

MONTANA CIVIL PROTECTION ORDERS

Survivors across the country seek safety through civil protection orders. Courts use these vital orders to issue stay away orders, or order an abuser pay medical bills, and even make temporary custody decisions. The remedies are important, but jurisdictions often have several types of orders and the distinctions are not always clear. This resource provides a brief overview of the different types of civil protection orders in each jurisdiction, answering vital questions such as: who can apply; and who can be restrained? The orders included in this resource are limited to those where a survivor can apply themselves, other protective measures may exist in your jurisdiction—reach out to VRLC’s TA team if you have questions!

In Montana, there is 1 type of civil protection order:

- **Civil Protective Orders** are available for individuals seeking protection from either a partner or family member, or any individual who has committed certain crimes (including sexual assault) against the petitioner (Mont. Code § 40-15.).

PARTNER AND FAMILY MEMBER ASSAULT, SEXUAL ASSAULT, AND STALKING – VICTIM PROTECTION

Who can apply?

Domestic violence victims can file for an order of protection against their partner or family member who abused them.

Mont. Code § 40-15-102(2).

Anyone who was the victim of one of the following crimes against them can file for an order of protection regardless of their relationship to the offender: assault; aggravated assault; assault on a minor; stalking; incest; sexual assault; sexual intercourse without consent; or a partner or family member of a victim of deliberate homicide or mitigated deliberate homicide.

Mont. Code § 40-15-102(2).

A parent/guardian can seek an order on behalf of a child under age 16 against an adult who has no legal supervision/control over the child if the parent believes that contact between them is not in the child's best interests even if there is no domestic violence or crime committed.

Mont. Code § 45-5-622(4).

If an adult has a guardian, conservator, or agent appointed by the court due to being incapacitated or protected, s/he can file on the adult victim's behalf.

Mont. Code § 40-15-102(4).

Domestic abuse is defined as:

1. When you are reasonably afraid of bodily injury from a partner or family member;
2. When a partner or family member commits one of the following crimes against you:
 - Assault;

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PARTNER AND FAMILY MEMBER ASSAULT, SEXUAL ASSAULT, AND STALKING – VICTIM PROTECTION

<p>Who can apply?</p>	<ul style="list-style-type: none"> • Aggravated assault; • Intimidation; • Partner or family member assault; • Criminal endangerment; • Negligent endangerment; • Assault on a minor; • Assault with a weapon; • Strangulation of a partner or family member; • Unlawful restraint; • Kidnapping; • Aggravated kidnapping; • Arson; or • Stalking. <p><i>Mont. Code § 40-15-102(2)(b).</i></p>
<p>Can minors apply?</p>	<p>No. A parent, guardian ad litem, or other representative can file for an order of protection on behalf of a minor child.</p> <p><i>Mont. Code §§ 41-1-101; 40-15-102(3).</i></p>
<p>Who can be restrained?</p>	<p>Partner or family member. “Partner” refers to spouses, former spouses, people who have a child in common, and people who have been or are currently in a dating or ongoing intimate relationship with a person of the opposite sex. “Family member” refers to mothers, fathers, children, brothers, sisters, and other past or present family members of a household whether these relationships are biological, or through adoption or remarriage.</p> <p><i>Mont. Code § 40-15-102(1).</i></p> <p style="text-align: right;"><i>continued on next page</i></p>



PARTNER AND FAMILY MEMBER ASSAULT, SEXUAL ASSAULT, AND STALKING – VICTIM PROTECTION

<p>Who can be restrained?</p>	<p>OR</p> <p>Anyone who commits one of the following crimes against the person seeking protection: assault; aggravated assault; assault on a minor; stalking; incest; sexual assault; sexual intercourse without consent; or a partner or family member of a victim of deliberate homicide or mitigated deliberate homicide.</p> <p><i>Mont. Code § 40-15-102(2).</i></p>
<p>What types of relief may a court order?</p>	<p>A temporary or final order of protection can order the abuser to:</p> <ul style="list-style-type: none"> • Stop committing or threatening to commit acts of violence against petitioner or petitioner’s family members; • Stop harassing, annoying, disturbing the peace of, contacting, or otherwise communicating directly or indirectly with petitioner, petitioner’s family members, or any witness to the abuse; • Not remove petitioner’s child from the state (“jurisdiction of the court”); • Leave and stay 1,500 feet away from petitioner, petitioner’s home, school, work, or another specific place; • Be removed (“excluded”) from petitioner’s home regardless of who owns the home; • Not transfer, hide, or get rid of any property except as would normally be done in the “usual course of business”; • Give possession and use of the home, a car, and other essential property, no matter who owns any of these things, and order law enforcement to accompany petitioner to the home to get these items; • Complete violence counseling, and, if necessary, drug counseling or treatment; <p style="text-align: right;"><i>continued on next page</i></p>



PARTNER AND FAMILY MEMBER ASSAULT, SEXUAL ASSAULT, AND STALKING – VICTIM PROTECTION

<p>What types of relief may a court order?</p>	<ul style="list-style-type: none"> • Not possess or use a firearm if s/he used one in an assault against petitioner; and • Grant any other relief that is necessary to provide for the safety and welfare of petitioner or petitioner’s family members. <p><i>Mont. Code §§ 40-15-201(2); 40-15-204(3).</i></p>
<p>How long does the order last?</p>	<p>A temporary order of protection is a court order designed to provide immediate protection. A judge can issue it if petitioner alleges, and the judge believes, that s/he will be in danger of harm if the court does not issue a temporary order of protection immediately. It is effective for up to 20 days.</p> <p><i>Mont. Code § 40-15-201(1), (2), (4), § 40-15-202.</i></p> <p>A final order of protection, also called a “permanent order of protection”, can last for a specific period of time or remain in effect permanently.</p> <p><i>Mont. Code § 40-15-204.</i></p>
<p>Can the order be renewed?</p>	<p>The statute does not address renewal of orders.</p>
<p>Is a hearing with the respondent required?</p>	<p>A final order of protection can be granted only after a temporary order of protection has issued and a full court hearing with both parties. Generally, this hearing will take place approximately 20 days after the temporary order is issued. However, the alleged abuser may request an emergency hearing before the end of the 20-day period by filing an affidavit that demonstrates that s/he has an urgent need for the emergency hearing. An emergency hearing must then be set within 3 business days of the filing of this affidavit.</p> <p><i>Mont. Code § 40-15-201, 202(2).</i></p>

HOW TO APPLY

Petitioner can file a petition in the county where petitioner lives, in the county where the abuser lives, or in the county where the abuse took place. There is no minimum length of residency required to file a petition.

Mont. Code § 40-15-301(4).

Forms are available online at: <https://courts.mt.gov/forms/domestic#6976857-forms>

SCAN ME!



For specific questions about how to use this guide, or if you have any other questions, VRLC is here to help!

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