

1 years. If such act be done unlawfully, but not maliciously, with
2 the intent aforesaid, the offender ~~shall be~~ is guilty of a felony
3 and, upon conviction, shall, ~~in the discretion of the court,~~ either
4 be ~~confined imprisoned in the penitentiary~~ a state correctional
5 facility not less than one nor more than five years, or be confined
6 in jail not exceeding twelve months and fined not exceeding \$500.

7 (b) *Assault.* -- ~~If~~ Any person who unlawfully attempts to
8 ~~commit a violent injury~~ use physical force capable of causing
9 physical pain or injury to the person of another or unlawfully
10 commits an act ~~which~~ that places another in reasonable apprehension
11 of immediately ~~receiving a violent~~ suffering physical pain or
12 injury, he or she ~~shall be~~ is guilty of a misdemeanor and, upon
13 conviction, shall be confined in jail for not more than six months,
14 or fined not more than \$100, or both ~~such fine and imprisonment~~
15 fined and confined.

16 (c) *Battery.* -- ~~If~~ Any person who unlawfully and intentionally
17 makes physical contact ~~of an insulting or provoking nature~~ with
18 force capable of causing physical pain or injury to the person of
19 another or unlawfully and intentionally causes physical ~~harm~~ pain
20 or injury to another person, he or she ~~shall be~~ is guilty of a
21 misdemeanor and, upon conviction, shall be confined in jail for not
22 more than twelve months, or fined not more than \$500, or both ~~such~~
23 ~~fine and imprisonment~~ fined and confined.

24 (d) Any person convicted of a violation of subsection (b) or

1 (c) of this section who has, in the ten years prior to said
2 conviction, been convicted of a violation of either subsection (b)
3 or (c) of this section where the victim was a current or former
4 spouse, current or former sexual or intimate partner, a person with
5 whom the defendant has a child in common, a person with whom the
6 defendant cohabits or has cohabited, a parent or guardian, the
7 defendant's child or ward or a member of the defendant's household
8 at the time of the offense or convicted of a violation of section
9 twenty-eight of this article or has served a period of pretrial
10 diversion for an alleged violation of subsection (b) or (c) of this
11 section or section twenty-eight of this article when the victim has
12 such present or past relationship shall upon conviction be subject
13 to the penalties set forth in section twenty-eight of this article
14 for a second, third or subsequent criminal act of domestic violence
15 offense, as appropriate.

16 **§61-2-28. Domestic violence -- Criminal acts.**

17 (a) *Domestic battery.* -- Any person who unlawfully and
18 intentionally makes physical contact ~~of an insulting or provoking~~
19 ~~nature with~~ force capable of causing physical pain or injury to his
20 or her family or household member or unlawfully and intentionally
21 causes physical harm to his or her family or household member, is
22 guilty of a misdemeanor and, upon conviction thereof, shall be
23 confined in ~~a county or regional~~ jail for not more than twelve
24 months, or fined not more than \$500, or both fined and confined.

1 (b) *Domestic assault.* -- Any person who unlawfully attempts to
2 ~~commit a violent~~ use force capable of causing physical pain or
3 injury against his or her family or household member or unlawfully
4 commits an act ~~which~~ that places his or her family or household
5 member in reasonable apprehension of immediately ~~receiving a~~
6 ~~violent~~ suffering physical pain or injury, is guilty of a
7 misdemeanor and, upon conviction thereof, shall be confined in a
8 ~~county or regional~~ jail for not more than six months, or fined not
9 more than \$100, or both fined and confined.

10 (c) *Second offense.* -- Domestic assault or domestic battery.

11 A person convicted of a violation of subsection (a) of this
12 section after having been previously convicted of a violation of
13 subsection (a) or (b) of this section, after having been convicted
14 of a violation of subsection (b) or (c), section nine of this
15 article or subsection (a), section fourteen-g of this article where
16 the victim was his or her current or former spouse, current or
17 former sexual or intimate partner, person with whom the defendant
18 has a child in common, person with whom the defendant cohabits or
19 has cohabited, a parent or guardian, the defendant's child or ward
20 or a member of the defendant's household at the time of the offense
21 or who has previously been granted a period of pretrial diversion
22 pursuant to section twenty-two, article eleven of this chapter for
23 a violation of subsection (a) or (b) of this section, or a
24 violation of subsection (b) or (c), section nine of this article or

1 subsection (a), section fourteen-g of this article where the victim
2 was a current or former spouse, current or former sexual or
3 intimate partner, person with whom the defendant has a child in
4 common, person with whom the defendant cohabits or has cohabited,
5 a parent or guardian, the defendant's child or ward or a member of
6 the defendant's household at the time of the offense is guilty of
7 a misdemeanor and, upon conviction thereof, shall be confined in a
8 ~~county or regional~~ jail for not less than sixty days nor more than
9 one year, or fined not more than \$1,000, or both fined and
10 confined.

11 A person convicted of a violation of subsection (b) of this
12 section after having been previously convicted of a violation of
13 subsection (a) or (b) of this section, after having been convicted
14 of a violation of subsection (b) or (c), section nine of this
15 article or subsection (a), section fourteen-g of this article where
16 the victim was a current or former spouse, current or former sexual
17 or intimate partner, person with whom the defendant has a child in
18 common, person with whom the defendant cohabits or has cohabited,
19 a parent or guardian, the defendant's child or ward or a member of
20 the defendant's household at the time of the offense or having
21 previously been granted a period of pretrial diversion pursuant to
22 section twenty-two, article eleven of this chapter for a violation
23 of subsection (a) or (b) of this section or subsection (b) or (c),
24 section nine of this article or subsection (a), section fourteen-g

1 of this article where the victim was a current or former spouse,
2 current or former sexual or intimate partner, person with whom the
3 defendant has a child in common, person with whom the defendant
4 cohabits or has cohabited, a parent or guardian, the defendant's
5 child or ward or a member of the defendant's household at the time
6 of the offense shall be confined in ~~a county or regional~~ jail for
7 not less than thirty days nor more than six months, or fined not
8 more than \$500, or both fined and confined.

9 (d) Any person who has been convicted of a third or subsequent
10 violation of the provisions of subsection (a) or (b) of this
11 section, a third or subsequent violation of the provisions of
12 section nine of this article or subsection (a), section fourteen-g
13 of this article where the victim was a current or former spouse,
14 current or former sexual or intimate partner, person with whom the
15 defendant has a child in common, person with whom the defendant
16 cohabits or has cohabited, a parent or guardian, the defendant's
17 child or ward or a member of the defendant's household at the time
18 of the offense or who has previously been granted a period of
19 pretrial diversion pursuant to section twenty-two, article eleven
20 of this chapter for a violation of subsection (a) or (b) of this
21 section or a violation of the provisions of section nine of this
22 article or subsection (a), section fourteen-g of this article in
23 which the victim was a current or former spouse, current or former
24 sexual or intimate partner, person with whom the defendant has a

1 child in common, person with whom the defendant cohabits or has
2 cohabited, a parent or guardian, the defendant's child or ward or
3 a member of the defendant's household at the time of the offense,
4 or any combination of convictions or diversions for these offenses,
5 is guilty of a felony if the offense occurs within ten years of a
6 prior conviction of any of these offenses and, upon conviction
7 thereof, shall be confined in a state correctional facility not
8 less than one nor more than five years or fined not more than
9 \$2,500, or both fined and confined.

10 (e) As used in this section, "family or household member"
11 means "family or household member" as defined in §48-27-204 of this
12 code.

13 (f) A person charged with a violation of this section may not
14 also be charged with a violation of subsection (b) or (c), section
15 nine of this article for the same act.

16 (g) No law-enforcement officer may be subject to any civil or
17 criminal action for false arrest or unlawful detention for
18 effecting an arrest pursuant to this section or pursuant to §48-27-
19 1002 of this code.

NOTE: The purpose of this bill is to modify the definition of
"battery" and "domestic battery" to conform with federal laws as a
result of *U. S. v. White*, 606 F. 3d 144.

Strike-throughs indicate language that would be stricken from

the present law, and underscoring indicates new language that would be added.