

SENATE BILL NO. 383

INTRODUCED BY D. EMRICH, D. LENZ

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO PARTNER OR FAMILY MEMBER ASSAULT; DEFINING "VICTIM" IN WHICH VICTIMS MAY NOT BE CHARGED WITH PARTNER OR FAMILY MEMBER ASSAULT; AND AMENDING SECTIONS 45-5-206 AND 45-5-215, 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. 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.

(c) "Victim" means a partner or family member against whom the offender commits an assault.

(i) A victim may use self-defense to defend themselves.

(ii) A person acting in self-defense is considered a victim.

(3) (a) (i) An offender convicted of partner or family member assault shall be fined an amount not

1 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
2 less than 24 hours for a first offense.

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

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

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

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

13 (b) For the purpose of determining the number of convictions under this section, a conviction
14 means:

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

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

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

18 (iv) if the offender was a partner or family member of the victim, a conviction for aggravated assault
19 under 45-5-202 or assault with a weapon under 45-5-213;

20 (v) a conviction for strangulation of a partner or family member under 45-5-215;

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

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

27 (4) (a) An offender convicted of partner or family member assault is required to pay for and
28 complete a counseling assessment with a focus on violence, controlling behavior, dangerousness, and

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

7 (b) The offender shall complete all recommendations for counseling, referrals, attendance at
8 psychoeducational groups, or treatment, including any indicated chemical dependency treatment, made by the
9 counseling provider. The counseling provider must be approved by the court. The counseling must include a
10 preliminary assessment for counseling, as defined in 45-5-231. The offender shall complete a minimum of 40
11 hours of counseling. The counseling may include attendance at psychoeducational groups, as defined in 45-5-
12 231, in addition to the assessment. The preliminary assessment and counseling that holds the offender
13 accountable for the offender's violent or controlling behavior must meet the standards established pursuant to
14 44-7-210 and 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
19 (4)(b) must be directed to the violent or controlling conduct of the offender. Other issues indicated by the
20 assessment may be addressed in additional counseling beyond the minimum 40 hours. Subsection (4)(b) does
21 not prohibit the placement of the offender in other appropriate treatment if the court determines that there is no
22 available 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
24 financial resources and future ability of the offender to pay restitution as provided for in 46-18-242, the court
25 shall require the offender, if able, to pay the victim's reasonable actual medical, housing, wage loss, and
26 counseling costs.

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

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

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

5 (9) A victim may not be charged with partner or family member assault.

6 (10) Only one party to a partner or family member assault incident may be charged with partner or
7 family member assault."

8
9 **Section 2.** Section 45-5-215, MCA, is amended to read:

10 **"45-5-215. Strangulation of partner or family member.** (1) A person commits the offense of
11 strangulation of a partner or family member if the person purposely or knowingly impedes the normal breathing
12 or circulation of the blood of a partner or family member by:

13 (a) applying pressure on the throat or neck of the partner or family member; or

14 (b) blocking air flow to the nose and mouth of the partner or family member.

15 (2) (a) A person convicted of a first offense of strangulation of a partner or family member shall be
16 fined an amount not to exceed \$50,000 or be imprisoned in the state prison for a term not to exceed 5 years, or
17 both.

18 (b) A person convicted of a second or subsequent offense under this section shall be imprisoned
19 in the state prison for a term of not less than 2 years or more than 20 years and may be fined an amount not
20 more than \$50,000, except as provided in 46-18-219 and 46-18-222.

21 (3) A person convicted of strangulation of a partner or family member is required to pay for and
22 complete a counseling assessment as required in 45-5-206(4).

23 (4) A victim may not be charged with the strangulation of a partner or family member.

24 (4)(5) For the purposes of this section, "partner", and "family member", and "victim" have the same
25 meanings as provided in 45-5-206."

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