SENATE BILL NO. 9

INTRODUCED BY M. YAKAWICH

A BILL FOR AN ACT ENTITLED: “AN ACT INCREASING THE PENALTIES FOR MULTIPLE VIOLATIONS OF NO CONTACT AND PROTECTION ORDERS; AND AMENDING SECTIONS 40-15-204, 45-5-209, AND 45-5-626, MCA.”

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

Section 1. Section 40-15-204, MCA, is amended to read:

"**40-15-204. Written orders of protection.** (1) The court may, on the basis of the respondent's history of violence, the severity of the offense at issue, and the evidence presented at the hearing, determine that to avoid further injury or harm, the petitioner needs permanent protection. The court may order that the order of protection remain in effect permanently.

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

(3) An order of protection may include all of the relief listed in 40-15-201, when appropriate.

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

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

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

(7) An amendment to a temporary order of protection or to an order of protection is effective only

after it has been served in writing on the opposing party.

(8) There is no cost to file a petition for an order of protection or for service of an order of protection whether served inside or outside the jurisdiction of the court issuing the order.

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

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

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

Section 2. Section 45-5-209, MCA, is amended to read:

"**45-5-209. Partner or family member assault -- no contact order -- notice -- violation of order -- penalty.** (1) A court may issue a standing no contact order and direct law enforcement to serve the order on a defendant charged with or arrested for a violation of 45-5-206 or, if the victim is a partner or family member of the defendant, a violation of 45-5-202, 45-5-213, or 45-5-215. The court order may specify conditions necessary to enhance the safety of any protected person. The court-ordered conditions may include prohibiting the defendant from contacting the protected person in person, by a third party, by telephone, by electronic communication, as defined in 45-8-213, and in writing. The court may impose up to a 1,500-foot restriction on the defendant to stay away from the protected person's location.

(2) Notice of the no contact order must be given orally and in writing by a peace officer at the time that the offender is charged with or arrested for a violation of 45-5-206 or, if the victim is a partner or family member of the defendant, a violation of 45-5-202, 45-5-213, or 45-5-215. One copy of the order must be given to the defendant, and one copy must be filed with the court.

(3) The charge of a violation of 45-5-206 or, if the victim is a partner or family member of the defendant, a violation of 45-5-202, 45-5-213, or 45-5-215 must be supported by a peace officer's affidavit of probable cause.

(4) The no contact order issued at the time that the defendant is charged with or arrested for a violation of 45-5-206 or, if the victim is a partner or family member of the defendant, a violation of 45-5-202, 45-

5-213, or 45-5-215 is effective for 72 hours or until the defendant makes the first appearance in court.

(5) The court order must state:

"You have been charged with or arrested for an assault on a partner or family member. You are not allowed to have contact with _____ (list names). You may not _____. Violation of this no contact order is a criminal offense under 45-5-209, MCA, and may result in your arrest. You may be arrested even if the person protected by the no contact order invites or allows you to violate the prohibitions. This order lasts 72 hours or until the court continues or changes the order."

(6) The court shall review and amend, if appropriate, the no contact order at the defendant's first appearance.

(7) A no contact order may be issued by a court with jurisdiction over violations of 45-5-206 or, if the victim is a partner or family member of the defendant, violations of 45-5-202, 45-5-213, or 45-5-215 at the time of the defendant's arraignment or at any other appearance of the defendant, including sentencing. The no contact order must be in writing. A copy of the no contact order must be given to the defendant when it is issued by the court. The court order shall specify protected persons and prohibited contact, including but not limited to the restriction mentioned in subsection (1).

(8) (a) A person commits the offense of violation of a no contact order if the person, with knowledge of the order, purposely or knowingly violates any provision of any order issued under this section.

(b) Each contact or attempt to make contact with each protected person, directly or indirectly, is a separate offense. Consent of the protected person to prohibited contact is not a defense. A protected person may not be charged with a violation of a no contact order.

(c) An offender convicted of a first or second violation of a no contact order shall be fined an amount not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(d) An offender convicted of a third or subsequent violation of a no contact order shall be fined an amount not to exceed $10,000 and be imprisoned in the county jail or state prison for a term not to exceed 5 years.

(9) As used in this section, the following definitions apply:

(a) "No contact order" means a court order that prohibits a defendant charged with or convicted of

an assault on a partner or family member from contacting a protected person.

(b) "Partner" or "family member" has the meaning provided in 45-5-206.

(c) "Protected person" means a victim of a partner or family member assault listed in a no contact order."

Section 3. Section 45-5-626, MCA, is amended to read:

"**45-5-626. Violation of order of protection.** (1) Except as provided in 50-32-609, a person commits the offense of violation of an order of protection if the person, with knowledge of the order, purposely or knowingly violates a provision of any order provided for in 40-4-121 or an order of protection under Title 40, chapter 15. It may be inferred that the defendant had knowledge of an order at the time of an offense if the defendant had been served with the order before the time of the offense. Service of the order is not required upon a showing that the defendant had knowledge of the order and its content.

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

(3) An offender convicted of violation of an order of protection shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both, for a first offense. Upon conviction for a second offense, an offender shall be fined not less than $200 and not more than $500 and be imprisoned in the county jail not less than 24 hours and not more than 6 months. Upon conviction for a third or subsequent offense, an offender shall be fined ~~not less than $500 and not more than $2,000~~ an amount not to exceed $10,000 and be imprisoned in the county jail or state prison for a term ~~not less than 10 days and not more than 2 years~~ not to exceed 5 years."

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