

Montana Code Annotated 2021

TITLE 40. FAMILY LAW

CHAPTER 15. PARTNER AND FAMILY MEMBER ASSAULT, SEXUAL ASSAULT, AND STALKING -- VICTIM PROTECTION

Part 1. General Provisions

Eligibility For Order Of Protection

40-15-102. Eligibility for order of protection. (1) A person may file a petition for an order of protection if:

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

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

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

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

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

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

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

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

(vii) assault on a minor as defined in 45-5-212;

(viii) assault with a weapon as defined in 45-5-213;

(ix) strangulation of a partner or family member as defined in 45-5-215;

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

(xi) kidnapping as defined in 45-5-302;

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

(xiii) arson as defined in 45-6-103.

(2) The following individuals are eligible to file a petition for an order of protection against the offender regardless of the individual's relationship to the offender:

(a) a victim of assault as defined in 45-5-201, aggravated assault as defined in 45-5-202, assault on a minor as defined in 45-5-212, stalking as defined in 45-5-220, incest as defined in 45-5-507, sexual assault as defined in 45-5-502, sexual intercourse without consent as defined in 45-5-503, sexual abuse of children as defined in 45-5-625, or human trafficking as defined in 45-5-701; or

(b) a partner or family member of a victim of deliberate homicide as defined in 45-5-102 or mitigated deliberate homicide as defined in 45-5-103.

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

(4) The following persons may file a petition for an order of protection on behalf of an adult:

- (a) a guardian appointed pursuant to Title 72, chapter 5, part 3, on behalf of an incapacitated person;
- (b) a conservator appointed pursuant to Title 72, chapter 5, part 4, on behalf of a protected person; or
- (c) an agent on behalf of an incapacitated principal. For the purposes of this subsection (4)(c), "incapacitated" has the same meaning as "incapacitated person" provided in 72-5-101.

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

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

- (a) the petitioner reports the abuse to law enforcement;
- (b) charges are filed; or
- (c) the petitioner participates in a criminal prosecution.

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

History: En. Sec. 22, Ch. 350, L. 1995; amd. Sec. 1, Ch. 432, L. 1999; amd. Sec. 5, Ch. 503, L. 2001; amd. Sec. 1, Ch. 465, L. 2007; amd. Sec. 2, Ch. 394, L. 2017; amd. Sec. 1, Ch. 255, L. 2019; amd. Sec. 1, Ch. 255, L. 2021.