

SENATE BILL NO. 132

INTRODUCED BY K. REGIER

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4 A BILL FOR AN ACT ENTITLED: "AN ACT PROTECTING STUDENTS FROM SEXUAL MISCONDUCT;
5 PROVIDING THAT A STUDENT CANNOT PROVIDE CONSENT TO ANY EMPLOYEE, CONTRACTOR, OR
6 VOLUNTEER OF A SCHOOL; PROHIBITING JOB ASSISTANCE FOR SCHOOL EMPLOYEES,
7 CONTRACTORS, AND AGENTS WHO HAVE ENGAGED IN SEXUAL MISCONDUCT WITH STUDENTS OR
8 CHILDREN; AMENDING SECTIONS 45-5-501 AND 45-5-502, MCA; AND PROVIDING AN IMMEDIATE
9 EFFECTIVE DATE AND AN APPLICABILITY DATE."

10
11 WHEREAS, present law does not adequately protect students aged 16 or older from predatory adults
12 in positions of authority over them; and

13 WHEREAS, protecting students from sexual predators is of paramount concern to the State of Montana;
14 and

15 WHEREAS, in 2015 Congress reauthorized the Elementary and Secondary Education Act of 1965
16 (ESEA) through the Every Student Succeeds Act, Pub. L. No. 114-95; and

17 WHEREAS, as amended, section 8546 of the ESEA (20 U.S.C. 7926) requires states as well as state
18 and local education agencies receiving federal funds to adopt policies to prohibit the aiding and abetting of sexual
19 abuse by school employees, contractors, and agents; and

20 WHEREAS, job search assistance and favorable job recommendations enable offenders to continue to
21 victimize new students, sometimes for years.

22
23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

24
25 **Section 1.** Section 45-5-501, MCA, is amended to read:

26 **"45-5-501. Definitions.** (1) (a) As used in 45-5-502, 45-5-503, and 45-5-508, the term "consent" means
27 words or overt actions indicating a freely given agreement to have sexual intercourse or sexual contact and is
28 further defined but not limited by the following:

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30 has been withdrawn;

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

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

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

7 (i) mentally disordered or incapacitated;

8 (ii) physically helpless;

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

10 (iv) less than 16 years old;

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

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

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

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

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

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

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

22 (viii) a student of an elementary or secondary school and the perpetrator is not a student of an elementary

23 or secondary school and is an employee, contractor, or volunteer of an elementary or secondary school who

24 currently has regular contact with students HAS EVER HAD INSTRUCTIONAL, SUPERVISORY, DISCIPLINARY, OR OTHER

25 AUTHORITY OVER THE STUDENT in an elementary or secondary school setting and knows, reasonably should know,

26 or should have known the victim is a student at an elementary or secondary school. Employees, contractors, and

27 volunteers include but are not limited to principals, teachers, student teachers, aides, paraprofessionals, monitors,

28 assistants, administrative employees, bus drivers, cafeteria workers, maintenance workers and custodians,

29 coaches, crossing guards, security workers, medical professionals, and mental health professionals.

30 (c) Subsection (1)(b)(v) does not apply if the individuals are married to each other and one of the

1 individuals involved is on probation or parole and the other individual is a probation or parole officer of a
 2 supervising authority.

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

7 (e) ~~Subsection (1)(b)(viii) does not apply if THE INDIVIDUALS ARE MARRIED TO EACH OTHER AND one of the~~
 8 ~~individuals involved is a student of an elementary or secondary school and the other individual is an employee,~~
 9 ~~contractor, or volunteer of an elementary or secondary school and:~~

10 ~~—— (i) the individuals are married to each other; or~~

11 ~~—— (ii) the individuals have been in a romantic relationship that predates the other individual's relationship~~
 12 ~~with an elementary or secondary school as an employee, contractor, or volunteer.~~

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

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

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

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

19 (a) "Parole":

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

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

23 (b) "Probation" means:

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

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

28 (c) "Supervising authority" includes a court, including a youth court, a county, or the department of
 29 corrections."

30

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

2 **"45-5-502. Sexual assault.** (1) A person who knowingly subjects another person to any sexual contact
3 without consent commits the offense of sexual assault.

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

6 (b) On a second conviction for sexual assault, the offender shall be fined an amount not to exceed
7 \$1,000 or be imprisoned in the county jail for a term not to exceed 1 year, or both.

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

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

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

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

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

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

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

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

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

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

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

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

1 (v) a student of an elementary or secondary school and the perpetrator is not a student of an elementary
 2 or secondary school and is an employee, contractor, or volunteer of an elementary or secondary school who
 3 ~~currently has regular contact with students~~ HAS EVER HAD INSTRUCTIONAL, SUPERVISORY, DISCIPLINARY, OR OTHER
 4 AUTHORITY OVER THE STUDENT in an elementary or secondary school setting and knows, reasonably should know,
 5 or should have known the victim is a student at an elementary or secondary school. Employees, contractors, and
 6 volunteers include but are not limited to principals, teachers, student teachers, aides, paraprofessionals, monitors,
 7 assistants, administrative employees, bus drivers, cafeteria workers, maintenance workers and custodians,
 8 coaches, crossing guards, security workers, medical professionals, and mental health professionals.

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

11 (c) Subsections (5)(a)(iii) and (5)(a)(iv) 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 (d) Subsection (5)(a)(v) does not apply if THE INDIVIDUALS ARE MARRIED TO EACH OTHER AND one of the
 16 individuals involved is a student of an elementary or secondary school and the other individual is an employee,
 17 contractor, or volunteer of an elementary or secondary school and:

18 ~~—— (i) the individuals are married to each other; or~~
 19 ~~—— (ii) the individuals have been in a romantic relationship that predates the other individual's relationship~~
 20 ~~with an elementary or secondary school as an employee, contractor, or volunteer."~~

21
 22 **NEW SECTION. Section 3. Employment assistance for CURRENT OR FORMER school employees,**
 23 **contractors, and volunteers engaged in sexual misconduct prohibited.** (1) Except as provided in subsection
 24 (2), a person who is an officer, trustee, employee, agent, or contractor of a school, school district, county
 25 superintendent of schools, or the state superintendent of public instruction and who knows or has probable cause
 26 to believe that a CURRENT OR FORMER school employee, contractor, or agent has committed or has attempted,
 27 solicited, or conspired to commit an act with a child or enrolled student that constitutes a violation of 45-5-502,
 28 45-5-503, 45-5-504, 45-5-507, 45-5-508, 45-5-601, 45-5-602, 45-5-603, 45-5-625, 45-5-702, 45-5-704, or
 29 45-5-705 may not assist that school employee, contractor, or agent in obtaining new employment apart from the
 30 routine transmission of administrative and personnel files.

1 (2) Subsection (1) does not apply if:

2 (a) the information giving rise to probable cause has been properly reported to a law enforcement agency
3 with jurisdiction over the alleged violation;

4 (b) the information has been properly reported to any other authorities as required by the laws of the
5 United States, the state, or any political subdivision of the state, including but not limited to reporting required by
6 Title 41, chapter 3, part 2, and Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 et seq., and the
7 regulations implementing that title under Title 34, part 106, Code of Federal Regulations, or any succeeding
8 regulations; and

9 (c) (i) a peace officer, city attorney, or county attorney with jurisdiction over the alleged misconduct has
10 notified school officials that there is insufficient information to establish probable cause that the school employee,
11 contractor, or agent committed or attempted, solicited, or conspired to commit an act with a child or pupil
12 constituting a violation of the offenses listed in subsection (1);

13 (ii) the school employee, contractor, or agent has been charged with and acquitted or otherwise
14 exonerated of the alleged violation; or

15 (iii) there have been no charges filed against the school employee, contractor, or agent within 4 years
16 of the date on which the information was reported to a law enforcement agency.

17 (3) This section applies to CURRENT OR FORMER school employees, contractors, and agents of both public
18 and nonpublic schools.

19
20 **NEW SECTION. Section 4. Penalty.** A person who purposely or knowingly assists a CURRENT OR
21 FORMER school employee, contractor, or agent in obtaining employment in violation of [section 3] is guilty of a
22 misdemeanor and shall be fined in an amount not to exceed \$1,000 or be imprisoned in the county jail for a term
23 not to exceed 1 year, or both.

24
25 **NEW SECTION. Section 5. Codification instruction.** [Sections 3 and 4] are intended to be codified
26 as an integral part of Title 20, chapter 7, part 13, and the provisions of Title 20, chapter 7, part 13, apply to
27 [sections 3 and 4].

28
29 **COORDINATION SECTION. SECTION 6. COORDINATION INSTRUCTION. IF HOUSE BILL NO. 173 IS PASSED**
30 **AND APPROVED AND IF IT INCLUDES A SECTION THAT AMENDS 45-5-501, THEN [SECTION 1 OF THIS ACT] AMENDING**

1 45-5-501 IS VOID.

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3 COORDINATION SECTION. SECTION 7. COORDINATION INSTRUCTION. IF HOUSE BILL NO. 173 IS PASSED
4 AND APPROVED AND IF IT INCLUDES A SECTION THAT AMENDS 45-5-502, THEN [SECTION 2 OF THIS ACT] AMENDING
5 45-5-502 IS VOID.

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7 NEW SECTION. SECTION 8. SEVERABILITY. IF A PART OF [THIS ACT] IS INVALID, ALL VALID PARTS THAT ARE
8 SEVERABLE FROM THE INVALID PART REMAIN IN EFFECT. IF A PART OF [THIS ACT] IS INVALID IN ONE OR MORE OF ITS
9 APPLICATIONS, THE PART REMAINS IN EFFECT IN ALL VALID APPLICATIONS THAT ARE SEVERABLE FROM THE INVALID
10 APPLICATIONS.

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12 NEW SECTION. SECTION 9. Effective date. [This act] is effective on passage and approval.

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14 NEW SECTION. SECTION 10. APPLICABILITY. [THIS ACT] APPLIES TO INCIDENTS OCCURRING ON OR AFTER
15 [THE EFFECTIVE DATE OF THIS ACT].

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