

House BILL NO. 416

Wm.E. Boharski

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INTRODUCED BY

*Frank Waters Bitney Adams Rahbein*  
*Brainard Bishop ORR Thomas Joe Slaton Wells*

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT IT IS AN OFFENSE TO CARRY A CONCEALED WEAPON ONLY IF THE WEAPON IS CARRIED CONCEALED FOR AN UNLAWFUL PURPOSE; CHANGING THE EXCEPTIONS TO THE OFFENSE OF CARRYING A CONCEALED WEAPON AND TO THE OFFENSE OF CARRYING A CONCEALED WEAPON IN A PROHIBITED PLACE; DELETING LAWS PROVIDING THAT HAVING A PERMIT TO CARRY A CONCEALED WEAPON IS NOT A DEFENSE TO THE OFFENSE OF CARRYING A CONCEALED WEAPON WHILE UNDER THE INFLUENCE AND THE OFFENSE OF CARRYING A CONCEALED WEAPON IN A PROHIBITED PLACE; DELETING THE REQUIREMENTS RELATING TO CONCEALED WEAPON PERMITS; PROVIDING FOR NEGOTIATION OF RECIPROCITY AGREEMENTS WITH STATES HAVING CONCEALED WEAPON PERMIT LAWS SIMILAR TO THOSE PREVIOUSLY IN EFFECT IN MONTANA; AMENDING SECTIONS 45-5-206, 45-8-315, 45-8-316, 45-8-317, 45-8-327, 45-8-328, AND 45-8-329, MCA; REPEALING SECTIONS 45-8-321, 45-8-322, 45-8-323, 45-8-324, 45-8-325, 45-8-326, AND 45-8-330, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE 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, 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

1 relationships continue regardless of the ages of the parties and whether the parties reside in the same  
2 household.

3 (b) "Partners" means spouses, former spouses, persons who have a child in common, and persons  
4 who have been or are currently in a dating or ongoing intimate relationship with a person of the opposite  
5 sex.

6 (3) (a) An offender convicted of partner or family member assault shall be fined an amount not less  
7 than \$100 or more than \$1,000 and be imprisoned in the county jail for a term not to exceed 1 year or not  
8 less than 24 hours for a first offense. An offender convicted of a second offense under this section shall  
9 be fined not less than \$300 or more than \$1,000 and be imprisoned in the county jail not less than 72  
10 hours or more than 1 year. Upon a first or second conviction, the offender may be ordered into  
11 misdemeanor probation as provided in 46-23-1005. On a third or subsequent conviction for partner or  
12 family member assault, the offender shall be fined not less than \$500 and not more than \$50,000 and be  
13 imprisoned for a term not less than 30 days and not more than 5 years. If the term of imprisonment does  
14 not exceed 1 year, the person shall be imprisoned in the county jail. If the term of imprisonment exceeds  
15 1 year, the person shall be imprisoned in the state prison.

16 (b) For the purpose of determining the number of convictions under this section, a conviction  
17 means a conviction, as defined in 45-2-101, in this state, conviction for a violation of a similar statute in  
18 another state, or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court  
19 in this state or in another state for a violation of a similar statute, which forfeiture has not been vacated.

20 (4) (a) An offender convicted of partner or family member assault shall be required to pay for and  
21 complete a counseling assessment with a focus on violence, dangerousness, and chemical dependency.  
22 The offender shall follow through on all recommendations made by the counseling provider. The counselor  
23 must be approved by the court. The counseling must include a counseling assessment and a minimum of  
24 25 hours of counseling, in addition to the assessment. The assessment and the counseling must be:

- 25 (i) with a person licensed under Title 37, chapter 17, 22, or 23;  
26 (ii) with a professional person as defined in 53-21-102; or  
27 (iii) in a specialized domestic violence intervention program.

28 (b) The counseling provided in subsection (4)(a) must be directed to the violent conduct of the  
29 offender. Other issues indicated by the assessment may be addressed in additional counseling beyond the  
30 minimum 25 hours. Subsection (4)(a) does not prohibit the placement of the offender in other appropriate

1 treatment if the court determines that there is no available treatment program directed to the violent  
2 conduct of the offender.

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

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

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

11 (8) At the time of sentencing, the court shall provide an offender a written copy of the offender's  
12 sentence."

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14 **Section 2.** Section 45-8-315, MCA, is amended to read:

15 **"45-8-315. Definition.** "Concealed weapon" means any weapon mentioned in 45-8-316 through  
16 45-8-318, ~~and 45-8-321 through 45-8-327, and~~ 45-8-328 that is wholly or partially covered by the clothing  
17 or wearing apparel of the person carrying or bearing the weapon, except that for purposes of ~~45-8-321~~  
18 ~~through 45-8-327 and~~ 45-8-328, concealed weapon means a handgun or a knife with a blade 4 or more  
19 inches in length that is wholly or partially covered by the clothing or wearing apparel of the person carrying  
20 or bearing the weapon."

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22 **Section 3.** Section 45-8-316, MCA, is amended to read:

23 **"45-8-316. Carrying concealed weapons.** (1) Every person who carries or bears concealed upon  
24 ~~his~~ the person a dirk, dagger, pistol, revolver, slingshot, sword cane, billy, knuckles made of any metal or  
25 hard substance, knife having a blade 4 inches long or longer, razor, not including a safety razor, or other  
26 deadly weapon for an unlawful purpose shall be punished by a fine not exceeding \$500 or imprisonment  
27 in the county jail for a period not exceeding 6 months, or both.

28 (2) A person who has previously been convicted of an offense, committed on a different occasion  
29 than the offense under this section, in this state or any other jurisdiction for which a sentence to a term  
30 of imprisonment in excess of 1 year could have been imposed and who carries or bears concealed upon

1 ~~he~~ the person any of the weapons described in subsection (1) for an unlawful purpose shall be punished  
 2 by a fine not exceeding \$1,000 or imprisoned in the state prison for a period not exceeding 5 years, or  
 3 both."

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5 **Section 4.** Section 45-8-317, MCA, is amended to read:

6 "**45-8-317. Exceptions.** ~~Section 45-8-316 and, except for a person referred to in subsection (7),~~

7 Section 45-8-328 ~~de~~ does not apply to:

8 (1) ~~any~~ a peace officer of the state of Montana;

9 (2) ~~any~~ an officer of the United States government authorized to carry a concealed weapon;

10 (3) a person in actual service as a national guardsman;

11 (4) a person summoned to the aid of ~~any of the persons named~~ a person referred to in subsections

12 (1) through (3);

13 (5) a civil officer or ~~he~~ the officer's deputy engaged in the discharge of official business;

14 (6) a probation and parole officer authorized to carry a firearm under 46-23-1002;

15 ~~(7) a person issued a permit under 45-8-321;~~

16 ~~(8)(7)~~ an agent of the department of justice or a criminal investigator in a county attorney's office;

17 ~~(9)(8)~~ a person who is outside the official boundaries of a city or town or the confines of a logging,

18 lumbering, mining, or railroad camp or who is lawfully engaged in hunting, fishing, trapping, camping,

19 hiking, backpacking, farming, ranching, or other outdoor activity in which weapons are often carried for

20 recreation or protection; or

21 ~~(10)(9)~~ the carrying of arms on one's own premises or at one's home or place of business."

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23 **Section 5.** Section 45-8-327, MCA, is amended to read:

24 "**45-8-327. Carrying a concealed weapon while under the influence.** A person commits the offense

25 of carrying a concealed weapon while under the influence if ~~he~~ the person purposely or knowingly carries

26 a concealed weapon while under the influence of an intoxicating substance. ~~It is not a defense that the~~

27 ~~person had a valid permit to carry a concealed weapon.~~ A person convicted of the offense shall be

28 imprisoned in the county jail for a term not to exceed 6 months or fined an amount not to exceed \$500,

29 or both."

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1           **Section 6.** Section 45-8-328, MCA, is amended to read:

2           **"45-8-328. Carrying concealed weapon in a prohibited place.** (1) A person commits the offense  
3 of carrying a concealed weapon in a prohibited place if ~~he~~ the person purposely or knowingly carries a  
4 concealed weapon in:

5           (a) a building owned or leased by the federal, state, or local government;

6           (b) a bank, credit union, savings and loan institution, or similar institution; or

7           (c) a room in which alcoholic beverages are sold, dispensed, and consumed under a license issued  
8 under Title 16 for the sale of alcoholic beverages for consumption on the premises.

9           ~~(2) It is not a defense that the person had a valid permit to carry a concealed weapon.~~ A person  
10 convicted of the offense shall be imprisoned in the county jail for a term not to exceed 6 months or fined  
11 an amount not to exceed \$500, or both."

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13           **Section 7.** Section 45-8-329, MCA, is amended to read:

14           **"45-8-329. Concealed weapon permit reciprocity agreements -- advisory council.** (1) The governor  
15 may negotiate concealed weapon permit reciprocity agreements with other states that have concealed  
16 weapon permit laws similar to those ~~of~~ previously in effect in Montana.

17           (2) The governor shall establish a council, composed of interested persons, including law  
18 enforcement personnel and gun owners, to advise the governor on and pursue reciprocity issues and  
19 agreements."

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21           NEW SECTION. **Section 8. Repealer.** Sections 45-8-321, 45-8-322, 45-8-323, 45-8-324,  
22 45-8-325, 45-8-326, and 45-8-330, MCA, are repealed.

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24           NEW SECTION. **Section 9. Effective date.** [This act] is effective on passage and approval.

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-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0416, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act providing that it is an offense to carry a concealed weapon only if the weapon is carried concealed for an unlawful purpose; changing the exceptions to the offense of carrying a concealed weapon and to the offense of carrying a concealed weapon in a prohibited place; deleting laws providing that having a permit to carry a concealed weapon is not a defense to the offense of carrying a concealed weapon while under the influence and offense of carrying a concealed weapon in a prohibited place; deleting the requirements relating to concealed weapon permits; providing for negotiation of reciprocity agreements with states having concealed weapon permit laws similar to those previously in effect in Montana.

FISCAL IMPACT:

There is no fiscal impact to the state.

*David Lewis* 2-5-97

DAVID LEWIS, BUDGET DIRECTOR      DATE  
Office of Budget and Program Planning

*Wes Prouse*

WES PROUSE, PRIMARY SPONSOR      DATE

Fiscal Note for HB0416, as introduced

**HB 416**