

SENATE BILL NO. 188

INTRODUCED BY R. WEBB

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A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT A CONVICTION FOR AGGRAVATED ASSAULT, IF THE OFFENDER IS A PARTNER OR FAMILY MEMBER OF THE VICTIM, IS A PRIOR CONVICTION FOR PURPOSES OF PARTNER OR FAMILY MEMBER ASSAULT; AMENDING SECTION 45-5-206, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

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. 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 shall be fined an amount not less than \$100 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 hours for a first offense.

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



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

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

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

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

14 (ii) A conviction for assault with a weapon under 45-5-213 or aggravated assault under 45-5-202, if the
15 offender was a partner or family member of the victim, constitutes a conviction for the purpose of calculating prior
16 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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20 NEW SECTION. **Section 2. Effective date.** [This act] is effective on passage and approval.

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22 NEW SECTION. **Section 3. Applicability -- retroactive applicability.** (1) [This act] applies to offenses
23 committed on or after [the effective date of this act].

24 (2) For the purpose of determining the number of prior convictions under 45-5-206(3)(b)(ii), [this act]
25 applies retroactively, within the meaning of 1-2-109, to convictions for aggravated assault under 45-5-202
26 occurring prior to [the effective date of this act]."

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