

HOUSE BILL NO. 743

INTRODUCED BY L. SMITH, G. OBLANDER, J. ETCHART

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A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO INCEST; PROVIDING THAT NEPHEWS AND NIECES ARE INCLUDED IN THE PROHIBITED RELATIONSHIPS; AMENDING SECTION 45-5-507, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 45-5-507, MCA, is amended to read:

"45-5-507. Incest. (1) A person commits the offense of incest if the person knowingly marries, cohabits with, has sexual intercourse with, or has sexual contact, as defined in 45-2-101, with an ancestor, a descendant, a brother or sister of the whole or half blood, a nephew or niece, or any stepson or stepdaughter.

The relationships referred to in this subsection include blood relationships without regard to legitimacy, relationships of parent and child by adoption, and relationships involving a stepson or stepdaughter.

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

(b) A person who is less than 18 years of age is not legally responsible or legally accountable for the offense of incest and is considered a victim of the offense of incest if the other person in the incestuous relationship is 4 or more years older than the victim.

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

(4) If the victim is under 16 years of age 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 incest, the offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 4 years or more than 100 years and may be fined not more than \$50,000.

1 (5) (a) If the victim was 12 years of age or younger and the offender was 18 years of age or older
2 at the time of the offense, the offender:

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

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

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

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

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

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19 **NEW SECTION. Section 2. Effective date.** [This act] is effective on passage and approval.

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