

SENATE BILL NO. 326

INTRODUCED BY MALEK, ARNTZEN, AUGARE, DICK BARRETT, BLEWETT, BUTTREY, COFFIN, DRISCOLL, GURSKY, HILL, JACKSON, JENT, L. JONES, KARY, KAUFMANN, KEANE, LARSEN, MACDONALD, MCCARTHY, OLSON, PHILLIPS, SALES, SONJU, VINCENT, K. VAN DYK

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT A PERSON CONVICTED OF SEXUAL INTERCOURSE WITHOUT CONSENT WHO IS THE BIOLOGICAL PARENT OF A CHILD RESULTING FROM THE ACT FORFEITS ALL PARENTAL RIGHTS UNDER CERTAIN CIRCUMSTANCES; AND AMENDING SECTION 45-5-503, MCA."

WHEREAS, sexual assault is a deviant, criminal act punishable under the laws of the state of Montana; and

WHEREAS, the most vicious form of sexual assault is sexual intercourse without consent; and

WHEREAS, sexual intercourse without consent may result in an unwanted pregnancy and the mother may choose to carry the child to term; and

WHEREAS, the mother may choose to allow adoption of the child or retain custody and raise the child; and

WHEREAS, under current Montana law there is no provision to prevent a person convicted of sexual intercourse without consent who is also the biological father of the child from claiming parental rights related to the child; and

WHEREAS, other states in the United States of America have enacted laws to prevent a person convicted of sexual intercourse without consent who is also the biological parent of a child resulting from the act of sexual intercourse without consent from claiming any parental rights to the child; and

WHEREAS, a claim for custody or other type of parental rights by a person convicted of sexual intercourse without consent may cause serious emotional trauma to the child and the mother who is also a crime victim.

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

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



1 **"45-5-503. Sexual intercourse without consent.** (1) A person who knowingly has sexual intercourse
2 without consent with another person commits the offense of sexual intercourse without consent. A person may
3 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).

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

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

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

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

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

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

24 (4) (a) If the victim was 12 years of age or younger and the offender was 18 years of age or older at the
25 time of the offense, the offender:

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

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

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

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

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

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

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

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