

SENATE BILL NO. 362

INTRODUCED BY J. WINDY BOY

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A BILL FOR AN ACT ENTITLED: "AN ACT INCREASING THE FINES AND PENALTIES FOR PARTNER OR FAMILY MEMBER ASSAULT; REVISING DEFINITIONS; AND AMENDING SECTION 45-5-206, MCA."

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

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

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

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

(2) For the purposes of Title 40, chapter 15, 45-5-231 through 45-5-234, 46-6-311, and this section, the following definitions apply:

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

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

(3) (a) (i) An offender convicted of ~~partner or family member assault~~ a first offense under this section shall be fined an amount not less than ~~\$100~~ \$250 or more than \$1,000 and be imprisoned in the county jail for a term not to exceed 1 year or not less than ~~24~~ 72 hours ~~for a first offense.~~

(ii) An offender convicted of a second offense under this section shall be fined an amount not less than ~~\$300~~ \$350 or more than \$1,000 and be imprisoned in the county jail for a term not less than ~~72 hours~~ 7 days or more than 1 year.



1 (iii) Upon a first or second conviction under this section, the offender may be ~~ordered into~~ placed on  
2 misdemeanor probation as provided in 46-23-1005.

3 (iv) On a third or subsequent conviction ~~for partner or family member assault~~ under this section, the  
4 offender shall be fined an amount not less than \$500 ~~and not or~~ more than \$50,000 and be imprisoned for a term  
5 not less than ~~30~~ 90 days and not more than 5 years. If the term of imprisonment does not exceed 1 year, the  
6 person shall be imprisoned in the county jail. If the term of imprisonment exceeds 1 year, the person shall be  
7 imprisoned in the state prison.

8 (v) If the offense was committed within the vision or hearing of a minor, the judge shall consider the  
9 minor's presence as a factor at the time of sentencing.

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

15 (ii) A conviction for assault with a weapon under 45-5-213, if the offender was a partner or family member  
16 of the victim, constitutes a conviction for the purpose of calculating prior convictions under this section.

17 (4) (a) An offender convicted of partner or family member assault is required to pay for and complete a  
18 counseling assessment with a focus on violence, controlling behavior, dangerousness, and chemical dependency.  
19 An investigative criminal justice report, as defined in 45-5-231, must be copied and sent to the offender  
20 intervention program, as defined in 45-5-231, to assist the counseling provider in properly assessing the  
21 offender's need for counseling and treatment. Counseling providers shall take all required precautions to ensure  
22 the confidentiality of the report. If the report contains confidential information relating to the victim's location or  
23 not related to the charged offense, that information must be deleted from the report prior to being sent to the  
24 offender intervention program.

25 (b) The offender shall complete all recommendations for counseling, referrals, attendance at  
26 psychoeducational groups, or treatment, including any indicated chemical dependency treatment, made by the  
27 counseling provider. The counseling provider must be approved by the court. The counseling must include a  
28 preliminary assessment for counseling, as defined in 45-5-231. The offender shall complete a minimum of 40  
29 hours of counseling. The counseling may include attendance at psychoeducational groups, as defined in  
30 45-5-231, in addition to the assessment. The preliminary assessment and counseling that holds the offender

1 accountable for the offender's violent or controlling behavior must be:

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

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

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

5 (c) The minimum counseling and attendance at psychoeducational groups provided in subsection (4)(b)  
6 must be directed to the violent or controlling conduct of the offender. Other issues indicated by the assessment  
7 may be addressed in additional counseling beyond the minimum 40 hours. Subsection (4)(b) does not prohibit  
8 the placement of the offender in other appropriate treatment if the court determines that there is no available  
9 treatment program directed to the violent or controlling conduct of the offender.

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

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

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

17 (8) The court shall provide an offender with a written copy of the offender's sentence at the time of  
18 sentencing or within 2 weeks of sentencing if the copy is sent electronically or by mail."

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