

1-1-1974

## Criminal Assault in Montana: A New Face for an Old Code

Bruce A. MacKenzie

Follow this and additional works at: <https://scholarworks.umt.edu/mlr>



Part of the [Law Commons](#)

Let us know how access to this document benefits you.

---

### Recommended Citation

Bruce A. MacKenzie, *Criminal Assault in Montana: A New Face for an Old Code*, 35 Mont. L. Rev. (1974).  
Available at: <https://scholarworks.umt.edu/mlr/vol35/iss1/15>

This Note is brought to you for free and open access by ScholarWorks at University of Montana. It has been accepted for inclusion in Montana Law Review by an authorized editor of ScholarWorks at University of Montana. For more information, please contact [scholarworks@mso.umt.edu](mailto:scholarworks@mso.umt.edu).

## **CRIMINAL ASSAULT IN MONTANA: A NEW FACE FOR AN OLD CODE**

**Bruce A. MacKenzie**

### *INTRODUCTION*

For years, Montana's assault statute<sup>1</sup> with its complex and varying interpretations, plagued members of the state's bench and bar. Whenever confronted by this criminal section, those working in the legal profession resembled the six blind men who stumbled upon an elephant. Every man having a different perception of the beast's composition according to the section of the animal he touched. The blind men varied in perspectives from a wall to a rope. Montana's legal minds envisioned anything from a twenty-year felony to a misdemeanor. With the passage of the 1973 Criminal Code, however, Montana has simpli-

<sup>1</sup>REVISED CODES OF MONTANA §§ 94-601—94-604 (1947) (repealed by Laws of Montana (1973), Ch. 513, § 32) [hereinafter cited as R.C.M. 1947]. These sections read as follows:

94-601. (10976) Assault in the first degree defined—penalty. Every person who, with intent to kill a human being, or to commit a felony upon the person or property of the one assaulted or of another:

1. Assaults another with a loaded firearm, or any other deadly weapon, or by any other means or force likely to produce death; or

2. Administers or causes to be administered to, or taken by another, poison, or any other destructive or noxious thing, so as to endanger the life of such other. is guilty of assault in the first degree, and is punishable by imprisonment in the state prison not less than five nor more than twenty years.

94-602. (10977) Assault in second degree. Every person who, under circumstances not amounting to the offense specified in the last section:

(1) With intent to injure unlawfully, administers to, or causes to be administered to, or taken by another, poison, or any other destructive or noxious thing, or any drug or medicine, the use of which is dangerous to life or health; or,

(2) With intent thereby to enable or assist himself, or any other person, to commit any crime, administers to, or causes to be administered to, or taken, by another, chloroform, ether, laudanum, or any other intoxicating narcotic, or anesthetic agent; or,

(3) Willfully or wrongfully wounds or inflicts grievous bodily harm upon another, either with or without a weapon; or

(4) Willfully and wrongfully assaults another by the use of a weapon, or other instrument or thing likely to produce grievous bodily harm; or,

(5) Assaults another with intent to commit a felony, or to prevent or resist the execution of any lawful process or mandate of any court or officer, or the lawful apprehension or detention of himself, or of any other person, is guilty of an assault in the second degree, and is punishable by imprisonment in the state prison for not less than one nor more than six years, or by a fine not exceeding two thousand dollars, or both.

94-603. (10978) Assault in third degree. Every person who commits an assault or an assault and battery, not such as is specified in the foregoing sections of this chapter, is guilty of assault in the third degree, and is punishable by imprisonment in the county jail not more than six months, or by a fine not more than five hundred dollars, or both.

94-604. (10979) Assaults with caustic chemicals, etc. Every person who willfully and maliciously places or throws, or causes to be placed or thrown upon the person of another, any vitriol, corrosive acid, or caustic chemical of any nature, with the intent to injure the flesh or disfigure the body of such person, is punishable by imprisonment in the state prison not less than one nor more than fourteen years.

fied the nature of the beast and hopefully has removed the complicating vestiges of the old law.<sup>2</sup>

The purpose of this note is simply to compare the old with the new, concentrating upon (1) how the new law attempts to alleviate some of the problems found in the prior law, and (2) the direction the new law is intended to take.

### THE OLD CODE

#### A. HISTORICAL PERSPECTIVE

Under the common law, the crimes of battery and assault originated from the action of trespass. These crimes, extensive in scope and application, were designed to protect the individual from every bodily harm or fear short of death.<sup>3</sup> Despite this broad scope, there was a clear distinction between the two crimes. Assault covered any "attempt or offer with force or violence to do a corporal hurt to another," while a battery involved unlawfully inflicting bodily harm upon another's person.<sup>4</sup>

Using these common law definitions, the differentiation between assault and battery was carried over into the Territorial Laws of Montana.<sup>5</sup> Battery, or as it was termed, assault and battery, required some sort of physical contact whereas assault did not. Although Montana's first code commission intended to codify the common law, the distinction became blurred with the passage of the 1895 Penal Code.<sup>6</sup> In this code, as in all its successors, Montana failed to provide a clear statutory definition of either assault or battery. Instead, the offenses were divided into three degrees: the first and second degrees<sup>7</sup> containing descriptions of conduct considered to be criminal, with the third<sup>8</sup> acting as a catchall for those acts of a battery or assault nature not previously described. Under this scheme, the word "assault" came to connote both battery and assault type crimes because (1) the code sections which dealt with both types of crimes were simply entitled "assault," and (2) there were no definitions of the crimes within the statute.

Nearly eight decades after the passage of the 1895 Code the assault statute remained unchanged. Its sections continued to include the same legal words of art—encrusted through the years by court interpretations—and to suffer from the same lack of definition the statute had at its inception. The tenacity with which this criminal section resisted change

<sup>1</sup>Laws of Montana (1973), Ch. 513, § 1 (MONTANA CRIMINAL CODE OF 1973, R.C.M. 1947, §§ 94-5-201, 94-5-202, effective Jan. 1, 1974) [hereinafter cited as M.C.C. 1973].

<sup>2</sup>State v. Maier, 13 N.J. 235, 99 A.2d 21 (1953).

<sup>3</sup>2 BURDICK, THE LAW OF CRIMES, §§ 338, 350 (1946).

<sup>4</sup>Laws of Montana (1864), Ch. 4 §§ 45-47.

<sup>5</sup>MONTANA CODE ANNOTATED, Ch. 5 §§ 400-403 (1895).

<sup>6</sup>R.C.M. 1947, §§ 94-601, 94-602.

<sup>7</sup>R.C.M. 1947, § 94-603. R.C.M. 1947, § 94-604, assault with caustic chemicals, was not considered a degree of assault, and was treated as a separate offense.

was a testimonial to tradition—a tradition that only provided problems to be alleviated.

## B. PROBLEMS

### (1) *The dual character of assault*

The duplicity of the word "assault" lent considerable confusion to the law. Whenever confronted by the word in one of the code sections, one was never certain which of the conceptually different crimes he was dealing with—assault or battery. In attempting to deal with this problem, the courts, by rendering definitions of their own, struggled to reinstate the distinction that was provided at the common law.<sup>9</sup> But the dilemma was perpetuated by the statute; for on its face it was never clear whether the word "assault" was to be given its common law meaning or whether it was to contain the battery and assault type crimes which appeared under its heading.

R.C.M. 1947, § 94-601(1) provides some indication of the impasse created by this dual role of "assault." This section reads:

Every person who, with the intent to kill a human being, or to commit a felony upon the person or property of another:

1. Assaults another with a loaded firearm, or any other deadly weapon, or by any other means likely to produce death; . . .

If this provision were to be read strictly within the common law definition of "assault," then it became apparent that there was no provision within the first degree assault section covering conduct in which serious bodily injury had been inflicted by means of a weapon. This latter type of conduct was covered only in R.C.M. 1947, § 94-602(3) of second degree assault. Therefore, the use of the common law definition for "assault" left a gap in the first degree section—a gap which could be filled only by defining the word "assault" as containing both battery and assault.

### (2) *The lack of clarity and definition*

The lack of legislative conciseness placed upon the courts the responsibility of providing the old code with the definitions and clarity it was wanting. "Deadly weapon," "grievous bodily harm," "crime," and other words and phrases constituting key factors in determining under which section of the old assault statute a crime was to be prosecuted, were never given meaning within Montana's statutory language. Therefore, definitions developed, if at all, on a case by case basis.

The word "crime" appears in R.C.M. 1947, § 94-602(2). This section dealt with a battery type crime in which the perpetrator administered some variety of "intoxicating narcotic or anesthetic agent" to "enable

or assist himself . . . to commit any crime." By comparison, the provision contained in R.C.M. 1947, § 94-601(2) covers any person administering poison or any other "noxious thing" in order to aid in committing a felony. The distinction between the two is at best hazy; for it is at least arguable that "noxious thing" and "intoxicating narcotic or anesthetic agent" could be construed as being identical, depending upon which definition of "noxious" one chooses.<sup>10</sup> The distinction is further blurred by the word "crime" which, in its general sense, includes both misdemeanors and felonies.<sup>11</sup> Therefore, due to imprecise phraseology it was possible, under these sections, for the same act to be tried successfully under either section.<sup>12</sup>

"Deadly weapon" is another phrase which lent confusion to the prior statute. There is case law which states a "deadly weapon" could be an "unloaded rifle"<sup>13</sup> or "an instrument a foot long with a knob on its striking end."<sup>14</sup> No case, however, ever gave a clear definition of the phrase and therefore it has developed slowly and painfully case by case.

The expression "grievous bodily harm," although without statutory definition, was defined in the case of *State v. Laughlin*.<sup>15</sup> In *Laughlin*, the victim suffered numerous bruises, a broken nose, a fractured jaw, and a slight concussion after being severely beaten about the face and head. The court defined "grievous bodily harm" as:

. . . any injury calculated to interfere with the health or comfort of the person injured and the word 'grievous' means atrocious, aggravated, harmful, painful, hard to bear, and serious in nature.<sup>16</sup>

This definition was an aid in interpreting a phrase which had been without a clear meaning. The court in *Laughlin*, however, proceeded to confuse the matter by stating:

A mere trespass upon the person of another or a simple beating would clearly be a crime under third degree assault.<sup>17</sup>

The problem thus becomes what is a "simple beating," and exactly where is the distinction to be made between injuries received from a "simple

<sup>10</sup>"Noxious . . . 1. harmful or destructive to man or other organisms . . . 2. having or regarded as capable of having a harmful influence on thought or behavior . . . 3. distasteful, obnoxious . . ." WEBSTER'S THIRD INTERNATIONAL DICTIONARY 2275 (14th ed. unabridged 1963).

<sup>11</sup>BLACK'S LAW DICTIONARY 445 (Rev. 4th ed. 1968).

<sup>12</sup>There are, perhaps fortunately, no recorded prosecutions under these sections.

<sup>13</sup>*State v. Herron*, 12 Mont. 230, 29 P. 819, 821 (1892). In *State v. Simon*, 126 Mont. 218, 247 P.2d 481, 484 (1952), a loaded gun was held to be a deadly weapon per se.

<sup>14</sup>*State v. Maggert*, 64 Mont. 331, 209 P. 989, 990 (1922). The court in *Maggert* stated that "the phrase deadly weapon has a well recognized meaning," citing *People v. Parales*, 141 Cal. 531, 75 P. 170, 171 (1904). However, *Parales* exercises some interesting linguistic gymnastics in declaring a heavy wooden stick a non-"deadly weapon."

<sup>15</sup>*State v. Laughlin*, 105 Mont. 490, 73 P.2d 718 (1967).

<sup>16</sup>*Id.* at 720.

<sup>17</sup>*Id.* at 721.

beating" and one which was aggravated. Both are, at least to the victim, "harmful, painful, hard to bear, and serious in nature."<sup>18</sup>

(3) *Subjective intent*

The old assault statute's lack of clarity also had the effect of requiring a subjective rather than objective standard of proof for intent. This result was primarily due to statutory language describing specific intents as requisite elements of some of the old code's assault sections. Phrases such as "intent to kill, intent to commit a felony,"<sup>19</sup> or "intent to injure,"<sup>20</sup> placed an added burden upon the prosecution to prove not only the intent to commit a battery or assault, but also that the act was done with a specific purpose in mind. In order to prove these specific intents, the state was required to enter evidence of the defendant's actual mental state at the time of the crime's commission:

There must be in the mind of the perpetrator the specific intent to commit a felony and unless such an intent exists the crime is not committed.<sup>21</sup>

This requirement of proving the actual subjective thoughts of the perpetrator made any assault charge, which included a specific intent as an element, extremely difficult to prosecute. Despite this, the courts continued to demand that the subjective state of mind be proven. Possibly one of the most distressing of these decisions, which entailed the use of the subjective standard of proof for intent, was *State v. Quinlan*.<sup>22</sup>

In *Quinlan*, the defendant had pointed a loaded revolver at the head of a cabbie and commanded that he be taken to Kellogg or the driver would be shot. The threat was not carried out. Quinlan stood trial and was convicted of assault in the first degree. On appeal, the conviction was reversed, the opinion stating that it was error for the district court to have refused to allow a third degree instruction to the jury. The majority went on to say:

. . . before a case could be made against [a] defendant accounting to a first or second degree assault, the prosecution had to prove, by satisfactory evidence, that at the time [the] defendant assaulted Woods by pointing a pistol at him, [the] defendant intended to commit a felony upon Woods.<sup>23</sup>

As if this were not enough, the dilemma of having to prove specific

<sup>18</sup>For more confusion see *State v. Tracey*, 35 Mont. 552, 90 P. 791 (1907), in which the defendant was convicted of only third degree assault after throwing the victim from a moving automobile.

<sup>19</sup>R.C.M. 1947, § 94-601.

<sup>20</sup>R.C.M. 1947, § 94-602(1). R.C.M. 1947, § 94-604 states that the assault must be committed with "an intent to injure or disfigure the flesh . . ." by the use of caustic chemicals.

<sup>21</sup>*State v. Bentley*, 155 Mont. 383, 472 P.2d 864, 877 (1970).

<sup>22</sup>*State v. Quinlan*, 126 Mont. 52, 244 P.2d 1058. See also *State v. District Court*, 35 Mont. 321, 88 P. 63 (1907); *State v. Schaeffer*, 35 Mont. 217, 88 P. 792 (1907). But see *State v. Karri*, 84 Mont. 730, 276 P. 427 (1929).

<sup>23</sup>Id. at 1059.

intents contained within the assault statute was further compounded by the courts adding a specific intent of their own:

If a person points a loaded firearm at another with the purpose to do another injury or put in fear, he is guilty of an unlawful act amounting to assault.<sup>24</sup>

Again the state must prove that the defendant was possessed of specific state of mind, that of placing the one assaulted in fear.

Recently, the difficulties of proving intent by the use of a subjective standard were recognized in *State v. Cooper*.<sup>25</sup> Faced by a fact situation in many respects similar to *Quinlan*, the court said:

. . . intent is not to be measured by the secret motive of the actor or some undisclosed purpose merely to frighten, not to hurt. Intent is to be judged objectively.<sup>26</sup>

This decision, although interpreting the old law, prepared the foundation for the use of the objective standard in proving the perpetrator's mental state.

### THE NEW CODE

#### A. A SIMPLE OVERVIEW

The new Montana assault statute, derived primarily from the MODEL PENAL CODE,<sup>27</sup> is broken down into two sections. The first of these sections, "Assault,"<sup>28</sup> replaces the prior law of simple assault contained in R.C.M. 1947, § 94-603. The second, "Aggravated assault,"<sup>29</sup> is concerned

<sup>24</sup>*State v. Kumm*, 55 Mont. 436, 178 P. 288, 291 (1919); accord *State v. London*, 131 Mont. 410, 310 P.2d 571, 584 (1957); *State v. Storm*, 124 Mont. 102, 220 P.2d 674, 675 (1950). The origin of this court-made specific intent appears to have come from a misinterpretation or intentional expansion of the rule found in *State v. Barry*, 45 Mont. 598, 124 P. 775 (1912). *Barry* held that if a gun was pointed at a victim, and the victim "was actually put in fear of immediate bodily injury therefrom, and the circumstances of the case were such as to induce fear in the mind of the reasonable man, then an assault was committed . . ." at 777.

<sup>25</sup>*State v. Cooper*, 158 Mont. 102, 489 P.2d 99 (1971); overruling *State v. Quinlan*, supra note 22.

<sup>26</sup>*Id.* at 104; accord *State v. Madden*, 128 Mont. 408, 276 P.2d 974, 978 (1954).

<sup>27</sup>MODEL PENAL CODE 1962; §§ 211.1, 211.1(2).

<sup>28</sup>M.C.C. 1973, § 94-5-201. Assault:

- (1) A person commits the offense of assault if he:
  - (a) purposely or knowingly causes bodily injury to another; or
  - (b) negligently causes bodily injury to another with a weapon; or
  - (c) purposely or knowingly makes physical contact of an insulting or provoking nature with any individual; or
  - (d) purposely or knowingly causes reasonable apprehension of bodily injury in another. The purpose to cause reasonable apprehension or the knowledge that reasonable apprehension would be caused shall be presumed in any case in which a person knowingly points a firearm at or in the direction of another whether or not the offender believes the firearm to be loaded.

<sup>29</sup>M.C.C. 1973, § 94-5-202. Aggravated Assault:

- (1) A person commits the offense of aggravated assault if he purposely or knowingly causes:
  - (a) serious bodily injury to another; or
  - (b) bodily injury to another with a weapon; or

with conduct of a more serious nature, supplanting the old crimes of first and second degree assault and assault with caustic chemicals.<sup>30</sup> Both sections contain assault and battery type crimes within their subsections. Unlike the old code, however, both sections specifically enumerate the elements of the offenses rather than relying on descriptions of conduct considered to be criminal.

## B. ALLEVIATING THE PROBLEMS

### (1) *The dual character of assault*

Like the old code, the new code entitles those sections dealing with the crimes of assault and battery with the word "assault." Retention of this traditional term, however, was probably based not on respect for past precedent, but rather on the grounds that its appearance would enhance acceptability of the code. The word "assault" never appears within the new code sections as it did in the old. Therefore, the problems of interpretation it created are never confronted. Furthermore, the elements of criminal conduct, as previously stated, are specifically enumerated; leaving no doubt as to whether a provision deals with contact or non-contact offenses.<sup>31</sup>

### (2) *The lack of clarity and definition*

The ancient legal words of art employed by the old code are not to be found within the new. "Serious bodily injury," "bodily injury," and "weapon" are the words now used under the new assault sections. The importance of clear and concise definitions for these words is shown by the fact that one of the distinguishing features between "Aggravated assault" and "Assault" is the degree of bodily harm inflicted or apprehended. "Aggravated assault" involves "serious bodily injury," whereas "Assault" deals only with conduct in which "bodily injury" is inflicted or apprehended. Without definitions for these terms, a distinction between these two sections would be impossible. The new code, however, provides a general definition section<sup>32</sup> in which both terms are given the meaning they require:

- 
- (c) reasonable apprehension of serious bodily injury in another by use of a weapon; or
  - (d) bodily injury to a peace officer.
  - (2) A person convicted of aggravated assault shall be imprisoned in the state prison for any term not to exceed twenty (20) years.

<sup>30</sup>R.C.M. 1947, §§ 94-601, 94-602, and 94-604.

<sup>31</sup>Battery type crimes are found in M.C.C. 1973, § 94-5-201(1) subsections (a), (b), (c), and § 94-5-202(1) subsections (a), (b), and (d). Assault crimes are contained in § 94-5-201(1)(d) and § 94-5-202(1)(e).

<sup>32</sup>M.C.C. 1973, § 94-2-101(1) through (68). This section also provides guidance for defining words not found within its provisions by stating "unless otherwise specified in the statute all words will be taken in an objective standard rather than the subjective

"Serious bodily injury" . . . means bodily injury which creates a substantial risk of death or which causes serious permanent disfigurement or protracted loss or impairment of the function or process of any bodily members or organ and includes serious mental illness or impairment.<sup>33</sup>

"Bodily injury" . . . means physical pain, illness, or any impairment of the physical condition and includes mental illness or impairment.<sup>34</sup>

The word "weapon" as it is used in the assault statute, is another example of the need for a clear definition which the old law failed to provide. "Weapon" appears in "Aggravated assault" under subsection 1(c), which provides for causing "bodily injury with a weapon."<sup>35</sup> This section must be distinguished from subsection 1(a) under "Assault," which deals simply with causing "bodily injury."<sup>36</sup> In order to distinguish these two sections it must be clearly shown what a "weapon" consists of in order to differentiate it from other means of causing "bodily injury." The following definition makes this differentiation possible:

"Weapon" means any instrument, article, or substance which, regardless of its primary function is readily capable of being used to produce death or "serious bodily harm."<sup>37</sup>

### (3) *Subjective v. objective intent*

Not only have the words and phrases been defined under the new code, the mental states required for various degrees of culpability are defined and have a prescribed hierarchy. The most culpable of these mental states under the new code is contained in the word "purposely."<sup>38</sup> This term, replacing the prior code's word "intentionally," implies a design in that "a person need not act toward a particular result, he need only act with the object to engage in certain conduct."<sup>39</sup> The word "knowingly"<sup>40</sup> is often used in conjunction with "purposely" as an alternate, although lesser, mental state. This second mental state also

<sup>33</sup>M.C.C. 1973, § 94-2-101(54).

<sup>34</sup>M.C.C. 1973, § 94-2-101(5).

<sup>35</sup>M.C.C. 1973, § 94-5-201(1)(a).

<sup>36</sup>M.C.C. 1973, §§ 94-5-202(1)(c), 94-5-201(1)(c).

<sup>37</sup>M.C.C. 1973, § 94-2-101(66).

<sup>38</sup>M.C.C. 1973, § 94-2-101(53).

Purposely—A person acts purposely with respect to a result or to conduct described by a statute defining an offense if it is his conscious object to engage in that conduct or to cause that result. When a particular purpose is an element of an offense, the element is established although such purpose is conditional, unless the condition negatives the harm or evil sought to be prevented by the law defining the offense. Equivalent terms such as "purpose" and "with the purpose" have the same meaning.

<sup>39</sup>*Id.* Commission Comment.

<sup>40</sup>M.C.C. 1973, § 94-2-101(28):

Knowingly—A person acts knowingly with respect to conduct or to a circumstance described by a statute defining an offense when he is aware of his conduct or that the circumstance exists. When knowledge of the existence of a particular fact is an element of an offense, such knowledge is established if a person is aware of a high probability of its existence. Equivalent terms such as "knowing" or "with knowledge" have the same meaning.

replaces the old law's "intentionally." It is not synonymous, however, with "purposely."

"Knowingly" refers to an awareness of the nature of one's conduct or of the existence of specified facts or circumstances. "Purposely" refers to the actor's objective or intended result.<sup>41</sup>

Although different, both are capable of being proven by reference to extrinsic facts. "Knowingly" can be proven by reference to what an ordinary man, from common experience, would expect as the consequence of his conduct. By reference to the perpetrator's conduct and other surrounding facts and circumstances, it can be shown that the offender's actions were "purposely" accomplished. Therefore, with these mental states requiring only extrinsic facts for their proof, the new assault statute need only refer to the objective rather than subjective mental state as the measure of criminal conduct.<sup>42</sup>

It should be noted that the third member of the mental state hierarchy is also present under the new assault statute.<sup>43</sup> "Negligently," as the term is used in the code, is a lesser mental state than those previously described and includes the concept of "recklessness" within the phrase "consciously disregards."<sup>44</sup> The term was included in the "Assault" section of the new code for the purpose of dealing with firearm mishap crimes, which were a problem area under the prior law.<sup>45</sup>

### CONCLUSION

Montana's previous criminal code lacked any unified classification of offenses and was difficult to use. The assault section was no exception to this norm. This section was inconsistent, imprecise, and obsolete. It alone demonstrated the "desperate need in Montana for a modern criminal code."<sup>46</sup> With the passage of the new code, the crime of assault received definition, clarity, and a workable hierarchy of mental states.

<sup>41</sup>*Id.* Commission Comment.

<sup>42</sup>It should be noted that the court-created intent of placing in fear is removed—at least in regards to the conduct in which a firearm is used—by the statutory presumption contained in § 94-5-201(1)(d).

<sup>43</sup>M.C.C. 1973, § 94-5-201(1)(b).

<sup>44</sup>M.C.C. 1973, § 94-2-101(32):

Negligently—A person acts negligently with respect to a result or to a circumstance described by a statute defining an offense when he consciously disregards a risk that the result will occur or that the circumstance exists; or if he disregards a risk of which he should be aware that the result will occur or that the circumstance exists. The risk must be of such a nature and degree that to disregard it involves a gross deviation from the standard of conduct that a reasonable person would observe in the actor's situation. Gross deviation means a deviation that is considerably greater than lack of ordinary care. Relevant terms such as "negligent" and "with negligence" have the same meaning.

<sup>45</sup>*See State v. Smith*, 126 Mont. 124, 246 P.2d 227 (1952).

<sup>46</sup>HON. WESLEY CASTLES, FORWARD TO THE REVISED PROPOSED MONTANA CRIMINAL CODE 2, (1973)

Although the section has yet to be interpreted,<sup>47</sup> it appears on its face to have removed the ancient vestiges of the former law and replaced them with a modern and effective means of social control.

Any method of social control, however, is only as effective as those charged with its enforcement. Therefore, it behooves the members of Montana's legal profession to turn away from the traditions of the past, and to work toward making the potentially effective tools provided in the new code truly effective. If this is done, Montana will be assured of one of the most modern, comprehensive, and systematic bodies of criminal law in existence today.

<sup>47</sup>To date, Ohio and Oregon are the only other states which have followed some of the guidelines of the MODEL PENAL CODE in regard to assault. OREGON REVISED STATUTES 1971, §§ 163.165, 163.175, 163.185; OHIO REVISED CODE 1973 Special Supplement, §§ 2903.11-2903.14. The decisions concerning these statutes may be of some help in future years when Montana's statute requires interpretation.

