

SENATE BILL NO. 261

INTRODUCED BY D. SANDS

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING CONSENT LAWS; LIMITING WHEN A PERSON IS
5 CAPABLE OF CONSENT TO SEXUAL CONTACT; PROVIDING THAT A PERSON WHO IS A WITNESS IN A
6 CRIMINAL MATTER IS INCAPABLE OF CONSENTING TO SEXUAL CONTACT WITH THE OFFICER OR
7 INVESTIGATOR IN THE CRIMINAL CASE; PROVIDING THAT A PARENT OR GUARDIAN IN A CHILD ABUSE
8 OR NEGLECT CASE IS INCAPABLE OF CONSENTING TO SEXUAL CONTACT WITH AN EMPLOYEE OF
9 THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES WHO IS DIRECTLY INVOLVED IN THE
10 CASE; AND AMENDING SECTION 45-5-501, MCA."

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

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

15 **"45-5-501. Definitions.** (1) (a) As used in 45-5-502, 45-5-503, and 45-5-508, the term "consent" means
16 words or overt actions indicating a freely given agreement to have sexual intercourse or sexual contact and is
17 further defined but not limited by the following:

- 18 (i) an expression of lack of consent through words or conduct means there is no consent or that consent
19 has been withdrawn;
- 20 (ii) a current or previous dating or social or sexual relationship by itself or the manner of dress of the
21 person involved with the accused in the conduct at issue does not constitute consent; and
- 22 (iii) lack of consent may be inferred based on all of the surrounding circumstances and must be
23 considered in determining whether a person gave consent.

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

- 25 (i) mentally disordered or incapacitated;
- 26 (ii) physically helpless;
- 27 (iii) overcome by deception, coercion, or surprise;
- 28 (iv) less than 16 years old;
- 29 (v) incarcerated in an adult or juvenile correctional, detention, or treatment facility or is on probation or
30 parole and the perpetrator is an employee, contractor, or volunteer of the supervising authority and has

- 1 supervisory or disciplinary authority over the victim, unless the act is part of a lawful search;
- 2 (vi) receiving services from a youth care facility, as defined in 52-2-602, and the perpetrator:
- 3 (A) has supervisory or disciplinary authority over the victim or is providing treatment to the victim; and
- 4 (B) is an employee, contractor, or volunteer of the youth care facility; ~~or~~
- 5 (vii) admitted to a mental health facility, as defined in 53-21-102, is admitted to a community-based facility
- 6 or a residential facility, as those terms are defined in 53-20-102, or is receiving community-based services, as
- 7 defined in 53-20-102, and the perpetrator:
- 8 (A) has supervisory or disciplinary authority over the victim or is providing treatment to the victim; and
- 9 (B) is an employee, contractor, or volunteer of the facility or community-based service;
- 10 (viii) a witness in a criminal investigation or a person who is under investigation in a criminal matter and
- 11 the perpetrator is a law enforcement officer who is involved with the case in which the victim is a witness or is
- 12 being investigated; or
- 13 (ix) a parent or guardian involved in a child abuse or neglect proceeding under Title 41, chapter 3, and
- 14 the perpetrator is:
- 15 (A) employed by the department of public health and human services for the purposes of carrying out
- 16 the department's duties under Title 41, chapter 3; and
- 17 (B) directly involved in the parent or guardian's case or involved in the supervision of the case.
- 18 (c) Subsection (1)(b)(v) does not apply if the individuals are married to each other and one of the
- 19 individuals involved is on probation or parole and the other individual is a probation or parole officer of a
- 20 supervising authority.
- 21 (d) Subsections (1)(b)(vi) and (1)(b)(vii) do not apply if the individuals are married to each other and one
- 22 of the individuals involved is a patient in or resident of a facility, is a recipient of community-based services, or
- 23 is receiving services from a youth care facility and the other individual is an employee, contractor, or volunteer
- 24 of the facility or community-based service.
- 25 (2) As used in 45-5-508, the term "force" means:
- 26 (a) the infliction, attempted infliction, or threatened infliction of bodily injury or the commission of a
- 27 forcible felony by the offender; or
- 28 (b) the threat of substantial retaliatory action that causes the victim to reasonably believe that the
- 29 offender has the ability to execute the threat.
- 30 (3) As used in 45-5-502 and this section, the following definitions apply:

1 (a) "Parole":

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

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

5 (b) "Probation" means:

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

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

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

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