

HOUSE BILL NO. 525

INTRODUCED BY A. REGIER

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A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO SEXUAL ASSAULT; PROVIDING A FELONY PENALTY FOR SEXUAL ASSAULT WHEN COMMITTED BY AN INDIVIDUAL PROVIDING OR PURPORTING TO PROVIDE PSYCHOTHERAPY SERVICES TO THE VICTIM; PROVIDING A MANDATORY MINIMUM PRISON TERM; REQUIRING REGISTRATION AS A SEXUAL OFFENDER; AMENDING SECTIONS 45-5-502, 46-18-205, 46-18-231, AND 46-23-502, MCA; AND PROVIDING AN APPLICABILITY DATE."

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

Section 1. Section 45-5-502, MCA, is amended to read:

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

(2) Except as provided in subsection (3) and (4):

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

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

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

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

(4) If the victim is a client receiving psychotherapy services and the offender is providing or

1 purporting to provide psychotherapy services to the victim, the offender shall be punished by life imprisonment
 2 or by imprisonment in the state prison for a term of not less than 4 years, unless the judge makes a written
 3 finding that there is good cause to impose a term of less than 4 years and imposes a term of less than 4 years,
 4 or more than 100 years and may be fined not more than \$50,000.

5 ~~(4)~~(5) An act "in the course of committing sexual assault" includes an attempt to commit the offense
 6 or flight after the attempt or commission.

7 ~~(5)~~(6) (a) Subject to subsections ~~(5)(b)~~ (6)(b) through ~~(5)(f)~~ (6)(f), consent is ineffective under this
 8 section if the victim is:

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

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

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

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

16 and

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

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

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

22 and

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

24 (v) a program participant, as defined in 52-2-802, in a private alternative adolescent residential or
 25 outdoor program, pursuant to Title 52, chapter 2, part 8, and the perpetrator is a person associated with the
 26 program, as defined in 52-2-802;

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

28 (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
2 psychotherapy services to the victim and the perpetrator has supervisory or disciplinary authority over the
3 victim; or

4 (vii) a student of an elementary, middle, junior high, or high school, whether public or nonpublic,
5 and the perpetrator is not a student of an elementary, middle, junior high, or high school and is an employee,
6 contractor, or volunteer of any school who has ever had instructional, supervisory, disciplinary, or other
7 authority over the student in a school setting.

8 (b) Subsection ~~(5)(a)(i)~~ (6)(a)(i) does not apply if one of the parties is on probation, conditional
9 release, or parole and the other party is a probation or parole officer of the supervising authority and the parties
10 are married to each other.

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

15 (d) Subsection ~~(5)(a)(v)~~ (6)(a)(v) does not apply if the individuals are married to each other and
16 one of the individuals involved is a program participant and the other individual is a person associated with the
17 program.

18 (e) Subsection ~~(5)(a)(vi)~~ (6)(a)(vi) does not apply if the individuals are married to each other and
19 one of the individuals involved is a psychotherapy client and the other individual is a psychotherapist or an
20 employee, contractor, or volunteer of a facility that provides or purports to provide psychotherapy services to
21 the client.

22 (f) Subsection ~~(5)(a)(vii)~~ (6)(a)(vii) does not apply if the individuals are married to each other."
23

24 **Section 2.** Section 46-18-205, MCA, is amended to read:

25 **"46-18-205. Mandatory minimum sentences -- restrictions on deferral or suspension.** (1) If the
26 victim was less than 16 years of age, the imposition or execution of the first 30 days of a sentence of
27 imprisonment imposed under the following sections may not be deferred or suspended and the provisions of
28 46-18-222 do not apply to the first 30 days of the imprisonment:

- 1 (a) 45-5-503, sexual intercourse without consent;
- 2 (b) 45-5-504, indecent exposure;
- 3 (c) 45-5-507, incest; or
- 4 (d) 45-8-218, deviate sexual conduct.
- 5 (2) Except as provided in 45-9-202 and 46-18-222, the imposition or execution of the first 2 years
- 6 of a sentence of imprisonment imposed under the following sections may not be deferred or suspended:
- 7 (a) 45-5-103(4), mitigated deliberate homicide;
- 8 (b) 45-5-202, aggravated assault;
- 9 (c) 45-5-302(2), kidnapping;
- 10 (d) 45-5-303(2), aggravated kidnapping;
- 11 (e) 45-5-401(2), robbery;
- 12 (f) 45-5-502(3) and (4), sexual assault;
- 13 (g) 45-5-503(2) and (3), sexual intercourse without consent; and
- 14 (h) 45-5-603, aggravated promotion of prostitution.
- 15 (3) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a sentence
- 16 of imprisonment imposed under 45-5-102, deliberate homicide, may not be deferred or suspended.
- 17 (4) The provisions of this section do not apply to sentences imposed pursuant to 45-5-503(4), 45-
- 18 5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(b), or 45-5-625(4)."

19

20 **Section 3.** Section 46-18-231, MCA, is amended to read:

- 21 **"46-18-231. Fines in felony and misdemeanor cases.** (1) (a) Except as provided in subsection
- 22 (1)(b), whenever, upon a verdict of guilty or a plea of guilty or nolo contendere, an offender has been found
- 23 guilty of an offense for which a felony penalty of imprisonment could be imposed, the sentencing judge may, in
- 24 lieu of or in addition to a sentence of imprisonment, impose a fine only in accordance with subsection (3).
- 25 (b) For those crimes for which penalties are provided in the following sections, a fine may be
- 26 imposed in accordance with subsection (3) in addition to a sentence of imprisonment:
- 27 (i) 45-5-103(4), mitigated deliberate homicide;
- 28 (ii) 45-5-202, aggravated assault;

- 1 (iii) 45-5-213, assault with a weapon;
- 2 (iv) 45-5-302(2), kidnapping;
- 3 (v) 45-5-303(2), aggravated kidnapping;
- 4 (vi) 45-5-401(2), robbery;
- 5 (vii) 45-5-502(3), sexual assault when the victim is less than 16 years old and the offender is 3 or
- 6 more years older than the victim or the offender inflicts bodily injury in the course of committing the sexual
- 7 assault;
- 8 (viii) 45-5-502(4), sexual assault when the victim is a client receiving psychotherapy services and
- 9 the offender is providing or purporting to provide psychotherapy services to the victim;
- 10 ~~(viii)~~(ix) 45-5-503(2) through (5), sexual intercourse without consent;
- 11 ~~(ix)~~(x) 45-5-507(5), incest when the victim is 12 years of age or younger and the offender is 18 years
- 12 of age or older at the time of the offense;
- 13 ~~(x)~~(xi) 45-5-508, aggravated sexual intercourse without consent;
- 14 ~~(xi)~~(xii) 45-5-601(3) or (4), 45-5-602(3) or (4), or 45-5-603(2)(b) or (2)(c), prostitution, promotion of
- 15 prostitution, or aggravated promotion of prostitution when the person patronized or engaging in prostitution was
- 16 a child and the offender was 18 years of age or older at the time of the offense or when the person engaging in
- 17 prostitution was a victim of human trafficking, as defined in 45-5-701, or was subjected to force, fraud, or
- 18 coercion, either of which caused the person to be in the situation where the offense occurred, and the offender
- 19 was 18 years of age or older at the time of the offense and the offender knew or reasonably should have known
- 20 that the person was a victim of human trafficking or was subjected to force, fraud, or coercion;
- 21 ~~(xii)~~(xiii) 45-5-625(4), sexual abuse of children;
- 22 ~~(xiii)~~(xiv) 45-5-702, 45-5-703, 45-5-704, or 45-5-705, trafficking of persons, involuntary servitude,
- 23 sexual servitude, or patronizing a victim of sexual servitude;
- 24 ~~(xiv)~~(xv) 45-9-101(3), criminal possession with intent to distribute a dangerous drug; and
- 25 ~~(xv)~~(xvi) 45-9-109, criminal possession with intent to distribute dangerous drugs on or near school
- 26 property.
- 27 (2) Whenever, upon a verdict of guilty or a plea of guilty or nolo contendere, an offender has been
- 28 found guilty of an offense for which a misdemeanor penalty of a fine could be imposed, the sentencing judge

1 may impose a fine only in accordance with subsection (3).

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

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

8

9 **Section 4.** Section 46-23-502, MCA, is amended to read:

10 **"46-23-502. Definitions.** As used in 46-18-255 and this part, the following definitions apply:

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

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

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

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

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

20 (6) "Registration agency" means:

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

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

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

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

28 (8) "Sexual offender evaluator" means a person qualified under rules established by the

1 department to conduct psychosexual evaluations of sexual offenders and sexually violent predators.

2 (9) "Sexual offense" means:

3 (a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-301 (if the
4 victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-302 (if the victim is less
5 than 18 years of age and the offender is not a parent of the victim), 45-5-303 (if the victim is less than 18 years
6 of age and the offender is not a parent of the victim), 45-5-502 (if the offender is a professional licensed under
7 Title 37 and commits the offense during any treatment, consultation, interview, or evaluation of a person's
8 physical or mental condition, ailment, disease, or injury), 45-5-502(3) (if the victim is less than 16 years of age
9 and the offender is 3 or more years older than the victim), 45-5-502(4) (if the victim is a client receiving
10 psychotherapy services and the offender is providing or purporting to provide psychotherapy services to the
11 victim), 45-5-503(1), (3), or (4), 45-5-504(2)(c), 45-5-504(3) (if the victim is less than 16 years of age and the
12 offender is 4 or more years older than the victim), 45-5-507 (if the victim is less than 18 years of age and the
13 offender is 3 or more years older than the victim or if the victim is 12 years of age or younger and the offender
14 is 18 years of age or older at the time of the offense), 45-5-508, 45-5-601(3), 45-5-602(3), 45-5-603(1)(b),
15 (2)(b), or (2)(c), 45-5-625, 45-5-704, or 45-5-705; or

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

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

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

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

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

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

28 (13) "Violent offense" means:

