

HOUSE BILL NO. 282

INTRODUCED BY D. LOGE, F. ANDERSON, G. CUSTER, F. GARNER, C. GLIMM, J. READ, W. SALES,  
D. SKEES, B. USHER

A BILL FOR AN ACT ENTITLED: "AN ACT PROTECTING VULNERABLE PERSONS FROM SEXUAL PREDATORS; PROVIDING THAT A PARTICIPANT IN A PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL OR OUTDOOR PROGRAM CANNOT PROVIDE CONSENT TO A WORKER AFFILIATED WITH THE PROGRAM; PROVIDING THAT A PERSON UNDERGOING PSYCHOTHERAPY CANNOT PROVIDE CONSENT TO A PSYCHOTHERAPIST; AMENDING SECTIONS 45-5-501 AND 45-5-502, 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 45-5-501, MCA, is amended to read:

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

(i) an expression of lack of consent through words or conduct means there is no consent or that consent has been withdrawn;

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

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

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

(i) mentally disordered or incapacitated;

(ii) physically helpless;

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

(iv) less than 16 years old;

(v) incarcerated in an adult or juvenile correctional, detention, or treatment facility or is on probation or

1 parole and the perpetrator is an employee, contractor, or volunteer of the supervising authority and has  
2 supervisory or disciplinary authority over the victim, unless the act is part of a lawful search;

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

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

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

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

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

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

11 (viii) a program participant, as defined in 37-48-102, in a private alternative adolescent residential or  
12 outdoor program, pursuant to Title 37, chapter 48, and the perpetrator is a worker affiliated with the program, as  
13 defined in 37-48-102; or

14 (ix) the victim is a client receiving psychotherapy services and the perpetrator:

15 (A) is providing or purporting to provide psychotherapy services to the victim; or

16 (B) is an employee, contractor, or volunteer of a facility that provides or purports to provide psychotherapy  
17 services to the victim and the perpetrator has supervisory or disciplinary authority over the victim.

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 (e) Subsection (1)(b)(viii) does not apply if the individuals are married to each other and one of the  
26 individuals involved is a program participant and the other individual is a worker affiliated with the program.

27 (f) Subsection (1)(b)(ix) does not apply if the individuals are married to each other and one of the  
28 individuals involved is a psychotherapy client and the other individual is a psychotherapist or an employee,  
29 contractor, or volunteer of a facility that provides or purports to provide psychotherapy services to the client.

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

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

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

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

6 (a) "Parole":

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

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

10 (b) "Probation" means:

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

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

15 (c) (i) "Psychotherapy services" means treatment, diagnosis, or counseling in a professional relationship  
16 to assist individuals or groups to alleviate behavioral or mental health disorders, understand unconscious or  
17 conscious motivation, resolve emotional, relationship, or attitudinal conflicts, or modify behaviors that interfere  
18 with effective emotional, social, or intellectual functioning REGARDLESS OF WHETHER THE INDIVIDUAL PROVIDING THE  
19 PSYCHOTHERAPY SERVICES IS LICENSED OR UNLICENSED.

20 (ii) THE TERM DOES NOT INCLUDE A PARTNER SURROGATE WORKING WITH A SOCIAL WORKER, A PROFESSIONAL  
21 COUNSELOR, OR A LICENSED CLINICAL PROFESSIONAL COUNSELOR AS THOSE PROFESSIONALS ARE LICENSED IN TITLE  
22 37, CHAPTER 22 OR 23.

23 ~~(e)~~(d) "Supervising authority" includes a court, including a youth court, a county, or the department of  
24 corrections."  
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26 **Section 2.** Section 45-5-502, MCA, is amended to read:

27 **"45-5-502. Sexual assault.** (1) A person who knowingly subjects another person to any sexual contact  
28 without consent commits the offense of sexual assault.

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

1           (b) On a second conviction for sexual assault, the offender shall be fined an amount not to exceed  
2 \$1,000 or be imprisoned in the county jail for a term not to exceed 1 year, or both.

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

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

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

12          (5) (a) Subject to subsections (5)(b) ~~and (5)(c)~~; through (5)(e), consent is ineffective under this section  
13 if the victim is:

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

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

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

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

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

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

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

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

26           (v) a program participant, as defined in 37-48-102, in a private alternative adolescent residential or  
27 outdoor program, pursuant to Title 37, chapter 48, and the perpetrator is a worker affiliated with the program, as  
28 defined in 37-48-102; or

29           (vi) the victim is a client receiving psychotherapy services and the perpetrator:

30               (A) is providing or purporting to provide psychotherapy services to the victim; or

1 (B) is an employee, contractor, or volunteer of a facility that provides or purports to provide psychotherapy  
2 services to the victim and the perpetrator has supervisory or disciplinary authority over the victim.

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

5 (c) Subsections (5)(a)(iii) and (5)(a)(iv) do not apply if the individuals are married to each other and one  
6 of the individuals involved is a patient in or resident of a facility, is a recipient of community-based services, or  
7 is receiving services from a youth care facility and the other individual is an employee, contractor, or volunteer  
8 of the facility or community-based service.

9 (d) Subsection (5)(a)(v) does not apply if the individuals are married to each other and one of the  
10 individuals involved is a program participant and the other individual is a worker affiliated with the program.

11 (e) Subsection (5)(a)(vi) does not apply if the individuals are married to each other and one of the  
12 individuals involved is a psychotherapy client and the other individual is a psychotherapist or an employee,  
13 contractor, or volunteer of a facility that provides or purports to provide psychotherapy services to the client."

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15 **NEW SECTION. Section 3. Effective date.** [This act] is effective on passage and approval.

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17 **NEW SECTION. Section 4. Applicability.** [This act] applies to incidents occurring on or after [the  
18 effective date of this act].

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