

HOUSE BILL NO. 102

INTRODUCED BY C. SMITH

A BILL FOR AN ACT ENTITLED: "AN ACT INCREASING THE PENALTY FOR SEXUAL ASSAULT FOR SECOND AND SUBSEQUENT OFFENSES; AND AMENDING SECTION 45-5-502, MCA."

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

**Section 1.** Section 45-5-502, MCA, is amended to read:

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

(2) ~~(a) A person convicted of~~ On a first conviction for sexual assault, the offender shall be fined an amount not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(b) On a second conviction for sexual assault, the offender shall be fined an amount not to exceed \$1,000 or be imprisoned in the county jail for a term not to exceed 1 year, or both.

(c) On a third and subsequent offense, the offender shall be fined an amount not to exceed \$10,000 or be imprisoned for a term not to exceed 5 years, or both.

(3) If the victim is less than 16 years old and the offender is 3 or more years older than the victim or if the offender inflicts bodily injury upon anyone in the course of committing sexual assault, the offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 4 years, unless the judge makes a written finding that there is good cause to impose a term of less than 4 years and imposes a term of less than 4 years, or more than 100 years and may be fined not more than \$50,000.

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

(5) (a) Subject to subsections (5)(b) and (5)(c), consent is ineffective under this section if the victim is:

(i) incarcerated in an adult or juvenile correctional, detention, or treatment facility or is on probation or parole and the perpetrator is an employee, contractor, or volunteer of the supervising authority and has supervisory or disciplinary authority over the victim, unless the act is part of a lawful search;

(ii) less than 14 years old and the offender is 3 or more years older than the victim;

(iii) receiving services from a youth care facility, as defined in 52-2-602, and the perpetrator:



1 (A) has supervisory or disciplinary authority over the victim or is providing treatment to the victim; and

2 (B) is an employee, contractor, or volunteer of the youth care facility; or

3 (iv) admitted to a mental health facility, as defined in 53-21-102, is admitted to a community-based facility

4 or a residential facility, as those terms are defined in 53-20-102, or is receiving community-based services, as

5 defined in 53-20-102, and the perpetrator:

6 (A) has supervisory or disciplinary authority over the victim or is providing treatment to the victim; and

7 (B) is an employee, contractor, or volunteer of the facility or community-based service.

8 (b) Subsection (5)(a)(i) does not apply if one of the parties is on probation or parole and the other party

9 is a probation or parole officer of the supervising authority and the parties are married to each other.

10 (c) Subsections (5)(a)(iii) and (5)(a)(iv) do not apply if the individuals are married to each other and one

11 of the individuals involved is a patient in or resident of a facility, is a recipient of community-based services, or

12 is receiving services from a youth care facility and the other individual is an employee, contractor, or volunteer

13 of the facility or community-based service."

14 - END -