

## Definitions

**45-5-231. Definitions.** As used in **45-5-231** through **45-5-234**, unless the context requires otherwise, the following definitions apply:

(1) "Assault on a partner or family member" has the meaning provided in **45-5-206** for partner or family member assault.

(2) "Chemical dependency treatment" means required counseling and treatment related to chemical dependency issues.

(3) "Counseling" means professional counseling as defined in **37-23-102** and includes group counseling for the purposes of **45-5-231** through **45-5-234**.

(4) "Investigative criminal justice report" means the investigative report prepared by a law enforcement agency associated with an offender's arrest for an assault on a partner or family member, excluding any confidential information relating to the victim's location and confidential information not related to the offense.

(5) "Offender" means a person convicted of an assault on a partner or family member.

(6) "Offender intervention program" means the combination of counseling and other services that is organized in a judicial district to provide a preliminary assessment for counseling and other services that are required for an offender.

(7) "Preliminary assessment for counseling" means the counseling assessment completed by a counselor to determine an offender's need for counseling, attendance at psychoeducational groups, and referrals for other treatment. This assessment must be completed either before or within 4 weeks after counseling and psychoeducational groups are started.

(8) "Psychoeducational group" means a group discussion, with instructional content themes, that encourages sharing and feedback, increases self-awareness, and is aimed at facilitating change in group members' daily lives.

(9) "Recreational intoxicant" means a substance, drug, or other chemical that was taken for the purpose of causing a person to be in a different emotional or psychological state and was not taken for a medically recognized therapeutic purpose.

(10) "Victim" means a person against whom the offender committed an assault.

## Partner Or Family Member Assault -- Penalty

**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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### Basis For Arrest Without Warrant -- Arrest Of Predominant Aggressor -- No Contact Order

**46-6-311. Basis for arrest without warrant -- arrest of predominant aggressor -- no contact order.** (1) A peace officer may arrest a person when a warrant has not been issued if the officer has probable cause to believe that the person is committing an offense or that the person has committed an offense and existing circumstances require immediate arrest.

(2) (a) The summoning of a peace officer to a place of residence by a partner or family member constitutes an exigent circumstance for making an arrest. Arrest is the preferred response in partner or family member assault cases involving injury to the victim, use or threatened use of a weapon, violation of a restraining order, or other imminent danger to the victim.

(b) When a peace officer responds to a partner or family member assault complaint and if it appears that the parties were involved in mutual aggression, the officer shall evaluate the situation to determine who is the predominant aggressor. If, based on the officer's evaluation, the officer determines that one person is the predominant aggressor, the officer may arrest only the predominant aggressor. A determination of who the predominant aggressor is must be based on but is not limited to the following considerations, regardless of who was the first aggressor:

- (i) the prior history of violence between the partners or family members, if information about the prior history is available to the officer;
- (ii) the relative severity of injuries received by each person;
- (iii) whether an act of or threat of violence was taken in self-defense;
- (iv) the relative sizes and apparent strength of each person;
- (v) the apparent fear or lack of fear between the partners or family members; and
- (vi) statements made by witnesses.

(3) If a judge has issued a standing order as provided in **45-5-209**, a peace officer shall give a defendant charged with or arrested for partner or family member assault or a violation of **45-5-202**, **45-5-213**, or **45-5-215** if

the victim is a partner or family member of the defendant, both written and verbal notice of the no contact order issued pursuant to **45-5-209**. The notice must include specific conditions as ordered by the court.

#### Partner Or Family Member Assault -- Seizure Of Weapon

**46-6-603. Partner or family member assault -- seizure of weapon.** (1) A peace officer who responds to a call relating to partner or family member assault shall seize the weapon used or threatened to be used in the alleged assault.

(2) The responding officer may, as appropriate:

(a) take reasonable action necessary to provide for the safety of a victim and any other member of the household;

(b) transport or arrange for the transportation of the victim and any other member of the household to a safe location; and

(c) assist a victim and any other member of the household to remove necessary personal items.

(3) A weapon seized under this section may not be returned to the offender until acquittal or until the return is ordered by the court.

#### Notice Of Rights To Victim In Partner Or Family Member Assault

**46-6-602. Notice of rights to victim in partner or family member assault.** Whenever a peace officer arrests a person for partner or family member assault, as defined in **45-5-206**, or responds to a call in which partner or family member assault is suspected, the officer, outside the presence of the offender, shall advise the victim of the availability of a shelter or other services in the community and give the victim immediate notice of any legal rights and remedies available. The notice must include furnishing the victim with a copy of the following statement:

"The city or county attorney's office can file criminal charges against an offender if the offender committed the offense of partner or family member assault.

In addition to the criminal charges filed by the state of Montana, you are entitled to the following civil remedies:

You may go to court and file a petition requesting any of the following orders for relief:

(1) an order of protection that prohibits the offender from threatening to hurt you or hurting you;

(2) an order of protection that directs the offender to leave your home and prohibits the offender from having any contact with you;

(3) an order of protection that prevents the offender from transferring any property except in the usual course of business;

(4) an order of protection that prohibits the offender from being within 1,500 feet or other appropriate distance of you, any named family member, and your worksite or other specified place;

(5) an order of protection that gives you possession of necessary personal property;

(6) an order of protection that prohibits the offender from possessing or using the firearm used in the assault.

If you file a petition in district court, the district court may order all of the above and may award custody of your minor children to you or to the other parent. The district court may order visitation of your children between the parents. The district court may order the offender to pay support payments to you if the offender has a legal obligation to pay you support payments.

The forms that you need to obtain an order of protection are at \_\_\_\_\_. You may call \_\_\_\_\_ at \_\_\_\_\_ for additional information about an order of protection.

You may file a petition in district court at \_\_\_\_\_.

You may be eligible for restitution payments from the offender (the offender would repay you for costs that you have had to pay as a result of the assault) or for crime victims compensation payments (a fund administered by the state of Montana for innocent victims of crime). You may call \_\_\_\_\_ at \_\_\_\_\_ for additional information about restitution or crime victims compensation.

If a person has been found guilty of partner or family member assault against you or a partner or family member, as defined in **45-5-206**, or has been found guilty of stalking or another offense involving bodily harm or the threat of bodily harm against you or a partner or family member, you may choose to keep your residential address off the list of registered voters by contacting the county election administrator at \_\_\_\_\_.

The following agencies may be able to give you additional information or emergency help. (List telephone numbers and addresses of agencies other than shelters with secret locations and a brief summary of services that are available.)"

### Advocate Privilege

**26-1-812. Advocate privilege.** (1) Unless a report is otherwise required by law, an advocate may not, without consent of the victim, be examined as to any communication made to the advocate by a victim and may not divulge records kept during the course of providing shelter, counseling, or crisis intervention services.

(2) This privilege belongs to the victim and may not be waived, except by express consent. The privilege continues even if the victim is unreachable. Consent may not be implied because the victim is a party to a divorce or custody proceeding. The privilege terminates upon the death of the victim.

(3) For purposes of this section, the following definitions apply:

(a) "Advocate" means an employee or volunteer of a domestic violence shelter, crisis line, or victim's services provider that provides services for victims of sexual assault, stalking, or any assault on a partner or family member.

(b) "Victim" means a person seeking assistance because of partner or family member assault, any sexual assault, or stalking, whether or not the victim seeks or receives services within the criminal justice system.