

HOUSE BILL NO. 514
INTRODUCED BY M. CAFERRO

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE SEXUAL ASSAULT AND SEXUAL INTERCOURSE WITHOUT CONSENT LAWS TO PROVIDE THAT CONSENT IS NOT EFFECTIVE IF THE VICTIM IS A PATIENT IN OR A RESIDENT OF A MENTAL HEALTH FACILITY, A RESIDENTIAL FACILITY, OR A COMMUNITY-BASED FACILITY OR IS A RECIPIENT OF COMMUNITY-BASED SERVICES AND THE PERPETRATOR IS AN EMPLOYEE, CONTRACTOR, OR VOLUNTEER OF THE FACILITY OR COMMUNITY-BASED SERVICE; PROVIDING A LIMITED MARRIAGE EXCEPTION; AND AMENDING SECTIONS 45-5-501 AND 45-5-502, 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. (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 (3), 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
 - (v) incarcerated in an adult or juvenile correctional, detention, or treatment facility and the perpetrator is an employee, contractor, or volunteer of the facility and has supervisory or disciplinary authority over the victim, unless the act is part of a lawful search; or
 - (vi) admitted to a mental health facility, as defined in 53-21-102, admitted to a community-based facility or a residential facility, as those terms are defined in 53-20-102, or is receiving community-based services, as defined in 53-20-102, and the perpetrator:
 - (A) has supervisory or disciplinary authority over the victim or is providing treatment to the victim; and
 - (B) is an employee, contractor, or volunteer of the facility or community-based service.
- (2) As used in subsection (1), the term "force" means:
 - (a) the infliction, attempted infliction, or threatened infliction of bodily injury or the commission of a

forcible felony by the offender; or

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

(3) Subsection (1)(b)(vi) does not apply if the individuals are married to each other and one of the individuals involved is a patient in or resident of a facility or is a recipient of community-based services and the other individual is an employee, contractor, or volunteer of the facility or community-based service."

Section 2. 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 person convicted of sexual assault shall be fined not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, 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) Consent~~ Subject to subsection (5)(b), consent is ineffective under this section if the victim is:

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

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

(iii) admitted to a mental health facility, as defined in 53-21-102, admitted to a community-based facility or a residential facility, as those terms are defined in 53-20-102, or is receiving community-based services, as defined in 53-20-102, and the perpetrator:

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

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

(b) Subsection (5)(a)(iii) does not apply if the individuals are married to each other and one of the individuals involved is a patient in or resident of a facility or is a recipient of community-based services and the

other individual is an employee, contractor, or volunteer of the facility or community-based service."

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