

SENATE BILL NO. 155

INTRODUCED BY R. WEBB

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A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE MANDATORY MINIMUM SENTENCES FOR CERTAIN SEXUAL OFFENSES WHEN THE VICTIM IS 12 YEARS OF AGE OR YOUNGER; AMENDING SECTIONS 39-51-2111, 40-4-219, 40-15-116, 41-3-102, 42-2-608, 45-5-503, ~~45-5-507~~, AND 45-5-625, 45-8-221, 46-1-502, 46-4-307, 46-18-219, 46-18-231, 46-18-1001, AND 52-3-803, MCA; AND PROVIDING AN APPLICABILITY DATE."

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

SECTION 1. SECTION 39-51-2111, MCA, IS AMENDED TO READ:

"39-51-2111. Unemployment benefits for victims of domestic violence, sexual assault, or stalking.

(1) (a) An individual who is otherwise eligible for benefits may not be denied benefits because the individual left work or was discharged because of circumstances resulting from the individual or a child of the individual being a victim of domestic violence, a sexual assault, or stalking or the individual left work or was discharged because of an attempt on the individual's part to protect the individual or the individual's child from domestic abuse, a sexual assault, or stalking.

(b) The account of an employer with an experience rating as provided in 39-51-1213 may not be charged for the payment of benefits to an individual who left work or was discharged because of circumstances resulting from domestic violence, a sexual assault, or stalking as provided for in subsection (1)(a).

(c) An individual may not receive more than 28 weeks of unemployment benefits for the 12-month period after filing a claim under the provisions of this section. The provisions of this section do not affect the rights of an individual to receive unemployment insurance benefits that the individual is entitled to under other provisions of state law.

(2) For the purposes of subsection (1), an individual must be treated as being a victim of domestic violence, a sexual assault, or stalking if the individual provides one or more of the following:

- (a) an order of protection or other documentation of equitable relief issued by a court of competent jurisdiction;
- (b) a police record documenting the domestic violence, sexual assault, or stalking;



1 (c) medical documentation of domestic violence or a sexual assault; or
2 (d) other documentation or certification of domestic violence, a sexual assault, or stalking provided by
3 a social worker, clergy member, shelter worker, or professional person, as defined in 53-21-102, who has
4 assisted the individual in dealing with domestic violence, a sexual assault, or stalking.

5 (3) An individual who is otherwise eligible for benefits under this section becomes ineligible if the
6 individual remains in or returns to the abusive situation that caused the individual to leave work or be discharged.

7 (4) The department shall provide a report to the legislature, as provided in 5-11-210, regarding the
8 benefits applied for and granted under this section, including a summary of the demographics of applicants for
9 and recipients of the benefits and the average and total cost of benefits provided.

10 (5) For the purposes of this section:

11 (a) "domestic violence" means the physical, mental, or emotional abuse of an individual or the individual's
12 child by a person with whom that individual or the individual's child lives or has recently lived;

13 (b) "sexual assault" means sexual assault as described in 45-5-502, sexual intercourse without consent
14 as described in 45-5-503, incest as described in 45-5-507, or sexual abuse of children and child pornography as
15 described in 45-5-625; and

16 (c) "stalking" has the meaning provided in 45-5-220."
17

18 **SECTION 2. SECTION 40-4-219, MCA, IS AMENDED TO READ:**

19 **"40-4-219. Amendment of parenting plan -- mediation.** (1) The court may in its discretion amend a
20 prior parenting plan if it finds, upon the basis of facts that have arisen since the prior plan or that were unknown
21 to the court at the time of entry of the prior plan, that a change has occurred in the circumstances of the child and
22 that the amendment is necessary to serve the best interest of the child. In determining the child's best interest
23 under this section, the court may, in addition to the criteria in 40-4-212, also consider whether:

24 (a) the parents agree to the amendment;

25 (b) the child has been integrated into the family of the petitioner with consent of the parents;

26 (c) the child is 14 years of age or older and desires the amendment;

27 (d) one parent has willfully and consistently:

28 (i) refused to allow the child to have any contact with the other parent; or

29 (ii) attempted to frustrate or deny contact with the child by the other parent; or

30 (e) one parent has changed or intends to change the child's residence in a manner that significantly

1 affects the child's contact with the other parent.

2 (2) A court may modify a de facto parenting arrangement in accordance with the factors set forth in
3 40-4-212.

4 (3) The court shall presume a parent is not acting in the child's best interest if the parent does any of the
5 acts specified in subsection (1)(d) or (8).

6 (4) The court may amend the prior parenting plan based on subsection (1)(e) to provide a new residential
7 schedule for parental contact with the child and to apportion transportation costs between the parents.

8 (5) Attorney fees and costs must be assessed against a party seeking frivolous or repeated amendment
9 if the court finds that the amendment action is vexatious and constitutes harassment.

10 (6) A parenting plan may be amended pursuant to 40-4-221 upon the death of one parent.

11 (7) As used in this section, "prior parenting plan" means a parenting determination contained in a judicial
12 decree or order made in a parenting proceeding. In proceedings for amendment under this section, a proposed
13 amended parenting plan must be filed and served with the motion for amendment and with the response to the
14 motion for amendment. Preference must be given to carrying out the parenting plan.

15 (8) (a) If a parent or other person residing in that parent's household has been convicted of any of the
16 crimes listed in subsection (8)(b), the other parent or any other person who has been granted rights to the child
17 pursuant to court order may file an objection to the current parenting order with the court. The parent or other
18 person having rights to the child pursuant to court order shall give notice to the other parent of the objection as
19 provided by the Montana Rules of Civil Procedure, and the other parent has 21 days from the notice to respond.
20 If the parent who receives notice of objection fails to respond within 21 days, the parenting rights of that parent
21 are suspended until further order of the court. If that parent responds and objects, a hearing must be held within
22 30 days of the response.

23 (b) This subsection (8) applies to the following crimes:

24 (i) deliberate homicide, as described in 45-5-102;

25 (ii) mitigated deliberate homicide, as described in 45-5-103;

26 (iii) sexual assault, as described in 45-5-502;

27 (iv) sexual intercourse without consent, as described in 45-5-503;

28 (v) deviate sexual conduct with an animal, as described in 45-2-101 and prohibited under 45-8-218;

29 (vi) incest, as described in 45-5-507;

30 (vii) aggravated promotion of prostitution of a child, as described in 45-5-603(1)(b);

- 1 (viii) endangering the welfare of children, as described in 45-5-622;
- 2 (ix) partner or family member assault of the type described in 45-5-206(1)(a);
- 3 (x) sexual abuse of children and child pornography, as described in 45-5-625; and
- 4 (xi) strangulation of a partner or family member, as described in 45-5-215.
- 5 (9) Except in cases of physical, sexual, or emotional abuse or threat of physical, sexual, or emotional
- 6 abuse by one parent against the other parent or the child or when a parent has been convicted of a crime
- 7 enumerated in subsection (8)(b), the court may, in its discretion, order the parties to participate in a dispute
- 8 resolution process to assist in resolving any conflicts between the parties regarding amendment of the parenting
- 9 plan. The dispute resolution process may include counseling or mediation by a specified person or agency, and
- 10 court action.
- 11 (10) (a) Except as provided in subsection (10)(b), a court-ordered or de facto modification of a parenting
- 12 plan based in whole or in part on military service orders of a parent is temporary and reverts to the previous
- 13 parenting plan at the end of the military service. If a motion for an amendment of a parenting plan is filed after
- 14 a parent returns from military service, the court may not consider a parent's absence due to that military service
- 15 in its determination of the best interest of the child.
- 16 (b) A parent who has performed or is performing military service, as defined in 10-1-1003, may consent
- 17 to a temporary or permanent modification of a parenting plan:
- 18 (i) for the duration of the military service; or
- 19 (ii) that continues past the end of the military service."

20

21 **SECTION 3. SECTION 40-15-116, MCA, IS AMENDED TO READ:**

22 **"40-15-116. Definitions.** As used in 40-15-115 through 40-15-121, the following definitions apply:

- 23 (1) "Applicant" means a victim and includes a parent or guardian who acts on behalf of a victim.
- 24 (2) "Department" means the department of justice.
- 25 (3) "Participant" means an applicant who has submitted an application pursuant to 40-15-117 that has
- 26 been approved by the department.
- 27 (4) "Partner or family member assault" has the meaning provided in 45-5-206.
- 28 (5) "Sexual assault" means sexual assault as defined in 45-5-502, sexual intercourse without consent
- 29 as defined in 45-5-503, incest as defined in 45-5-507, or sexual abuse of children and child pornography as
- 30 defined in 45-5-625.

1 (6) "Stalking" has the meaning provided in 45-5-220.

2 (7) "Victim" means an individual who has been a victim of partner or family member assault, sexual
3 assault, or stalking or who is otherwise eligible to file a petition for an order of protection under 40-15-102."

4

5 **SECTION 4. SECTION 41-3-102, MCA, IS AMENDED TO READ:**

6 **"41-3-102. Definitions.** As used in this chapter, the following definitions apply:

7 (1) (a) "Abandon", "abandoned", and "abandonment" mean:

8 (i) leaving a child under circumstances that make reasonable the belief that the parent does not intend
9 to resume care of the child in the future;

10 (ii) willfully surrendering physical custody for a period of 6 months and during that period not manifesting
11 to the child and the person having physical custody of the child a firm intention to resume physical custody or to
12 make permanent legal arrangements for the care of the child;

13 (iii) that the parent is unknown and has been unknown for a period of 90 days and that reasonable efforts
14 to identify and locate the parent have failed; or

15 (iv) the voluntary surrender, as defined in 40-6-402, by a parent of a newborn who is no more than 30
16 days old to an emergency services provider, as defined in 40-6-402.

17 (b) The terms do not include the voluntary surrender of a child to the department solely because of
18 parental inability to access publicly funded services.

19 (2) "A person responsible for a child's welfare" means:

20 (a) the child's parent, guardian, or foster parent or an adult who resides in the same home in which the
21 child resides;

22 (b) a person providing care in a day-care facility;

23 (c) an employee of a public or private residential institution, facility, home, or agency; or

24 (d) any other person responsible for the child's welfare in a residential setting.

25 (3) "Abused or neglected" means the state or condition of a child who has suffered child abuse or
26 neglect.

27 (4) (a) "Adequate health care" means any medical care or nonmedical remedial health care recognized
28 by an insurer licensed to provide disability insurance under Title 33, including the prevention of the withholding
29 of medically indicated treatment or medically indicated psychological care permitted or authorized under state
30 law.

1 (b) This chapter may not be construed to require or justify a finding of child abuse or neglect for the sole
2 reason that a parent or legal guardian, because of religious beliefs, does not provide adequate health care for
3 a child. However, this chapter may not be construed to limit the administrative or judicial authority of the state to
4 ensure that medical care is provided to the child when there is imminent substantial risk of serious harm to the
5 child.

6 (5) "Best interests of the child" means the physical, mental, and psychological conditions and needs of
7 the child and any other factor considered by the court to be relevant to the child.

8 (6) "Child" or "youth" means any person under 18 years of age.

9 (7) (a) "Child abuse or neglect" means:

10 (i) actual physical or psychological harm to a child;

11 (ii) substantial risk of physical or psychological harm to a child; or

12 (iii) abandonment.

13 (b) (i) The term includes:

14 (A) actual physical or psychological harm to a child or substantial risk of physical or psychological harm
15 to a child by the acts or omissions of a person responsible for the child's welfare; or

16 (B) exposing a child to the criminal distribution of dangerous drugs, as prohibited by 45-9-101, the
17 criminal production or manufacture of dangerous drugs, as prohibited by 45-9-110, or the operation of an unlawful
18 clandestine laboratory, as prohibited by 45-9-132.

19 (ii) For the purposes of this subsection (7), "dangerous drugs" means the compounds and substances
20 described as dangerous drugs in Schedules I through IV in Title 50, chapter 32, part 2.

21 (c) In proceedings under this chapter in which the federal Indian Child Welfare Act is applicable, this term
22 has the same meaning as "serious emotional or physical damage to the child" as used in 25 U.S.C. 1912(f).

23 (d) The term does not include self-defense, defense of others, or action taken to prevent the child from
24 self-harm that does not constitute physical or psychological harm to a child.

25 (8) "Concurrent planning" means to work toward reunification of the child with the family while at the
26 same time developing and implementing an alternative permanent plan.

27 (9) "Department" means the department of public health and human services provided for in 2-15-2201.

28 (10) "Family group decisionmaking meeting" means a meeting that involves family members in either
29 developing treatment plans or making placement decisions, or both.

30 (11) "Indian child" means any unmarried person who is under 18 years of age and who is either:

- 1 (a) a member of an Indian tribe; or
- 2 (b) eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.
- 3 (12) "Indian child's tribe" means:
- 4 (a) the Indian tribe in which an Indian child is a member or eligible for membership; or
- 5 (b) in the case of an Indian child who is a member of or eligible for membership in more than one Indian
- 6 tribe, the Indian tribe with which the Indian child has the more significant contacts.
- 7 (13) "Indian custodian" means any Indian person who has legal custody of an Indian child under tribal
- 8 law or custom or under state law or to whom temporary physical care, custody, and control have been transferred
- 9 by the child's parent.
- 10 (14) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians
- 11 recognized by:
- 12 (a) the state of Montana; or
- 13 (b) the United States secretary of the interior as being eligible for the services provided to Indians or
- 14 because of the group's status as Indians, including any Alaskan native village as defined in federal law.
- 15 (15) "Limited emancipation" means a status conferred on a youth by a court in accordance with 41-1-503
- 16 under which the youth is entitled to exercise some but not all of the rights and responsibilities of a person who
- 17 is 18 years of age or older.
- 18 (16) "Parent" means a biological or adoptive parent or stepparent.
- 19 (17) "Parent-child legal relationship" means the legal relationship that exists between a child and the
- 20 child's birth or adoptive parents, as provided in Title 40, chapter 6, part 2, unless the relationship has been
- 21 terminated by competent judicial decree as provided in 40-6-234, Title 42, or part 6 of this chapter.
- 22 (18) "Permanent placement" means reunification of the child with the child's parent, adoption, placement
- 23 with a legal guardian, placement with a fit and willing relative, or placement in another planned permanent living
- 24 arrangement until the child reaches 18 years of age.
- 25 (19) "Physical abuse" means an intentional act, an intentional omission, or gross negligence resulting
- 26 in substantial skin bruising, internal bleeding, substantial injury to skin, subdural hematoma, burns, bone
- 27 fractures, extreme pain, permanent or temporary disfigurement, impairment of any bodily organ or function, or
- 28 death.
- 29 (20) "Physical neglect" means either failure to provide basic necessities, including but not limited to
- 30 appropriate and adequate nutrition, protective shelter from the elements, and appropriate clothing related to

1 weather conditions, or failure to provide cleanliness and general supervision, or both, or exposing or allowing the
2 child to be exposed to an unreasonable physical or psychological risk to the child.

3 (21) (a) "Physical or psychological harm to a child" means the harm that occurs whenever the parent or
4 other person responsible for the child's welfare:

5 (i) inflicts or allows to be inflicted upon the child physical abuse, physical neglect, or psychological abuse
6 or neglect;

7 (ii) commits or allows sexual abuse or exploitation of the child;

8 (iii) induces or attempts to induce a child to give untrue testimony that the child or another child was
9 abused or neglected by a parent or other person responsible for the child's welfare;

10 (iv) causes malnutrition or a failure to thrive or otherwise fails to supply the child with adequate food or
11 fails to supply clothing, shelter, education, or adequate health care, though financially able to do so or offered
12 financial or other reasonable means to do so;

13 (v) exposes or allows the child to be exposed to an unreasonable risk to the child's health or welfare by
14 failing to intervene or eliminate the risk; or

15 (vi) abandons the child.

16 (b) The term does not include a youth not receiving supervision solely because of parental inability to
17 control the youth's behavior.

18 (22) (a) "Protective services" means services provided by the department:

19 (i) to enable a child alleged to have been abused or neglected to remain safely in the home;

20 (ii) to enable a child alleged to have been abused or neglected who has been removed from the home
21 to safely return to the home; or

22 (iii) to achieve permanency for a child adjudicated as a youth in need of care when circumstances and
23 the best interests of the child prevent reunification with parents or a return to the home.

24 (b) The term includes emergency protective services provided pursuant to 41-3-301, voluntary protective
25 services provided pursuant to 41-3-302, and court-ordered protective services provided pursuant to parts 4 and
26 6 of this chapter.

27 (23) (a) "Psychological abuse or neglect" means severe maltreatment through acts or omissions that are
28 injurious to the child's emotional, intellectual, or psychological capacity to function, including the commission of
29 acts of violence against another person residing in the child's home.

30 (b) The term may not be construed to hold a victim responsible for failing to prevent the crime against

1 the victim.

2 (24) "Qualified expert witness" as used in cases involving an Indian child in proceedings subject to the
3 federal Indian Child Welfare Act means:

4 (a) a member of the Indian child's tribe who is recognized by the tribal community as knowledgeable in
5 tribal customs as they pertain to family organization and child-rearing practices;

6 (b) a lay expert witness who has substantial experience in the delivery of child and family services to
7 Indians and extensive knowledge of prevailing social and cultural standards and child-rearing practices within the
8 Indian child's tribe; or

9 (c) a professional person who has substantial education and experience in providing services to children
10 and families and who possesses significant knowledge of and experience with Indian culture, family structure,
11 and child-rearing practices in general.

12 (25) "Reasonable cause to suspect" means cause that would lead a reasonable person to believe that
13 child abuse or neglect may have occurred or is occurring, based on all the facts and circumstances known to the
14 person.

15 (26) "Residential setting" means an out-of-home placement where the child typically resides for longer
16 than 30 days for the purpose of receiving food, shelter, security, guidance, and, if necessary, treatment.

17 (27) (a) "Sexual abuse" means the commission of sexual assault, sexual intercourse without consent,
18 indecent exposure, sexual abuse, ritual abuse of a minor, or incest, as described in Title 45, chapter 5.

19 (b) Sexual abuse does not include any necessary touching of an infant's or toddler's genital area while
20 attending to the sanitary or health care needs of that infant or toddler by a parent or other person responsible for
21 the child's welfare.

22 (28) "Sexual exploitation" means allowing, permitting, or encouraging a child to engage in a prostitution
23 offense, as described in 45-5-601 through 45-5-603, or allowing, permitting, or encouraging sexual abuse of
24 children and child pornography as described in 45-5-625.

25 (29) (a) "Social worker" means an employee of the department who, before the employee's field
26 assignment, has been educated or trained in a program of social work or a related field that includes cognitive
27 and family systems treatment or who has equivalent verified experience or verified training in the investigation
28 of child abuse, neglect, and endangerment.

29 (b) This definition does not apply to any provision of this code that is not in this chapter.

30 (30) "Treatment plan" means a written agreement between the department and the parent or guardian

1 or a court order that includes action that must be taken to resolve the condition or conduct of the parent or
2 guardian that resulted in the need for protective services for the child. The treatment plan may involve court
3 services, the department, and other parties, if necessary, for protective services.

4 (31) "Unfounded" means that after an investigation, the investigating person has determined that the
5 reported abuse, neglect, or exploitation has not occurred.

6 (32) "Unsubstantiated" means that after an investigation, the investigator was unable to determine by a
7 preponderance of the evidence that the reported abuse, neglect, or exploitation has occurred.

8 (33) (a) "Withholding of medically indicated treatment" means the failure to respond to an infant's
9 life-threatening conditions by providing treatment, including appropriate nutrition, hydration, and medication, that,
10 in the treating physician's or physicians' reasonable medical judgment, will be most likely to be effective in
11 ameliorating or correcting the conditions.

12 (b) The term does not include the failure to provide treatment, other than appropriate nutrition, hydration,
13 or medication, to an infant when, in the treating physician's or physicians' reasonable medical judgment:

14 (i) the infant is chronically and irreversibly comatose;

15 (ii) the provision of treatment would:

16 (A) merely prolong dying;

17 (B) not be effective in ameliorating or correcting all of the infant's life-threatening conditions; or

18 (C) otherwise be futile in terms of the survival of the infant; or

19 (iii) the provision of treatment would be virtually futile in terms of the survival of the infant and the
20 treatment itself under the circumstances would be inhumane. For purposes of this subsection (33), "infant" means
21 an infant less than 1 year of age or an infant 1 year of age or older who has been continuously hospitalized since
22 birth, who was born extremely prematurely, or who has a long-term disability. The reference to less than 1 year
23 of age may not be construed to imply that treatment should be changed or discontinued when an infant reaches
24 1 year of age or to affect or limit any existing protections available under state laws regarding medical neglect
25 of children 1 year of age or older.

26 (34) "Youth in need of care" means a youth who has been adjudicated or determined, after a hearing,
27 to be or to have been abused, neglected, or abandoned."

28

29 **SECTION 5. SECTION 42-2-608, MCA, IS AMENDED TO READ:**

30 **"42-2-608. Finding of unfitness.** (1) The court may terminate parental rights for purposes of making

- 1 a child available for adoption on the grounds of unfitness if:
- 2 (a) the court makes a determination that the parent has been judicially deprived of custody of the child
3 on account of abuse or neglect toward the child;
- 4 (b) the parent has willfully abandoned the child, as defined in 41-3-102, in Montana or in any other
5 jurisdiction of the United States;
- 6 (c) it is proven to the satisfaction of the court that the parent, if able, has not contributed to the support
7 of the child for an aggregate period of 1 year before the filing of a petition for adoption;
- 8 (d) it is proven to the satisfaction of the court that the parent is in violation of a court order to support
9 either the child that is the subject of the adoption proceedings or other children with the same birth mother;
- 10 (e) the parent has been found guilty by a court of competent jurisdiction of:
- 11 (i) aggravated assault on the adoptee, as provided in 45-5-202;
- 12 (ii) sexual assault on a child, as provided in 45-5-502;
- 13 (iii) sexual intercourse without consent, as provided in 45-5-503, if the victim was a child;
- 14 (iv) incest, as provided in 45-5-507, if the victim was a child;
- 15 (v) homicide of a child, as provided in 45-5-102 or 45-5-103;
- 16 (vi) sexual abuse of a child and child pornography, as provided in 45-5-625; or
- 17 (vii) ritual abuse of a minor, as provided in 45-5-627;
- 18 (f) the child has been maintained by a public or private children's institution, a charitable agency, a
19 licensed child-placing agency, or the department for a period of 1 year without the parent contributing to the
20 support of the child during that period, if able;
- 21 (g) a finding is made for a parent who is given proper notice of hearing:
- 22 (i) that the parent has been convicted of a crime of violence or of violating a restraining or protective
23 order; and
- 24 (ii) the facts of the crime or violation and the parent's behavior indicate that the parent is unfit to maintain
25 a relationship of parent and child with the child;
- 26 (h) a finding is made for a parent who is given proper notice of hearing and is a respondent to the petition
27 to terminate parental rights and:
- 28 (i) by a preponderance of the evidence, it is found that termination is in the best interests of the child;
29 and
- 30 (ii) upon clear and convincing evidence, it is found that one of the following grounds exists:

1 (A) if the child is not in the legal and physical custody of the other parent, that the respondent is not able
2 or willing to promptly assume legal and physical custody of the child and to pay for the child's support in
3 accordance with the respondent's financial means;

4 (B) if the child is in the legal and physical custody of the other parent and a stepparent who is the
5 prospective adoptive parent, that the respondent is not able or willing to promptly establish and maintain contact
6 with the child and to pay for the child's support in accordance with the respondent's financial means;

7 (C) placing the child in the respondent's legal and physical custody would pose a risk of substantial harm
8 to the physical or psychological well-being of the child because the circumstances of the child's conception, the
9 respondent's behavior during the mother's pregnancy or since the child's birth, or the respondent's behavior with
10 respect to other children indicates that the respondent is unfit to maintain a relationship of parent and child with
11 the child; or

12 (D) failure to terminate the relationship of parent and child would be detrimental to the child.

13 (2) In making a determination under subsection (1)(h)(ii)(D), the court shall consider any relevant factor,
14 including the respondent's efforts to obtain or maintain legal and physical custody of the child, the role of other
15 persons in thwarting the respondent's efforts to assert parental rights, the respondent's ability to care for the child,
16 the age of the child, the quality of any previous relationship between the respondent and the child and between
17 the respondent and any other children, the duration and suitability of the child's present custodial environment,
18 and the effect of a change of physical custody on the child."

19

20 **Section 6.** Section 45-5-503, MCA, is amended to read:

21 **"45-5-503. Sexual intercourse without consent.** (1) A person who knowingly has sexual intercourse
22 with another person without consent or with another person who is incapable of consent commits the offense of
23 sexual intercourse without consent. A person may not be convicted under this section based on the age of the
24 person's spouse, as provided in 45-5-501(1)(b)(iv).

25 (2) A person convicted of sexual intercourse without consent shall be punished by life imprisonment or
26 by imprisonment in the state prison for a term of not more than 20 years and may be fined not more than \$50,000,
27 except as provided in 46-18-219, 46-18-222, and subsections (3), (4), and (5) of this section.

28 (3) (a) If the victim is less than 16 years old and the offender is 4 or more years older than the victim or
29 if the offender inflicts bodily injury on anyone in the course of committing sexual intercourse without consent, the
30 offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than

1 4 years or more than 100 years and may be fined not more than \$50,000, except as provided in 46-18-219 and
2 46-18-222.

3 (b) If two or more persons are convicted of sexual intercourse without consent with the same victim in
4 an incident in which each offender was present at the location where another offender's offense occurred during
5 a time period in which each offender could have reasonably known of the other's offense, each offender shall be
6 punished by life imprisonment or by imprisonment in the state prison for a term of not less than 5 years or more
7 than 100 years and may be fined not more than \$50,000, except as provided in 46-18-219 and 46-18-222.

8 (c) If the offender was previously convicted of an offense under this section or of an offense under the
9 laws of another state or of the United States that if committed in this state would be an offense under this section
10 and if the offender inflicted serious bodily injury on a person in the course of committing each offense, the
11 offender shall be:

12 (i) punished by death as provided in 46-18-301 through 46-18-310, unless the offender is less than 18
13 years of age at the time of the commission of the offense; or

14 (ii) punished as provided in 46-18-219.

15 (4) (a) If the victim was 12 years of age or younger and the offender in the course of committing a
16 violation of this section was 18 years of age or older at the time of the offense, the offender:

17 (i) shall be punished by imprisonment in a state prison for a term of 100 years. ~~The~~ FOR A FIRST OFFENSE,
18 THE COURT MAY NOT SUSPEND EXECUTION OR DEFER IMPOSITION OF THE FIRST 10 YEARS OF A SENTENCE OF
19 IMPRISONMENT IMPOSED UNDER THIS SUBSECTION (4)(A)(I) EXCEPT AS PROVIDED IN 46-18-222(1) THROUGH (5), AND
20 DURING THE FIRST 10 YEARS OF IMPRISONMENT, THE OFFENDER IS NOT ELIGIBLE FOR PAROLE. FOR A SECOND OR
21 SUBSEQUENT OFFENSE, THE court may not suspend execution or defer imposition of the first ~~40~~ 25 years of a
22 sentence of imprisonment imposed under this subsection (4)(a)(i) except as provided in 46-18-222(1) through
23 (5), and during the first ~~40~~ 25 years of imprisonment, the offender is not eligible for parole. The exception provided
24 in 46-18-222(6) does not apply.

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

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

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

1 (5) If the victim is at least 14 years of age and the offender is 18 years of age or younger, the offender
 2 may be punished by imprisonment in the state prison for a term of not more than 5 years and may be fined not
 3 more than \$10,000 if:

4 (a) the offender has not previously been found to have committed or been adjudicated for a sexual
 5 offense as defined in 46-23-502;

6 (b) a psychosexual evaluation of the offender has been prepared and the court finds that registration is
 7 not necessary for protection of the public and that relief from registration is in the public's best interest; and

8 (c) the court finds that the alleged conduct was consensual as indicated by words or overt actions
 9 indicating a freely given agreement to have sexual intercourse or sexual contact.

10 (6) In addition to any sentence imposed under subsection (2) or (3), after determining the financial
 11 resources and future ability of the offender to pay restitution as required by 46-18-242, the court shall require the
 12 offender, if able, to pay the victim's reasonable medical and counseling costs that result from the offense. The
 13 amount, method, and time of payment must be determined in the same manner as provided for in 46-18-244.

14 (7) As used in subsections (3) and (4), an act "in the course of committing sexual intercourse without
 15 consent" includes an attempt to commit the offense or the act of flight after the attempt or commission.

16 (8) If as a result of sexual intercourse without consent a child is born, the offender who has been
 17 convicted of an offense under this section and who is the biological parent of the child resulting from the sexual
 18 intercourse without consent forfeits all parental and custodial rights to the child if the provisions of 46-1-401 have
 19 been followed."

20

21 ~~Section 2. Section 45-5-507, MCA, is amended to read:~~

22 ~~"45-5-507. Incest. (1) A person commits the offense of incest if the person knowingly marries, cohabits~~
 23 ~~with, has sexual intercourse with, or has sexual contact, as defined in 45-2-101, with an ancestor, a descendant,~~
 24 ~~a brother or sister of the whole or half blood, or any stepson or stepdaughter. The relationships referred to in this~~
 25 ~~subsection include blood relationships without regard to legitimacy, relationships of parent and child by adoption,~~
 26 ~~and relationships involving a stepson or stepdaughter.~~

27 ~~(2) (a) Consent is a defense to incest with or upon a stepson or stepdaughter, but consent is ineffective~~
 28 ~~if the stepson or stepdaughter is less than 18 years of age and the stepparent is 4 or more years older than the~~
 29 ~~stepson or stepdaughter.~~

30 ~~(b) A person who is less than 18 years of age is not legally responsible or legally accountable for the~~

1 offense of incest and is considered a victim of the offense of incest if the other person in the incestuous
2 relationship is 4 or more years older than the victim.

3 ~~———(3) Except as provided in subsections (4) and (5), a person convicted of incest shall be punished by life
4 imprisonment or by imprisonment in the state prison for a term not to exceed 100 years or be fined an amount
5 not to exceed \$50,000.~~

6 ~~———(4) If the victim is under 16 years of age and the offender is 3 or more years older than the victim or if
7 the offender inflicts bodily injury upon anyone in the course of committing incest, the offender shall be punished
8 by life imprisonment or by imprisonment in the state prison for a term of not less than 4 years or more than 100
9 years and may be fined not more than \$50,000.~~

10 ~~———(5) (a) If the victim was 12 years of age or younger and the offender was 18 years of age or older at the
11 time of the offense, the offender:~~

12 ~~———(i) shall be punished by imprisonment in a state prison for a term of 100 years. The court may not
13 suspend execution or defer imposition of the first 10 25 years of a sentence of imprisonment imposed under this
14 subsection (5)(a)(i) except as provided in 46-18-222(1) through (5), and during the first 10 25 years of
15 imprisonment, the offender is not eligible for parole. The exception provided in 46-18-222(6) does not apply.~~

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

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

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

22 ~~———(6) In addition to any sentence imposed under subsection (3), (4), or (5), after determining the financial
23 resources and future ability of the offender to pay restitution as required by 46-18-242, the court shall require the
24 offender, if able, to pay the victim's reasonable costs of counseling that result from the offense. The amount,
25 method, and time of payment must be determined in the same manner as provided for in 46-18-244."~~

26

27 **Section 7.** Section 45-5-625, MCA, is amended to read:

28 **"45-5-625. Sexual abuse of children AND CHILD PORNOGRAPHY.** (1) A person commits the offense of
29 sexual abuse of children AND CHILD PORNOGRAPHY if the person:

30 (a) knowingly employs, uses, or permits the employment or use of a child in an exhibition of sexual

1 conduct, actual or simulated;

2 (b) knowingly photographs, films, videotapes, develops or duplicates the photographs, films, or
3 videotapes, or records a child engaging in sexual conduct, actual or simulated;

4 (c) knowingly, by any means of communication, including electronic communication or in person,
5 persuades, entices, counsels, coerces, encourages, directs, or procures a child under 16 years of age or a
6 person the offender believes to be a child under 16 years of age to engage in sexual conduct, actual or simulated,
7 or to view sexually explicit material or acts for the purpose of inducing or persuading a child to participate in any
8 sexual activity that is illegal;

9 (d) knowingly processes, develops, prints, publishes, transports, distributes, sells, exhibits, or advertises
10 any visual or print medium, including a medium by use of electronic communication in which a child is engaged
11 in sexual conduct, actual or simulated;

12 (e) knowingly possesses any visual or print medium, including a medium by use of electronic
13 communication in which a child is engaged in sexual conduct, actual or simulated;

14 (f) finances any of the activities described in subsections (1)(a) through (1)(d) and (1)(g), knowing that
15 the activity is of the nature described in those subsections;

16 (g) possesses with intent to sell any visual or print medium, including a medium by use of electronic
17 communication in which a child is engaged in sexual conduct, actual or simulated;

18 (h) knowingly travels within, from, or to this state with the intention of meeting a child under 16 years of
19 age or a person the offender believes to be a child under 16 years of age in order to engage in sexual conduct,
20 actual or simulated; or

21 (i) knowingly coerces, entices, persuades, arranges for, or facilitates a child under 16 years of age or
22 a person the offender believes to be a child under 16 years of age to travel within, from, or to this state with the
23 intention of engaging in sexual conduct, actual or simulated.

24 (2) (a) Except as provided in subsection (2)(b), (2)(c), or (4), a person convicted of the offense of sexual
25 abuse of children AND CHILD PORNOGRAPHY shall be punished by life imprisonment or by imprisonment in the state
26 prison for a term not to exceed 100 years and may be fined not more than \$10,000.

27 (b) Except as provided in 46-18-219, if the victim is under 16 years of age, a person convicted of the
28 offense of sexual abuse of children AND CHILD PORNOGRAPHY shall be punished by life imprisonment or by
29 imprisonment in the state prison for a term of not less than 4 years or more than 100 years and may be fined not
30 more than \$10,000.

1 (c) Except as provided in 46-18-219, a person convicted of the offense of sexual abuse of children AND
2 CHILD PORNOGRAPHY for the possession of material, as provided in subsection (1)(e), shall be fined not to exceed
3 \$10,000 or be imprisoned in the state prison for a term not to exceed 10 years, or both.

4 (3) An offense is not committed under subsections (1)(d) through (1)(g) if the visual or print medium is
5 processed, developed, printed, published, transported, distributed, sold, possessed, or possessed with intent to
6 sell, or if the activity is financed, as part of a sexual offender information or treatment course or program
7 conducted or approved by the department of corrections.

8 (4) (a) If the victim was 12 years of age or younger and the offender was 18 years of age or older at the
9 time of the offense, the offender:

10 (i) shall be punished by imprisonment in a state prison for a term of 100 years. ~~The~~ FOR A FIRST OFFENSE,
11 THE COURT MAY NOT SUSPEND EXECUTION OR DEFER IMPOSITION OF THE FIRST 10 YEARS OF A SENTENCE OF
12 IMPRISONMENT IMPOSED UNDER THIS SUBSECTION (4)(A)(I) EXCEPT AS PROVIDED IN 46-18-222(1) THROUGH (5), AND
13 DURING THE FIRST 10 YEARS OF IMPRISONMENT, THE OFFENDER IS NOT ELIGIBLE FOR PAROLE. FOR A SECOND OR
14 SUBSEQUENT OFFENSE, THE court may not suspend execution or defer imposition of the first ~~40~~ 25 years of a
15 sentence of imprisonment imposed under this subsection (4)(a)(i) except as provided in 46-18-222(1) through
16 (5), and during the first ~~40~~ 25 years of imprisonment, the offender is not eligible for parole. The exception provided
17 in 46-18-222(6) does not apply.

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

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

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

24 (5) As used in this section, the following definitions apply:

25 (a) "Electronic communication" means a sign, signal, writing, image, sound, data, or intelligence of any
26 nature transmitted or created in whole or in part by a wire, radio, electromagnetic, photoelectronic, or
27 photo-optical system.

28 (b) "Sexual conduct" means:

29 (i) actual or simulated:

30 (A) sexual intercourse, whether between persons of the same or opposite sex;

- 1 (B) penetration of the vagina or rectum by any object, except when done as part of a recognized medical
2 procedure;
- 3 (C) bestiality;
- 4 (D) masturbation;
- 5 (E) sadomasochistic abuse;
- 6 (F) lewd exhibition of the genitals, breasts, pubic or rectal area, or other intimate parts of any person;
- 7 or
- 8 (G) defecation or urination for the purpose of the sexual stimulation of the viewer; or
- 9 (ii) depiction of a child in the nude or in a state of partial undress with the purpose to abuse, humiliate,
10 harass, or degrade the child or to arouse or gratify the person's own sexual response or desire or the sexual
11 response or desire of any person.
- 12 (c) "Simulated" means any depicting of the genitals or pubic or rectal area that gives the appearance of
13 sexual conduct or incipient sexual conduct.
- 14 (d) "Visual medium" means:
- 15 (i) any film, photograph, videotape, negative, slide, or photographic reproduction that contains or
16 incorporates in any manner any film, photograph, videotape, negative, or slide; or
- 17 (ii) any disk, diskette, or other physical media that allows an image to be displayed on a computer or other
18 video screen and any image transmitted to a computer or other video screen by telephone line, cable, satellite
19 transmission, or other method."

- 20
- 21 **SECTION 8. SECTION 45-8-221, MCA, IS AMENDED TO READ:**
- 22 **"45-8-221. Predatory loitering by sexual offender.** (1) A person commits the offense of predatory
23 loitering if the person:
- 24 (a) was previously convicted of a predatory sexual offense or sexual abuse of children and child
25 pornography;
- 26 (b) purposely or knowingly loiters:
- 27 (i) in the vicinity of a residence, school, church, or place of work of the person's previous victim; or
- 28 (ii) in the vicinity of any school, park, playground, church, bicycle or multiuse path, or other place
29 frequented by minors of an age similar to the age of the victim of the previous sexual offense if the sexual offense
30 concerned a minor; and

1 (c) has previously been requested by a person in authority to:

2 (i) leave the area in which the person loiters; or

3 (ii) leave any area in which the person has loitered.

4 (2) Proof of the offense of predatory loitering must also include proof that the person in authority has
5 made a report of the request to the law enforcement agency with jurisdiction over the area, and the agency has
6 documented the report.

7 (3) A person convicted of the offense of predatory loitering may be fined not more than \$500 or be
8 imprisoned for not more than 6 months, or both. A person convicted of a second or subsequent offense of
9 predatory loitering may be fined not more than \$1,000 or be imprisoned for not more than 1 year, or both.

10 (4) As used in this section, the following definitions apply:

11 (a) "Person in authority" includes a peace officer or:

12 (i) for the purposes of a school or playground, a principal, teacher, school staff member, parent or other
13 adult relative of a child attending the school or playground, or other supervisor of minors;

14 (ii) for the purposes of a church, a minister, priest, rabbi, deacon, or other ecclesiastical official, a church
15 staff member, or a parent or other adult relative of a child attending the church;

16 (iii) for the purposes of a park, playground, or bicycle or multiuse path, a person specified in subsection
17 (3)(a)(i) or a park warden, guard, or host; or

18 (iv) for purposes of a place of work, a person employed at the place of work.

19 (b) "Predatory sexual offense" has the meaning provided in 46-23-502.

20 (c) "Sexual abuse of children and child pornography" means commission of the offense provided in
21 45-5-625."

22

23 **SECTION 9. SECTION 46-1-502, MCA, IS AMENDED TO READ:**

24 **"46-1-502. Mediation.** (1) At any time after the commencement of a prosecution and before the verdict,
25 the court may, at its suggestion or upon motion of a party and with the consent of all the parties, refer the
26 proceeding to mediation by a mediator chosen by the court.

27 (2) The proceeding may not be referred for mediation if the offense charged is:

28 (a) deliberate homicide, as described in 45-5-102;

29 (b) mitigated deliberate homicide, as described in 45-5-103;

30 (c) intimidation, as described in 45-5-203;

- 1 (d) partner or family member assault, as described in 45-5-206;
 - 2 (e) assault on a minor, as described in 45-5-212;
 - 3 (f) strangulation of a partner or family member, as described in 45-5-215;
 - 4 (g) stalking, as described in 45-5-220;
 - 5 (h) aggravated kidnapping, as described in 45-5-303;
 - 6 (i) a sex crime, as described in 45-5-502, 45-5-503, 45-5-504, or 45-5-507;
 - 7 (j) endangering the welfare of children, as described in 45-5-622;
 - 8 (k) sexual abuse of children and child pornography, as described in 45-5-625; or
 - 9 (l) ritual abuse of a minor, as described in 45-5-627.
- 10 (3) Any aspect of or issue in the proceeding may be the subject of the mediation, including but not limited
- 11 to the charge, a plea bargain, or a recommended sentence.
- 12 (4) At any point during mediation, a party may withdraw from the mediation without penalty or sanction.
- 13 (5) This section does not prohibit the parties from engaging in traditional plea negotiations."

14

15 **SECTION 10. SECTION 46-4-307, MCA, IS AMENDED TO READ:**

16 **"46-4-307. Sexual abuse of children and child pornography -- report to national center for missing**

17 **and exploited children.** A peace officer who, pursuant to a criminal investigation, recovers images or movies

18 of a child in an exhibition of sexual conduct, actual or simulated, or images or movies of a child engaging in sexual

19 conduct, actual or simulated, shall:

- 20 (1) provide the images or movies to the law enforcement contact at the child victim identification program
- 21 at the national center for missing and exploited children;
- 22 (2) request the law enforcement contact at the child victim identification program to identify any images
- 23 or movies recovered that contain an identified victim of ~~child~~ sexual abuse of children and child pornography as
- 24 defined by 45-5-625; and
- 25 (3) provide case information to the child victim identification program in any case in which the peace
- 26 officer identifies a previously unidentified victim of ~~child~~ sexual abuse of children and child pornography."

27

28 **SECTION 11. SECTION 46-18-219, MCA, IS AMENDED TO READ:**

29 **"46-18-219. Life sentence without possibility of release.** (1) (a) Except as provided in subsection (3),

30 if an offender convicted of one of the following offenses was previously convicted of one of the following offenses

1 or of an offense under the laws of another state or of the United States that, if committed in this state, would be
2 one of the following offenses, the offender must be sentenced to life in prison, unless the death penalty is
3 applicable and imposed:

- 4 (i) 45-5-102, deliberate homicide;
- 5 (ii) 45-5-303, aggravated kidnapping;
- 6 (iii) 45-5-625, sexual abuse of children and child pornography;
- 7 (iv) 45-5-627, except subsection (1)(b), ritual abuse of a minor; or
- 8 (v) 45-5-508, aggravated sexual intercourse without consent.

9 (b) Except as provided in subsection (3), if an offender convicted of one of the following offenses was
10 previously convicted of two of the following offenses, two of any combination of the offenses listed in subsection
11 (1)(a) or the following offenses, or two of any offenses under the laws of another state or of the United States that,
12 if committed in this state, would be one of the offenses listed in subsection (1)(a) or this subsection, the offender
13 must be sentenced to life in prison, unless the death penalty is applicable and imposed:

- 14 (i) 45-5-103, mitigated deliberate homicide;
- 15 (ii) 45-5-202, aggravated assault;
- 16 (iii) 45-5-215, strangulation of a partner or family member;
- 17 (iv) 45-5-302, kidnapping;
- 18 (v) 45-5-401, robbery; or
- 19 (vi) 45-5-603, aggravated promotion of prostitution.

20 (2) Except as provided in 46-23-210 and subsection (3) of this section, an offender sentenced under
21 subsection (1):

- 22 (a) shall serve the entire sentence;
- 23 (b) shall serve the sentence in prison;
- 24 (c) may not for any reason, except a medical reason, be transferred for any length of time to another type
25 of institution, facility, or program;
- 26 (d) may not be paroled; and
- 27 (e) may not be given time off for good behavior or otherwise be given an early release for any reason.

28 (3) If the offender was previously sentenced for either of two or three offenses listed in subsection (1),
29 pursuant to any of the exceptions listed in 46-18-222, then the provisions of subsections (1) and (2) of this section
30 do not apply to the offender's present sentence.

1 (4) The imposition or execution of the sentences prescribed by this section may not be deferred or
2 suspended. In the event of a conflict between this section and any provision of 46-18-201 or 46-18-205, this
3 section prevails.

4 (5) (a) For purposes of this section, "prison" means a secure detention facility in which inmates are
5 locked up 24 hours a day and that is operated by this state, another state, the federal government, or a private
6 contractor.

7 (b) Prison does not include a work release center, prerelease center, boot camp, or any other type of
8 facility that does not provide secure detention."

9

10 **SECTION 12. SECTION 46-18-231, MCA, IS AMENDED TO READ:**

11 **"46-18-231. Fines in felony and misdemeanor cases.** (1) (a) Except as provided in subsection (1)(b),
12 whenever, upon a verdict of guilty or a plea of guilty or nolo contendere, an offender has been found guilty of an
13 offense for which a felony penalty of imprisonment could be imposed, the sentencing judge may, in lieu of or in
14 addition to a sentence of imprisonment, impose a fine only in accordance with subsection (3).

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

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

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

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

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

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

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

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

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

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

28 (x) 45-5-601(3), 45-5-602(3), or 45-5-603(2)(b), prostitution, promotion of prostitution, or aggravated
29 promotion of prostitution when the person patronized or engaging in prostitution was a child and the patron was
30 18 years of age or older at the time of the offense;

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

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

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

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

13

14 **SECTION 13. SECTION 46-18-1001, MCA, IS AMENDED TO READ:**

15 **"46-18-1001. Definitions.** As used in this part, the following definitions apply:

16 (1) (a) "Home" means the temporary or permanent residence of an offender consisting of the actual living
17 area approved by the supervising authority.

18 (b) When more than one residence or family are located on a single piece of property, the term does not
19 include the residence of any other person who is not part of the social unit formed by the offender's immediate
20 family.

21 (2) "Home arrest" means the use of a person's home for purposes of confinement and home arrest
22 procedures and conditions imposed under this part. It does not include intensive supervision by the department
23 of corrections.

24 (3) "Monitoring device" means an electronic device or apparatus capable of recording or transmitting
25 information concerning the offender's presence in or absence from the home. The device may include an
26 apparatus for testing the offender's breath for the presence of alcohol. A telephone alone is not a monitoring
27 device.

28 (4) "Supervising authority" means:

29 (a) in the case of an adult felon, the department of corrections;

30 (b) in the case of an adult misdemeanor, a court-approved entity other than the department of

1 corrections; or

2 (c) in the case of a juvenile, the juvenile probation division of the youth court or any other person or entity
3 appointed by the court.

4 (5) "Violent felony offense" means deliberate homicide, mitigated deliberate homicide, negligent
5 homicide, aggravated assault, negligent vehicular assault, kidnapping, aggravated kidnapping, robbery, sexual
6 intercourse without consent, sexual abuse of children and child pornography, arson, aggravated burglary, escape,
7 any criminal attempt to commit an enumerated offense, or conviction as a persistent felony offender when the
8 offender has a felony conviction for any of the listed offenses within the 5-year period preceding the date of the
9 present conviction."

10

11 **SECTION 14. SECTION 52-3-803, MCA, IS AMENDED TO READ:**

12 **"52-3-803. Definitions.** As used in this part, the following definitions apply:

13 (1) "Abuse" means:

14 (a) the infliction of physical or mental injury; or

15 (b) the deprivation of food, shelter, clothing, or services necessary to maintain the physical or mental
16 health of an older person or a person with a developmental disability without lawful authority. A declaration made
17 pursuant to 50-9-103 constitutes lawful authority.

18 (2) "Department" means the department of public health and human services provided for in 2-15-2201.

19 (3) "Exploitation" means:

20 (a) the unreasonable use of an older person or a person with a developmental disability or of a power
21 of attorney, conservatorship, or guardianship with regard to an older person or a person with a developmental
22 disability in order to obtain control of or to divert to the advantage of another the ownership, use, benefit, or
23 possession of or interest in the person's money, assets, or property by means of deception, duress, menace,
24 fraud, undue influence, or intimidation with the intent or result of permanently depriving the older person or person
25 with a developmental disability of the ownership, use, benefit, or possession of or interest in the person's money,
26 assets, or property;

27 (b) an act taken by a person who has the trust and confidence of an older person or a person with a
28 developmental disability to obtain control of or to divert to the advantage of another the ownership, use, benefit,
29 or possession of or interest in the person's money, assets, or property by means of deception, duress, menace,
30 fraud, undue influence, or intimidation with the intent or result of permanently depriving the older person or person

1 with a developmental disability of the ownership, use, benefit, or possession of or interest in the person's money,
2 assets, or property;

3 (c) the unreasonable use of an older person or a person with a developmental disability or of a power
4 of attorney, conservatorship, or guardianship with regard to an older person or a person with a developmental
5 disability done in the course of an offer or sale of insurance or securities in order to obtain control of or to divert
6 to the advantage of another the ownership, use, benefit, or possession of the person's money, assets, or property
7 by means of deception, duress, menace, fraud, undue influence, or intimidation with the intent or result of
8 permanently depriving the older person or person with a developmental disability of the ownership, use, benefit,
9 or possession of the person's money, assets, or property.

10 (4) "Incapacitated person" has the meaning given in 72-5-101.

11 (5) "Long-term care facility" means a facility defined in 50-5-101.

12 (6) "Mental injury" means an identifiable and substantial impairment of a person's intellectual or
13 psychological functioning or well-being.

14 (7) "Neglect" means the failure of a person who has assumed legal responsibility or a contractual
15 obligation for caring for an older person or a person with a developmental disability or who has voluntarily
16 assumed responsibility for the person's care, including an employee of a public or private residential institution,
17 facility, home, or agency, to provide food, shelter, clothing, or services necessary to maintain the physical or
18 mental health of the older person or the person with a developmental disability.

19 (8) "Older person" means a person who is at least 60 years of age.

20 (9) "Person with a developmental disability" means a person 18 years of age or older who has a
21 developmental disability, as defined in 53-20-102.

22 (10) "Physical injury" means death, permanent or temporary disfigurement, or impairment of any bodily
23 organ or function.

24 (11) "Sexual abuse" means the commission of sexual assault, sexual intercourse without consent,
25 indecent exposure, deviate sexual conduct, incest, or sexual abuse of children and child pornography as
26 described in Title 45, chapter 5, part 5, and Title 45, chapter 8, part 2."

27
28 **NEW SECTION. Section 15. Applicability.** [This act] applies to offenses committed on or after October
29 1, 2019.

30 - END -