

1 HOUSE BILL NO. 294

2 INTRODUCED BY T. FACEY

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATING TO DEVIATE SEXUAL CONDUCT;
5 REVISING THE DEFINITION OF "DEVIATE SEXUAL RELATIONS"; AND AMENDING SECTIONS 27-2-216,
6 45-1-205, 45-2-101, 45-5-505, 46-16-216, AND 46-18-205, MCA."

7

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

9

10 **Section 1.** Section 27-2-216, MCA, is amended to read:

11 **"27-2-216. Tort actions -- childhood sexual abuse.** (1) An action based on intentional conduct brought
12 by a person for recovery of damages for injury suffered as a result of childhood sexual abuse must be
13 commenced not later than:

14 (a) 3 years after the act of childhood sexual abuse that is alleged to have caused the injury; or

15 (b) 3 years after the plaintiff discovers or reasonably should have discovered that the injury was caused
16 by the act of childhood sexual abuse.17 (2) It is not necessary for a plaintiff to establish which act, in a series of acts of childhood sexual abuse,
18 caused the injury that is the subject of the suit. The plaintiff may compute the period referred to in subsection
19 (1)(a) from the date of the last act by the same perpetrator.20 (3) As used in this section, "childhood sexual abuse" means any act committed against a plaintiff who
21 was less than 18 years of age at the time the act occurred and that would have been a violation of 45-5-502,
22 45-5-503, 45-5-504, ~~45-5-505~~, 45-5-507, 45-5-625, or prior similar laws in effect at the time the act occurred.

23 (4) The provisions of 27-2-401 apply to this section."

24

25 **Section 2.** Section 45-1-205, MCA, is amended to read:26 **"45-1-205. General time limitations.** (1) (a) A prosecution for deliberate, mitigated, or negligent
27 homicide may be commenced at any time.28 (b) A prosecution for a felony offense under 45-5-502, 45-5-503, or 45-5-507(4) may be commenced
29 within 10 years after it is committed, except that it may be commenced within 10 years after the victim reaches
30 18 years of age if the victim was less than 18 years of age at the time that the offense occurred. A prosecution

1 for a misdemeanor offense under those provisions may be commenced within 1 year after the offense is
2 committed, except that it may be commenced within 5 years after the victim reaches 18 years of age if the victim
3 was less than 18 years of age at the time that the offense occurred.

4 (c) A prosecution under 45-5-504, ~~45-5-505~~, 45-5-507(1), (2), (3), or (5), 45-5-625, or 45-5-627 may be
5 commenced within 5 years after the victim reaches 18 years of age if the victim was less than 18 years of age
6 at the time that the offense occurred.

7 (2) Except as provided in subsection (7)(b) or as otherwise provided by law, prosecutions for other
8 offenses are subject to the following periods of limitation:

9 (a) A prosecution for a felony must be commenced within 5 years after it is committed.

10 (b) A prosecution for a misdemeanor must be commenced within 1 year after it is committed.

11 (3) The periods prescribed in subsection (2) are extended in a prosecution for theft involving a breach
12 of fiduciary obligation to an aggrieved person as follows:

13 (a) if the aggrieved person is a minor or incompetent, during the minority or incompetency or within 1
14 year after the termination of the minority or incompetency;

15 (b) in any other instance, within 1 year after the discovery of the offense by the aggrieved person or by
16 a person who has legal capacity to represent an aggrieved person or has a legal duty to report the offense and
17 is not personally a party to the offense or, in the absence of discovery, within 1 year after the prosecuting officer
18 becomes aware of the offense.

19 (4) The period prescribed in subsection (2) must be extended in a prosecution for unlawful use of a
20 computer, and prosecution must be brought within 1 year after the discovery of the offense by the aggrieved
21 person or by a person who has legal capacity to represent an aggrieved person or has a legal duty to report the
22 offense and is not personally a party to the offense or, in the absence of discovery, within 1 year after the
23 prosecuting officer becomes aware of the offense.

24 (5) The period prescribed in subsection (2) is extended in a prosecution for misdemeanor fish and
25 wildlife violations under Title 87, and prosecution must be brought within 3 years after an offense is committed.

26 (6) The period prescribed in subsection (2)(b) is extended in a prosecution for misdemeanor violations
27 of the laws regulating the activities of outfitters and guides under Title 37, chapter 47, and prosecution must be
28 brought within 3 years after an offense is committed.

29 (7) (a) An offense is committed either when every element occurs or, when the offense is based upon
30 a continuing course of conduct, at the time when the course of conduct is terminated. Time starts to run on the

1 day after the offense is committed.

2 (b) A prosecution for theft under 45-6-301 may be commenced at any time during the 5 years following
3 the date of the theft, whether or not the offender is in possession of or otherwise exerting unauthorized control
4 over the property at the time the prosecution is commenced. After the 5-year period ends, a prosecution may
5 be commenced at any time if the offender is still in possession of or otherwise exerting unauthorized control over
6 the property, except that the prosecution must be commenced within 1 year after the investigating officer
7 discovers that the offender still possesses or is otherwise exerting unauthorized control over the property.

8 (8) A prosecution is commenced either when an indictment is found or an information or complaint is
9 filed."

10

11 **Section 3.** Section 45-2-101, MCA, is amended to read:

12 **"45-2-101. General definitions.** Unless otherwise specified in the statute, all words will be taken in the
13 objective standard rather than in the subjective, and unless a different meaning plainly is required, the following
14 definitions apply in this title:

15 (1) "Acts" has its usual and ordinary meaning and includes any bodily movement, any form of
16 communication, and when relevant, a failure or omission to take action.

17 (2) "Administrative proceeding" means a proceeding the outcome of which is required to be based on
18 a record or documentation prescribed by law or in which a law or a regulation is particularized in its application
19 to an individual.

20 (3) "Another" means a person or persons other than the offender.

21 (4) "Benefit" means gain or advantage or anything regarded by the beneficiary as gain or advantage,
22 including benefit to another person or entity in whose welfare the beneficiary is interested. Benefit does not
23 include an advantage promised generally to a group or class of voters as a consequence of public measures
24 that a candidate engages to support or oppose.

25 (5) "Bodily injury" means physical pain, illness, or an impairment of physical condition and includes
26 mental illness or impairment.

27 (6) "Cohabit" means to live together under the representation of being married.

28 (7) "Common scheme" means a series of acts or omissions motivated by a purpose to accomplish a
29 single criminal objective or by a common purpose or plan that results in the repeated commission of the same
30 offense or that affects the same person or the same persons or the property of the same person or persons.

1 (8) "Computer" means an electronic device that performs logical, arithmetic, and memory functions by
2 the manipulation of electronic or magnetic impulses and includes all input, output, processing, storage, software,
3 or communication facilities that are connected or related to that device in a system or network.

4 (9) "Computer network" means the interconnection of communication systems between computers or
5 computers and remote terminals.

6 (10) "Computer program" means an instruction or statement or a series of instructions or statements,
7 in a form acceptable to a computer, that in actual or modified form permits the functioning of a computer or
8 computer system and causes it to perform specified functions.

9 (11) "Computer services" include but are not limited to computer time, data processing, and storage
10 functions.

11 (12) "Computer software" means a set of computer programs, procedures, and associated
12 documentation concerned with the operation of a computer system.

13 (13) "Computer system" means a set of related, connected, or unconnected devices, computer software,
14 or other related computer equipment.

15 (14) "Conduct" means an act or series of acts and the accompanying mental state.

16 (15) "Conviction" means a judgment of conviction or sentence entered upon a plea of guilty or nolo
17 contendere or upon a verdict or finding of guilty of an offense rendered by a legally constituted jury or by a court
18 of competent jurisdiction authorized to try the case without a jury.

19 (16) "Correctional institution" means a state prison, detention center, multijurisdictional detention center,
20 private detention center, regional correctional facility, private correctional facility, or other institution for the
21 incarceration of inmates under sentence for offenses or the custody of individuals awaiting trial or sentence for
22 offenses.

23 (17) "Deception" means knowingly to:

24 (a) create or confirm in another an impression that is false and that the offender does not believe to be
25 true;

26 (b) fail to correct a false impression that the offender previously has created or confirmed;

27 (c) prevent another from acquiring information pertinent to the disposition of the property involved;

28 (d) sell or otherwise transfer or encumber property without disclosing a lien, adverse claim, or other
29 legal impediment to the enjoyment of the property, whether the impediment is or is not of value or is or is not a
30 matter of official record; or

- 1 (e) promise performance that the offender does not intend to perform or knows will not be performed.
2 Failure to perform, standing alone, is not evidence that the offender did not intend to perform.
- 3 (18) "Defamatory matter" means anything that exposes a person or a group, class, or association to
4 hatred, contempt, ridicule, degradation, or disgrace in society or to injury to the person's or its business or
5 occupation.
- 6 (19) "Deprive" means:
7 (a) to withhold property of another:
8 (i) permanently;
9 (ii) for such a period as to appropriate a portion of its value; or
10 (iii) with the purpose to restore it only upon payment of reward or other compensation; or
11 (b) to dispose of the property of another and use or deal with the property so as to make it unlikely that
12 the owner will recover it.
- 13 (20) "Deviate sexual relations" means ~~sexual contact or sexual intercourse between two persons of the~~
14 ~~same sex~~ or any form of sexual intercourse with an animal.
- 15 (21) "Document" means, with respect to offenses involving the medicaid program, any application, claim,
16 form, report, record, writing, or correspondence, whether in written, electronic, magnetic, microfilm, or other form.
- 17 (22) "Felony" means an offense in which the sentence imposed upon conviction is death or
18 imprisonment in a state prison for a term exceeding 1 year.
- 19 (23) "Forcible felony" means a felony that involves the use or threat of physical force or violence against
20 any individual.
- 21 (24) A "frisk" is a search by an external patting of a person's clothing.
- 22 (25) "Government" includes a branch, subdivision, or agency of the government of the state or a locality
23 within it.
- 24 (26) "Harm" means loss, disadvantage, or injury or anything so regarded by the person affected,
25 including loss, disadvantage, or injury to a person or entity in whose welfare the affected person is interested.
- 26 (27) A "house of prostitution" means a place where prostitution or promotion of prostitution is regularly
27 carried on by one or more persons under the control, management, or supervision of another.
- 28 (28) "Human being" means a person who has been born and is alive.
- 29 (29) An "illegal article" is an article or thing that is prohibited by statute, rule, or order from being in the
30 possession of a person subject to official detention.

- 1 (30) "Inmate" means a person who is confined in a correctional institution.
- 2 (31) (a) "Intoxicating substance" means a controlled substance, as defined in Title 50, chapter 32, and
3 an alcoholic beverage, including but not limited to a beverage containing 1/2 of 1% or more of alcohol by volume.
- 4 (b) Intoxicating substance does not include dealcoholized wine or a beverage or liquid produced by the
5 process by which beer, ale, port, or wine is produced if it contains less than 1/2 of 1% of alcohol by volume.
- 6 (32) An "involuntary act" means an act that is:
- 7 (a) a reflex or convulsion;
- 8 (b) a bodily movement during unconsciousness or sleep;
- 9 (c) conduct during hypnosis or resulting from hypnotic suggestion; or
- 10 (d) a bodily movement that otherwise is not a product of the effort or determination of the actor, either
11 conscious or habitual.
- 12 (33) "Juror" means a person who is a member of a jury, including a grand jury, impaneled by a court in
13 this state in an action or proceeding or by an officer authorized by law to impanel a jury in an action or
14 proceeding. The term "juror" also includes a person who has been drawn or summoned to attend as a
15 prospective juror.
- 16 (34) "Knowingly"--a person acts knowingly with respect to conduct or to a circumstance described by
17 a statute defining an offense when the person is aware of the person's own conduct or that the circumstance
18 exists. A person acts knowingly with respect to the result of conduct described by a statute defining an offense
19 when the person is aware that it is highly probable that the result will be caused by the person's conduct. When
20 knowledge of the existence of a particular fact is an element of an offense, knowledge is established if a person
21 is aware of a high probability of its existence. Equivalent terms, such as "knowing" or "with knowledge", have
22 the same meaning.
- 23 (35) "Medicaid" means the Montana medical assistance program provided for in Title 53, chapter 6.
- 24 (36) "Medicaid agency" has the meaning in 53-6-155.
- 25 (37) "Medicaid benefit" means the provision of anything of pecuniary value to or on behalf of a recipient
26 under the medicaid program.
- 27 (38) (a) "Medicaid claim" means a communication, whether in oral, written, electronic, magnetic, or other
28 form:
- 29 (i) that is used to claim specific services or items as payable or reimbursable under the medicaid
30 program; or

1 (ii) that states income, expense, or other information that is or may be used to determine entitlement to
2 or the rate of payment under the medicaid program.

3 (b) The term includes related documents submitted as a part of or in support of the claim.

4 (39) "Mentally defective" means that a person suffers from a mental disease or defect that renders the
5 person incapable of appreciating the nature of the person's own conduct.

6 (40) "Mentally incapacitated" means that a person is rendered temporarily incapable of appreciating or
7 controlling the person's own conduct as a result of the influence of an intoxicating substance.

8 (41) "Misdemeanor" means an offense for which the sentence imposed upon conviction is imprisonment
9 in the county jail for a term or a fine, or both, or for which the sentence imposed is imprisonment in a state prison
10 for a term of 1 year or less.

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

18 (43) "Nolo contendere" means a plea in which the defendant does not contest the charge or charges
19 against the defendant and neither admits nor denies the charge or charges.

20 (44) "Obtain" means:

21 (a) in relation to property, to bring about a transfer of interest or possession, whether to the offender
22 or to another; and

23 (b) in relation to labor or services, to secure the performance of the labor or service.

24 (45) "Obtains or exerts control" includes but is not limited to the taking, the carrying away, or the sale,
25 conveyance, or transfer of title to, interest in, or possession of property.

26 (46) "Occupied structure" means any building, vehicle, or other place suitable for human occupancy or
27 night lodging of persons or for carrying on business, whether or not a person is actually present. Each unit of
28 a building consisting of two or more units separately secured or occupied is a separate occupied structure.

29 (47) "Offender" means a person who has been or is liable to be arrested, charged, convicted, or
30 punished for a public offense.

1 (48) "Offense" means a crime for which a sentence of death or of imprisonment or a fine is authorized.
2 Offenses are classified as felonies or misdemeanors.

3 (49) "Official detention" means imprisonment resulting from a conviction for an offense, confinement for
4 an offense, confinement of a person charged with an offense, detention by a peace officer pursuant to arrest,
5 detention for extradition or deportation, or lawful detention for the purpose of the protection of the welfare of the
6 person detained or for the protection of society. Official detention does not include supervision of probation or
7 parole, constraint incidental to release on bail, or an unlawful arrest unless the person arrested employed
8 physical force, a threat of physical force, or a weapon to escape.

9 (50) "Official proceeding" means a proceeding heard or that may be heard before a legislative, a judicial,
10 an administrative, or another governmental agency or official authorized to take evidence under oath, including
11 any referee, hearings examiner, commissioner, notary, or other person taking testimony or deposition in
12 connection with the proceeding.

13 (51) "Other state" means a state or territory of the United States, the District of Columbia, and the
14 Commonwealth of Puerto Rico.

15 (52) "Owner" means a person other than the offender who has possession of or other interest in the
16 property involved, even though the interest or possession is unlawful, and without whose consent the offender
17 has no authority to exert control over the property.

18 (53) "Party official" means a person who holds an elective or appointive post in a political party in the
19 United States by virtue of which the person directs or conducts or participates in directing or conducting party
20 affairs at any level of responsibility.

21 (54) "Peace officer" means a person who by virtue of the person's office or public employment is vested
22 by law with a duty to maintain public order or to make arrests for offenses while acting within the scope of the
23 person's authority.

24 (55) "Pecuniary benefit" is benefit in the form of money, property, commercial interests, or anything else
25 the primary significance of which is economic gain.

26 (56) "Person" includes an individual, business association, partnership, corporation, government, or
27 other legal entity and an individual acting or purporting to act for or on behalf of a government or subdivision of
28 government.

29 (57) "Physically helpless" means that a person is unconscious or is otherwise physically unable to
30 communicate unwillingness to act.

- 1 (58) "Possession" is the knowing control of anything for a sufficient time to be able to terminate control.
- 2 (59) "Premises" includes any type of structure or building and real property.
- 3 (60) "Property" means a tangible or intangible thing of value. Property includes but is not limited to:
- 4 (a) real estate;
- 5 (b) money;
- 6 (c) commercial instruments;
- 7 (d) admission or transportation tickets;
- 8 (e) written instruments that represent or embody rights concerning anything of value, including labor
- 9 or services, or that are otherwise of value to the owner;
- 10 (f) things growing on, affixed to, or found on land and things that are part of or affixed to a building;
- 11 (g) electricity, gas, and water;
- 12 (h) birds, animals, and fish that ordinarily are kept in a state of confinement;
- 13 (i) food and drink, samples, cultures, microorganisms, specimens, records, recordings, documents,
- 14 blueprints, drawings, maps, and whole or partial copies, descriptions, photographs, prototypes, or models
- 15 thereof;
- 16 (j) other articles, materials, devices, substances, and whole or partial copies, descriptions, photographs,
- 17 prototypes, or models thereof that constitute, represent, evidence, reflect, or record secret scientific, technical,
- 18 merchandising, production, or management information or a secret designed process, procedure, formula,
- 19 invention, or improvement; and
- 20 (k) electronic impulses, electronically processed or produced data or information, commercial
- 21 instruments, computer software or computer programs, in either machine- or human-readable form, computer
- 22 services, any other tangible or intangible item of value relating to a computer, computer system, or computer
- 23 network, and copies thereof.
- 24 (61) "Property of another" means real or personal property in which a person other than the offender has
- 25 an interest that the offender has no authority to defeat or impair, even though the offender may have an interest
- 26 in the property.
- 27 (62) "Public place" means a place to which the public or a substantial group has access.
- 28 (63) (a) "Public servant" means an officer or employee of government, including but not limited to
- 29 legislators, judges, and firefighters, and a person participating as a juror, adviser, consultant, administrator,
- 30 executor, guardian, or court-appointed fiduciary. ~~The term does not include witnesses.~~ The term "public servant"

1 includes one who has been elected or designated to become a public servant.

2 (b) The term does not include witnesses.

3 (64) "Purposely"--a person acts purposely with respect to a result or to conduct described by a statute
4 defining an offense if it is the person's conscious object to engage in that conduct or to cause that result. When
5 a particular purpose is an element of an offense, the element is established although the purpose is conditional,
6 unless the condition negatives the harm or evil sought to be prevented by the law defining the offense.
7 Equivalent terms, such as "purpose" and "with the purpose", have the same meaning.

8 (65) (a) "Serious bodily injury" means bodily injury that:

9 (i) creates a substantial risk of death;

10 (ii) causes serious permanent disfigurement or protracted loss or impairment of the function or process
11 of a bodily member or organ; or

12 (iii) at the time of injury, can reasonably be expected to result in serious permanent disfigurement or
13 protracted loss or impairment of the function or process of a bodily member or organ.

14 (b) The term includes serious mental illness or impairment.

15 (66) "Sexual contact" means touching of the sexual or other intimate parts of the person of another,
16 directly or through clothing, in order to knowingly or purposely:

17 (a) cause bodily injury to or humiliate, harass, or degrade another; or

18 (b) arouse or gratify the sexual response or desire of either party.

19 (67) (a) "Sexual intercourse" means penetration of the vulva, anus, or mouth of one person by the penis
20 of another person, penetration of the vulva or anus of one person by a body member of another person, or
21 penetration of the vulva or anus of one person by a foreign instrument or object manipulated by another person
22 to knowingly or purposely:

23 (i) cause bodily injury or humiliate, harass, or degrade; or

24 (ii) arouse or gratify the sexual response or desire of either party.

25 (b) For purposes of subsection (67)(a), any penetration, however slight, is sufficient.

26 (68) "Solicit" or "solicitation" means to command, authorize, urge, incite, request, or advise another to
27 commit an offense.

28 (69) "State" or "this state" means the state of Montana, all the land and water in respect to which the
29 state of Montana has either exclusive or concurrent jurisdiction, and the air space above the land and water.

30 (70) "Statute" means an act of the legislature of this state.

1 (71) "Stolen property" means property over which control has been obtained by theft.

2 (72) A "stop" is the temporary detention of a person that results when a peace officer orders the person
3 to remain in the peace officer's presence.

4 (73) "Tamper" means to interfere with something improperly, meddle with it, make unwarranted
5 alterations in its existing condition, or deposit refuse upon it.

6 (74) "Telephone" means any type of telephone, including but not limited to a corded, uncorded, cellular,
7 or satellite telephone.

8 (75) "Threat" means a menace, however communicated, to:

9 (a) inflict physical harm on the person threatened or any other person or on property;

10 (b) subject any person to physical confinement or restraint;

11 (c) commit a criminal offense;

12 (d) accuse a person of a criminal offense;

13 (e) expose a person to hatred, contempt, or ridicule;

14 (f) harm the credit or business repute of a person;

15 (g) reveal information sought to be concealed by the person threatened;

16 (h) take action as an official against anyone or anything, withhold official action, or cause the action or
17 withholding;

18 (i) bring about or continue a strike, boycott, or other similar collective action if the person making the
19 threat demands or receives property that is not for the benefit of groups that the person purports to represent;

20 or

21 (j) testify or provide information or withhold testimony or information with respect to another's legal claim
22 or defense.

23 (76) (a) "Value" means the market value of the property at the time and place of the crime or, if the
24 market value cannot be satisfactorily ascertained, the cost of the replacement of the property within a reasonable
25 time after the crime. If the offender appropriates a portion of the value of the property, the value must be
26 determined as follows:

27 (i) The value of an instrument constituting an evidence of debt, such as a check, draft, or promissory
28 note, is considered the amount due or collectible. The figure is ordinarily the face amount of the indebtedness
29 less any portion of the indebtedness that has been satisfied.

30 (ii) The value of any other instrument that creates, releases, discharges, or otherwise affects any

1 valuable legal right, privilege, or obligation is considered the amount of economic loss that the owner of the
2 instrument might reasonably suffer by virtue of the loss of the instrument.

3 (iii) The value of electronic impulses, electronically produced data or information, computer software or
4 programs, or any other tangible or intangible item relating to a computer, computer system, or computer network
5 is considered to be the amount of economic loss that the owner of the item might reasonably suffer by virtue of
6 the loss of the item. The determination of the amount of economic loss includes but is not limited to consideration
7 of the value of the owner's right to exclusive use or disposition of the item.

8 (b) When it cannot be determined if the value of the property is more or less than \$1,000 by the
9 standards set forth in subsection (76)(a), its value is considered to be an amount less than \$1,000.

10 (c) Amounts involved in thefts committed pursuant to a common scheme or the same transaction,
11 whether from the same person or several persons, may be aggregated in determining the value of the property.

12 (77) "Vehicle" means a device for transportation by land, water, or air or by mobile equipment, with
13 provision for transport of an operator.

14 (78) "Weapon" means an instrument, article, or substance that, regardless of its primary function, is
15 readily capable of being used to produce death or serious bodily injury.

16 (79) "Witness" means a person whose testimony is desired in an official proceeding, in any investigation
17 by a grand jury, or in a criminal action, prosecution, or proceeding."

18

19 **Section 4.** Section 45-5-505, MCA, is amended to read:

20 **"45-5-505. Deviate sexual conduct.** (1) A person who knowingly engages in deviate sexual relations
21 or who causes another to engage in deviate sexual relations commits the offense of deviate sexual conduct.

22 (2) A person convicted of the offense of deviate sexual conduct shall be imprisoned in the state prison
23 for ~~any a~~ term not to exceed 10 years or be fined an amount not to exceed \$50,000, or both.

24 ~~(3) The fact that a person seeks testing or receives treatment for the HIV-related virus or another~~
25 ~~sexually transmitted disease may not be used as a basis for a prosecution under this section and is not~~
26 ~~admissible in evidence in a prosecution under this section."~~

27

28 **Section 5.** Section 46-16-216, MCA, is amended to read:

29 **"46-16-216. Videotaped testimony.** (1) For any prosecution commenced under 45-5-502(3), 45-5-503,
30 ~~45-5-505,~~ or 45-5-507 or for prosecution of any offense against the person provided for in Title 45, chapter 5,

1 involving a victim who is under 16 years of age, the testimony of the victim, at the request of the victim and with
 2 the concurrence of the prosecutor, may be recorded by means of videotape for presentation at trial. The
 3 recorded testimony may be presented at trial and must be received into evidence. The victim need not be
 4 physically present in the courtroom when the videotape is admitted into evidence.

5 (2) The procedural and evidentiary rules of the state that are applicable to criminal trials within the state
 6 apply to the videotape proceedings authorized by this section.

7 (3) The district court judge, the prosecutor, the victim, the defendant, the defendant's attorney, and other
 8 persons ~~as~~ who are considered necessary by the court to make the recordings authorized under this section
 9 must be allowed to attend the videotape proceedings.

10 (4) Videotapes that are part of the court record are subject to a protective order of the court for the
 11 purpose of protecting the privacy of the victim."
 12

13 **Section 6.** Section 46-18-205, MCA, is amended to read:

14 **"46-18-205. Mandatory minimum sentences -- restrictions on deferral or suspension.** (1) If the
 15 victim was less than 16 years old, the imposition or execution of the first 30 days of a sentence of imprisonment
 16 imposed under the following sections may not be deferred or suspended and the provisions of 46-18-222 do not
 17 apply to the first 30 days of the imprisonment:

18 (a) 45-5-503, sexual intercourse without consent;

19 (b) 45-5-504, indecent exposure; or

20 ~~(c) 45-5-505, deviate sexual conduct; or~~

21 ~~(d)~~(c) 45-5-507, incest.

22 (2) Except as provided in 45-9-202 and 46-18-222, the imposition or execution of the first 2 years of a
 23 sentence of imprisonment imposed under the following sections may not be deferred or suspended:

24 (a) 45-5-103(4), mitigated deliberate homicide;

25 (b) 45-5-202, aggravated assault;

26 (c) 45-5-302(2), kidnapping;

27 (d) 45-5-303(2), aggravated kidnapping;

28 (e) 45-5-401(2), robbery;

29 (f) 45-5-502(3), sexual assault;

30 (g) 45-5-503(2) and (3), sexual intercourse without consent;

- 1 (h) 45-5-603, aggravated promotion of prostitution;
2 (i) 45-9-101(2), (3), and (5)(d), criminal distribution of dangerous drugs;
3 (j) 45-9-102(4), criminal possession of dangerous drugs; and
4 (k) 45-9-103(2), criminal possession with intent to distribute dangerous drugs.
5 (3) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a sentence of
6 imprisonment imposed under 45-5-102, deliberate homicide, may not be deferred or suspended."

7
8 **NEW SECTION. Section 7. Code commissioner instruction.** The code commissioner is instructed
9 to renumber and codify 45-5-505 as an integral part of Title 45, chapter 8, part 2.

10 - END -