

## 1 SENATE BILL NO. 26

2 INTRODUCED BY S. MALEK

3 BY REQUEST OF THE LAW AND JUSTICE INTERIM COMMITTEE

4

5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS REGARDING SEXUAL INTERCOURSE WITHOUT  
6 CONSENT; PROVIDING A MAXIMUM PENALTY WHEN THE OFFENDER IS 18 YEARS OF AGE OR  
7 YOUNGER AND THE VICTIM IS 14 YEARS OF AGE OR OLDER, IT IS A FIRST OFFENSE AND NO FORCE  
8 WAS USED; PROVIDING THAT AN 18-YEAR-OLD WHO IS CONVICTED OF SEXUAL INTERCOURSE  
9 WITHOUT CONSENT REGARDING A VICTIM WHO IS AGE 14 OR OLDER DOES NOT HAVE TO REGISTER  
10 AS A SEX OFFENDER AS LONG AS NO FORCE WAS USED; AMENDING SECTIONS 45-5-503, 46-18-231,  
11 AND 46-23-502, MCA; AND PROVIDING AN APPLICABILITY DATE."

12

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

14

15       **Section 1.** Section 45-5-503, MCA, is amended to read:

16       **"45-5-503. Sexual intercourse without consent.** (1) A person who knowingly has sexual intercourse  
17 without consent with another person commits the offense of sexual intercourse without consent. A person may  
18 not be convicted under this section based on the age of the person's spouse, as provided in 45-5-501(1)(a)(ii)(D).

19           (2) A person convicted of sexual intercourse without consent shall be punished by life imprisonment or  
20 by imprisonment in the state prison for a term of not less than 2 years or more than 100 years and may be fined  
21 not more than \$50,000, except as provided in 46-18-219, 46-18-222, and subsections (3), and (4), and (5) of this  
22 section.

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

28           (b) If two or more persons are convicted of sexual intercourse without consent with the same victim in  
29 an incident in which each offender was present at the location where another offender's offense occurred during  
30 a time period in which each offender could have reasonably known of the other's offense, each offender shall be

1        punished by life imprisonment or by imprisonment in the state prison for a term of not less than 5 years or more  
2        than 100 years and may be fined not more than \$50,000, except as provided in 46-18-219 and 46-18-222.

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

7                        (i) punished by death as provided in 46-18-301 through 46-18-310, unless the offender is less than 18  
8        years of age at the time of the commission of the offense; or  
9                        (ii) punished as provided in 46-18-219.

10                (4) (a) If the victim was 12 years of age or younger and the offender in the course of committing sexual  
11        intercourse without consent was 18 years of age or older at the time of the offense, the offender:

12                        (i) shall be punished by imprisonment in a state prison for a term of 100 years. The court may not  
13        suspend execution or defer imposition of the first 25 years of a sentence of imprisonment imposed under this  
14        subsection (4)(a)(i) except as provided in 46-18-222, and during the first 25 years of imprisonment, the offender  
15        is not eligible for parole.

16                        (ii) may be fined an amount not to exceed \$50,000; and

17                        (iii) shall be ordered to enroll in and successfully complete the educational phase and the cognitive and  
18        behavioral phase of a sexual offender treatment program provided or approved by the department of corrections.

19                (b) If the offender is released after the mandatory minimum period of imprisonment, the offender is  
20        subject to supervision by the department of corrections for the remainder of the offender's life and shall participate  
21        in the program for continuous, satellite-based monitoring provided for in 46-23-1010.

22                (5) If the victim is at least 14 years of age and the offender is 18 years of age or younger, the offender  
23        may be punished by imprisonment in the state prison for a term of not more than 5 years and may be fined not  
24        more than \$10,000 if:

25                        (a) the offender has not previously been found to have committed or been adjudicated for a sexual  
26        offense as defined in 46-23-502;

27                        (b) a psychosexual evaluation of the offender has been prepared and the court finds that registration is  
28        not necessary for protection of the public and that relief from registration is in the public's best interest; and

29                        (c) the court finds that the alleged conduct was consensual as indicated by words or overt actions  
30        indicating a freely given agreement to have sexual intercourse or sexual contact.

1           (5)(6) In addition to any sentence imposed under subsection (2) or (3), after determining the financial  
2 resources and future ability of the offender to pay restitution as required by 46-18-242, the court shall require the  
3 offender, if able, to pay the victim's reasonable medical and counseling costs that result from the offense. The  
4 amount, method, and time of payment must be determined in the same manner as provided for in 46-18-244.

5           (6)(7) As used in subsections (3) and (4), an act "in the course of committing sexual intercourse without  
6 consent" includes an attempt to commit the offense or the act of flight after the attempt or commission.

7           (7)(8) If as a result of sexual intercourse without consent a child is born, the offender who has been  
8 convicted of an offense under this section and who is the biological parent of the child resulting from the sexual  
9 intercourse without consent forfeits all parental and custodial rights to the child if the provisions of 46-1-401 have  
10 been followed."

11

12           **Section 2.** Section 46-18-231, MCA, is amended to read:

13           **"46-18-231. Fines in felony and misdemeanor cases.** (1) (a) Except as provided in subsection (1)(b),  
14 whenever, upon a verdict of guilty or a plea of guilty or nolo contendere, an offender has been found guilty of an  
15 offense for which a felony penalty of imprisonment could be imposed, the sentencing judge may, in lieu of or in  
16 addition to a sentence of imprisonment, impose a fine only in accordance with subsection (3).

17           (b) For those crimes for which penalties are provided in the following sections, a fine may be imposed  
18 in accordance with subsection (3) in addition to a sentence of imprisonment:

- 19           (i) 45-5-103(4), mitigated deliberate homicide;
- 20           (ii) 45-5-202, aggravated assault;
- 21           (iii) 45-5-213, assault with a weapon;
- 22           (iv) 45-5-302(2), kidnapping;
- 23           (v) 45-5-303(2), aggravated kidnapping;
- 24           (vi) 45-5-401(2), robbery;

25           (vii) 45-5-502(3), sexual assault when the victim is less than 16 years old and the offender is 3 or more  
26 years older than the victim or the offender inflicts bodily injury in the course of committing the sexual assault;

27           (viii) 45-5-503(2) through (4) (5), sexual intercourse without consent;

28           (ix) 45-5-507(5), incest when the victim is 12 years of age or younger and the offender is 18 years of age  
29 or older at the time of the offense;

30           (x) 45-5-601(3), 45-5-602(3), or 45-5-603(2)(b), prostitution, promotion of prostitution, or aggravated

1 promotion of prostitution when the person patronized or engaging in prostitution was a child and the patron was  
2 18 years of age or older at the time of the offense;  
3 (xi) 45-5-625(4), sexual abuse of children;  
4 (xii) 45-9-101(2), (3), and (5)(d), criminal possession with intent to distribute a narcotic drug, criminal  
5 possession with intent to distribute a dangerous drug included in Schedule I or Schedule II, or other criminal  
6 possession with intent to distribute a dangerous drug;  
7 (xiii) 45-9-102(4), criminal possession of an opiate;  
8 (xiv) 45-9-103(2), criminal possession of an opiate with an intent to distribute; and  
9 (xv) 45-9-109, criminal possession with intent to distribute dangerous drugs on or near school property.  
10 (2) Whenever, upon a verdict of guilty or a plea of guilty or nolo contendere, an offender has been found  
11 guilty of an offense for which a misdemeanor penalty of a fine could be imposed, the sentencing judge may  
12 impose a fine only in accordance with subsection (3).  
13 (3) The sentencing judge may not sentence an offender to pay a fine unless the offender is or will be able  
14 to pay the fine. In determining the amount and method of payment, the sentencing judge shall take into account  
15 the nature of the crime committed, the financial resources of the offender, and the nature of the burden that  
16 payment of the fine will impose.  
17 (4) Any fine levied under this section in a felony case shall be in an amount fixed by the sentencing judge  
18 not to exceed \$50,000."

19  
20 **Section 3.** Section 46-23-502, MCA, is amended to read:  
21 "**46-23-502. Definitions.** As used in 46-18-255 and this part, the following definitions apply:  
22 (1) "Department" means the department of corrections provided for in 2-15-2301.  
23 (2) "Mental abnormality" means a congenital or acquired condition that affects the mental, emotional,  
24 or volitional capacity of a person in a manner that predisposes the person to the commission of one or more  
25 sexual offenses to a degree that makes the person a menace to the health and safety of other persons.  
26 (3) "Municipality" means an entity that has incorporated as a city or town.  
27 (4) "Personality disorder" means a personality disorder as defined in the fourth edition of the Diagnostic  
28 and Statistical Manual of Mental Disorders adopted by the American psychiatric association.  
29 (5) "Predatory sexual offense" means a sexual offense committed against a stranger or against a person  
30 with whom a relationship has been established or furthered for the primary purpose of victimization.

1                 (6) "Registration agency" means:

2                 (a) if the offender resides in a municipality, the police department of that municipality; or

3                 (b) if the offender resides in a place other than a municipality, the sheriff's office of the county in which

4 the offender resides.

5                 (7) (a) "Residence" means the location at which a person regularly resides, regardless of the number  
6 of days or nights spent at that location, that can be located by a street address, including a house, apartment  
7 building, motel, hotel, or recreational or other vehicle.

8                 (b) The term does not mean a homeless shelter.

9                 (8) "Sexual offender evaluator" means a person qualified under rules established by the department to  
10 conduct psychosexual evaluations of sexual offenders and sexually violent predators.

11                 (9) "Sexual offense" means:

12                 (a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-301 (if the victim  
13 is less than 18 years of age and the offender is not a parent of the victim), 45-5-302 (if the victim is less than 18  
14 years of age and the offender is not a parent of the victim), 45-5-303 (if the victim is less than 18 years of age and  
15 the offender is not a parent of the victim), 45-5-502 (if the offender is a professional licensed under Title 37 and  
16 commits the offense during any treatment, consultation, interview, or evaluation of a person's physical or mental  
17 condition, ailment, disease, or injury), 45-5-502(3) (if the victim is less than 16 years of age and the offender is  
18 3 or more years older than the victim), ~~45-5-503~~ 46-5-503(1), (3), or (4), 45-5-504(2)(c), 45-5-504(3) (if the victim  
19 is less than 16 years of age and the offender is 4 or more years older than the victim), 45-5-507 (if the victim is  
20 less than 18 years of age and the offender is 3 or more years older than the victim or if the victim is 12 years of  
21 age or younger and the offender is 18 years of age or older at the time of the offense), 45-5-601(3), 45-5-602(3),  
22 45-5-603(1)(b) or (2)(b), 45-5-625, 45-5-704, or 45-5-705; or

23                 (b) any violation of a law of another state, a tribal government, or the federal government that is  
24 reasonably equivalent to a violation listed in subsection (9)(a) or for which the offender was required to register  
25 as a sexual offender after an adjudication or conviction.

26                 (10) "Sexual or violent offender" means a person who has been convicted of or, in youth court, found to  
27 have committed or been adjudicated for a sexual or violent offense.

28                 (11) "Sexually violent predator" means a person who:

29                 (a) has been convicted of or, in youth court, found to have committed or been adjudicated for a sexual  
30 offense and who suffers from a mental abnormality or a personality disorder that makes the person likely to

- 1 engage in predatory sexual offenses; or
- 2 (b) has been convicted of a sexual offense against a victim 12 years of age or younger and the offender
- 3 is 18 years of age or older.

4 (12) "Transient" means an offender who has no residence.

5 (13) "Violent offense" means:

- 6 (a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-102, 45-5-103,
- 7 45-5-202, 45-5-206 (third or subsequent offense), 45-5-210(1)(b), (1)(c), or (1)(d), 45-5-212, 45-5-213, 45-5-302
- 8 (if the victim is not a minor), 45-5-303 (if the victim is not a minor), 45-5-401, 45-6-103, or 45-9-132; or
- 9 (b) any violation of a law of another state, a tribal government, or the federal government reasonably
- 10 equivalent to a violation listed in subsection (13)(a)."

12        **NEW SECTION.** **Section 4. Applicability.** [This act] applies to offenses committed on or after [the  
13 effective date of this act].

14 - END -