

HOUSE BILL NO. 730

INTRODUCED BY L. SHELDON-GALLOWAY

A BILL FOR AN ACT ENTITLED: "AN ACT INCREASING PENALTIES FOR CERTAIN CRIMES COMMITTED AGAINST A PREGNANT WOMAN; AND AMENDING SECTIONS 45-5-201 AND 45-5-206, MCA."

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

**Section 1.** Section 45-5-201, MCA, is amended to read:

**"45-5-201. Assault.** (1) A person commits the offense of assault if the person:

- (a) purposely or knowingly causes bodily injury to another;
- (b) negligently causes bodily injury to another with a weapon;
- (c) purposely or knowingly makes physical contact of an insulting or provoking nature with any individual;

or

(d) purposely or knowingly causes reasonable apprehension of bodily injury in another.

(2) (a) ~~A~~ Except as provided in subsection (2)(b), a person convicted of assault shall be fined not to exceed \$500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

(b) (i) A person who is convicted of a first offense of assault against a pregnant woman and who, at the time of the offense, knew or should have known that the woman was pregnant shall be fined an amount not to exceed \$500 or be imprisoned in the county jail for not less than 7 days or more than 1 year, or both.

(ii) A person who is convicted of a second offense of assault against a pregnant woman and who, at the time of the offense, knew or should have known that the woman was pregnant shall be fined an amount not to exceed \$1,000 or be imprisoned in the county jail for not less than 6 months or more than 1 year, or both.

(iii) In addition to any sentence imposed under subsection (2)(b)(i) or (2)(b)(ii), an offender must also comply with the requirements for assessment and counseling provided in 45-5-206(4)."

**Section 2.** 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;



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

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

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

10 (b) "Partners" means spouses, former spouses, persons who have a child in common, and persons who  
 11 have been or are currently in a dating or ongoing intimate relationship.

12 (3) (a) (i) ~~An~~ Except as provided in subsection (3)(a)(iii), an offender who is convicted of partner or family  
 13 member assault shall be fined an amount not less than \$100 or more than \$1,000 and be imprisoned in the  
 14 county jail for a term not to exceed 1 year or not less than 24 hours for a first offense.

15 (ii) ~~An~~ Except as provided in subsection (3)(a)(iv), an offender who is convicted of a second offense under  
 16 this section shall be fined not less than \$300 or more than \$1,000 and be imprisoned in the county jail not less  
 17 than 72 hours or more than 1 year.

18 (iii) An offender who is convicted of a first offense under this section when the victim is a pregnant woman  
 19 and who, at the time of the offense, knew or should have known that the woman was pregnant shall be fined not  
 20 less than \$500 and be imprisoned in the county jail not less than 7 days or more than 1 year.

21 (iv) An offender who is convicted of a second offense under this section when the victim is a pregnant  
 22 woman and who, at the time of the offense, knew or should have known that the woman was pregnant shall be  
 23 fined \$1,000 and be imprisoned in the county jail not less than 6 months or more than 1 year.

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

26 (iv)(vi) (A) ~~On~~ Except as provided in subsection (3)(a)(vi)(B), an offender who is convicted of a third or  
 27 subsequent conviction for partner or family member assault, the offender offense under this section shall be fined  
 28 not less than \$500 and not more than \$50,000 and be imprisoned for a term not less than 30 days and not more  
 29 than 5 years. If the term of imprisonment does not exceed 1 year, the person shall be imprisoned in the county  
 30 jail. If the term of imprisonment exceeds 1 year, the person shall be imprisoned in the state prison.

1           (B) An offender who is convicted of a third or subsequent offense under this section when the victim is  
2 a pregnant woman and who, at the time of the offense, knew or should have known that the woman was pregnant  
3 must be sentenced as provided in 46-18-226.

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

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

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

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

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

10           (iv) if the offender was a partner or family member of the victim, a conviction for aggravated assault under  
11 45-5-202 or assault with a weapon under 45-5-213;

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

13           (vi) a conviction in another state for an offense related to domestic violence between partners or family  
14 members, as those terms are defined in this section, regardless of what the offense is named or whether it is  
15 misdemeanor or felony, if the offense involves conduct similar to conduct that is prohibited under 45-5-202,  
16 45-5-213, or this section; or

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

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

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

1 hours of counseling. The counseling may include attendance at psychoeducational groups, as defined in  
2 45-5-231, in addition to the assessment. The preliminary assessment and counseling that holds the offender  
3 accountable for the offender's violent or controlling behavior must meet the standards established pursuant to  
4 44-7-210 and be:

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

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

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

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

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

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

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

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

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