

SENATE BILL NO. 147

INTRODUCED BY M. MACDONALD

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4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO HUMAN  
5 TRAFFICKING AND SEX CRIMES TO PROTECT VICTIMS; REVISING THE OFFENSE OF PROSTITUTION  
6 TO INCLUDE DIRECT SEXUAL CONTACT; REVISING PENALTIES FOR PROSTITUTION OFFENSES TO  
7 ALLOW FOR AGGRAVATED PENALTIES FOR PERSONS WHO PROMOTE PROSTITUTION AND TO ALLOW  
8 FOR AGGRAVATED PENALTIES WHEN THE OFFENDER KNEW OR SHOULD HAVE KNOWN THAT THE  
9 VICTIM WAS A HUMAN TRAFFICKING VICTIM OR SUBJECTED TO FORCE, FRAUD, OR COERCION;  
10 REVISING THE DEFINITION OF A CRIME OF VIOLENCE TO INCLUDE AGGRAVATED PROMOTION OF  
11 PROSTITUTION AND HUMAN TRAFFICKING OFFENSES; PROVIDING THAT A PERSON'S CONSENT TO  
12 SEXUAL INTERCOURSE OR SEXUAL CONTACT IS NEGATED IF THE ACCUSED KNEW OR REASONABLY  
13 SHOULD HAVE KNOWN THE PERSON WAS A VICTIM OF HUMAN TRAFFICKING OR WAS SUBJECTED  
14 TO FORCE, FRAUD, OR COERCION; AMENDING SECTIONS 45-5-501, 45-5-601, 45-5-602, 45-5-603,  
15 46-18-104, AND 46-18-231, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN  
16 APPLICABILITY DATE."

17  
18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

19  
20 **Section 1.** Section 45-5-501, MCA, is amended to read:

21 **"45-5-501. Definitions.** (1) (a) As used in 45-5-502, 45-5-503, and 45-5-508, the term "consent" means  
22 words or overt actions indicating a freely given agreement to have sexual intercourse or sexual contact and is  
23 further defined but not limited by the following:

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25 has been withdrawn;

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

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

30 (iv) consent is negated if the accused knew or reasonably should have known that the victim was a victim

1 of human trafficking, as defined in 45-5-701, or was subjected to force, fraud, or coercion, which caused the victim  
2 to be in the situation in which sexual intercourse or sexual contact occurred.

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

4 (i) mentally disordered or incapacitated;

5 (ii) physically helpless;

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

7 (iv) less than 16 years old;

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

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

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

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

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

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

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

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 45-5-601, MCA, is amended to read:

15 **"45-5-601. Prostitution.** (1) A person commits the offense of prostitution if the person engages in or  
16 agrees or offers to engage in sexual intercourse or sexual contact that is direct and not through clothing with  
17 another person for compensation, whether the compensation is received or to be received or paid or to be paid.

18 (2) (a) A prostitute convicted of prostitution shall be fined an amount not to exceed \$500 or be imprisoned  
19 in the county jail for a term not to exceed 6 months, or both.

20 (b) Except as provided in subsection (3), a patron who is convicted of prostitution shall for the first  
21 offense be fined an amount not to exceed \$1,000 or be imprisoned for a term not to exceed 1 year, or both, and  
22 for a second or subsequent offense shall be fined an amount not to exceed \$10,000 or be imprisoned for a term  
23 not to exceed 5 years, or both.

24 (3) (a) If the person patronized was a child and the patron was 18 years of age or older at the time of  
25 the offense, whether or not the patron was aware of the child's age, or if the patron offender knew or should have  
26 known that the victim was a victim of human trafficking, as defined in 45-5-701, or that the victim was subjected  
27 to force, fraud, or coercion, the patron offender:

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

1 is not eligible for parole.

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

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

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

8

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

10 **"45-5-602. Promoting prostitution.** (1) A person commits the offense of promoting prostitution if the  
11 person purposely or knowingly commits any of the following acts:

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

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

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

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

17 (e) procures a prostitute for a patron;

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

20 (g) leases or otherwise permits a place controlled by the offender, alone or in association with others,  
21 to be regularly used for prostitution or for the procurement of prostitution or fails to make reasonable effort to  
22 abate that use by ejecting the tenant, notifying law enforcement authorities, or using other legally available  
23 means; or

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

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

28 (3) (a) If the person engaging in prostitution was a child and the ~~patron~~ offender was 18 years of age or  
29 older at the time of the offense, whether or not the ~~patron~~ offender was aware of the child's age, or if the person  
30 engaging in prostitution was a victim of human trafficking, as defined in 45-5-701, or was subjected to force, fraud,

1 or coercion, and the offender knew or reasonably should have known that the victim was a victim of human  
 2 trafficking or was subjected to force, fraud, or coercion, the ~~patron~~ offender:

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

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

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

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

13

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

15 **"45-5-603. Aggravated promotion of prostitution.** (1) A person commits the offense of aggravated  
 16 promotion of prostitution if the person purposely or knowingly commits any of the following acts:

17 (a) compels another to engage in or promote prostitution;

18 (b) promotes prostitution of a child, whether or not the person is aware of the child's age;

19 (c) promotes the prostitution of one's spouse, child, ward, or any person for whose care, protection, or  
 20 support the person is responsible.

21 (2) (a) Except as provided in subsection (2)(b), a person convicted of aggravated promotion of  
 22 prostitution shall be punished by:

23 (i) life imprisonment; or

24 (ii) imprisonment in a state prison for a term not to exceed 20 years or a fine in an amount not to exceed  
 25 \$50,000, or both.

26 (b) (i) Except as provided in 46-18-219 and 46-18-222, if the person engaging in prostitution was a child  
 27 and the ~~patron~~ offender was 18 years of age or older at the time of the offense, or if the person engaging in  
 28 prostitution was a victim of human trafficking, as defined in 45-5-701, or was subjected to force, fraud, or  
 29 coercion, and the offender was 18 years of age or older at the time of the offense and the offender knew or  
 30 reasonably should have known that the victim was a victim of human trafficking or was subjected to force, fraud,

1 or coercion, the ~~patron~~ offender:

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

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

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

9 (ii) If the offender is released after the mandatory minimum period of imprisonment, the offender is subject  
10 to supervision by the department of corrections for the remainder of the offender's life and shall participate in the  
11 program for continuous, satellite-based monitoring provided for in 46-23-1010."  
12

13 **Section 5.** Section 46-18-104, MCA, is amended to read:

14 **"46-18-104. Definitions.** As used in 46-18-101, 46-18-105, 46-18-201, 46-18-225, and this section,  
15 unless the context requires otherwise, the following definitions apply:

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

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

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

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

22 or

23 (iii) an offense under:

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

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

27 (C) 45-5-507 if the victim is under 16 years of age and the offender is 3 or more years older than the  
28 victim or if the offender inflicts bodily injury upon anyone in the course of committing the offense;

29 (D) 45-5-603;

30 (E) 45-5-702;

1           (F) 45-5-703;

2           (G) 45-5-704; or

3           (H) 45-5-705.

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

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

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

11

12          **Section 6.** Section 46-18-231, MCA, is amended to read:

13          **"46-18-231. Fines in felony and misdemeanor cases.** (1) (a) Except as provided in subsection (1)(b),  
14 whenever, upon a verdict of guilty or a plea of guilty or nolo contendere, an offender has been found guilty of an  
15 offense for which a felony penalty of imprisonment could be imposed, the sentencing judge may, in lieu of or in  
16 addition to a sentence of imprisonment, impose a fine only in accordance with subsection (3).

17          (b) For those crimes for which penalties are provided in the following sections, a fine may be imposed  
18 in accordance with subsection (3) in addition to a sentence of imprisonment:

19           (i) 45-5-103(4), mitigated deliberate homicide;

20           (ii) 45-5-202, aggravated assault;

21           (iii) 45-5-213, assault with a weapon;

22           (iv) 45-5-302(2), kidnapping;

23           (v) 45-5-303(2), aggravated kidnapping;

24           (vi) 45-5-401(2), robbery;

25           (vii) 45-5-502(3), sexual assault when the victim is less than 16 years old and the offender is 3 or more  
26 years older than the victim or the offender inflicts bodily injury in the course of committing the sexual assault;

27           (viii) 45-5-503(2) through (5), sexual intercourse without consent;

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

30           (x) 45-5-601(3), 45-5-602(3), or 45-5-603(2)(b), prostitution, promotion of prostitution, or aggravated

1 promotion of prostitution when the person patronized or engaging in prostitution was a child and the ~~patron~~  
 2 offender was 18 years of age or older at the time of the offense or when the person engaging in prostitution was  
 3 a victim of human trafficking, as defined in 45-5-701, or was subjected to force, fraud, or coercion, and the  
 4 offender was 18 years of age or older at the time of the offense and the offender knew or reasonably should have  
 5 known that the victim was a victim of human trafficking or was subjected to force, fraud, or coercion;

- 6 (xi) 45-5-625(4), sexual abuse of children;
- 7 (xii) 45-9-101(4), criminal possession with intent to distribute a dangerous drug; and
- 8 (xiii) 45-9-109, criminal possession with intent to distribute dangerous drugs on or near school property.

9 (2) Whenever, upon a verdict of guilty or a plea of guilty or nolo contendere, an offender has been found  
 10 guilty of an offense for which a misdemeanor penalty of a fine could be imposed, the sentencing judge may  
 11 impose a fine only in accordance with subsection (3).

12 (3) The sentencing judge may not sentence an offender to pay a fine unless the offender is or will be able  
 13 to pay the fine. In determining the amount and method of payment, the sentencing judge shall take into account  
 14 the nature of the crime committed, the financial resources of the offender, and the nature of the burden that  
 15 payment of the fine will impose.

16 (4) Any fine levied under this section in a felony case shall be in an amount fixed by the sentencing judge  
 17 not to exceed \$50,000."

18

19 NEW SECTION. **Section 7. Effective date.** [This act] is effective on passage and approval.

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21 NEW SECTION. **Section 8. Applicability.** [This act] applies to offenses committed on or after [the  
 22 effective date of this act].

23 - END -