

SENATE BILL NO. 50

INTRODUCED BY GALLUS

BY REQUEST OF THE DEPARTMENT OF CORRECTIONS

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE PROVISION IN THE SEXUAL ASSAULT AND SEXUAL INTERCOURSE WITHOUT CONSENT LAWS TO PROVIDE THAT CONSENT IS NOT EFFECTIVE IF THE VICTIM IS UNDER THE SUPERVISION OF THE DEPARTMENT OF CORRECTIONS OR JUVENILE ON PROBATION OR PAROLE AND THE PERPETRATOR IS A DEPARTMENT OR YOUTH COURT AN EMPLOYEE OR JUVENILE PROBATION OFFICER, CONTRACTOR, OR VOLUNTEER OF THE SUPERVISING AUTHORITY WITH AUTHORITY OVER THE VICTIM; PROVIDING A LIMITED MARRIAGE EXCEPTION; REMOVING THE SPECIFIC SENTENCE FOR SEXUAL INTERCOURSE WITHOUT CONSENT BY CORRECTIONAL FACILITY EMPLOYEES; AND AMENDING SECTIONS 45-5-501, 45-5-502, AND 45-5-503, MCA."

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

Section 1. Section 45-5-501, MCA, is amended to read:

"45-5-501. Definition DEFINITIONS. (1) As used in 45-5-503, the term "without consent" means:

- (a) the victim is compelled to submit by force against the victim or another; or
- (b) subject to subsection (2), the victim is incapable of consent because the victim is:
 - (i) mentally defective or incapacitated;
 - (ii) physically helpless;
 - (iii) overcome by deception, coercion, or surprise;
 - (iv) less than 16 years old; ~~or~~ OR
 - (v) incarcerated in an adult or juvenile correctional, detention, or treatment facility or is under the supervision of the department of corrections ON PROBATION OR PAROLE and the perpetrator is an employee, contractor, or volunteer of the facility department of corrections SUPERVISING AUTHORITY and has supervisory or disciplinary authority over the victim, unless the act is part of a lawful search; ~~or~~
 - ~~(vi) a juvenile on probation and the perpetrator is a juvenile probation officer as provided in Title 41, chapter 5 AN EMPLOYEE, CONTRACTOR, OR VOLUNTEER OF THE YOUTH COURT AND HAS SUPERVISORY OR DISCIPLINARY~~

1 AUTHORITY OVER THE VICTIM.

2 (2) Subsections (1)(b)(v) and (1)(b)(vi) do SUBSECTION (1)(B)(V) DOES not apply if the individuals are
 3 married to each other and one of the individuals involved is on probation or parole and the other individual is a
 4 probation or parole officer OF A SUPERVISING AUTHORITY.

5 ~~(2)~~(3) As used in subsection (1), the term "force" means:

6 (a) the infliction, attempted infliction, or threatened infliction of bodily injury or the commission of a
 7 forcible felony by the offender; or

8 (b) the threat of substantial retaliatory action that causes the victim to reasonably believe that the
 9 offender has the ability to execute the threat.

10 (4) AS USED IN ~~45-5-503~~ 45-5-502 AND THIS SECTION, THE FOLLOWING DEFINITIONS APPLY:

11 (A) "PAROLE":

12 (I) IN THE CASE OF AN ADULT OFFENDER, HAS THE MEANING PROVIDED IN 46-1-202; AND

13 (II) IN THE CASE OF A JUVENILE OFFENDER, MEANS SUPERVISION OF A YOUTH RELEASED FROM A STATE YOUTH
 14 CORRECTIONAL FACILITY, AS DEFINED IN 41-5-103, TO THE SUPERVISION OF THE DEPARTMENT OF CORRECTIONS.

15 (B) "PROBATION" MEANS:

16 (I) IN THE CASE OF AN ADULT OFFENDER, RELEASE BY A COURT WITHOUT IMPRISONMENT OF A DEFENDANT FOUND
 17 GUILTY OF A CRIME AND SUBJECT TO THE SUPERVISION OF A SUPERVISING AUTHORITY; AND

18 (II) IN THE CASE OF A JUVENILE OFFENDER, SUPERVISION OF THE JUVENILE BY A YOUTH COURT PURSUANT TO
 19 TITLE 41, CHAPTER 5.

20 (C) "SUPERVISING AUTHORITY" INCLUDES A COURT, INCLUDING A YOUTH COURT, A COUNTY, OR THE MONTANA
 21 DEPARTMENT OF CORRECTIONS."

22

23 **Section 2.** Section 45-5-502, MCA, is amended to read:

24 **"45-5-502. Sexual assault.** (1) A person who knowingly subjects another person to any sexual contact
 25 without consent commits the offense of sexual assault.

26 (2) A person convicted of sexual assault shall be fined not to exceed \$500 or be imprisoned in the county
 27 jail for a term not to exceed 6 months, or both.

28 (3) If the victim is less than 16 years old and the offender is 3 or more years older than the victim or if
 29 the offender inflicts bodily injury upon anyone in the course of committing sexual assault, the offender shall be
 30 punished by life imprisonment or by imprisonment in the state prison for a term of not less than 4 years, unless

1 the judge makes a written finding that there is good cause to impose a term of less than 4 years and imposes a
2 term of less than 4 years, or more than 100 years and may be fined not more than \$50,000.

3 (4) An act "in the course of committing sexual assault" includes an attempt to commit the offense or flight
4 after the attempt or commission.

5 (5) ~~(a) Consent~~ Subject to subsection (5)(b), consent is ineffective under this section if:

6 ~~(a)(i)~~ the victim is incarcerated in an adult or juvenile correctional, detention, or treatment facility or is
7 under the supervision of the department of corrections ON PROBATION OR PAROLE and the perpetrator is an
8 employee, contractor, or volunteer of the facility ~~department of corrections~~ SUPERVISING AUTHORITY and has
9 supervisory or disciplinary authority over the victim, unless the act is part of a lawful search;

10 ~~(ii) the victim is a juvenile offender and the perpetrator is a juvenile probation officer as provided in Title~~
11 ~~41, chapter 5 AN EMPLOYEE, CONTRACTOR, OR VOLUNTEER OF THE YOUTH COURT AND HAS SUPERVISORY OR~~
12 ~~DISCIPLINARY AUTHORITY OVER THE VICTIM; OR~~

13 ~~(b)(iii)(II)~~ the victim is less than 14 years old and the offender is 3 or more years older than the victim.

14 ~~(b) Subsections (5)(a)(i) and (5)(a)(ii) do~~ SUBSECTION (5)(A)(I) DOES not apply if one of the parties is on
15 probation or parole and the other party is a probation or parole officer OF THE SUPERVISING AUTHORITY and the
16 parties are married to each other."

17

18 **Section 3.** Section 45-5-503, MCA, is amended to read:

19 **"45-5-503. Sexual intercourse without consent.** (1) A person who knowingly has sexual intercourse
20 without consent with another person commits the offense of sexual intercourse without consent. A person may
21 not be convicted under this section based on the age of the person's spouse, as provided in 45-5-501(1)(b)(iv).

22 (2) A person convicted of sexual intercourse without consent shall be punished by life imprisonment or
23 by imprisonment in the state prison for a term of not less than 2 years or more than 100 years and may be fined
24 not more than \$50,000, except as provided in 46-18-219 and 46-18-222.

25 (3) (a) If the victim is less than 16 years old and the offender is 3 or more years older than the victim or
26 if the offender inflicts bodily injury upon anyone in the course of committing sexual intercourse without consent,
27 the offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less
28 than 4 years or more than 100 years and may be fined not more than \$50,000, except as provided in 46-18-219
29 and 46-18-222.

30 (b) If two or more persons are convicted of sexual intercourse without consent with the same victim in

1 an incident in which each offender was present at the location where another offender's offense occurred during
2 a time period in which each offender could have reasonably known of the other's offense, each offender shall be
3 punished by life imprisonment or by imprisonment in the state prison for a term of not less than 5 years or more
4 than 100 years and may be fined not more than \$50,000, except as provided in 46-18-219 and 46-18-222.

5 (c) If the offender was previously convicted of an offense under this section or of an offense under the
6 laws of another state or of the United States that if committed in this state would be an offense under this section
7 and if the offender inflicted serious bodily injury upon a person in the course of committing each offense, the
8 offender shall be:

9 (i) punished by death as provided in 46-18-301 through 46-18-310, unless the offender is less than 18
10 years of age at the time of the commission of the offense; or

11 (ii) punished as provided in 46-18-219.

12 ~~(d) If the victim was incarcerated in an adult or juvenile correctional, detention, or treatment facility at the~~
13 ~~time of the offense and the offender had supervisory or disciplinary authority over the victim, the offender shall~~
14 ~~be punished by imprisonment in the state prison for a term of not more than 5 years or fined an amount not to~~
15 ~~exceed \$50,000, or both.~~

16 (4) In addition to any sentence imposed under subsection (2) or (3), after determining the financial
17 resources and future ability of the offender to pay restitution as required by 46-18-242, the court shall require the
18 offender, if able, to pay the victim's reasonable medical and counseling costs that result from the offense. The
19 amount, method, and time of payment must be determined in the same manner as provided for in 46-18-244.

20 (5) As used in subsection (3), an act "in the course of committing sexual intercourse without consent"
21 includes an attempt to commit the offense or flight after the attempt or commission."

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