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60th Montana Legislature

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TO: State-Tribal Relations Committee Members
FROM: Jeremy Gersovitz, Staff Attorney
RE: State District Court Penalties for Felony Partner or Family Member Assault
Compared to Tribal Court Penalties
DATE: July 29, 2008

Overview of state court sentences for the offense of Partner or Family Member Assault

In non-tribal courts, Montana's criminal code applies to Partner or Family Member Assault offenses. A third conviction or plea of guilty to the crime of Partner or Family Member Assault (PFMA) constitutes a felony. A defendant's prior conviction for the crime of assault with a weapon can also be counted if the victim of that offense was a partner or a family member.

The penalty provided under Section 45-5-206, MCA, for a felony PFMA is:

- A mandatory minimum of 30 days in the county jail with a maximum term of incarceration of five years at Montana State Prison.
- A fine of up to \$50,000 but not less than a mandatory \$500 is also required. In fashioning a sentence, the judge can take into account whether the offense was committed within the sight or hearing of a minor.

Other requirements:

- The defendant has to obtain, pay for and then follow the recommendations of an evaluation focused on violence, controlling behavior, dangerousness and chemical dependency. The counseling must last for a minimum of 40 hours.
- Restitution to the victim is also provided for depending upon the offender's financial resources and future ability to pay.
- The offender, if financially able, may be charged the costs associated with probation.
- While a state judge may prohibit the offender from possessing the firearm used in the crime, under federal law the offender will be prohibited from possessing firearms.
- Depending upon the offender's immigration status, they may face deportation proceedings.

It should be noted that a first offense PFMA (which is a misdemeanor) carries a mandatory 24 hours and up to one year in jail and a fine of not less than \$100 or more than \$1,000. A second offense PFMA (also a misdemeanor) carries a mandatory 72 hours and up to one year in jail and a fine of not less than \$300 or more than \$1,000. In either case, the offender would be required to complete the same conditions as for a felony PFMA, with the exception that supervision is optional and is obviously misdemeanor probation and not felony probation.

Selected Tribal Court Penalties for Partner or Family Member Assault:

- The Blackfeet Tribal Law and Order Code provides, for a first or second offense PFMA, a minimum of 10 days and a maximum of 180 days in jail and a fine of up to \$500. Additionally, the Judge may require the defendant receive counseling. For a third or subsequent offense, the code allows the Judge to sentence an offender for up to 365 days in jail and/or a fine of up to \$2,000. The Judge is required to impose a counseling requirement for a period of up to 365 days unless the offender is released earlier by the treating therapist.
- The Confederated Salish & Kootenai Tribes Laws Codified classifies a first offense PFMA as a Class D offense over which the Tribes have exclusive jurisdiction. A second offense PFMA is classified as a Class D offense over which the Tribes have exclusive jurisdiction. Class D offenses carry a penalty of up to 180 days in jail and/or a fine of up to \$500. A third or subsequent offense PFMA is classified as a Class E offense over which the Tribes have concurrent jurisdiction with the State of Montana. Class E offenses carry a penalty of up to 365 days in jail and/or a fine of up to \$5,000. PFMA offenders can receive deferred sentences and, for example, in the case of Class E offenses, those can run for up to 3 years. Similarly, Class E offenders can receive a suspended sentence for up to 3 years. On either a deferred or a suspended sentence, an offender would be placed on supervision with reasonable restrictions and conditions. Those would include community service; any diagnostic, therapeutic, or rehabilitative measures, treatments, or services deemed appropriate; restitution to the victim; prohibition on owning or carrying a dangerous weapon; restrictions on freedom of movement; restrictions on freedom of association; requiring employment; and any requirement or limitation intended to improve the mental or physical health or marketable skills of the offender. Home arrest at the offender's expense is allowed for. The Court also has discretion to impose traditional punishments.
- The Fort Peck Tribes Comprehensive Code of Justice includes a "severe physical domestic abuse" crime which is denominated a felony. No fine is provided for. There is, however, a mandatory minimum of four months in jail. If an offender receives a jail sentence of less than a year, then the offender is also placed on probation for a period to be determined by the sentencing judge. Committing the offense while minor children are in the home or where the victim is pregnant, carries a maximum mandatory jail term of one year. For an offender without any prior domestic abuse convictions, the code recommends the sentencing judge order mandatory counseling in any of the following: anger management; drug and/or alcohol treatment; meeting with a career and academic advisor to evaluate what the offender can do to enhance and market life and work skills; meeting with a financial advisor regarding budgeting, spending and planning; attending witnessing meetings with the Council of Tribal Elders; enrollment in wilderness survival skills and/or an outdoor work program; and out-of-court meetings with a Council of Elders, the victim and family for purposes of compensation, reconciliation and apology. "Domestic abuse" is listed as a Class A misdemeanor. No fine can be levied. Any jail sentence of less than three months has to be accompanied by a temporary restraining

order (TRO) that lasts for the balance of the three months. The sentencing judge can impose any of the conditions provided for with a severe physical domestic abuse conviction.

The reality of State District Court Penalties for Felony Partner or Family Member Assault:

- Due to a statutory presumption, many first time felony offenders in state district courts will receive a deferred sentence (Section 46-18-201, MCA) or a deferred prosecution (Section 46-16-130, MCA). This means that at the end of the period of deferment, possibly as little as two years, if they have complied with the terms of the sentence they can come back to court and ask their plea of guilty be withdrawn, the matter be dismissed and their criminal record be sealed.

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