

HOUSE BILL NO. 173

INTRODUCED BY S. MORIGEAU, K. ABBOTT, B. BENNETT, L. BISHOP, K. BOGNER, M. CAFERRO,
W. GALT, F. GARNER, T. JACOBSON, R. LYNCH, D. SANDS, C. SCHREINER, D. SKEES, J. SMALL,
J. WELBORN

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has been withdrawn;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)~~ THROUGH (1)(E), 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;

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

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

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

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

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

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

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

11 (VIII) A STUDENT OF AN ELEMENTARY, MIDDLE, JUNIOR HIGH, OR HIGH SCHOOL, WHETHER PUBLIC OR NONPUBLIC,
12 AND THE PERPETRATOR IS NOT A STUDENT OF AN ELEMENTARY, MIDDLE, JUNIOR HIGH, OR HIGH SCHOOL AND IS AN
13 EMPLOYEE, CONTRACTOR, OR VOLUNTEER OF THAT ANY SCHOOL WHO REGULARLY HAS CONTACT WITH STUDENTS HAS
14 EVER HAD INSTRUCTIONAL, SUPERVISORY, DISCIPLINARY, OR OTHER AUTHORITY OVER THE STUDENT IN A SCHOOL
15 SETTING.

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

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

23 ~~(E) SUBSECTION (1)(B)(VIII) DOES NOT APPLY IF THE INDIVIDUALS ARE MARRIED TO EACH OTHER. AND ONE OF~~
24 ~~THE INDIVIDUALS INVOLVED IS A STUDENT OF THE SCHOOL AND THE OTHER INDIVIDUAL IS AN EMPLOYEE, CONTRACTOR,~~
25 ~~OR VOLUNTEER OF THAT SCHOOL.~~

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

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

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

- 1 (3) As used in 45-5-502 and this section, the following definitions apply:
- 2 (a) "Parole":
- 3 (i) in the case of an adult offender, has the meaning provided in 46-1-202; and
- 4 (ii) in the case of a juvenile offender, means supervision of a youth released from a state youth
- 5 correctional facility, as defined in 41-5-103, to the supervision of the department of corrections.
- 6 (b) "Probation" means:
- 7 (i) in the case of an adult offender, release without imprisonment of a defendant found guilty of a crime
- 8 and subject to the supervision of a supervising authority; and
- 9 (ii) in the case of a juvenile offender, supervision of the juvenile by a youth court pursuant to Title 41,
- 10 chapter 5.
- 11 (c) "Supervising authority" includes a court, including a youth court, a county, or the department of
- 12 corrections."

13

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

15 **"45-5-502. Sexual assault.** (1) A person who knowingly subjects another person to any sexual contact

16 without consent commits the offense of sexual assault.

17 (2) (a) On a first conviction for sexual assault, the offender shall be fined an amount not to exceed \$500

18 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

19 (b) On a second conviction for sexual assault, the offender shall be fined an amount not to exceed

20 \$1,000 or be imprisoned in the county jail for a term not to exceed 1 year, or both.

21 (c) On a third and subsequent conviction for sexual assault, the offender shall be fined an amount not

22 to exceed \$10,000 or be imprisoned for a term not to exceed 5 years, or both.

23 (3) If the victim is less than 16 years old and the offender is 3 or more years older than the victim or if

24 the offender inflicts bodily injury upon anyone in the course of committing sexual assault, the offender shall be

25 punished by life imprisonment or by imprisonment in the state prison for a term of not less than 4 years, unless

26 the judge makes a written finding that there is good cause to impose a term of less than 4 years and imposes a

27 term of less than 4 years, or more than 100 years and may be fined not more than \$50,000.

28 (4) An act "in the course of committing sexual assault" includes an attempt to commit the offense or flight

29 after the attempt or commission.

30 (5) (a) Subject to subsections (5)(b) and ~~(5)(c)~~ THROUGH (5)(D), consent is ineffective under this section

1 if the victim is:

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

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

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

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

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

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

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

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

14 ~~(v) an elementary or high school student and the perpetrator is a school employee, school volunteer, or~~
15 ~~an independent contractor who works directly with students.~~

16 (V) A STUDENT OF AN ELEMENTARY, MIDDLE, JUNIOR HIGH, OR HIGH SCHOOL, WHETHER PUBLIC OR NONPUBLIC,
17 AND THE PERPETRATOR IS NOT A STUDENT OF AN ELEMENTARY, MIDDLE, JUNIOR HIGH, OR HIGH SCHOOL AND IS AN
18 EMPLOYEE, CONTRACTOR, OR VOLUNTEER OF THAT ANY SCHOOL WHO REGULARLY HAS CONTACT WITH STUDENTS HAS
19 EVER HAD INSTRUCTIONAL, SUPERVISORY, DISCIPLINARY, OR OTHER AUTHORITY OVER THE STUDENT IN A SCHOOL
20 SETTING.

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

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

27 (D) SUBSECTION (5)(A)(V) DOES NOT APPLY IF THE INDIVIDUALS ARE MARRIED TO EACH OTHER. AND ONE OF THE
28 INDIVIDUALS INVOLVED IS A STUDENT OF THE SCHOOL AND THE OTHER INDIVIDUAL IS AN EMPLOYEE, CONTRACTOR, OR
29 VOLUNTEER OF THAT SCHOOL."

30 - END -