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Senate BILL NO. 341

INTRODUCED BY Henry Bookout
Frank M. Taylor David

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE PENALTY FOR THE OFFENSE OF FELONY ASSAULT; PROVIDING THAT IF THE OFFENDER IS A PARTNER OR FAMILY MEMBER OF THE VICTIM, THE OFFENDER IS REQUIRED TO PAY FOR AND UNDERGO COUNSELING ASSESSMENT; PROVIDING THAT A CONVICTION FOR FELONY ASSAULT, IF THE OFFENDER IS A PARTNER OR FAMILY MEMBER OF THE VICTIM, IS A PRIOR CONVICTION FOR PURPOSES OF PARTNER OR FAMILY MEMBER ASSAULT; AND AMENDING SECTIONS 45-5-202 AND 45-5-206, MCA."

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

Section 1. Section 45-5-202, MCA, is amended to read:

"45-5-202. (Temporary) Aggravated assault -- felony assault. (1) A person commits the offense of aggravated assault if ~~he~~ the person purposely or knowingly causes serious bodily injury to another.

(2) A person commits the offense of felony assault if ~~he~~ the person purposely or knowingly causes:

(a) bodily injury to another with a weapon;

(b) reasonable apprehension of serious bodily injury in another by use of a weapon; or

(c) bodily injury to a peace officer or a person who is responsible for the care or custody of a prisoner.

(3) (a) A person convicted of aggravated assault shall be imprisoned in the state prison for a term of not less than 2 years or more than 20 years and may be fined not more than \$50,000, except as provided in 46-18-222. A Subject to the provisions of subsection (3)(b), a person convicted of felony assault shall be imprisoned in the state prison for a term not to exceed 10 years or be fined not more than \$50,000, or both.

(b) In addition to any sentence imposed under subsection (3)(a), if the person convicted of felony assault is a partner or family member of the victim, as defined in 45-5-206, the person is required to pay for and complete a counseling assessment as required in 45-5-206(4).

45-5-202. (Effective July 1, 1997) Aggravated assault -- felony assault. (1) A person commits the offense of aggravated assault if the person purposely or knowingly causes serious bodily injury to another.

1 (2) A person commits the offense of felony assault if the person purposely or knowingly causes:

2 (a) bodily injury to another with a weapon;

3 (b) reasonable apprehension of serious bodily injury in another by use of a weapon; or

4 (c) bodily injury to a peace officer or a person who is responsible for the care or custody of a
5 prisoner.

6 (3) (a) A person convicted of aggravated assault shall be imprisoned in the state prison for a term
7 of not less than 2 years or more than 20 years and may be fined not more than \$50,000, except as
8 provided in 46-18-219 and 46-18-222. A Subject to the provisions of subsection (3)(b), a person convicted
9 of felony assault shall be imprisoned in the state prison for a term not to exceed 10 years or be fined not
10 more than \$50,000, or both.

11 (b) In addition to any sentence imposed under subsection (3)(a), if the person convicted of felony
12 assault is a partner or family member of the victim, as defined in 45-5-206, the person is required to pay
13 for and complete a counseling assessment as required in 45-5-206(4)."

14
15 **Section 2.** Section 45-5-206, MCA, is amended to read:

16 **"45-5-206. Partner or family member assault -- penalty.** (1) A person commits the offense of
17 partner or family member assault if the person:

18 (a) purposely or knowingly causes bodily injury to a partner or family member;

19 (b) negligently causes bodily injury to a partner or family member with a weapon; or

20 (c) purposely or knowingly causes reasonable apprehension of bodily injury in a partner or family
21 member.

22 (2) For the purposes of Title 40, chapter 15, 46-6-311, and this section, the following definitions
23 apply:

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

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

1 sex.

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

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

16 (ii) A conviction for felony assault under 45-5-202, if the offender was a partner or family member
17 of the victim, constitutes a conviction for the purpose of calculating prior convictions under this section.

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

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

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

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

26 (b) The counseling provided in subsection (4)(a) must be directed to the violent conduct of the
27 offender. Other issues indicated by the assessment may be addressed in additional counseling beyond the
28 minimum 25 hours. Subsection (4)(a) does not prohibit the placement of the offender in other appropriate
29 treatment if the court determines that there is no available treatment program directed to the violent
30 conduct of the offender.

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

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

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

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

11

-END-

STATE OF MONTANA - FISCAL NOTE

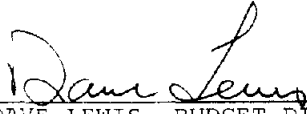
Fiscal Note for SB0341, as introduced

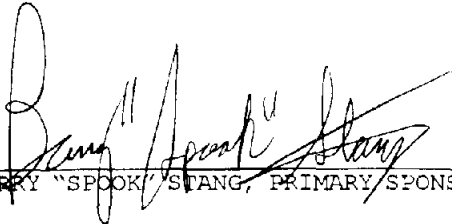
DESCRIPTION OF PROPOSED LEGISLATION:

An act revising the penalty for the offense of felony assault; providing that if the offender is a partner or family member of the victim, the offender is required to pay for and undergo counseling assessment; providing that a conviction for felony assault, if the offender is a partner or family member of the victim, is a prior conviction for purposes of partner or family member assault.

FISCAL IMPACT:

There is no fiscal impact to the state.

 2-15-97
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

 2/15/97
BARRY "SPOOK" STANG, PRIMARY SPONSOR DATE
Fiscal Note for SB0341, as introduced
SB 341

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Senate BILL NO. 341

INTRODUCED BY

Alene Bookout
Bradley M. Taylor *Barbara*

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE PENALTY FOR THE OFFENSE OF FELONY ASSAULT; PROVIDING THAT IF THE OFFENDER IS A PARTNER OR FAMILY MEMBER OF THE VICTIM, THE OFFENDER IS REQUIRED TO PAY FOR AND UNDERGO COUNSELING ASSESSMENT; PROVIDING THAT A CONVICTION FOR FELONY ASSAULT, IF THE OFFENDER IS A PARTNER OR FAMILY MEMBER OF THE VICTIM, IS A PRIOR CONVICTION FOR PURPOSES OF PARTNER OR FAMILY MEMBER ASSAULT; AND AMENDING SECTIONS 45-5-202 AND 45-5-206, MCA."

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

Section 1. Section 45-5-202, MCA, is amended to read:

"45-5-202. (Temporary) Aggravated assault -- felony assault. (1) A person commits the offense of aggravated assault if ~~he~~ the person purposely or knowingly causes serious bodily injury to another.

(2) A person commits the offense of felony assault if ~~he~~ the person purposely or knowingly causes:

- (a) bodily injury to another with a weapon;
- (b) reasonable apprehension of serious bodily injury in another by use of a weapon; or
- (c) bodily injury to a peace officer or a person who is responsible for the care or custody of a prisoner.

(3) (a) A person convicted of aggravated assault shall be imprisoned in the state prison for a term of not less than 2 years or more than 20 years and may be fined not more than \$50,000, except as provided in 46-18-222. A Subject to the provisions of subsection (3)(b), a person convicted of felony assault shall be imprisoned in the state prison for a term not to exceed 10 years or be fined not more than \$50,000, or both.

(b) In addition to any sentence imposed under subsection (3)(a), if the person convicted of felony assault is a partner or family member of the victim, as defined in 45-5-206, the person is required to pay for and complete a counseling assessment as required in 45-5-206(4).

45-5-202. (Effective July 1, 1997) Aggravated assault -- felony assault. (1) A person commits the offense of aggravated assault if the person purposely or knowingly causes serious bodily injury to another.

1 (2) A person commits the offense of felony assault if the person purposely or knowingly causes:
2 (a) bodily injury to another with a weapon;
3 (b) reasonable apprehension of serious bodily injury in another by use of a weapon; or
4 (c) bodily injury to a peace officer or a person who is responsible for the care or custody of a
5 prisoner.

6 (3) (a) A person convicted of aggravated assault shall be imprisoned in the state prison for a term
7 of not less than 2 years or more than 20 years and may be fined not more than \$50,000, except as
8 provided in 46-18-219 and 46-18-222. Subject to the provisions of subsection (3)(b), a person convicted
9 of felony assault shall be imprisoned in the state prison for a term not to exceed 10 years or be fined not
10 more than \$50,000, or both.

11 (b) In addition to any sentence imposed under subsection (3)(a), if the person convicted of felony
12 assault is a partner or family member of the victim, as defined in 45-5-206, the person is required to pay
13 for and complete a counseling assessment as required in 45-5-206(4)."
14

15 **Section 2.** Section 45-5-206, MCA, is amended to read:

16 **"45-5-206. Partner or family member assault -- penalty.** (1) A person commits the offense of
17 partner or family member assault if the person:

18 (a) purposely or knowingly causes bodily injury to a partner or family member;
19 (b) negligently causes bodily injury to a partner or family member with a weapon; or
20 (c) purposely or knowingly causes reasonable apprehension of bodily injury in a partner or family
21 member.

22 (2) For the purposes of Title 40, chapter 15, 46-6-311, and this section, the following definitions
23 apply:

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

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

1 sex.

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

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

16 (ii) A conviction for felony assault under 45-5-202, if the offender was a partner or family member
17 of the victim, constitutes a conviction for the purpose of calculating prior convictions under this section.

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

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

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

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

26 (b) The counseling provided in subsection (4)(a) must be directed to the violent conduct of the
27 offender. Other issues indicated by the assessment may be addressed in additional counseling beyond the
28 minimum 25 hours. Subsection (4)(a) does not prohibit the placement of the offender in other appropriate
29 treatment if the court determines that there is no available treatment program directed to the violent
30 conduct of the offender.

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

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

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

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

11

-END-

1 Senate BILL NO. 341

2 INTRODUCED BY Aling Bookout
3 Brandon M. Taylor Daniel

4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE PENALTY FOR THE OFFENSE OF FELONY
5 ASSAULT; PROVIDING THAT IF THE OFFENDER IS A PARTNER OR FAMILY MEMBER OF THE VICTIM, THE
6 OFFENDER IS REQUIRED TO PAY FOR AND UNDERGO COUNSELING ASSESSMENT; PROVIDING THAT
7 A CONVICTION FOR FELONY ASSAULT, IF THE OFFENDER IS A PARTNER OR FAMILY MEMBER OF THE
8 VICTIM, IS A PRIOR CONVICTION FOR PURPOSES OF PARTNER OR FAMILY MEMBER ASSAULT; AND
9 AMENDING SECTIONS 45-5-202 AND 45-5-206, MCA."

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

12
13 Section 1. Section 45-5-202, MCA, is amended to read:

14 "45-5-202. (Temporary) Aggravated assault -- felony assault. (1) A person commits the offense
15 of aggravated assault if ~~he~~ the person purposely or knowingly causes serious bodily injury to another.

16 (2) A person commits the offense of felony assault if ~~he~~ the person purposely or knowingly causes:

- 17 (a) bodily injury to another with a weapon;
- 18 (b) reasonable apprehension of serious bodily injury in another by use of a weapon; or
- 19 (c) bodily injury to a peace officer or a person who is responsible for the care or custody of a
20 prisoner.

21 (3) (a) A person convicted of aggravated assault shall be imprisoned in the state prison for a term
22 of not less than 2 years or more than 20 years and may be fined not more than \$50,000, except as
23 provided in 46-18-222. A Subject to the provisions of subsection (3)(b), a person convicted of felony
24 assault shall be imprisoned in the state prison for a term not to exceed 10 years or be fined not more than
25 \$50,000, or both.

26 (b) In addition to any sentence imposed under subsection (3)(a), if the person convicted of felony
27 assault is a partner or family member of the victim, as defined in 45-5-206, the person is required to pay
28 for and complete a counseling assessment as required in 45-5-206(4).

29 45-5-202. (Effective July 1, 1997) Aggravated assault -- felony assault. (1) A person commits the
30 offense of aggravated assault if the person purposely or knowingly causes serious bodily injury to another.



1 (2) A person commits the offense of felony assault if the person purposely or knowingly causes:
 2 (a) bodily injury to another with a weapon;
 3 (b) reasonable apprehension of serious bodily injury in another by use of a weapon; or
 4 (c) bodily injury to a peace officer or a person who is responsible for the care or custody of a
 5 prisoner.

6 (3) (a) A person convicted of aggravated assault shall be imprisoned in the state prison for a term
 7 of not less than 2 years or more than 20 years and may be fined not more than \$50,000, except as
 8 provided in 46-18-219 and 46-18-222. Subject to the provisions of subsection (3)(b), a person convicted
 9 of felony assault shall be imprisoned in the state prison for a term not to exceed 10 years or be fined not
 10 more than \$50,000, or both.

11 (b) In addition to any sentence imposed under subsection (3)(a), if the person convicted of felony
 12 assault is a partner or family member of the victim, as defined in 45-5-206, the person is required to pay
 13 for and complete a counseling assessment as required in 45-5-206(4)."
 14

15 **Section 2.** Section 45-5-206, MCA, is amended to read:

16 **"45-5-206. Partner or family member assault -- penalty.** (1) A person commits the offense of
 17 partner or family member assault if the person:

18 (a) purposely or knowingly causes bodily injury to a partner or family member;
 19 (b) negligently causes bodily injury to a partner or family member with a weapon; or
 20 (c) purposely or knowingly causes reasonable apprehension of bodily injury in a partner or family
 21 member.

22 (2) For the purposes of Title 40, chapter 15, 46-6-311, and this section, the following definitions
 23 apply:

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

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

1 sex.

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

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

16 (ii) A conviction for felony assault under 45-5-202, if the offender was a partner or family member
17 of the victim, constitutes a conviction for the purpose of calculating prior convictions under this section.

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

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

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

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

26 (b) The counseling provided in subsection (4)(a) must be directed to the violent conduct of the
27 offender. Other issues indicated by the assessment may be addressed in additional counseling beyond the
28 minimum 25 hours. Subsection (4)(a) does not prohibit the placement of the offender in other appropriate
29 treatment if the court determines that there is no available treatment program directed to the violent
30 conduct of the offender.

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

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

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

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

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Senate BILL NO. 341

INTRODUCED BY *Aleng Bookout*
Brandon M. Taylor *Barbara*

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE PENALTY FOR THE OFFENSE OF FELONY ASSAULT; PROVIDING THAT IF THE OFFENDER IS A PARTNER OR FAMILY MEMBER OF THE VICTIM, THE OFFENDER IS REQUIRED TO PAY FOR AND UNDERGO COUNSELING ASSESSMENT; PROVIDING THAT A CONVICTION FOR FELONY ASSAULT, IF THE OFFENDER IS A PARTNER OR FAMILY MEMBER OF THE VICTIM, IS A PRIOR CONVICTION FOR PURPOSES OF PARTNER OR FAMILY MEMBER ASSAULT; AND AMENDING SECTIONS 45-5-202 AND 45-5-206, MCA."

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

Section 1. Section 45-5-202, MCA, is amended to read:

"45-5-202. (Temporary) Aggravated assault -- felony assault. (1) A person commits the offense of aggravated assault if ~~he~~ the person purposely or knowingly causes serious bodily injury to another.

(2) A person commits the offense of felony assault if ~~he~~ the person purposely or knowingly causes:

- (a) bodily injury to another with a weapon;
- (b) reasonable apprehension of serious bodily injury in another by use of a weapon; or
- (c) bodily injury to a peace officer or a person who is responsible for the care or custody of a

prisoner.

(3) (a) A person convicted of aggravated assault shall be imprisoned in the state prison for a term of not less than 2 years or more than 20 years and may be fined not more than \$50,000, except as provided in 46-18-222. A Subject to the provisions of subsection (3)(b), a person convicted of felony assault shall be imprisoned in the state prison for a term not to exceed 10 years or be fined not more than \$50,000, or both.

(b) In addition to any sentence imposed under subsection (3)(a), if the person convicted of felony assault is a partner or family member of the victim, as defined in 45-5-206, the person is required to pay for and complete a counseling assessment as required in 45-5-206(4).

45-5-202. (Effective July 1, 1997) Aggravated assault -- felony assault. (1) A person commits the offense of aggravated assault if the person purposely or knowingly causes serious bodily injury to another.

1 (2) A person commits the offense of felony assault if the person purposely or knowingly causes:
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 3 (b) reasonable apprehension of serious bodily injury in another by use of a weapon; or
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 5 prisoner.

6 (3) (a) A person convicted of aggravated assault shall be imprisoned in the state prison for a term
 7 of not less than 2 years or more than 20 years and may be fined not more than \$50,000, except as
 8 provided in 46-18-219 and 46-18-222. A Subject to the provisions of subsection (3)(b), a person convicted
 9 of felony assault shall be imprisoned in the state prison for a term not to exceed 10 years or be fined not
 10 more than \$50,000, or both.

11 (b) In addition to any sentence imposed under subsection (3)(a), if the person convicted of felony
 12 assault is a partner or family member of the victim, as defined in 45-5-206, the person is required to pay
 13 for and complete a counseling assessment as required in 45-5-206(4)."
 14

15 **Section 2.** Section 45-5-206, MCA, is amended to read:

16 **"45-5-206. Partner or family member assault -- penalty.** (1) A person commits the offense of
 17 partner or family member assault if the person:

18 (a) purposely or knowingly causes bodily injury to a partner or family member;
 19 (b) negligently causes bodily injury to a partner or family member with a weapon; or
 20 (c) purposely or knowingly causes reasonable apprehension of bodily injury in a partner or family
 21 member.

22 (2) For the purposes of Title 40, chapter 15, 46-6-311, and this section, the following definitions
 23 apply:

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

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

1 sex.

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

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

16 (ii) A conviction for felony assault under 45-5-202, if the offender was a partner or family member
17 of the victim, constitutes a conviction for the purpose of calculating prior convictions under this section.

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

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

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

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

26 (b) The counseling provided in subsection (4)(a) must be directed to the violent conduct of the
27 offender. Other issues indicated by the assessment may be addressed in additional counseling beyond the
28 minimum 25 hours. Subsection (4)(a) does not prohibit the placement of the offender in other appropriate
29 treatment if the court determines that there is no available treatment program directed to the violent
30 conduct of the offender.

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

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

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

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

11

-END-

SENATE BILL NO. 341

INTRODUCED BY STANG, BOOKOUT-REINICKE, BROOKE, M. TAYLOR, BANKHEAD

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE PENALTY FOR THE OFFENSE OF FELONY ASSAULT; PROVIDING THAT IF THE OFFENDER IS A PARTNER OR FAMILY MEMBER OF THE VICTIM, THE OFFENDER IS REQUIRED TO PAY FOR AND UNDERGO COUNSELING ASSESSMENT; PROVIDING THAT A CONVICTION FOR FELONY ASSAULT, IF THE OFFENDER IS A PARTNER OR FAMILY MEMBER OF THE VICTIM, IS A PRIOR CONVICTION FOR PURPOSES OF PARTNER OR FAMILY MEMBER ASSAULT; AND AMENDING SECTIONS 45-5-202 AND 45-5-206, MCA."

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

Section 1. Section 45-5-202, MCA, is amended to read:

"45-5-202. (Temporary) Aggravated assault -- felony assault. (1) A person commits the offense of aggravated assault if ~~he~~ the person purposely or knowingly causes serious bodily injury to another.

(2) A person commits the offense of felony assault if ~~he~~ the person purposely or knowingly causes:

(a) bodily injury to another with a weapon;

(b) reasonable apprehension of serious bodily injury in another by use of a weapon; or

(c) bodily injury to a peace officer or a person who is responsible for the care or custody of a prisoner.

(3) (a) A person convicted of aggravated assault shall be imprisoned in the state prison for a term of not less than 2 years or more than 20 years and may be fined not more than \$50,000, except as provided in 46-18-222. ~~A~~ Subject to the provisions of subsection (3)(b), a person convicted of felony assault shall be imprisoned in the state prison for a term not to exceed 10 years or be fined not more than \$50,000, or both.

(b) In addition to any sentence imposed under subsection (3)(a), if the person convicted of felony assault is a partner or family member of the victim, as defined in 45-5-206, the person is required to pay for and complete a counseling assessment as required in 45-5-206(4).

45-5-202. (Effective July 1, 1997) Aggravated assault -- felony assault. (1) A person commits the offense of aggravated assault if the person purposely or knowingly causes serious bodily injury to another.

1 (2) A person commits the offense of felony assault if the person purposely or knowingly causes:
2 (a) bodily injury to another with a weapon;
3 (b) reasonable apprehension of serious bodily injury in another by use of a weapon; or
4 (c) bodily injury to a peace officer or a person who is responsible for the care or custody of a
5 prisoner.

6 (3) (a) A person convicted of aggravated assault shall be imprisoned in the state prison for a term
7 of not less than 2 years or more than 20 years and may be fined not more than \$50,000, except as
8 provided in 46-18-219 and 46-18-222. A Subject to the provisions of subsection (3)(b), a person convicted
9 of felony assault shall be imprisoned in the state prison for a term not to exceed 10 years or be fined not
10 more than \$50,000, or both.

11 (b) In addition to any sentence imposed under subsection (3)(a), if the person convicted of felony
12 assault is a partner or family member of the victim, as defined in 45-5-206, the person is required to pay
13 for and complete a counseling assessment as required in 45-5-206(4)."
14

15 **Section 2.** Section 45-5-206, MCA, is amended to read:

16 **"45-5-206. Partner or family member assault -- penalty.** (1) A person commits the offense of
17 partner or family member assault if the person:

18 (a) purposely or knowingly causes bodily injury to a partner or family member;
19 (b) negligently causes bodily injury to a partner or family member with a weapon; or
20 (c) purposely or knowingly causes reasonable apprehension of bodily injury in a partner or family
21 member.

22 (2) For the purposes of Title 40, chapter 15, 46-6-311, and this section, the following definitions
23 apply:

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

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

1 sex.

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

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

16 (ii) A conviction for felony assault under 45-5-202, if the offender was a partner or family member
17 of the victim, constitutes a conviction for the purpose of calculating prior convictions under this section.

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

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

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

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

26 (b) The counseling provided in subsection (4)(a) must be directed to the violent conduct of the
27 offender. Other issues indicated by the assessment may be addressed in additional counseling beyond the
28 minimum 25 hours. Subsection (4)(a) does not prohibit the placement of the offender in other appropriate
29 treatment if the court determines that there is no available treatment program directed to the violent
30 conduct of the offender.

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

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

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

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

11

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