

## HOUSE BILL NO. 173

INTRODUCED BY S. MORIGEAU

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO CONSENT AND PROVIDING THAT ELEMENTARY OR HIGH SCHOOL STUDENTS ARE INCAPABLE OF CONSENT IN A SCHOOL SETTING; 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. Definitions.** (1) (a) As used in 45-5-502, 45-5-503, and 45-5-508, the term "consent" means words or overt actions indicating a freely given agreement to have sexual intercourse or sexual contact and is further defined but not limited by the following:

(i) an expression of lack of consent through words or conduct means there is no consent or that consent has been withdrawn;

(ii) a current or previous dating or social or sexual relationship by itself or the manner of dress of the person involved with the accused in the conduct at issue does not constitute consent; and

(iii) lack of consent may be inferred based on all of the surrounding circumstances and must be considered in determining whether a person gave consent.

(b) Subject to subsections (1)(c) and (1)(d), the victim is incapable of consent because the victim is:

(i) mentally disordered or incapacitated;

(ii) physically helpless;

(iii) overcome by deception, coercion, or surprise;

(iv) less than 16 years old;

(v) 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;

(vi) receiving services from a youth care facility, as defined in 52-2-602, 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 youth care facility; or

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

4 (A) has supervisory or disciplinary authority over the victim or is providing treatment to the victim; and  
5 (B) is an employee, contractor, or volunteer of the facility or community-based service.

6 (viii) an elementary or high school student and the perpetrator is a school employee, school volunteer,  
7 or an independent contractor who works directly with students.

8 (c) Subsection (1)(b)(v) does not apply if the individuals are married to each other and one of the  
9 individuals involved is on probation or parole and the other individual is a probation or parole officer of a  
10 supervising authority.

11 (d) Subsections (1)(b)(vi) and (1)(b)(vii) do not apply if the individuals are married to each other and one  
12 of the individuals involved is a patient in or resident of a facility, is a recipient of community-based services, or  
13 is receiving services from a youth care facility and the other individual is an employee, contractor, or volunteer  
14 of the facility or community-based service.

15 (2) As used in 45-5-508, the term "force" means:

16 (a) the infliction, attempted infliction, or threatened infliction of bodily injury or the commission of a  
17 forcible felony by the offender; or

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

20 (3) As used in 45-5-502 and this section, the following definitions apply:

21 (a) "Parole":

22 (i) in the case of an adult offender, has the meaning provided in 46-1-202; and

23 (ii) in the case of a juvenile offender, means supervision of a youth released from a state youth  
24 correctional facility, as defined in 41-5-103, to the supervision of the department of corrections.

25 (b) "Probation" means:

26 (i) in the case of an adult offender, release without imprisonment of a defendant found guilty of a crime  
27 and subject to the supervision of a supervising authority; and

28 (ii) in the case of a juvenile offender, supervision of the juvenile by a youth court pursuant to Title 41,  
29 chapter 5.

30 (c) "Supervising authority" includes a court, including a youth court, a county, or the department of

1 corrections."

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3 **Section 2.** Section 45-5-502, MCA, is amended to read:

4 **"45-5-502. Sexual assault.** (1) A person who knowingly subjects another person to any sexual contact  
5 without consent commits the offense of sexual assault.

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

8 (b) On a second conviction for sexual assault, the offender shall be fined an amount not to exceed  
9 \$1,000 or be imprisoned in the county jail for a term not to exceed 1 year, or both.

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

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

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

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

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

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

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

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

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

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

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

1 (B) is an employee, contractor, or volunteer of the facility or community-based service.  
2 (v) an elementary or high school student and the perpetrator is a school employee, school volunteer, or  
3 an independent contractor who works directly with students.

4 (b) Subsection (5)(a)(i) does not apply if one of the parties is on probation or parole and the other party  
5 is a probation or parole officer of the supervising authority and the parties are married to each other.

6 (c) Subsections (5)(a)(iii) and (5)(a)(iv) do not apply if the individuals are married to each other and one  
7 of the individuals involved is a patient in or resident of a facility, is a recipient of community-based services, or  
8 is receiving services from a youth care facility and the other individual is an employee, contractor, or volunteer  
9 of the facility or community-based service."

10 - END -