



AN ACT GENERALLY REVISING LAWS RELATED TO HUMAN TRAFFICKING AND SEX CRIMES TO PROTECT VICTIMS; REVISING THE OFFENSE OF PROSTITUTION TO INCLUDE DIRECT SEXUAL CONTACT; REVISING PENALTIES FOR PROSTITUTION OFFENSES TO ALLOW FOR AGGRAVATED PENALTIES FOR PERSONS WHO PROMOTE PROSTITUTION AND TO ALLOW FOR AGGRAVATED PENALTIES WHEN THE OFFENDER KNEW OR SHOULD HAVE KNOWN THAT THE VICTIM WAS A HUMAN TRAFFICKING VICTIM OR SUBJECTED TO FORCE, FRAUD, OR COERCION; REVISING THE DEFINITION OF A CRIME OF VIOLENCE TO INCLUDE AGGRAVATED PROMOTION OF PROSTITUTION AND HUMAN TRAFFICKING OFFENSES; PROVIDING THAT A PERSON'S CONSENT IS NOT A DEFENSE TO HUMAN TRAFFICKING AND SEX CRIMES IF THE ACCUSED KNEW OR REASONABLY SHOULD HAVE KNOWN THE PERSON WAS A VICTIM OF HUMAN TRAFFICKING OR WAS SUBJECTED TO FORCE, FRAUD, OR COERCION; REFORMING LAWS RELATED TO HUMAN TRAFFICKING TO CONFORM PENALTIES AND LANGUAGE TO LAWS RELATED TO SEX CRIMES; AMENDING SECTIONS 45-2-211, 45-5-601, 45-5-602, 45-5-603, 45-5-702, 45-5-704, 45-5-705, 45-5-709, 46-18-104, 46-18-111, 46-18-207, 46-18-219, 46-18-231, AND 46-23-502, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

**Section 1.** Section 45-2-211, MCA, is amended to read:

**"45-2-211. Consent as defense.** (1) The consent of the victim to conduct charged to constitute an offense or to the result thereof is a defense.

(2) Consent is ineffective if:

(a) it is given by a person who is legally incompetent to authorize the conduct charged to constitute the offense;

(b) it is given by a person who by reason of youth, mental disease or disorder, or intoxication is unable to make a reasonable judgment as to the nature or harmfulness of the conduct charged to constitute the offense;

(c) it is induced by force, duress, or deception; or

(d) it is against public policy to permit the conduct or the resulting harm, even though consented to; or  
 (e) for offenses under 45-5-502, 45-5-503, 45-5-508, 45-5-601, 45-5-602, 45-5-603, or Title 45, chapter 5, part 7, it is given by a person who the offender knew or reasonably should have known was a victim of human trafficking, as defined in 45-5-701, or was subjected to force, fraud, or coercion, either of which caused the person to be in the situation where the offense occurred."

**Section 2.** Section 45-5-601, MCA, is amended to read:

**"45-5-601. Prostitution -- patronizing a prostitute -- exception.** (1) A Except as provided in subsection (2)(a), ~~person commits~~ the offense of prostitution is committed if ~~the~~ a person engages in or agrees or offers to engage in sexual intercourse or sexual contact that is direct and not through clothing with another person for compensation, whether the compensation is received or to be received or paid or to be paid.

(2) (a) A prostitute may be convicted of prostitution only if the prostitute engages in or agrees or offers to engage in sexual intercourse with another person for compensation, whether the compensation is received or to be received or paid or to be paid. A prostitute who is convicted of prostitution ~~shall~~ may 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.

(b) A patron may be convicted of patronizing a prostitute if the patron engages in or agrees or offers to engage in sexual intercourse or sexual contact that is direct and not through clothing with another person for compensation, whether the compensation is received or to be received or paid or to be paid. Except as provided in ~~subsection (3)~~ subsections (3) and (4), a patron who is convicted of prostitution shall for the first offense be fined an amount not to exceed \$1,000 or be imprisoned for a term not to exceed 1 year, or both, and for a second or subsequent offense shall be fined an amount not to exceed \$10,000 or be imprisoned for a term not to exceed 5 years, or both.

(3) (a) If the person patronized was a child and the patron was 18 years of age or older at the time of the offense, whether or not the patron was aware of the child's age, the patron offender:

(i) shall be punished by imprisonment in a state prison for a term of 100 years. The court may not suspend execution or defer imposition of the first 25 years of a sentence of imprisonment imposed under this subsection (3)(a)(i) except as provided in 46-18-222, and during the first 25 years of imprisonment, the offender is not eligible for parole.

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

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

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

(4) If the person patronized was a victim of human trafficking, as defined in 45-5-701, or was subjected to force, fraud, or coercion, either of which caused the person to be in the situation where the offense occurred, and the patron offender was 18 years of age or older at the time of the offense and knew or reasonably should have known that the person patronized was a victim of human trafficking or was subjected to force, fraud, or coercion, the patron offender:

(a) shall be punished by imprisonment in a state prison for a term of up to 10 years; and

(b) may be fined an amount not to exceed \$25,000.

(5) It is not a violation of 45-5-602, 45-5-603, or this section for a person with an impaired physical ability, physical dysfunction, recent injury, or other disability to engage in sex therapy with a partner surrogate who is working under the supervision of a social worker, professional counselor, or licensed clinical professional counselor licensed under Title 37, chapter 22 or 23."

**Section 3.** Section 45-5-602, MCA, is amended to read:

**"45-5-602. Promoting prostitution.** (1) A person commits the offense of promoting prostitution if the person purposely or knowingly commits any of the following acts:

(a) owns, controls, manages, supervises, resides in, or otherwise keeps, alone or in association with others, a house of prostitution or a prostitution business;

(b) procures an individual for a house of prostitution or a place in a house of prostitution for an individual;

(c) encourages, induces, or otherwise purposely causes another to become or remain a prostitute;

(d) solicits clients for another person who is a prostitute;

(e) procures a prostitute for a patron;

(f) transports an individual into or within this state with the purpose to promote that individual's engaging in prostitution or procures or pays for transportation with that purpose;

(g) leases or otherwise permits a place controlled by the offender, alone or in association with others,

to be regularly used for prostitution or for the procurement of prostitution or fails to make reasonable effort to abate that use by ejecting the tenant, notifying law enforcement authorities, or using other legally available means; or

(h) lives in whole or in part upon the earnings of an individual engaging in prostitution, unless the person is the prostitute's minor child or other legal dependent incapable of self-support.

(2) Except as provided in ~~subsection (3)~~ subsections (3) and (4), a person convicted of promoting prostitution shall be fined an amount not to exceed \$50,000 or be imprisoned in a state prison for a term not to exceed 10 years, or both.

(3) (a) If the person engaging in prostitution was a child and the ~~patron~~ offender was 18 years of age or older at the time of the offense, whether or not the ~~patron~~ offender was aware of the child's age, the ~~patron~~ offender:

(i) shall be punished by imprisonment in a state prison for a term of 100 years. The court may not suspend execution or defer imposition of the first 25 years of a sentence of imprisonment imposed under this subsection (3)(a)(i) except as provided in 46-18-222, and during the first 25 years of imprisonment, the offender is not eligible for parole.

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

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

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

(4) If the person engaging in prostitution was a victim of human trafficking, as defined in 45-5-701, or was subjected to force, fraud, or coercion, either of which caused the person to be in the situation where the offense occurred, and the offender was 18 years of age or older at the time of the offense and knew or reasonably should have known that the person was a victim of human trafficking or was subjected to force, fraud, or coercion, the offender:

(a) shall be punished by imprisonment in a state prison for a term of not more than 20 years; and

(b) may be fined an amount not to exceed \$50,000."

**Section 4.** Section 45-5-603, MCA, is amended to read:

**"45-5-603. Aggravated promotion of prostitution.** (1) A person commits the offense of aggravated promotion of prostitution if the person purposely or knowingly commits any of the following acts:

- (a) compels another to engage in or promote prostitution;
- (b) promotes prostitution of a child, whether or not the person is aware of the child's age;
- (c) promotes the prostitution of one's spouse, child, ward, or any person for whose care, protection, or support the person is responsible.

(2) (a) Except as provided in ~~subsection (2)(b)~~ subsections (2)(b) and (2)(c), a person convicted of aggravated promotion of prostitution shall be punished by:

- (i) life imprisonment; or
- (ii) imprisonment in a state prison for a term not to exceed 20 years or a fine in an amount not to exceed \$50,000, or both.

(b) (i) Except as provided in 46-18-219 and 46-18-222, if the person engaging in prostitution was a child and the ~~patron~~ offender was 18 years of age or older at the time of the offense, the ~~patron~~ offender:

(A) shall be punished by imprisonment in a state prison for a term of 100 years. The court may not suspend execution or defer imposition of the first 25 years of a sentence of imprisonment imposed under this subsection (2)(b)(i)(A) except as provided in 46-18-222, and during the first 25 years of imprisonment, the offender is not eligible for parole.

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

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

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

(c) If the person engaging in prostitution was a victim of human trafficking, as defined in 45-5-701, or was subjected to force, fraud, or coercion, either of which caused the person to be in the situation where the offense occurred, and the offender was 18 years of age or older at the time of the offense and knew or reasonably should have known that the person was a victim of human trafficking or was subjected to force, fraud, or coercion, the offender:

- (i) shall be punished by imprisonment in a state prison for a term of not more than 30 years;
- (ii) may be fined an amount not to exceed \$50,000; and
- (iii) shall be ordered to enroll in and successfully complete the educational phase and the cognitive and behavioral phase of a sexual offender treatment program provided or approved by the department of corrections."

**Section 5.** Section 45-5-702, MCA, is amended to read:

**"45-5-702. Trafficking of persons.** (1) A person commits the offense of trafficking of persons if the person purposely or knowingly:

(a) recruits, transports, transfers, harbors, receives, provides, obtains, isolates, maintains, or entices another person intending or knowing that the person will be subjected to involuntary servitude or sexual servitude; or

(b) benefits, financially or by receiving anything of value, from facilitating any conduct described in subsection (1)(a) or from participation in a venture that has subjected another person to involuntary servitude or sexual servitude.

(2) (a) Except as provided in ~~subsection (2)(b)~~ subsections (2)(b) and (2)(c), a person convicted of the offense of trafficking of persons shall be imprisoned in the state prison for a term of not more than 15 years, fined an amount not to exceed \$50,000, or both.

(b) A person convicted of the offense of trafficking of persons shall be imprisoned in the state prison for a term of not more than 50 years, ~~and may be fined not more than~~ an amount not to exceed \$100,000, or both, if:

- ~~— (i) the violation involves aggravated kidnapping, sexual intercourse without consent, or deliberate homicide; or~~
- ~~— (ii) the victim was a child.~~

(c) A person convicted of the offense of trafficking of persons shall be imprisoned in the state prison for a term of not more than 25 years, fined an amount not to exceed \$75,000, or both, if the violation involves aggravated kidnapping, aggravated sexual intercourse without consent, or deliberate homicide."

**Section 6.** Section 45-5-704, MCA, is amended to read:

**"45-5-704. Sexual servitude.** (1) A person commits the offense of sexual servitude if the person

purposely or knowingly:

(a) uses fraud, coercion, or deception to compel an adult to engage in commercial sexual activity; or

(b) recruits, transports, transfers, harbors, receives, provides, obtains by any means, isolates, entices, maintains, or makes available a child for the purpose of commercial sexual activity.

(2) It is not a defense in a prosecution under subsection (1)(b) that the child consented to engage in commercial sexual activity or that the defendant believed the child was an adult.

(3) (a) A person convicted of the offense of sexual servitude under subsection (1)(a) shall be imprisoned in the state prison for a term of not more than 15 years, fined an amount not to exceed \$50,000, or both.

(b) A person convicted of the offense of sexual servitude under subsection (1)(b) shall be imprisoned in the state prison for a term of not more than 25 years and fined an amount not to exceed \$75,000."

**Section 7.** Section 45-5-705, MCA, is amended to read:

**"45-5-705. Patronizing victim of sexual servitude.** (1) A person commits the offense of patronizing a victim of sexual servitude if the person purposely or knowingly gives, agrees to give, or offers to give anything of value so that a person may engage in commercial sexual activity ~~with~~:

(a) that involves sexual contact that is direct and not through clothing with another person who the person knows or reasonably should have known is a victim of sexual servitude; or

(b) with a child.

(2) (a) Except as provided in subsection (2)(b), a person convicted of the offense of patronizing a victim of sexual servitude shall be imprisoned in the state prison for a term of not more than 15 years, fined an amount not to exceed \$50,000, or both.

(b) If the individual patronized was a child, a person convicted of the offense of patronizing a victim of sexual servitude, whether or not the person believed the child was an adult, shall be imprisoned in the state prison for a term of not more than 25 years and fined an amount not to exceed \$75,000."

**Section 8.** Section 45-5-709, MCA, is amended to read:

**"45-5-709. Immunity of child -- sex therapy participants.** (1) A person is not criminally liable or subject to proceedings under Title 41, chapter 5, for prostitution, promoting prostitution, or other nonviolent offenses if the person was a child at the time of the offense and committed the offense as a direct result of being a victim

of human trafficking.

(2) A person who has engaged in commercial sexual activity is not criminally liable or subject to proceedings under Title 41, chapter 5, for prostitution ~~or promoting prostitution~~ if the person was a child at the time of the offense.

(3) A child who under subsection (1) or (2) is not subject to criminal liability or proceedings under Title 41, chapter 5, is presumed to be a youth in need of care under Title 41, chapter 3.

(4) ~~This section does~~ Subsections (1) through (3) do not apply in a prosecution under 45-5-601 or a proceeding under Title 41, chapter 5, for patronizing a prostitute.

(5) It is not a violation of this part for a person with an impaired physical ability, physical dysfunction, recent injury, or other disability to engage in sex therapy with a partner surrogate who is working under the supervision of a social worker, professional counselor, or licensed clinical professional counselor licensed under Title 37, chapter 22 or 23."

**Section 9.** Section 46-18-104, MCA, is amended to read:

**"46-18-104. Definitions.** As used in 46-18-101, 46-18-105, 46-18-201, 46-18-225, and this section, unless the context requires otherwise, the following definitions apply:

(1) "Community corrections" or "community corrections facility or program" means a community corrections facility or program as defined in 53-30-303.

(2) (a) "Crime of violence" means:

(i) a crime in which an offender uses or possesses and threatens to use a deadly weapon during the commission or attempted commission of a crime;

(ii) a crime in which the offender causes serious bodily injury or death to a person other than the offender;

or

(iii) an offense under:

(A) 45-5-502 for which the maximum potential sentence is life imprisonment or imprisonment in a state prison for a term exceeding 1 year;

(B) 45-5-503, except as provided in subsection (2)(b) of this section; ~~or~~

(C) 45-5-507 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 the offense;



(D) 45-5-508;

(E) 45-5-603;

(F) 45-5-702;

(G) 45-5-703;

(H) 45-5-704; or

(I) 45-5-705.

(b) In a prosecution under 45-5-503, if the sexual intercourse was without consent based solely on the victim's age, the victim willingly participated, and the offender is not more than 3 years older than the victim, the offense is not a crime of violence for purposes of this section.

(3) "Nonviolent felony offender" means a person who has entered a plea of guilty or nolo contendere to a felony offense other than a crime of violence or who has been convicted of a felony offense other than a crime of violence.

(4) "Restorative justice" has the meaning provided in 2-15-2013."

**Section 10.** Section 46-18-111, MCA, is amended to read:

**"46-18-111. Presentence investigation -- when required -- definition.** (1) (a) (i) Upon the acceptance of a plea or upon a verdict or finding of guilty to one or more felony offenses, the district court shall direct the probation and parole officer to make a presentence investigation and report unless an investigation and report has been provided to the court prior to the plea or the verdict or finding of guilty.

(ii) Unless additional information is required under subsections (1)(b), (1)(c), or (1)(d) or unless more time is required to allow for victim input, a preliminary or final presentence investigation and report must be available to the court within 30 days of the plea or the verdict or finding of guilty.

(iii) The district court shall consider the presentence investigation report prior to sentencing.

(b) If the defendant was convicted of an offense under 45-5-502, 45-5-503, 45-5-504, 45-5-507, 45-5-508, 45-5-601(3), 45-5-602(3), 45-5-603(2)(b) or (2)(c), 45-5-625, 45-5-627, 45-5-704, 45-5-705, or 45-8-218 or if the defendant was convicted under 46-23-507 and the offender was convicted of failure to register as a sexual offender pursuant to Title 46, chapter 23, part 5, the investigation must include a psychosexual evaluation of the defendant and a recommendation as to treatment of the defendant in the least restrictive environment, considering the risk the defendant presents to the community and the defendant's needs, unless

the defendant was sentenced under 46-18-219. The evaluation must be completed by a sexual offender evaluator who is a member of the Montana sex offender treatment association or has comparable credentials acceptable to the department of labor and industry. The psychosexual evaluation must be made available to the county attorney's office, the defense attorney, the probation and parole officer, and the sentencing judge. All costs related to the evaluation must be paid by the defendant. If the defendant is determined by the district court to be indigent, all costs related to the evaluation are the responsibility of the district court and must be paid by the county or the state, or both, under Title 3, chapter 5, part 9. The district court may order subsequent psychosexual evaluations at the request of the county attorney. The requestor of any subsequent psychosexual evaluations is responsible for the cost of the evaluation.

(c) If the defendant was convicted of an offense under 45-5-212(2)(b) or (2)(c), the investigation may include a mental health evaluation of the defendant and a recommendation as to treatment of the defendant in the least restrictive environment, considering the risk the defendant presents to the community and the defendant's needs. The evaluation must be completed by a qualified psychiatrist, licensed clinical psychologist, advanced practice registered nurse, or other professional with comparable credentials acceptable to the department of labor and industry. The mental health evaluation must be made available to the county attorney's office, the defense attorney, the probation and parole officer, and the sentencing judge. All costs related to the evaluation must be paid by the defendant. If the defendant is determined by the district court to be indigent, all costs related to the evaluation are the responsibility of the district court and must be paid by the county or the state, or both, under Title 3, chapter 5, part 9.

(d) When, pursuant to 46-14-311, the court has ordered a presentence investigation and a report pursuant to this section, the mental evaluation required by 46-14-311 must be attached to the presentence investigation report and becomes part of the report. The report must be made available to persons and entities as provided in 46-18-113.

(2) The court shall order a presentence investigation report unless the court makes a finding that a report is unnecessary. Unless the court makes that finding, a defendant convicted of any offense not enumerated in subsection (1) that may result in incarceration for 1 year or more may not be sentenced before a written presentence investigation report by a probation and parole officer is presented to and considered by the district court. The district court may order a presentence investigation for a defendant convicted of a misdemeanor only if the defendant was convicted of a misdemeanor that the state originally charged as a sexual or violent offense

as defined in 46-23-502.

(3) The defendant shall pay to the department of corrections a \$50 fee at the time that the report is completed, unless the court determines that the defendant is not able to pay the fee within a reasonable time. The fee may be retained by the department and used to finance contracts entered into under 53-1-203(5).

(4) For the purposes of 46-18-112 and this section, "probation and parole officer" means:

(a) a probation and parole officer who is employed by the department of corrections pursuant to 46-23-1002; or

(b) an employee of the department of corrections who has received specific training or who possesses specific expertise to make a presentence investigation and report but who is not required to be licensed as a probation and parole officer by the public safety officer standards and training council created in 2-15-2029."

**Section 11.** Section 46-18-207, MCA, is amended to read:

**"46-18-207. Sexual offender treatment.** (1) Upon sentencing a person convicted of a sexual offense, as defined in 46-23-502, the court shall designate the offender as a level 1, 2, or 3 offender pursuant to 46-23-509.

(2) (a) Except as provided in subsection (2)(b), the court shall order an offender convicted of a sexual offense, as defined in 46-23-502, except an offense under 45-5-301 through 45-5-303, and sentenced to imprisonment in a state prison to:

(i) enroll in and successfully complete the educational phase of the prison's sexual offender treatment program;

(ii) if the person has been or will be designated as a level 3 offender pursuant to 46-23-509, enroll in and successfully complete the cognitive and behavioral phase of the prison's sexual offender treatment program; and

(iii) if the person is sentenced pursuant to 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(b), or 45-5-625(4) and is released on parole, remain in an outpatient sexual offender treatment program for the remainder of the person's life.

(b) A person who has been sentenced to life imprisonment without possibility of release may not participate in treatment provided pursuant to this section.

(3) A person who has been ordered to enroll in and successfully complete a phase of a state prison's sexual offender treatment program is not eligible for parole unless that phase of the program has been

successfully completed as certified by a sexual offender evaluator to the board of pardons and parole.

(4) (a) Except for an offender sentenced pursuant to 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(b) or (2)(c), or 45-5-625(4), during an offender's term of commitment to the department of corrections or a state prison, the department may place the person in a residential sexual offender treatment program approved by the department under 53-1-203.

(b) If the person successfully completes a residential sexual offender treatment program approved by the department of corrections, the remainder of the term must be served on probation unless the department petitions the sentencing court to amend the original sentencing judgment.

(5) If, following a conviction for a sexual offense as defined in 46-23-502, any portion of a person's sentence is suspended, during the suspended portion of the sentence the person:

(a) shall abide by the standard conditions of probation established by the department of corrections;

(b) shall pay the costs of imprisonment, probation, and any sexual offender treatment if the person is financially able to pay those costs;

(c) may have no contact with the victim or the victim's immediate family unless approved by the victim or the victim's parent or guardian, the person's therapists, and the person's probation officer;

(d) shall comply with all requirements and conditions of sexual offender treatment as directed by the person's sex offender therapist;

(e) may not enter an establishment where alcoholic beverages are sold for consumption on the premises or where gambling takes place;

(f) may not consume alcoholic beverages;

(g) shall enter and remain in an aftercare program as directed by the person's probation officer;

(h) shall submit to random or routine drug and alcohol testing;

(i) may not possess pornographic material or access pornography through the internet; and

(j) at the discretion of the probation and parole officer, may be subject to electronic monitoring or continuous satellite monitoring.

(6) The sentencing of a sexual offender is subject to 46-18-202(2) and 46-18-219.

(7) The sentencing court may, upon petition by the department of corrections, modify a sentence of a sexual offender to impose any part of a sentence that was previously suspended."

**Section 12.** 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) 45-5-625, sexual abuse of children;
- (iv) 45-5-627, except subsection (1)(b), ritual abuse of a minor; or
- (v) 45-5-508, aggravated sexual intercourse without consent.

(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) 45-5-215, strangulation of a partner or family member;
- (iv) 45-5-302, kidnapping;
- (v) 45-5-401, robbery; or
- (vi) 45-5-603(2)(b), aggravated promotion of prostitution of a child.

(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 13.** 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 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) 45-5-503(2) through (5), sexual intercourse without consent;

(ix) 45-5-507(5), incest when the victim is 12 years of age or younger and the offender is 18 years of age or older at the time of the offense;

(x) 45-5-508, aggravated sexual intercourse without consent;

(~~x~~)(xi) 45-5-601(3) or (4), 45-5-602(3) or (4), or 45-5-603(2)(b) or (2)(c), prostitution, promotion of prostitution, or aggravated promotion of prostitution when the person patronized or engaging in prostitution was a child and the ~~patron~~ offender was 18 years of age or older at the time of the offense or when the person engaging in prostitution was a victim of human trafficking, as defined in 45-5-701, or was subjected to force, fraud, or coercion, either of which caused the person to be in the situation where the offense occurred, and the offender was 18 years of age or older at the time of the offense and the offender knew or reasonably should have known that the person was a victim of human trafficking or was subjected to force, fraud, or coercion;

(~~xi~~)(xii) 45-5-625(4), sexual abuse of children;

(xiii) 45-5-702, 45-5-703, 45-5-704, or 45-5-705, trafficking of persons, involuntary servitude, sexual servitude, or patronizing a victim of sexual servitude;

(~~xii~~)(xiv) 45-9-101(4), criminal possession with intent to distribute a dangerous drug; and

(~~xiii~~)(xv) 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 14.** Section 46-23-502, MCA, is amended to read:

**"46-23-502. Definitions.** As used in 46-18-255 and this part, the following definitions apply:

(1) "Department" means the department of corrections provided for in 2-15-2301.

(2) "Mental abnormality" means a congenital or acquired condition that affects the mental, emotional, or volitional capacity of a person in a manner that predisposes the person to the commission of one or more sexual offenses to a degree that makes the person a menace to the health and safety of other persons.

(3) "Municipality" means an entity that has incorporated as a city or town.

(4) "Personality disorder" means a personality disorder as defined in the fourth edition of the Diagnostic and Statistical Manual of Mental Disorders adopted by the American psychiatric association.

(5) "Predatory sexual offense" means a sexual offense committed against a stranger or against a person with whom a relationship has been established or furthered for the primary purpose of victimization.

(6) "Registration agency" means:

(a) if the offender resides in a municipality, the police department of that municipality; or

(b) if the offender resides in a place other than a municipality, the sheriff's office of the county in which the offender resides.

(7) (a) "Residence" means the location at which a person regularly resides, regardless of the number of days or nights spent at that location, that can be located by a street address, including a house, apartment building, motel, hotel, or recreational or other vehicle.

(b) The term does not mean a homeless shelter.

(8) "Sexual offender evaluator" means a person qualified under rules established by the department to conduct psychosexual evaluations of sexual offenders and sexually violent predators.

(9) "Sexual offense" means:

(a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-301 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-302 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-303 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-502 (if the offender is a professional licensed under Title 37 and commits the offense during any treatment, consultation, interview, or evaluation of a person's physical or mental condition, ailment, disease, or injury), 45-5-502(3) (if the victim is less than 16 years of age and the offender is 3 or more years older than the victim), 45-5-503(1), (3), or (4), 45-5-504(2)(c), 45-5-504(3) (if the victim is less than 16 years of age and the offender is 4 or more years older than the victim), 45-5-507 (if the victim is less than 18 years of age and the offender is 3 or more years older than the victim or if the victim is 12 years of age or younger and the offender is 18 years of age or older at the time of the offense), 45-5-508, 45-5-601(3),



45-5-602(3), 45-5-603(1)(b) or (2)(b) or (2)(c), 45-5-625, 45-5-704, or 45-5-705; or

(b) any violation of a law of another state, a tribal government, or the federal government that is reasonably equivalent to a violation listed in subsection (9)(a) or for which the offender was required to register as a sexual offender after an adjudication or conviction.

(10) "Sexual or violent offender" means a person who has been convicted of or, in youth court, found to have committed or been adjudicated for a sexual or violent offense.

(11) "Sexually violent predator" means a person who:

(a) has been convicted of or, in youth court, found to have committed or been adjudicated for a sexual offense and who suffers from a mental abnormality or a personality disorder that makes the person likely to engage in predatory sexual offenses; or

(b) has been convicted of a sexual offense against a victim 12 years of age or younger and the offender is 18 years of age or older.

(12) "Transient" means an offender who has no residence.

(13) "Violent offense" means:

(a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-102, 45-5-103, 45-5-202, 45-5-206 (third or subsequent offense), 45-5-210(1)(b), (1)(c), or (1)(d), 45-5-212, 45-5-213, 45-5-215, 45-5-302 (if the victim is not a minor), 45-5-303 (if the victim is not a minor), 45-5-401, 45-6-103, or 45-9-132; or

(b) any violation of a law of another state, a tribal government, or the federal government reasonably equivalent to a violation listed in subsection (13)(a)."

**Section 15. Effective date.** [This act] is effective on passage and approval.

**Section 16. Applicability.** [This act] applies to offenses committed on or after [the effective date of this act].

- END -

I hereby certify that the within bill,  
SB 0147, originated in the Senate.

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President of the Senate

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2019.

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Secretary of the Senate

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Speaker of the House

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2019.

SENATE BILL NO. 147

INTRODUCED BY M. MACDONALD, G. CUSTER, F. FLEMING, J. GROSS, J. KARJALA, K. KELKER,  
E. KERR-CARPENTER, E. MCCLAFFERTY, M. MCNALLY, A. OLSEN, R. PEPPERS, T. RICHMOND,  
D. SANDS, J. SMALL, B. SMITH, S. STEWART PEREGOY, P. WEBB, D. ZOLNIKOV

AN ACT GENERALLY REVISING LAWS RELATED TO HUMAN TRAFFICKING AND SEX CRIMES TO PROTECT VICTIMS; REVISING THE OFFENSE OF PROSTITUTION TO INCLUDE DIRECT SEXUAL CONTACT; REVISING PENALTIES FOR PROSTITUTION OFFENSES TO ALLOW FOR AGGRAVATED PENALTIES FOR PERSONS WHO PROMOTE PROSTITUTION AND TO ALLOW FOR AGGRAVATED PENALTIES WHEN THE OFFENDER KNEW OR SHOULD HAVE KNOWN THAT THE VICTIM WAS A HUMAN TRAFFICKING VICTIM OR SUBJECTED TO FORCE, FRAUD, OR COERCION; REVISING THE DEFINITION OF A CRIME OF VIOLENCE TO INCLUDE AGGRAVATED PROMOTION OF PROSTITUTION AND HUMAN TRAFFICKING OFFENSES; PROVIDING THAT A PERSON'S CONSENT IS NOT A DEFENSE TO HUMAN TRAFFICKING AND SEX CRIMES IF THE ACCUSED KNEW OR REASONABLY SHOULD HAVE KNOWN THE PERSON WAS A VICTIM OF HUMAN TRAFFICKING OR WAS SUBJECTED TO FORCE, FRAUD, OR COERCION; REFORMING LAWS RELATED TO HUMAN TRAFFICKING TO CONFORM PENALTIES AND LANGUAGE TO LAWS RELATED TO SEX CRIMES; AMENDING SECTIONS 45-2-211, 45-5-601, 45-5-602, 45-5-603, 45-5-702, 45-5-704, 45-5-705, 45-5-709, 46-18-104, 46-18-111, 46-18-207, 46-18-219, 46-18-231, AND 46-23-502, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.