

SENATE BILL NO. 189

INTRODUCED BY WEBB, ARNTZEN, BOULANGER, CAFERRO, FIELDER, KARY, LENZ, MURPHY,
TAYLOR

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING PARTNER OR FAMILY MEMBER ASSAULT LAWS;
PROVIDING THAT A CONVICTION IN ANOTHER STATE FOR AN OFFENSE RELATED TO DOMESTIC
VIOLENCE BETWEEN PARTNERS OR FAMILY MEMBERS, AS THOSE TERMS ARE DEFINED IN MONTANA,
IS A CONVICTION FOR PURPOSES OF DETERMINING THE NUMBER OF PRIOR CONVICTIONS FOR THE
OFFENSE 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

1 than 24 hours for a first offense.

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

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

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

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

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

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

19 (i) a conviction, as defined in 45-2-101, under this section;

20 (ii) a conviction for domestic abuse under this section;

21 (iii) a conviction for a violation of a statute similar to this section in another state;

22 (iv) a conviction for assault with a weapon under 45-5-213 if the offender was a partner or family member
23 of the victim;

24 (v) a conviction in another state for an offense related to domestic violence between partners or family
25 members, as those terms are defined in this section, regardless of what the offense is named or whether it is
26 misdemeanor or felony, if the offense involves conduct similar to conduct that is prohibited under 45-5-202,
27 45-5-213, or this section; or

28 (vi) a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state
29 or in another state for a violation of a statute similar to this section, which forfeiture has not been vacated.

30 (4) (a) An offender convicted of partner or family member assault is required to pay for and complete a

1 counseling assessment with a focus on violence, controlling behavior, dangerousness, and chemical dependency.
2 An investigative criminal justice report, as defined in 45-5-231, must be copied and sent to the offender
3 intervention program, as defined in 45-5-231, to assist the counseling provider in properly assessing the
4 offender's need for counseling and treatment. Counseling providers shall take all required precautions to ensure
5 the confidentiality of the report. If the report contains confidential information relating to the victim's location or
6 not related to the charged offense, that information must be deleted from the report prior to being sent to the
7 offender intervention program.

8 (b) The offender shall complete all recommendations for counseling, referrals, attendance at
9 psychoeducational groups, or treatment, including any indicated chemical dependency treatment, made by the
10 counseling provider. The counseling provider must be approved by the court. The counseling must include a
11 preliminary assessment for counseling, as defined in 45-5-231. The offender shall complete a minimum of 40
12 hours of counseling. The counseling may include attendance at psychoeducational groups, as defined in
13 45-5-231, in addition to the assessment. The preliminary assessment and counseling that holds the offender
14 accountable for the offender's violent or controlling behavior must be:

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

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

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

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

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

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

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

30 (8) The court shall provide an offender with a written copy of the offender's sentence at the time of

1 sentencing or within 2 weeks of sentencing if the copy is sent electronically or by mail."

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3 NEW SECTION. Section 2. Effective date. [This act] is effective on passage and approval.

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

7 ~~(2) For the purpose of determining the number of prior convictions under 45-5-206(3)(b)(v), [this act]~~
8 ~~applies retroactively, within the meaning of 1-2-109, to convictions occurring prior to [the effective date of this act].~~

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