

1 **** BILL NO. ****
2 INTRODUCED BY ****
3 BY REQUEST OF THE ****
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING ADDITIONAL PENALTIES FOR MISDEMEANOR
6 PARTNER FAMILY MEMBER ASSAULT; FIREARM PROHIBITIONS; AND AMENDING SECTIONS 45-5-206,
7 45-8-313, AND 45-8-314, MCA."
8

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
10

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

12 **"45-5-206. Partner or family member assault -- penalty.** (1) A person commits the offense of
13 partner or family member assault if the person:

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

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

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

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

26 (3) (a) (i) An offender convicted of partner or family member assault shall be fined an amount not
27 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
28 less than 24 hours for a first offense.

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

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

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

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

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

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

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

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

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

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

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

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

25 (4) (a) An offender convicted of partner or family member assault is required to pay for and
26 complete a counseling assessment with a focus on violence, controlling behavior, dangerousness, and
27 chemical dependency. An investigative criminal justice report, as defined in 45-5-231, must be copied and sent
28 to the offender intervention program, as defined in 45-5-231, to assist the counseling provider in properly

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1 assessing the offender's need for counseling and treatment. Counseling providers shall take all required
2 precautions to ensure the confidentiality of the report. If the report contains confidential information relating to
3 the victim's location or not related to the charged offense, that information must be deleted from the report prior
4 to being sent to the offender intervention program.

5 (b) The offender shall complete all recommendations for counseling, referrals, attendance at
6 psychoeducational groups, or treatment, including any indicated chemical dependency treatment, made by the
7 counseling provider. The counseling provider must be approved by the court. The counseling must include a
8 preliminary assessment for counseling, as defined in 45-5-231. The offender shall complete a minimum of 40
9 hours of counseling. The counseling may include attendance at psychoeducational groups, as defined in 45-5-
10 231, in addition to the assessment. The preliminary assessment and counseling that holds the offender
11 accountable for the offender's violent or controlling behavior must meet the standards established pursuant to
12 44-7-210 and be:

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

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

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

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

21 (5) In addition to any sentence imposed under subsections (3) and (4), the court shall require the
22 offender to pay the victim's reasonable actual medical, housing, wage loss, and counseling costs. The amount,
23 method, and time of payment must be determined in the same manner as provided in 46-18-244.

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

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

28 ~~(8)(7)~~ The court shall provide an offender with a written copy of the offender's sentence at the time of

Commented [AC1]: Removed since an individual has to reapply every five years, which necessarily means any application under 45-8-323 would be prohibited by the new 45-8-313 prohibition. If changed to 3 years, though, will need to put the second sentence back in.

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

2

3 **Section 2.** Section 45-8-313, MCA, is amended to read:

4 **"45-8-313. Unlawful possession of firearm by convicted person.** (1) A person commits the offense
5 of unlawful possession of a firearm by a convicted person if the person purposely or knowingly purchases or
6 possesses a firearm after the person has been convicted of:

7 (a) a felony for which the person received an additional sentence under 46-18-221;

8 (b) an offense under the law of another state or of the United States that is equivalent to an

9 offense that when committed in Montana is subject to an additional sentence under 46-18-221; ~~or~~

10 (c) a misdemeanor under 45-5-206, for 5 years following the date of conviction; or

11 (e)(d) a felony for which the person is currently required to register for the sexual or violent offender
12 registry.

13 (2) A person convicted of unlawful possession of a firearm by a convicted person shall be
14 imprisoned in a state prison for not less than 2 years or more than 10 years.

15 (3) A person who has been issued a permit under 45-8-314 may not be convicted of a violation of
16 this section."

17

18 **Section 3.** Section 45-8-314, MCA, is amended to read:

19 **"45-8-314. Lifetime firearms Firearms supervision of certain convicted persons.** (1)~~(a)~~ Except as
20 stated in subsection (1)(b), ~~F~~for the purposes of rehabilitation and public protection, a person convicted of an
21 offense referred to in 45-8-313 shall, as part of the sentence imposed, be sentenced to life supervision by the
22 state for the purpose of restricting the person's right to purchase and possess firearms.

23 (b) For the purposes of rehabilitation and public protection, a person convicted of a misdemeanor
24 under 45-8-313 shall, as part of the sentence imposed, be sentenced to 5 years of supervision following the
25 date of conviction for the purpose of restricting the person's right to purchase and possess firearms.

26 (c) Active supervision by a probation or parole officer is not required but may be imposed by the
27 court. "Supervision" means that the person may not violate 45-8-313 and must comply with other state and
28 federal law restrictions on the purchase and possession of firearms.

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1 (2) (a) A person subject to subsection (1) may apply to the district court for the county in which the
2 person resides for a permit to purchase and possess one or more firearms. The person shall show good cause
3 for the possession of each firearm sought to be purchased and possessed. The grant or denial of the
4 application does not prevent the person from making another application, except that if an application is denied,
5 another application may not be made for the next 12 months.

6 (b) The application must contain the following information:

7 (i) the person's full name and any past or present aliases;

8 (ii) the person's date and place of birth;

9 (iii) the person's address;

10 (iv) the person's occupation;

11 (v) the make and model of each firearm sought to be purchased and possessed;

12 (vi) the date and place of each conviction of an offense referred to in 45-8-313, the name of the
13 offense, the state and county in which the offense occurred, the sentence imposed, the place or places of
14 incarceration, and the date of discharge from supervision for the last offense;

15 (vii) the name and business address of the person's last probation or parole officer; and

16 (viii) any other information considered necessary by the court.

17 (c) The person shall, at the time of filing the application with the court, mail a copy to the county
18 attorney and county sheriff.

19 (d) The county attorney or county sheriff may file a written objection with the court. If no objection
20 is filed, the court may grant the permit if it finds that the person has shown good cause to purchase and
21 possess the firearm or firearms listed in the application. If an objection is filed, a hearing must be held within 60
22 days after the filing of the objection. If the court first finds that the person has shown good cause to purchase
23 and possess the firearm or firearms listed in the application and that, but for the objection, the court would have
24 granted a permit, the court shall decide whether the objection is valid and overrides the good cause showing
25 and requires denial of the permit."
26
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