
16 remitted to the state to be deposited as provided in 19-5-404.

17 (7) Fees collected under subsections (1)(d) through (1)(i) must be deposited in the district court  
18 fund. If no district court fund exists, fees must be deposited in the general fund for district court operations.

19 (8) The clerk of the district court shall remit to the credit of the state general fund \$20 of each fee  
20 collected under the provisions of subsections (1)(a) through (1)(c), (1)(m), and (1)(n) to fund a portion of  
21 judicial salaries.

22 ~~(9) There is no fee for filing a petition for a temporary order of protection or for an order of~~  
23 ~~protection under Title 40, chapter 15."~~

24

25 ~~Section 2. Section 25-31-112, MCA, is amended to read:~~

26 ~~"25-31-112. Fees. (1) The following is the schedule of fees which that, except as provided in~~  
27 ~~25-35-605, shall must be paid in every civil action in a justice's court:~~

28 ~~(1)(a) \$25 except as provided in subsection (2), \$26 when complaint is filed, to be paid by the~~  
29 ~~plaintiff;~~

30 ~~(2)(b) \$10 when the defendant appears, to be paid by the defendant;~~

1 ~~(3)(c) \$10 to be paid by the prevailing party when judgment is rendered. In cases where in which~~  
 2 ~~judgment is entered by default, no charge except the \$25 for the filing of the complaint shall must be made~~  
 3 ~~for any services, including issuing and return of execution.~~

4 ~~(4)(d) \$10 for all services in an action where in which judgment is rendered by confession;~~

5 ~~(5)(e) \$10 for filing notice of appeal and transcript on appeal, justifying and approving undertaking~~  
 6 ~~on appeal, and transmitting papers to the district court with certificate.~~

7 ~~(2) There is no fee for filing a petition for a temporary order of protection or for an order of~~  
 8 ~~protection under Title 40, chapter 15."~~

9

10 NEW SECTION. Section 2. Temporary order or temporary injunction -- continuing effect. A  
 11 temporary order or temporary injunction issued under 40-4-121 before October 1, 1995, continues in full  
 12 force and effect as provided in the order or injunction.

13

14 ~~Section 4. Section 40-15-201, MCA, is amended to read:~~

15 ~~"40-15-201. Temporary order of protection. (1) A petitioner may seek a temporary order of~~  
 16 ~~protection from a court listed in 40-15-301. The petitioner shall file a sworn petition that states that the~~  
 17 ~~petitioner is in reasonable apprehension of bodily injury or is a victim of one of the offenses listed in~~  
 18 ~~40-15-102, has a relationship to the respondent if required by 40-15-102, and is in danger of harm if the~~  
 19 ~~court does not issue a temporary order of protection immediately.~~

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

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

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

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

29 ~~(d) directing the respondent to stay 1,500 feet or other appropriate distance away from the~~  
 30 ~~petitioner, the petitioner's residence, the school or place of employment of the petitioner, or any specified~~



1 ~~place frequented by the petitioner and by any other designated family or household member;~~

2 ~~(e) removing and excluding the respondent from the residence of the petitioner, regardless of~~  
 3 ~~ownership of the residence;~~

4 ~~(f) prohibiting the respondent from possessing or using the firearm used in the assault;~~

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

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

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

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

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

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

24 ~~(5) There is no fee for filing a petition for a temporary order of protection or for an order of~~  
 25 ~~protection."~~

26  
 27 **Section 3.** Section 40-15-202, MCA, is amended to read:

28 **"40-15-202. Order of protection -- hearing -- evidence.** (1) A hearing must be conducted within  
 29 20 days from the date the court issues a temporary order of protection. At the hearing, the court shall  
 30 determine whether good cause exists for the temporary order of protection to be continued, amended, or

1 made permanent.

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

5 (3) The order of protection may not be made mutually effective by the court. The respondent may  
6 obtain an order of protection from the petitioner only by filing an application for an order of protection and  
7 following the procedure described in this chapter.

8 (4) (a) Except as provided in subsection (4)(b), evidence concerning a victim's sexual conduct is  
9 not admissible in a hearing under this section.

10 (b) Evidence of a victim's past sexual conduct with the offender or evidence of specific instances  
11 of the victim's sexual activity to show the origin of semen, pregnancy, or disease may be admitted in a  
12 hearing under this section only if that sexual conduct is at issue in the hearing.

13 (5) If a respondent proposes to offer evidence subject to subsection (4)(b), the trial judge shall  
14 order a separate hearing to determine whether the proposed evidence is admissible under subsection  
15 (4)(b)."

16

17 **Section 4.** Section 40-15-302, MCA, is amended to read:

18 **"40-15-302. Appeal to district court -- order to remain in effect.** (1) An order issued by a justice's  
19 court, municipal court, or city court pursuant to 40-15-201 is immediately reviewable by the district judge  
20 upon the filing of a notice of appeal. The district judge may affirm, dissolve, or modify an order of a  
21 justice's court, municipal court, or city court made pursuant to 40-15-201 or 40-15-204.

22 (2) A case in which an order has been issued by a justice's court, municipal court, or city court  
23 pursuant to 40-15-201 or 40-15-204 may be removed to district court upon filing of a notice of removal.

24 (3) If a temporary order of protection or an order of protection issued by a court of limited  
25 jurisdiction is appealed or removed to an appellate court, the order continues in full force and effect unless  
26 modified by the appellate court."

27

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

29 **"45-5-206. Partner or family member assault -- penalty.** (1) A person commits the offense of  
30 partner or family member assault if the person:

- 1 (a) purposely or knowingly causes bodily injury to a partner or family member;  
2 (b) negligently causes bodily injury to a partner or family member with a weapon; or  
3 (c) purposely or knowingly causes reasonable apprehension of bodily injury in a partner or family  
4 member.

5 (2) For the purposes of Title 40, chapter 15, 46-6-311, and this section, the following definitions  
6 apply:

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

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

15 (3) (a) An offender convicted of partner or family member assault shall be fined an amount not less  
16 than \$100 or more than \$1,000 and be imprisoned in the county jail for a term not to exceed 1 year or not  
17 less than 24 hours for a first offense. An offender convicted of a second offense under this section shall  
18 be fined not less than \$300 or more than \$1,000 and be imprisoned in the county jail not less than 72  
19 hours or more than 1 year. Upon a first or second conviction, the offender may be ordered into  
20 misdemeanor probation as provided in 46-23-1005. On a third or subsequent conviction for partner or  
21 family member assault, the offender shall be fined not less than \$500 and not more than \$50,000 and be  
22 imprisoned for a term not less than 30 days and not more than 5 years. If the term of imprisonment does  
23 not exceed 1 year, the person shall be imprisoned in the county jail. If the term of imprisonment exceeds  
24 1 year, the person shall be imprisoned in the state prison.

25 (b) For the purpose of determining the number of convictions under this section, a conviction  
26 means a conviction, as defined in 45-2-101, in this state, conviction for a violation of a similar statute in  
27 another state, or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court  
28 in this state or in another state for a violation of a similar statute, which forfeiture has not been vacated.  
29 A prior conviction for domestic abuse under this section is a prior conviction for purposes of subsection  
30 (3)(a).

1 (4) (a) An offender convicted of partner or family member assault ~~shall~~ must be required to pay for  
2 and complete a counseling assessment with a focus on violence, dangerousness, and chemical dependency.  
3 The offender shall follow through on all recommendations made by the counseling provider. The ~~counselor~~  
4 counseling provider must be approved by the court. The counseling must include a counseling assessment  
5 and a minimum of 25 hours of counseling, in addition to the assessment. The assessment and the  
6 counseling must be:

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

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

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

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

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

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

21 (7) The court may prohibit an offender convicted under this section from possession or use of the  
22 firearm used in the assault. The court may enforce 45-8-323 if a firearm was used in the assault.

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

25

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

27 "**46-6-311. Basis for arrest without warrant -- arrest of primary aggressor.** (1) A peace officer may  
28 arrest a person when a warrant has not been issued if the officer has probable cause to believe that the  
29 person is committing an offense or that the person has committed an offense and existing circumstances  
30 require immediate arrest.

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

5 ~~(b) If a peace officer receives a complaint of violence or threat of violence from more than one~~  
 6 ~~person who is a family member or partner, the officer shall evaluate the complaints separately. WHEN A~~  
 7 ~~PEACE OFFICER RESPONDS TO A PARTNER OR FAMILY MEMBER ASSAULT COMPLAINT AND IF IT~~  
 8 ~~APPEARS THAT THE PARTIES WERE INVOLVED IN MUTUAL AGGRESSION, THE OFFICER SHALL~~  
 9 ~~EVALUATE THE SITUATION to determine who is the primary aggressor. If, based on the officer's~~  
 10 ~~evaluation, the officer determines that one person is the primary aggressor, the officer may arrest only the~~  
 11 ~~primary aggressor. A determination of who the primary aggressor is must be based on but is not limited~~  
 12 ~~to the following considerations, regardless of who was the first aggressor:~~

13 ~~(i) the prior history of violence between the partners or family members, if information about the~~  
 14 ~~prior history is available to the officer;~~

15 ~~(ii) the relative severity of injuries received by each person;~~

16 ~~(iii) whether an act of or threat of violence was taken in self-defense;~~

17 ~~(iv) the relative sizes and apparent strength of each person;~~

18 ~~(v) the apparent fear or lack of fear between the partners or family members; and~~

19 ~~(vi) statements made by witnesses."~~

20  
 21 **Section 7.** Section 46-9-302, MCA, is amended to read:

22 **"46-9-302. Bail schedule -- acceptance by peace officer.** (1) A judge may establish and post a  
 23 schedule of bail for offenses over which the judge has original jurisdiction. A person may not be released  
 24 on bail without first appearing before the judge when the offense is any assault on a partner or family  
 25 member assault, as partner or family member is defined in 45-5-206, or stalking, as defined in 45-5-220.

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

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

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

29 (3) Whenever a peace officer accepts bail, the officer shall give a signed receipt to the offender  
 30 setting forth the bail received. The peace officer shall then deliver the bail to the judge before whom the

1 offender is to appear, and the judge shall give a receipt to the peace officer for the bail delivered."

2

3 **NEW SECTION. Section 8. Advocate privilege.** (1) Unless a report is otherwise required by law,  
4 an advocate may not, without consent of the victim, be examined as to any communication made to the  
5 advocate by a victim and may not divulge records kept during the course of providing shelter, counseling,  
6 or crisis intervention services.

7 (2) This privilege belongs to the victim and may not be waived, except by express consent. The  
8 privilege continues even if the victim is unreachable. Consent may not be implied because the victim is a  
9 party to a divorce or custody proceeding. The privilege terminates upon the death of the victim.

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

11 (a) "Advocate" means an employee or volunteer of a domestic violence shelter, crisis line, or  
12 victim's services provider that provides services for victims of sexual assault, stalking, or any assault on  
13 a partner or family member.

14 (b) "Victim" means a person seeking assistance because of partner or family member assault, any  
15 sexual assault, or stalking, whether or not the victim seeks or receives services within the criminal justice  
16 system.

17

18 **NEW SECTION. Section 9. Partner and family member assault intervention and treatment fund**  
19 **account.** (1) There is a partner and family member assault intervention and treatment fund account in the  
20 state special revenue fund in the state treasury. The money in the account is allocated to the department  
21 of public health and human services to fund services to victims of partner or family member assault, as  
22 provided in subsections (2) and (3).

23 (2) The department shall distribute the money in the account, as provided in subsection (3), to  
24 agencies that provide direct services to victims of partner or family member assault, including but not  
25 limited to shelters, crisis lines, safe homes, and victim's counseling providers. A service provider is eligible  
26 to receive money under this section for services provided to a victim of partner or family member assault,  
27 whether or not the victim seeks or receives services within the criminal justice system.

28 (3) A service provider that provides direct services to victims of partner or family member assault  
29 shall apply to the department for distribution of money under this section. The department shall evaluate  
30 a provider's eligibility to receive money under this section based on available money, the needs of the

1 provider, whether the provider includes programs focused on prevention of partner and family member  
2 assault, the quality of services provided by the provider, the need for services in the community, and the  
3 need for improved or continuing services in the community.

4  
5 NEW SECTION. Section 10. Codification instruction. (1) [Section ~~40~~ 8] is intended to be codified  
6 as an integral part of Title 26, chapter 1, part 8, and the provisions of Title 26, chapter 1, part 8, apply to  
7 [section ~~40~~ 8].

8 (2) [Section ~~44~~ 9] is intended to be codified as an integral part of Title 40, chapter 15, part 1, and  
9 the provisions of Title 40, chapter 15, part 1, apply to [section ~~44~~ 9].

10  
11 NEW SECTION. Section 11. Severability. If a part of [this act] is invalid, all valid parts that are  
12 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its  
13 applications, the part remains in effect in all valid applications that are severable from the invalid  
14 applications.

15  
16 NEW SECTION. Section 12. Retroactive applicability. [Section ~~3~~ 2] applies retroactively to October  
17 1, 1995.

18  
19 NEW SECTION. Section 13. Effective date. [This act] is effective July 1, 1997.

20  
21 NEW SECTION. SECTION 14. TERMINATION. [SECTIONS 1 AND 9] TERMINATE JUNE 30, 1999.

22 -END-

## 1 HOUSE BILL NO. 343

2 INTRODUCED BY GRIMES, NELSON

3  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO DOMESTIC  
 5 VIOLENCE; ~~ELIMINATING FILING FEES FOR ORDERS OF PROTECTION~~; INCREASING CERTAIN FILING FEES  
 6 ~~TO OFFSET THE ELIMINATION OF FEES~~; CREATING AN ACCOUNT TO HELP FUND DOMESTIC VIOLENCE  
 7 SHELTERS AND CRISIS LINES; PROVIDING THAT IN PARTNER OR FAMILY MEMBER ASSAULT  
 8 SITUATIONS A PEACE OFFICER MAY ARREST THE PRIMARY AGGRESSOR; PROVIDING THAT IN ANY  
 9 ASSAULT AGAINST A PARTNER OR FAMILY MEMBER AN OFFENDER MUST GO TO JAIL WITHOUT BAIL;  
 10 PROVIDING THAT IN A HEARING FOR AN ORDER OF PROTECTION THE VICTIM'S PAST SEXUAL  
 11 HISTORY MAY NOT BE PLACED INTO EVIDENCE; PROVIDING A PRIVILEGE FOR A VICTIM OF PARTNER  
 12 OR FAMILY MEMBER ASSAULT FROM DISCLOSURE OF DISCUSSIONS WITH SHELTER WORKERS AND  
 13 VOLUNTEERS; CLARIFYING THAT A CONVICTION UNDER THE FORMER DOMESTIC ABUSE STATUTE IS  
 14 A CONVICTION UNDER THE CURRENT PARTNER OR FAMILY MEMBER ASSAULT STATUTE; AMENDING  
 15 SECTIONS 25-1-201, ~~25-31-112, 40-15-201, 40-15-202, 40-15-302, 45-5-206, 46-6-311, AND 46-9-302,~~  
 16 MCA; AND PROVIDING AN EFFECTIVE DATE ~~AND~~, A RETROACTIVE APPLICABILITY DATE, AND A  
 17 TERMINATION DATE."

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

20  
 21 **Section 1.** Section 25-1-201, MCA, is amended to read:

22 **"25-1-201. Fees of clerk of district court.** (1) The clerk of the district court shall collect the  
 23 following fees:

24 (a) at the commencement of each action or proceeding, except a petition for dissolution of  
 25 marriage, ~~for a temporary order of protection, or for an order of protection~~, from the plaintiff or petitioner,  
 26 \$80; for filing a complaint in intervention, from the intervenor, \$80; for filing a petition for dissolution of  
 27 marriage, a fee of ~~\$120~~ \$150; and for filing a petition for legal separation, a fee of ~~\$120~~ \$150;

28 (b) from each defendant or respondent, on appearance, \$60;

29 (c) on the entry of judgment, from the prevailing party, \$45;

30 (d) for preparing copies of papers on file in the clerk's office, 50 cents per page for the first five



- 1 pages of each file, per request, and 25 cents per additional page;
- 2 (e) for each certificate, with seal, \$2;
- 3 (f) for oath and jurat, with seal, \$1;
- 4 (g) for search of court records, 50 cents for each year searched, not to exceed a total of \$25;
- 5 (h) for filing and docketing a transcript of judgment or transcript of the docket from all other courts,  
6 the fee for entry of judgment provided for in subsection (1)(c);
- 7 (i) for issuing an execution or order of sale on a foreclosure of a lien, \$5;
- 8 (j) for transmission of records or files or transfer of a case to another court, \$5;
- 9 (k) for filing and entering papers received by transfer from other courts, \$10;
- 10 (l) for issuing a marriage license, \$30;
- 11 (m) on the filing of an application for informal, formal, or supervised probate or for the appointment  
12 of a personal representative or the filing of a petition for the appointment of a guardian or conservator, from  
13 the applicant or petitioner, \$70, which includes the fee for filing a will for probate;
- 14 (n) on the filing of the items required in 72-4-303 by a domiciliary foreign personal representative  
15 of the estate of a nonresident decedent, \$55;
- 16 (o) for filing a declaration of marriage without solemnization, \$30;
- 17 (p) for filing a motion for substitution of a judge, \$100.
- 18 (2) Except as provided in subsections (3) through (8), 32% of all fees collected by the clerk of the  
19 district court must be deposited in and credited to the district court fund. If no district court fund exists,  
20 that portion of the fees must be deposited in the general fund for district court operations. The remaining  
21 portion of the fees must be remitted to the state to be deposited as provided in 19-5-404.
- 22 (3) In the case of a fee collected for issuing a marriage license or filing a declaration of marriage  
23 without solemnization, \$14 must be deposited in and credited to the state general fund, \$6.40 must be  
24 deposited in and credited to the county general fund, and \$9.60 must be remitted to the state to be  
25 deposited as provided in 19-5-404.
- 26 (4) Of the fee for filing a petition for dissolution of marriage or legal separation, \$40 must be  
27 deposited in the state general fund, \$35 must be remitted to the state to be deposited as provided in  
28 19-5-404, \$5 must be deposited in the children's trust fund account established by 41-3-702, \$30 must  
29 be deposited in the partner and family member assault intervention and treatment fund established by  
30 [section 11-9], and \$20 must be deposited in and credited to the district court fund. If no district court fund

1 exists, the \$20 must be deposited in the general fund for district court operations.

2 (5) (a) Before the percentages contained in subsection (2) are applied and the fees deposited in the  
3 district court fund or the county general fund or remitted to the state, the clerk of the district court shall  
4 deduct from the following fees the amounts indicated:

5 (i) at the commencement of each action or proceeding and for filing a complaint in intervention as  
6 provided in subsection (1)(a), \$35;

7 (ii) from each defendant or respondent, on appearance, as provided in subsection (1)(b), \$25;

8 (iii) on the entry of judgment as provided in subsection (1)(c), \$15; and

9 (iv) from the applicant or petitioner, on the filing of an application for probate or for the appointment  
10 of a personal representative or on the filing of a petition for appointment of a guardian or conservator, as  
11 provided in subsection (1)(m), \$15.

12 (b) The clerk of the district court shall deposit the money deducted in subsection (5)(a) in the  
13 county general fund for district court operations unless the county has a district court fund. If the county  
14 has a district court fund, the money must be deposited in that fund.

15 (6) The fee for filing a motion for substitution of a judge as provided in subsection (1)(p) must be  
16 remitted to the state to be deposited as provided in 19-5-404.

17 (7) Fees collected under subsections (1)(d) through (1)(i) must be deposited in the district court  
18 fund. If no district court fund exists, fees must be deposited in the general fund for district court operations.

19 (8) The clerk of the district court shall remit to the credit of the state general fund \$20 of each fee  
20 collected under the provisions of subsections (1)(a) through (1)(c), (1)(m), and (1)(n) to fund a portion of  
21 judicial salaries.

22 ~~(9) There is no fee for filing a petition for a temporary order of protection or for an order of~~  
23 ~~protection under Title 40, chapter 15."~~

24

25 ~~Section 2. Section 25-31-112, MCA, is amended to read:~~

26 ~~"25-31-112. Fees. (1) The following is the schedule of fees which that, except as provided in~~  
27 ~~25-35-605, shall must be paid in every civil action in a justice's court:~~

28 ~~(1)(a) \$25 except as provided in subsection (2), \$26 when complaint is filed, to be paid by the~~  
29 ~~plaintiff;~~

30 ~~(2)(b) \$10 when the defendant appears, to be paid by the defendant;~~

1 ~~(3)(c) \$10 to be paid by the prevailing party when judgment is rendered. In cases where in which~~  
 2 ~~judgment is entered by default, no charge except the \$25 for the filing of the complaint shall must be made~~  
 3 ~~for any services, including issuing and return of execution.~~

4 ~~(4)(d) \$10 for all services in an action where in which judgment is rendered by confession;~~

5 ~~(5)(e) \$10 for filing notice of appeal and transcript on appeal, justifying and approving undertaking~~  
 6 ~~on appeal, and transmitting papers to the district court with certificate.~~

7 ~~(2) There is no fee for filing a petition for a temporary order of protection or for an order of~~  
 8 ~~protection under Title 40, chapter 15."~~

9  
 10 NEW SECTION. **Section 2. Temporary order or temporary injunction -- continuing effect.** A  
 11 temporary order or temporary injunction issued under 40-4-121 before October 1, 1995, continues in full  
 12 force and effect as provided in the order or injunction.

13  
 14 ~~**Section 4.** Section 40-15-201, MCA, is amended to read:~~

15 ~~"**40-15-201. Temporary order of protection.** (1) A petitioner may seek a temporary order of~~  
 16 ~~protection from a court listed in 40-15-301. The petitioner shall file a sworn petition that states that the~~  
 17 ~~petitioner is in reasonable apprehension of bodily injury or is a victim of one of the offenses listed in~~  
 18 ~~40-15-102, has a relationship to the respondent if required by 40-15-102, and is in danger of harm if the~~  
 19 ~~court does not issue a temporary order of protection immediately.~~

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

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

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

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

29 ~~(d) directing the respondent to stay 1,500 feet or other appropriate distance away from the~~  
 30 ~~petitioner, the petitioner's residence, the school or place of employment of the petitioner, or any specified~~

1 ~~place frequented by the petitioner and by any other designated family or household member;~~

2 ~~(e) removing and excluding the respondent from the residence of the petitioner, regardless of~~  
 3 ~~ownership of the residence;~~

4 ~~(f) prohibiting the respondent from possessing or using the firearm used in the assault;~~

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

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

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

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

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

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

24 ~~(5) There is no fee for filing a petition for a temporary order of protection or for an order of~~  
 25 ~~protection.~~"

26  
 27 **Section 3.** Section 40-15-202, MCA, is amended to read:

28 **"40-15-202. Order of protection -- hearing -- evidence.** (1) A hearing must be conducted within  
 29 20 days from the date the court issues a temporary order of protection. At the hearing, the court shall  
 30 determine whether good cause exists for the temporary order of protection to be continued, amended, or

1 made permanent.

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

5 (3) The order of protection may not be made mutually effective by the court. The respondent may  
6 obtain an order of protection from the petitioner only by filing an application for an order of protection and  
7 following the procedure described in this chapter.

8 (4) (a) Except as provided in subsection (4)(b), evidence concerning a victim's sexual conduct is  
9 not admissible in a hearing under this section.

10 (b) Evidence of a victim's past sexual conduct with the offender or evidence of specific instances  
11 of the victim's sexual activity to show the origin of semen, pregnancy, or disease may be admitted in a  
12 hearing under this section only if that sexual conduct is at issue in the hearing.

13 (5) If a respondent proposes to offer evidence subject to subsection (4)(b), the trial judge shall  
14 order a separate hearing to determine whether the proposed evidence is admissible under subsection  
15 (4)(b)."

16

17 **Section 4.** Section 40-15-302, MCA, is amended to read:

18 **"40-15-302. Appeal to district court -- order to remain in effect.** (1) An order issued by a justice's  
19 court, municipal court, or city court pursuant to 40-15-201 is immediately reviewable by the district judge  
20 upon the filing of a notice of appeal. The district judge may affirm, dissolve, or modify an order of a  
21 justice's court, municipal court, or city court made pursuant to 40-15-201 or 40-15-204.

22 (2) A case in which an order has been issued by a justice's court, municipal court, or city court  
23 pursuant to 40-15-201 or 40-15-204 may be removed to district court upon filing of a notice of removal.

24 (3) If a temporary order of protection or an order of protection issued by a court of limited  
25 jurisdiction is appealed or removed to an appellate court, the order continues in full force and effect unless  
26 modified by the appellate court."

27

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

29 **"45-5-206. Partner or family member assault -- penalty.** (1) A person commits the offense of  
30 partner or family member assault if the person:

- 1 (a) purposely or knowingly causes bodily injury to a partner or family member;  
2 (b) negligently causes bodily injury to a partner or family member with a weapon; or  
3 (c) purposely or knowingly causes reasonable apprehension of bodily injury in a partner or family  
4 member.

5 (2) For the purposes of Title 40, chapter 15, 46-6-311, and this section, the following definitions  
6 apply:

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

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

15 (3) (a) An offender convicted of partner or family member assault shall be fined an amount not less  
16 than \$100 or more than \$1,000 and be imprisoned in the county jail for a term not to exceed 1 year or not  
17 less than 24 hours for a first offense. An offender convicted of a second offense under this section shall  
18 be fined not less than \$300 or more than \$1,000 and be imprisoned in the county jail not less than 72  
19 hours or more than 1 year. Upon a first or second conviction, the offender may be ordered into  
20 misdemeanor probation as provided in 46-23-1005. On a third or subsequent conviction for partner or  
21 family member assault, the offender shall be fined not less than \$500 and not more than \$50,000 and be  
22 imprisoned for a term not less than 30 days and not more than 5 years. If the term of imprisonment does  
23 not exceed 1 year, the person shall be imprisoned in the county jail. If the term of imprisonment exceeds  
24 1 year, the person shall be imprisoned in the state prison.

25 (b) For the purpose of determining the number of convictions under this section, a conviction  
26 means a conviction, as defined in 45-2-101, in this state, conviction for a violation of a similar statute in  
27 another state, or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court  
28 in this state or in another state for a violation of a similar statute, which forfeiture has not been vacated.  
29 A prior conviction for domestic abuse under this section is a prior conviction for purposes of subsection  
30 (3)(a).

1 (4) (a) An offender convicted of partner or family member assault ~~shall~~ must be required to pay for  
 2 and complete a counseling assessment with a focus on violence, dangerousness, and chemical dependency.  
 3 The offender shall follow through on all recommendations made by the counseling provider. The ~~counselor~~  
 4 counseling provider must be approved by the court. The counseling must include a counseling assessment  
 5 and a minimum of 25 hours of counseling, in addition to the assessment. The assessment and the  
 6 counseling must be:

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

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

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

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

21 (7) The court may prohibit an offender convicted under this section from possession or use of the  
 22 firearm used in the assault. The court may enforce 45-8-323 if a firearm was used in the assault.

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

25

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

27 **"46-6-311. Basis for arrest without warrant -- arrest of primary aggressor.** (1) A peace officer may  
 28 arrest a person when a warrant has not been issued if the officer has probable cause to believe that the  
 29 person is committing an offense or that the person has committed an offense and existing circumstances  
 30 require immediate arrest.

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

5 ~~(b) If a peace officer receives a complaint of violence or threat of violence from more than one~~  
 6 ~~person who is a family member or partner, the officer shall evaluate the complaints separately~~ WHEN A  
 7 PEACE OFFICER RESPONDS TO A PARTNER OR FAMILY MEMBER ASSAULT COMPLAINT AND IF IT  
 8 APPEARS THAT THE PARTIES WERE INVOLVED IN MUTUAL AGGRESSION, THE OFFICER SHALL  
 9 EVALUATE THE SITUATION to determine who is the primary aggressor. If, based on the officer's  
 10 evaluation, the officer determines that one person is the primary aggressor, the officer may arrest only the  
 11 primary aggressor. A determination of who the primary aggressor is must be based on but is not limited  
 12 to the following considerations, regardless of who was the first aggressor:

13 (i) the prior history of violence between the partners or family members, if information about the  
 14 prior history is available to the officer;

15 (ii) the relative severity of injuries received by each person;

16 (iii) whether an act of or threat of violence was taken in self-defense;

17 (iv) the relative sizes and apparent strength of each person;

18 (v) the apparent fear or lack of fear between the partners or family members; and

19 (vi) statements made by witnesses."

20  
 21 **Section 7.** Section 46-9-302, MCA, is amended to read:

22 **"46-9-302. Bail schedule -- acceptance by peace officer.** (1) A judge may establish and post a  
 23 schedule of bail for offenses over which the judge has original jurisdiction. A person may not be released  
 24 on bail without first appearing before the judge when the offense is any assault on a partner or family  
 25 member ~~assault~~, as partner or family member is defined in 45-5-206, or stalking, as defined in 45-5-220.

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

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

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

29 (3) Whenever a peace officer accepts bail, the officer shall give a signed receipt to the offender  
 30 setting forth the bail received. The peace officer shall then deliver the bail to the judge before whom the



1 offender is to appear, and the judge shall give a receipt to the peace officer for the bail delivered."

2

3 **NEW SECTION. Section 8. Advocate privilege.** (1) Unless a report is otherwise required by law,  
4 an advocate may not, without consent of the victim, be examined as to any communication made to the  
5 advocate by a victim and may not divulge records kept during the course of providing shelter, counseling,  
6 or crisis intervention services.

7 (2) This privilege belongs to the victim and may not be waived, except by express consent. The  
8 privilege continues even if the victim is unreachable. Consent may not be implied because the victim is a  
9 party to a divorce or custody proceeding. The privilege terminates upon the death of the victim.

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

11 (a) "Advocate" means an employee or volunteer of a domestic violence shelter, crisis line, or  
12 victim's services provider that provides services for victims of sexual assault, stalking, or any assault on  
13 a partner or family member.

14 (b) "Victim" means a person seeking assistance because of partner or family member assault, any  
15 sexual assault, or stalking, whether or not the victim seeks or receives services within the criminal justice  
16 system.

17

18 **NEW SECTION. Section 9. Partner and family member assault intervention and treatment fund**  
19 **account.** (1) There is a partner and family member assault intervention and treatment fund account in the  
20 state special revenue fund in the state treasury. The money in the account is allocated to the department  
21 of public health and human services to fund services to victims of partner or family member assault, as  
22 provided in subsections (2) and (3).

23 (2) The department shall distribute the money in the account, as provided in subsection (3), to  
24 agencies that provide direct services to victims of partner or family member assault, including but not  
25 limited to shelters, crisis lines, safe homes, and victim's counseling providers. A service provider is eligible  
26 to receive money under this section for services provided to a victim of partner or family member assault,  
27 whether or not the victim seeks or receives services within the criminal justice system.

28 (3) A service provider that provides direct services to victims of partner or family member assault  
29 shall apply to the department for distribution of money under this section. The department shall evaluate  
30 a provider's eligibility to receive money under this section based on available money, the needs of the

1 provider, whether the provider includes programs focused on prevention of partner and family member  
2 assault, the quality of services provided by the provider, the need for services in the community, and the  
3 need for improved or continuing services in the community.

4

5 NEW SECTION. Section 10. Codification instruction. (1) [Section ~~40~~ 8] is intended to be codified  
6 as an integral part of Title 26, chapter 1, part 8, and the provisions of Title 26, chapter 1, part 8, apply to  
7 [section ~~40~~ 8].

8 (2) [Section ~~44~~ 9] is intended to be codified as an integral part of Title 40, chapter 15, part 1, and  
9 the provisions of Title 40, chapter 15, part 1, apply to [section ~~44~~ 9].

10

11 NEW SECTION. Section 11. Severability. If a part of [this act] is invalid, all valid parts that are  
12 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its  
13 applications, the part remains in effect in all valid applications that are severable from the invalid  
14 applications.

15

16 NEW SECTION. Section 12. Retroactive applicability. [Section ~~3~~ 2] applies retroactively to October  
17 1, 1995.

18

19 NEW SECTION. Section 13. Effective date. [This act] is effective July 1, 1997.

20

21 NEW SECTION. SECTION 14. TERMINATION. [SECTIONS 1 AND 9] TERMINATE JUNE 30, 1999.

22

-END-