

SENATE BILL NO. 154  
INTRODUCED BY R. LAIBLE

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING SEXUAL OFFENSE PENALTIES TO SUBSTANTIALLY ADOPT THE PENALTIES PROVIDED IN FLORIDA'S JESSICA LUNSFORD ACT; PROVIDING FOR PENALTIES OF 25 YEARS TO LIFE IMPRISONMENT; PROVIDING FOR LIFETIME PROBATION FOR OFFENDERS NOT SENTENCED TO LIFE IMPRISONMENT; PROVIDING FOR MONETARY FINES; AMENDING SECTIONS 45-5-502, 45-5-503, 45-5-504, 45-5-505, 45-5-507, 45-5-512, 45-5-622, 45-5-625, 45-5-627, 46-1-202, 46-16-216, 46-18-201, 46-18-205, 46-18-219, 46-18-222, 46-18-231, 46-23-201, AND 46-23-1011, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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~~ Except as provided in subsection (4), a person convicted of sexual assault 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.

(3) ~~If~~ Except as provided in subsection (4), if the victim is less than 16 years old of age 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 an amount not more than \$50,000.

(4) Except as provided in 46-18-219, if the victim is less than 13 years of age and the offender is 18 years of age or older, the offender shall be punished by:

(a) imprisonment in a state prison for a term of not less than 25 years and not more than life imprisonment;

(b) probation for the rest of the offender's life if the offender is sentenced to less than life imprisonment;  
and

(c) a fine of at least \$25,000 and not more than \$50,000.

~~(4)~~(5) An act "in the course of committing sexual assault" includes an attempt to commit the offense or flight after the attempt or commission.

~~(5)~~(6) Consent is ineffective under this section if:

(a) 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) the victim is less than 14 years ~~old~~ of age and the offender is 3 or more years older than the victim.

(7) Consent is ineffective under subsection (4)."

**Section 2.** Section 45-5-503, MCA, is amended to read:

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

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

(3) (a) If Except as provided in subsection (4), if the victim is less than 16 years ~~old~~ of age 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 intercourse without consent, the offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 4 years or more than 100 years and may be fined not more than \$50,000, except as provided in 46-18-219 and 46-18-222.

(b) If two or more persons are convicted of sexual intercourse without consent with the same victim in an incident in which each offender was present at the location where another offender's offense occurred during a time period in which each offender could have reasonably known of the other's offense, each offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 5 years or more than 100 years and may be fined not more than \$50,000, except as provided in 46-18-219 and 46-18-222.

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

(i) punished by death as provided in 46-18-301 through 46-18-310, unless the offender is less than 18

years of age at the time of the commission of the offense; or

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

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

(4) Except as provided in 46-18-219, if the victim is less than 13 years of age and the offender is 18 years of age or older, the offender shall be punished by:

(a) imprisonment in a state prison for a term of not less than 25 years and not more than life imprisonment;

(b) probation for the rest of the offender's life if the offender is sentenced to less than life imprisonment;  
and

(c) a fine of at least \$25,000 and not more than \$50,000.

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

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

**Section 3.** Section 45-5-504, MCA, is amended to read:

**"45-5-504. Indecent exposure.** (1) A person commits the offense of indecent exposure if the person knowingly or purposely exposes the person's genitals under circumstances in which the person knows the conduct is likely to cause affront or alarm in order to:

(a) abuse, humiliate, harass, or degrade another; or

(b) arouse or gratify the person's own sexual response or desire or the sexual response or desire of any person.

(2) (a) ~~A~~ Except as provided in subsection (3), a person convicted of the offense of indecent exposure shall be fined an amount not to exceed \$500 or be imprisoned in the county jail for a term of not more than 6 months, or both.

(b) ~~On~~ Except as provided in subsection (3), on a second conviction, the person shall be fined an amount not to exceed \$1,000 or be imprisoned in the county jail for a term of not more than 1 year, or both.

(c) ~~On~~ Except as provided in subsection (3), on a third or subsequent conviction, the person shall be punished by life imprisonment or by imprisonment in a state prison for a term of not less than 5 years or more than 100 years and may be fined not more than \$10,000.

(3) Except as provided in 46-18-219, if the victim is less than 13 years of age and the offender is 18 years of age or older, the offender shall be punished by:

(a) imprisonment in a state prison for a term of not less than 25 years and not more than life imprisonment;

(b) probation for the rest of the offender's life if the offender is sentenced to less than life imprisonment;  
and

(c) a fine of at least \$25,000 and not more than \$50,000."

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

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

(2) ~~A~~ Except as provided in subsection (4), a person convicted of the offense of deviate sexual conduct shall be imprisoned in the state prison for ~~any~~ a term not to exceed 10 years or be fined an amount not to exceed \$50,000, or both.

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

(4) Except as provided in 46-18-219, if the victim is less than 13 years of age and the offender is 18 years of age or older, the offender shall be punished by:

(a) imprisonment in a state prison for a term of not less than 25 years and not more than life imprisonment;

(b) probation for the rest of the offender's life if the offender is sentenced to less than life imprisonment;  
and

(c) a fine of at least \$25,000 and not more than \$50,000."

**Section 5.** Section 45-5-507, MCA, is amended to read:

**"45-5-507. Incest.** (1) A person commits the offense of incest if the person knowingly marries, cohabits with, has sexual intercourse with, or has sexual contact, as defined in 45-2-101, with an ancestor, a descendant, a brother or sister of the whole or half blood, or any stepson or stepdaughter. The relationships referred to in this subsection include blood relationships without regard to legitimacy, relationships of parent and child by adoption, and relationships involving a stepson or stepdaughter.

(2) Consent is a defense under this section to incest with or upon a stepson or stepdaughter, but consent is ineffective if the victim is less than 18 years ~~old~~ of age.

(3) ~~A~~ Except as provided in subsection (5), a person convicted of incest shall be punished by life imprisonment or by imprisonment in the state prison for a term not to exceed 100 years or be fined an amount not to exceed \$50,000.

(4) ~~If~~ Except as provided in subsection (5), if the victim is under 16 years of age 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 incest, the offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 4 years or more than 100 years and may be fined not more than \$50,000.

(5) Except as provided in 46-18-219, if the victim is less than 13 years of age and the offender is 18 years of age or older, the offender shall be punished by:

(a) imprisonment in a state prison for a term of not less than 25 years and not more than life imprisonment;

(b) probation for the rest of the offender's life if the offender is sentenced to less than life imprisonment;  
and

(c) a fine of at least \$25,000 and not more than \$50,000.

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

**Section 6.** Section 45-5-512, MCA, is amended to read:

**"45-5-512. Chemical treatment of sex offenders.** (1) A person convicted of a first offense under 45-5-502(3) or (4), 45-5-503(3) or (4), or 45-5-507(4) or (5) may, in addition to the sentence imposed under those sections, be sentenced to undergo medically safe medroxyprogesterone acetate treatment or its chemical equivalent or other medically safe drug treatment that reduces sexual fantasies, sex drive, or both, administered

by the department of corrections or its agent pursuant to subsection (4).

(2) A person convicted of a second or subsequent offense under 45-5-502(3), 45-5-503, or 45-5-507 may, in addition to the sentence imposed under those sections, be sentenced to undergo medically safe medroxyprogesterone acetate treatment or its chemical equivalent or other medically safe drug treatment that reduces sexual fantasies, sex drive, or both, administered by the department of corrections or its agent pursuant to subsection (4).

(3) A person convicted of a first or subsequent offense under 45-5-502, 45-5-503, or 45-5-507 who is not sentenced to undergo medically safe medroxyprogesterone acetate treatment or its chemical equivalent or other medically safe drug treatment that reduces sexual fantasies, sex drive, or both, may voluntarily undergo such treatment, which must be administered by the department of corrections or its agent and paid for by the department of corrections.

(4) Treatment under subsection (1) or (2) must begin 1 week before release from confinement and must continue until the department of corrections determines that the treatment is no longer necessary. Failure to continue treatment as ordered by the department of corrections constitutes a criminal contempt of court for failure to comply with the sentence, for which the sentencing court shall impose a term of incarceration without possibility of parole of not less than 10 years or more than 100 years.

(5) Prior to chemical treatment under this section, the person must be fully medically informed of its effects.

(6) A state employee who is a professional medical person may not be compelled against the employee's wishes to administer chemical treatment under this section."

**Section 7.** Section 45-5-622, MCA, is amended to read:

**"45-5-622. Endangering welfare of children.** (1) A parent, guardian, or other person supervising the welfare of a child less than 18 years ~~old~~ of age commits the offense of endangering the welfare of children if the parent, guardian, or other person knowingly endangers the child's welfare by violating a duty of care, protection, or support.

(2) Except as provided in 16-6-305, a parent or guardian or any person who is 18 years of age or older, whether or not the parent, guardian, or other person is supervising the welfare of the child, commits the offense of endangering the welfare of children if the parent, guardian, or other person knowingly contributes to the delinquency of a child less than:

(a) 18 years ~~old~~ of age by:

- (i) supplying or encouraging the use of an intoxicating substance by the child; or
- (ii) assisting, promoting, or encouraging the child to enter a place of prostitution; ~~or~~
- (b) 16 years ~~old~~ of age by assisting, promoting, or encouraging the child to:
  - (i) abandon the child's place of residence without the consent of the child's parents or guardian; or
  - (ii) engage in sexual conduct; or
  - (c) 13 years of age by assisting, promoting, or encouraging the child to:
    - (i) abandon the child's place of residence without the consent of the child's parents or guardian; or
    - (ii) engage in sexual conduct.

(3) A parent, guardian, or other person supervising the welfare of a child less than 16 years of age may verbally or in writing request a person who is 18 years of age or older and who has no legal right of supervision or control over the child to stop contacting the child if the ~~requester~~ requester believes that the contact is not in the child's best interests. If the person continues to contact the child, the parent, guardian, or other person supervising the welfare of the child may petition or the county attorney may upon the person's request petition for an order of protection under Title 40, chapter 15. To the extent that they are consistent with this subsection, the provisions of Title 40, chapter 15, apply. A person who purposely or knowingly violates an order of protection commits the offense of endangering the welfare of children and upon conviction shall be sentenced as provided in subsection (4).

(4) (a) ~~A~~ Except as provided in subsection (4)(b), a person convicted of endangering the welfare of children shall be fined an amount not to exceed \$500 or be imprisoned in the county jail for ~~any a~~ a term not to exceed 6 months, or both. A person convicted of a second offense of endangering the welfare of children shall be fined an amount not to exceed \$1,000 or be imprisoned in the county jail for ~~any a~~ a term not to exceed 6 months, or both.

(b) Except as provided in 46-18-219, if the victim is less than 13 years of age and the offender is 18 years of age or older, the offender shall be punished by:

- (i) imprisonment in a state prison for a term of not less than 25 years and not more than life imprisonment;
- (ii) probation for the rest of the offender's life if the offender is sentenced to less than life imprisonment;
- and
- (iii) a fine of at least \$25,000 and not more than \$50,000.

(5) On the issue of whether there has been a violation of the duty of care, protection, and support, the following, in addition to all other admissible evidence, is admissible: cruel treatment; abuse; infliction of

unnecessary and cruel punishment; abandonment; neglect; lack of proper medical care, clothing, shelter, and food; and evidence of past bodily injury.

(6) The court may order, in its discretion, any fine levied or any bond forfeited upon a charge of endangering the welfare of children paid to or for the benefit of the person or persons whose welfare the defendant has endangered."

**Section 8.** Section 45-5-625, MCA, is amended to read:

**"45-5-625. Sexual abuse of children.** (1) A person commits the offense of sexual abuse of children if the person:

(a) knowingly employs, uses, or permits the employment or use of a child in an exhibition of sexual conduct, actual or simulated;

(b) knowingly photographs, films, videotapes, develops or duplicates the photographs, films, or videotapes, or records a child engaging in sexual conduct, actual or simulated;

(c) knowingly, by any means of communication, including electronic communication as defined in 45-8-213, persuades, entices, counsels, or procures a child under 16 years of age or a person the offender believes to be a child under 16 years of age to engage in sexual conduct, actual or simulated;

(d) knowingly processes, develops, prints, publishes, transports, distributes, sells, exhibits, or advertises any visual or print medium, including a medium by use of electronic communication, as defined in 45-8-213, in which a child is engaged in sexual conduct, actual or simulated;

(e) knowingly possesses any visual or print medium, including a medium by use of electronic communication, as defined in 45-8-213, in which a child is engaged in sexual conduct, actual or simulated;

(f) finances any of the activities described in subsections (1)(a) through (1)(d) and (1)(g), knowing that the activity is of the nature described in those subsections; or

(g) possesses with intent to sell any visual or print medium, including a medium by use of electronic communication, as defined in 45-8-213, in which a child is engaged in sexual conduct, actual or simulated.

(2) (a) ~~Except as provided in subsection (2)(d),~~ a person convicted of the offense of sexual abuse of children shall be punished by life imprisonment or by imprisonment in the state prison for a term not to exceed 100 years and may be fined not more than \$10,000.

(b) Except as provided in 46-18-219 and subsection (2)(d) of this section, if the victim is under 16 years of age, a person convicted of the offense of sexual abuse of children shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 4 years or more than 100 years and may be fined



not more than \$10,000.

(c) Except as provided in 46-18-219 and subsection (2)(d) of this section, a person convicted of the offense of sexual abuse of children for the possession of material, as provided in subsection (1)(e), shall be fined an amount not to exceed \$10,000 or be imprisoned in the state prison for a term not to exceed 10 years, or both.

(d) Except as provided in 46-18-219, if the child involved in the exhibition, photograph, film, videotape, recording, or other visual or audio medium is less than 13 years of age and the offender is 18 years of age or older, the offender shall be punished by:

(i) imprisonment in a state prison for a term of not less than 25 years and not more than life imprisonment;

(ii) probation for the rest of the offender's life if the offender is sentenced to less than life imprisonment;  
and

(iii) a fine of at least \$25,000 and not more than \$50,000.

(3) An offense is not committed under subsections (1)(d) through (1)(g) if the visual or print medium is processed, developed, printed, published, transported, distributed, sold, possessed, or possessed with intent to sell, or if the activity is financed, as part of a sex offender information or treatment course or program conducted or approved by the department of corrections."

**Section 9.** Section 45-5-627, MCA, is amended to read:

**"45-5-627. Ritual abuse of minor -- exceptions -- penalty.** (1) ~~A~~ Except as provided in subsection (4), a person commits the offense of ritual abuse of a minor if the person purposely or knowingly and as part of any ceremony, rite, or ritual or of any training or practice for any ceremony, rite, or ritual:

(a) has sexual intercourse without consent with a person less than 16 years of age; commits assault, aggravated assault, assault on a minor, or assault with a weapon against a victim less than 16 years of age; or kills a person less than 16 years of age;

(b) actually or by simulation tortures, mutilates, or sacrifices an animal or person in the presence of the minor;

(c) dissects, mutilates, or incinerates a human corpse or remains in the presence of the minor;

(d) forces upon the minor or upon another person in the presence of a minor the ingestion or the external bodily application of human or animal urine, feces, flesh, blood, bone, or bodily secretions or drugs or chemical compounds;

(e) places a living minor or another living person in the presence of a minor in a coffin or open grave that

is empty or that contains a human corpse or remains; or

(f) threatens the minor or, in the presence of the minor, threatens any person or animal with death or serious bodily harm and the minor reasonably believes that the threat will or may be carried out.

(2) This section does not apply to activities, practices, and procedures otherwise allowed by law.

(3) Except as provided in 46-18-219 and subsection (4) of this section, a person convicted of ritual abuse of a minor shall:

(a) for the first offense, be imprisoned in the state prison for a term of not less than 2 years or more than 20 years and may be fined not more than \$50,000, or both; and

(b) for a second or subsequent offense, be imprisoned in the state prison for ~~any a~~ term of not less than 2 years or more than 40 years and may be fined not more than \$50,000, or both.

(4) Except as provided in 46-18-219, if the victim of an act specified in subsection (1) is less than 13 years of age and the offender is 18 years of age or older, the offender shall be punished by:

(a) imprisonment in a state prison for a term of not less than 25 years and not more than life imprisonment;

(b) probation for the rest of the offender's life if the offender is sentenced to less than life imprisonment;  
and

(c) a fine of at least \$25,000 and not more than \$50,000.

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

**Section 10.** Section 46-1-202, MCA, is amended to read:

**"46-1-202. Definitions.** As used in this title, unless the context requires otherwise, the following definitions apply:

(1) "Advanced practice registered nurse" means an individual certified as an advanced practice registered nurse provided for in 37-8-202, with a clinical specialty in psychiatric mental health nursing.

(2) "Arrestment" means the formal act of calling the defendant into open court to enter a plea answering a charge.

(3) "Arrest" means taking a person into custody in the manner authorized by law.

(4) "Arrest warrant" means a written order from a court directed to a peace officer or to some other

person specifically named commanding that officer or person to arrest another. The term includes the original warrant of arrest and a copy certified by the issuing court.

(5) "Bail" means the security given for the primary purpose of ensuring the presence of the defendant in a pending criminal proceeding.

(6) "Charge" means a written statement that accuses a person of the commission of an offense, that is presented to a court, and that is contained in a complaint, information, or indictment.

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

(8) "Court" means a place where justice is judicially administered and includes the judge of the court.

(9) "Included offense" means an offense that:

(a) is established by proof of the same or less than all the facts required to establish the commission of the offense charged;

(b) consists of an attempt to commit the offense charged or to commit an offense otherwise included in the offense charged; or

(c) differs from the offense charged only in the respect that a less serious injury or risk to the same person, property, or public interest or a lesser kind of culpability suffices to establish its commission.

(10) "Judge" means a person who is vested by law with the power to perform judicial functions.

(11) "Judgment" means an adjudication by a court that the defendant is guilty or not guilty, and if the adjudication is that the defendant is guilty, it includes the sentence pronounced by the court.

(12) (a) "Make available for examination and reproduction" means to make material and information that is subject to disclosure available upon request at a designated place during specified reasonable times and to provide suitable facilities or arrangements for reproducing it. The parties may by mutual consent make other or additional arrangements.

(b) The term does not mean that the disclosing party is required to make copies at its expense, to deliver the materials or information to the other party, or to supply the facilities or materials required to carry out tests on disclosed items. ~~The parties may by mutual consent make other or additional arrangements.~~

(13) "New trial" means a reexamination of the issue in the same court before another jury after a verdict or finding has been rendered.

(14) "Notice to appear" means a written direction that is issued by a peace officer and that requests a person to appear before a court at a stated time and place to answer a charge for the alleged commission of an

offense.

(15) "Offense" means a violation of any penal statute of this state or any ordinance of its political subdivisions.

(16) "Parole" means the release to the community of a prisoner by a decision of the board of pardons and parole prior to the expiration of the prisoner's term subject to conditions imposed by the board of pardons and parole and the supervision of the department of corrections.

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

(18) "Persistent felony offender" means an offender who has previously been convicted of a felony and who is presently being sentenced for a second felony committed on a different occasion than the first. An offender is considered to have been previously convicted of a felony if:

(a) the previous felony conviction was for an offense committed in this state or any other jurisdiction for which a sentence of imprisonment in excess of 1 year could have been imposed;

(b) less than 5 years have elapsed between the commission of the present offense and either:

(i) the previous felony conviction; or

(ii) the offender's release on parole or otherwise from prison or other commitment imposed as a result of a previous felony conviction; and

(c) the offender has not been pardoned on the ground of innocence and the conviction has not been set aside at the postconviction hearing.

(19) "Place of trial" means the geographical location and political subdivision in which the court that will hear the cause is situated.

(20) "Preliminary examination" means a hearing before a judge for the purpose of determining if there is probable cause to believe a felony has been committed by the defendant.

(21) "Probation", except as otherwise provided by law, means release by the court without imprisonment of a defendant found guilty of a crime. The release is subject to the supervision of the department of corrections upon direction of the court.

(22) "Prosecutor" means an elected or appointed attorney who is vested by law with the power to initiate and carry out criminal proceedings on behalf of the state or a political subdivision.

(23) "Same transaction" means conduct consisting of a series of acts or omissions that are motivated by:

(a) a purpose to accomplish a criminal objective and that are necessary or incidental to the

accomplishment of that objective; or

(b) a common purpose or plan that results in the repeated commission of the same offense or effect upon the same person or the property of the same person.

(24) "Search warrant" means an order that is:

(a) in writing;

(b) in the name of the state;

(c) signed by a judge;

(d) a particular description of the place, object, or person to be searched and the evidence, contraband, or person to be seized; and

(e) directed to a peace officer and commands the peace officer to search for evidence, contraband, or persons.

(25) "Sentence" means the judicial disposition of a criminal proceeding upon a plea of guilty or nolo contendere or upon a verdict or finding of guilty.

(26) "Statement" means:

(a) a writing signed or otherwise adopted or approved by a person;

(b) a video or audio recording of a person's communications or a transcript of the communications; and

(c) a writing containing a summary of a person's oral communications or admissions.

(27) "Summons" means a written order issued by the court that commands a person to appear before a court at a stated time and place to answer a charge for the offense set forth in the order.

(28) "Superseded notes" means handwritten notes, including field notes, that have been substantially incorporated into a statement. The notes may not be considered a statement and are not subject to disclosure except as provided in 46-15-324.

(29) "Temporary road block" means any structure, device, or means used by a peace officer for the purpose of controlling all traffic through a point on the highway where all vehicles may be slowed or stopped.

(30) "Witness" means a person whose testimony is desired in a proceeding or investigation by a grand jury or in a criminal action, prosecution, or proceeding.

(31) "Work product" means legal research, records, correspondence, reports, and memoranda, both written and oral, to the extent that they contain the opinions, theories, and conclusions of the prosecutor, defense counsel, or their staff or investigators."

**Section 11.** Section 46-16-216, MCA, is amended to read:

**"46-16-216. Videotaped testimony.** (1) For any prosecution commenced under 45-5-502(3) or (4), 45-5-503, 45-5-505, or 45-5-507 or for prosecution of any offense against the person provided for in Title 45, chapter 5, involving a victim who is under 16 years of age, the testimony of the victim, at the request of the victim and with the concurrence of the prosecutor, may be recorded by means of videotape for presentation at trial. The recorded testimony may be presented at trial and must be received into evidence. The victim need not be physically present in the courtroom when the videotape is admitted into evidence.

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

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

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

**Section 12.** Section 46-18-201, MCA, is amended to read:

**"46-18-201. Sentences that may be imposed.** (1) (a) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may defer imposition of sentence, except as otherwise specifically provided by statute, for a period:

- (i) not exceeding 1 year for a misdemeanor or for a period not exceeding 3 years for a felony; or
- (ii) not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for a felony if a financial obligation is imposed as a condition of sentence for either the misdemeanor or the felony, regardless of whether any other conditions are imposed.

(b) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the case of an offender who has been convicted of a felony on a prior occasion, whether or not the sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was suspended.

(2) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may suspend execution of sentence, except as otherwise specifically provided by statute, for a period up to the maximum sentence allowed or for a period of 6 months, whichever is greater, for each particular offense.

(3) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may impose a sentence that may include:

- (a) a fine as provided by law for the offense;
  - (b) payment of costs as provided in 46-18-232 or payment of costs of assigned counsel as provided in 46-8-113;
  - (c) a term of incarceration, as provided in Title 45 for the offense, at a county detention center or at a state prison to be designated by the department of corrections;
  - (d) commitment of:
    - (i) an offender not referred to in subsection (3)(d)(ii) to the department of corrections, with a recommendation for placement in an appropriate correctional facility or program; however, all but the first 5 years of the commitment to the department of corrections must be suspended; or
    - (ii) a youth transferred to district court under 41-5-206 and found guilty in the district court of an offense enumerated in 41-5-206 to the department of corrections for a period determined by the court for placement in an appropriate correctional facility or program;
  - (e) with the approval of the facility or program, placement of the offender in a community corrections facility or program as provided in 53-30-321;
  - (f) with the approval of the prerelease center or prerelease program and confirmation by the department of corrections that space is available, placement of the offender in a prerelease center or prerelease program for a period not to exceed 1 year;
  - (g) chemical treatment of sex offenders, as provided in 45-5-512, if applicable, that is paid for by and for a period of time determined by the department of corrections, but not exceeding the period of state supervision of the person; or
  - (h) any combination of subsections (2) through (3)(g).
- (4) When deferring imposition of sentence, ~~or~~ suspending all or a portion of execution of sentence, or imposing probation pursuant to 45-5-502(4), 45-5-503(4), 45-5-504(3), 45-5-505(4), 45-5-507(5), 45-5-622(4)(b), 45-5-625(2)(d), or 45-5-627(4), the sentencing judge may impose upon the offender any reasonable restrictions or conditions during the period of the deferred imposition of sentence, or suspension of sentence, or probation imposed pursuant to those sections cited in this subsection. Reasonable restrictions or conditions imposed under subsection (1)(a) or (2) may include but are not limited to:
- (a) limited release during employment hours as provided in 46-18-701;
  - (b) incarceration in a detention center not exceeding 180 days;
  - (c) conditions for probation;
  - (d) payment of the costs of confinement;

- (e) payment of a fine as provided in 46-18-231;
  - (f) payment of costs as provided in 46-18-232 and 46-18-233;
  - (g) payment of costs of assigned counsel as provided in 46-8-113;
  - (h) with the approval of the facility or program, an order that the offender be placed in a community corrections facility or program as provided in 53-30-321;
  - (i) with the approval of the prerelease center or prerelease program and confirmation by the department of corrections that space is available, an order that the offender be placed in a prerelease center or prerelease program for a period not to exceed 1 year;
  - (j) community service;
  - (k) home arrest as provided in Title 46, chapter 18, part 10;
  - (l) payment of expenses for use of a judge pro tempore or special master as provided in 3-5-116;
  - (m) with the approval of the department of corrections and with a signed statement from an offender that the offender's participation in the boot camp incarceration program is voluntary, an order that the offender complete the boot camp incarceration program established pursuant to 53-30-403;
  - (n) participation in a day reporting program provided for in 53-1-203;
  - (o) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the protection of the victim or society; or
  - (p) any combination of the restrictions or conditions listed in subsections (4)(a) through (4)(p).
- (5) In addition to any other penalties imposed, if a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere and the sentencing judge finds that a victim, as defined in 46-18-243, has sustained a pecuniary loss, the sentencing judge shall, as part of the sentence, require payment of full restitution to the victim, as provided in 46-18-241 through 46-18-249, whether or not any part of the sentence is deferred or suspended.
- (6) In addition to any of the penalties, restrictions, or conditions imposed pursuant to subsections (1) through (5), the sentencing judge may include the suspension of the license or driving privilege of the person to be imposed upon the failure to comply with any penalty, restriction, or condition of the sentence. A suspension of the license or driving privilege of the person must be accomplished as provided in 61-5-214 through 61-5-217.
- (7) In imposing a sentence on an offender convicted of a sexual or violent offense, as defined in 46-23-502, the sentencing judge may not waive the registration requirement provided in Title 46, chapter 23, part 5.
- (8) If a felony sentence includes probation, the department of corrections shall supervise the offender



unless the court specifies otherwise."

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

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

- (a) 45-5-503, sexual intercourse without consent;
- (b) 45-5-504, indecent exposure;
- (c) 45-5-505, deviate sexual conduct; or
- (d) 45-5-507, incest.

(2) Except as provided in 45-9-202, [section 14], and 46-18-222, the imposition or execution of the first 2 years of a sentence of imprisonment imposed under the following sections may not be deferred or suspended:

- (a) 45-5-103(4), mitigated deliberate homicide;
- (b) 45-5-202, aggravated assault;
- (c) 45-5-302(2), kidnapping;
- (d) 45-5-303(2), aggravated kidnapping;
- (e) 45-5-401(2), robbery;
- (f) 45-5-502(3), sexual assault;
- (g) 45-5-503(2) and (3), sexual intercourse without consent;
- (h) 45-5-603, aggravated promotion of prostitution;
- (i) 45-9-101(2), (3), and (5)(d), criminal distribution of dangerous drugs;
- (j) 45-9-102(4), criminal possession of dangerous drugs; and
- (k) 45-9-103(2), criminal possession with intent to distribute dangerous drugs.

(3) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a sentence of imprisonment imposed under 45-5-102, deliberate homicide, may not be deferred or suspended."

**NEW SECTION. Section 14. Mandatory sentence for sex crimes against children -- deferral or suspension prohibited.** If a victim is less than 13 years of age and the offender is 18 years of age or older, the imposition or execution of a sentence imposed under the following sections may not be deferred or suspended:

- (1) 45-5-502(4), sexual assault;

- (2) 45-5-503(4), sexual intercourse without consent;
- (3) 45-5-504(3), indecent exposure;
- (4) 45-5-505(4), deviate sexual conduct;
- (5) 45-5-507(5), incest;
- (6) 45-5-622(4)(b), endangering the welfare of children;
- (7) 45-5-625(2)(d), sexual abuse of children; and
- (8) 45-5-627(4), ritual abuse of a minor.

**Section 15.** Section 46-18-219, MCA, is amended to read:

**"46-18-219. Life sentence without possibility of release.** (1) (a) Except as provided in subsection (3), if an offender convicted of one of the following offenses was previously convicted of one of the following offenses or of an offense under the laws of another state or of the United States that, if committed in this state, would be one of the following offenses, the offender must be sentenced to life in prison, unless the death penalty is applicable and imposed:

- (i) 45-5-102, deliberate homicide;
- (ii) 45-5-303, aggravated kidnapping;
- (iii) 45-5-503, sexual intercourse without consent;
- (iv) 45-5-625, sexual abuse of children; or
- (v) 45-5-627, except subsection (1)(b), ritual abuse of a minor.

(b) Except as provided in subsection (3), if an offender convicted of one of the following offenses was previously convicted of two of the following offenses, two of any combination of the offenses listed in subsection (1)(a) or the following offenses, or two of any offenses under the laws of another state or of the United States that, if committed in this state, would be one of the offenses listed in subsection (1)(a) or this subsection, the offender must be sentenced to life in prison, unless the death penalty is applicable and imposed:

- (i) 45-5-103, mitigated deliberate homicide;
- (ii) 45-5-202, aggravated assault;
- (iii) 45-5-302, kidnapping;
- (iv) 45-5-401, robbery; or
- (v) 45-5-603, aggravated promotion of prostitution.

(c) If an offender convicted of one of the following offenses and sentenced under one of the following sentencing provisions was previously convicted or sentenced under circumstances the same as those provided

in this subsection regarding the age of the victim and offender under the laws of this state, another state, or the United States, the offender must be sentenced to life in prison, unless the death penalty is applicable and imposed:

(i) 45-5-502(4), sexual assault when the victim is less than 13 years of age and the offender is 18 years of age or older;

(ii) 45-5-503(4), sexual intercourse without consent when the victim is less than 13 years of age and the offender is 18 years of age or older;

(iii) 45-5-504(3), indecent exposure when the victim is less than 13 years of age and the offender is 18 years of age or older;

(iv) 45-5-505(4), deviate sexual conduct when the victim is less than 13 years of age and the offender is 18 years of age or older;

(v) 45-5-507(5), incest when the victim is less than 13 years of age and the offender is 18 years of age or older;

(vi) 45-5-622(4)(b), endangering the welfare of children when the victim is less than 13 years of age and the offender is 18 years of age or older;

(vii) 45-5-625(2)(d), sexual abuse of children when the victim is less than 13 years of age and the offender is 18 years of age or older; or

(viii) 45-5-627(4), ritual abuse of children when the victim is less than 13 years of age and the offender is 18 years of age or older.

(2) Except as provided in 46-23-210 and subsection (3) of this section, an offender sentenced under subsection (1):

(a) shall serve the entire sentence;

(b) shall serve the sentence in prison;

(c) may not for any reason, except a medical reason, be transferred for any length of time to another type of institution, facility, or program;

(d) may not be paroled; and

(e) may not be given time off for good behavior or otherwise be given an early release for any reason.

(3) If the offender was previously sentenced for either of two or three offenses listed in subsection (1), pursuant to any of the exceptions listed in 46-18-222, then the provisions of subsections (1) and (2) of this section do not apply to the offender's present sentence.

(4) The imposition or execution of the sentences prescribed by this section may not be deferred or

suspended. In the event of a conflict between this section and any provision of 46-18-201 or 46-18-205, this section prevails.

(5) (a) For purposes of this section, "prison" means a secure detention facility in which inmates are locked up 24 hours a day and that is operated by this state, another state, the federal government, or a private contractor.

(b) Prison does not include a work release center, prerelease center, boot camp, or any other type of facility that does not provide secure detention."

**Section 16.** Section 46-18-222, MCA, is amended to read:

**"46-18-222. Exceptions to mandatory minimum sentences and restrictions on deferred imposition and suspended execution of sentence.** ~~(1) Mandatory~~ Except as otherwise provided in subsection (2), ~~mandatory~~ minimum sentences prescribed by the laws of this state, mandatory life sentences prescribed by 46-18-219, and the restrictions on deferred imposition and suspended execution of sentence prescribed by 46-18-201(1)(b), 46-18-205, 46-18-221(3), 46-18-224, and 46-18-502(3) do not apply if:

~~(1)(a)~~ (a) the offender was less than 18 years of age at the time of the commission of the offense for which the offender is to be sentenced;

~~(2)(b)~~ (b) the offender's mental capacity, at the time of the commission of the offense for which the offender is to be sentenced, was significantly impaired, although not so impaired as to constitute a defense to the prosecution. However, a voluntarily induced intoxicated or drugged condition may not be considered an impairment for the purposes of this subsection.

~~(3)(c)~~ (c) the offender, at the time of the commission of the offense for which the offender is to be sentenced, was acting under unusual and substantial duress, although not such duress as would constitute a defense to the prosecution;

~~(4)(d)~~ (d) the offender was an accomplice, the conduct constituting the offense was principally the conduct of another, and the offender's participation was relatively minor;

~~(5)(e)~~ (e) in a case in which the threat of bodily injury or actual infliction of bodily injury is an actual element of the crime, no serious bodily injury was inflicted on the victim unless a weapon was used in the commission of the offense; or

~~(6)(f)~~ (f) the offense was committed under 45-5-502(3) and the judge determines that treatment of the offender in a local community affords a better opportunity for rehabilitation of the offender and for the ultimate protection of the victim and society, in which case the judge shall include in ~~its~~ the judgment a statement of the

reasons for ~~its~~ the determination.

(2) Subsection (1) does not apply to an offender sentenced pursuant to 45-5-502(4), 45-5-503(4), 45-5-504(3), 45-5-505(4), 45-5-507(5), 45-5-622(4)(b), 45-5-625(2)(d), or 45-5-627(4)."

**Section 17.** Section 46-18-231, MCA, is amended to read:

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

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

- (i) 45-5-103(4), mitigated deliberate homicide;
- (ii) 45-5-202, aggravated assault;
- (iii) 45-5-213, assault with a weapon;
- (iv) 45-5-302(2), kidnapping;
- (v) 45-5-303(2), aggravated kidnapping;
- (vi) 45-5-401(2), robbery;
- (vii) 45-5-502(3), sexual assault when the victim is less than 16 years ~~old~~ of age and the offender is 3 or more years older than the victim or the offender inflicts bodily injury in the course of committing the sexual assault;
- (viii) 45-5-502(4), sexual assault when the victim is less than 13 years of age and the offender is 18 years of age or older;
- ~~(viii)~~(ix) 45-5-503(2) and (3), sexual intercourse without consent;
- (x) 45-5-503(4), sexual intercourse without consent when the victim is less than 13 years of age and the offender is 18 years of age or older;
- (xi) 45-5-504(3), indecent exposure when the victim is less than 13 years of age and the offender is 18 years of age or older;
- (xii) 45-5-505(4), deviate sexual conduct when the victim is less than 13 years of age and the offender is 18 years of age or older;
- (xiii) 45-5-507(5), incest when the victim is less than 13 years of age and the offender is 18 years of age or older;
- (xiv) 45-5-622(4)(b), endangering the welfare of children when the victim is less than 13 years of age

and the offender is 18 years of age or older;

(xv) 45-5-625(2)(d), sexual abuse of children when the victim is less than 13 years of age and the offender is 18 years of age or older; and

(xvi) 45-5-627(4), ritual abuse of children when the victim is less than 13 years of age and the offender is 18 years of age or older;

~~(x)~~(xvii) 45-9-101(2), (3), and (5)(d), criminal possession with intent to distribute a narcotic drug, criminal possession with intent to distribute a dangerous drug included in Schedule I or Schedule II, or other criminal possession with intent to distribute a dangerous drug;

~~(x)~~(xviii) 45-9-102(4), criminal possession of an opiate;

~~(x)~~(xix) 45-9-103(2), criminal possession of an opiate with an intent to distribute; and

~~(xii)~~(xx) 45-9-109, criminal possession with intent to distribute dangerous drugs on or near school property.

(2) Whenever, upon a verdict of guilty or a plea of guilty or nolo contendere, an offender has been found guilty of an offense for which a misdemeanor penalty of a fine could be imposed, the sentencing judge may impose a fine only in accordance with subsection (3).

(3) The sentencing judge may not sentence an offender to pay a fine unless the offender is or will be able to pay the fine. In determining the amount and method of payment, the sentencing judge shall take into account the nature of the crime committed, the financial resources of the offender, and the nature of the burden that payment of the fine will impose.

(4) Any fine levied under this section in a felony case shall be in an amount fixed by the sentencing judge not to exceed \$50,000."

**Section 18.** Section 46-23-201, MCA, is amended to read:

**"46-23-201. Prisoners eligible for nonmedical parole.** (1) Subject to the restrictions contained in subsections (2) through ~~(5)~~ (6), the board may release on nonmedical parole by appropriate order any person who is confined in a state prison or the state hospital or any person who is sentenced to the state prison and confined in a prerelease center when in its opinion there is reasonable probability that the prisoner can be released without detriment to the prisoner or to the community.

(2) Persons under sentence of death, persons sentenced to the department who have been placed by the department in a state prison temporarily for assessment or sanctioning, and persons serving sentences imposed under 46-18-202(2) or 46-18-219 may not be paroled.

(3) A prisoner serving a time sentence may not be paroled under this section until the prisoner has served at least one-fourth of the prisoner's full term.

(4) A prisoner serving a life sentence may not be paroled under this section until the prisoner has served 30 years.

(5) A parole may be ordered under this section only for the best interests of society and not as an award of clemency or a reduction of sentence or pardon. A prisoner may be placed on parole only when the board believes that the prisoner is able and willing to fulfill the obligations of a law-abiding citizen.

(6) An offender to whom [section 14] applies is not eligible for nonmedical parole."

**Section 19.** Section 46-23-1011, MCA, is amended to read:

**"46-23-1011. Supervision on probation.** (1) The department shall supervise probationers during their probation period, including the probationary period imposed pursuant to 45-5-502(4), 45-5-503(4), 45-5-504(3), 45-5-505(4), 45-5-507(5), 45-5-622(4)(b), 45-5-625(2)(d), or 45-5-627(4), in accord with the conditions set by a sentencing judge. If the sentencing judge did not set conditions of probation at the time of sentencing, the court shall, at the request of the department, hold a hearing and set conditions of probation. The probationer must be present at the hearing. The probationer has the right to counsel as provided in chapter 8 of this title.

(2) A copy of the conditions of probation must be signed by the probationer. The department may require a probationer to waive extradition for the probationer's return to Montana.

(3) The probation and parole officer shall regularly advise and consult with the probationer to encourage the probationer to improve the probationer's condition and conduct and shall inform the probationer of the restoration of rights on successful completion of the sentence.

(4) (a) The probation and parole officer may recommend and a judge may modify or add any condition of probation or suspension of sentence at any time.

(b) The probation and parole officer shall provide the county attorney in the sentencing jurisdiction with a report that identifies the conditions of probation and the reason why the officer believes that the judge should modify or add the conditions.

(c) The county attorney may file a petition requesting that the court modify or add conditions as requested by the probation and parole officer.

(d) The court may grant the petition if the probationer does not object. If the probationer objects to the petition, the court ~~must~~ shall hold a hearing pursuant to the provisions of 46-18-203.

(e) The provisions of 46-18-203(7)(a)(ii) do not apply to this section.

(f) The probationer shall sign a copy of new or modified conditions of probation. The court may waive or modify a condition of restitution only as provided in 46-18-246.

(5) (a) Upon recommendation of the probation and parole officer, a judge may conditionally discharge a probationer from supervision before expiration of the probationer's sentence if:

(i) the judge determines that a conditional discharge from supervision:

(A) is in the best interests of the probationer and society; and

(B) will not present unreasonable risk of danger to the victim of the offense; and

(ii) the offender has paid all restitution and court-ordered financial obligations in full.

(b) Subsection (5)(a) does not prohibit a judge from revoking the order suspending execution or deferring imposition of sentence, as provided in 46-18-203, for a probationer who has been conditionally discharged from supervision.

(c) If the department certifies to the sentencing judge that the workload of a district probation and parole office has exceeded the optimum workload for the district over the preceding 60 days, the judge may not place an offender on probation under supervision by that district office unless the judge grants a conditional discharge to a probationer being supervised by that district office. The department may recommend probationers to the judge for conditional discharge. The judge may accept or reject the recommendations of the department. The department shall determine the optimum workload for each district probation and parole office."

**NEW SECTION. Section 20. Codification instruction.** [Section 14] is intended to be codified as an integral part of Title 46, chapter 18, part 2, and the provisions of Title 46, chapter 18, part 2, apply to [section 14].

**NEW SECTION. Section 21. Effective date.** [This act] is effective on passage and approval.

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