

SENATE BILL NO. 198

INTRODUCED BY THOMAS, BOLAND, BOULANGER, BRENDEN, FITZPATRICK, HOVEN, JACOBSON,  
LARSEN, O'HARA, TROPILA, VAN DYK

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR INCREASED PENALTIES FOR ASSAULT ON A  
MINOR UNDER 36 MONTHS OF AGE; AMENDING ~~SECTION~~ SECTIONS 45-5-212 AND 46-18-111, MCA; AND  
PROVIDING AN APPLICABILITY DATE."

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

**Section 1.** Section 45-5-212, MCA, is amended to read:

**"45-5-212. Assault on minor.** (1) A person commits the offense of assault on a minor if the person  
commits an offense under 45-5-201, and at the time of the offense, the victim is under 14 years of age and the  
offender is 18 years of age or older.

(2) (a) Except as provided in subsection (2)(b) or (2)(c), a A person convicted of assault on a minor shall  
be imprisoned in a state prison for a term not to exceed 5 years or be fined not more than \$50,000, or both.

(b) If, at the time of the offense the victim is under 36 months of age, a person convicted of assault on  
a minor shall be imprisoned in a state prison for a term not to exceed 20 years or be fined not more than \$50,000,  
or both:

(i) FOR A FIRST OFFENSE UNDER THIS SUBSECTION (2)(B) SHALL BE IMPRISONED IN A STATE PRISON FOR A TERM  
NOT TO EXCEED 10 YEARS OR BE FINED NOT MORE THAN \$50,000, OR BOTH; OR

(ii) FOR A SECOND OR SUBSEQUENT OFFENSE UNDER THIS SUBSECTION (2)(B) SHALL BE IMPRISONED IN A STATE  
PRISON FOR A TERM NOT TO EXCEED 20 YEARS OR BE FINED NOT MORE THAN \$50,000, OR BOTH.

(c) If, at the time of the offense the victim is under 36 months of age, a person convicted of assault on  
a minor that resulted in serious bodily injury to the victim shall be imprisoned in a state prison for a term not to  
exceed 40 years or be fined not more than \$50,000, or both:

(i) FOR A FIRST OFFENSE UNDER THIS SUBSECTION (2)(C) SHALL BE IMPRISONED IN A STATE PRISON FOR A TERM  
NOT TO EXCEED 20 YEARS OR BE FINED NOT MORE THAN \$50,000, OR BOTH; OR

(ii) FOR A SECOND OR SUBSEQUENT OFFENSE UNDER THIS SUBSECTION (2)(C) SHALL BE IMPRISONED IN A STATE  
PRISON FOR A TERM NOT TO EXCEED 40 YEARS OR BE FINED NOT MORE THAN \$50,000, OR BOTH.

1           (3) AN OFFENDER CONVICTED OF AN OFFENSE UNDER SUBSECTION (2)(B) OR (2)(C) SHALL PAY FOR AND  
2 COMPLETE A COUNSELING ASSESSMENT WITH A FOCUS ON VIOLENCE, CONTROLLING BEHAVIOR, DANGEROUSNESS, AND  
3 CHEMICAL DEPENDENCY AND COMPLETE ALL RECOMMENDATIONS FOR COUNSELING, REFERRALS, ATTENDANCE AT  
4 PSYCHOEDUCATIONAL GROUPS, OR TREATMENT, INCLUDING ANY INDICATED CHEMICAL DEPENDENCY TREATMENT, MADE  
5 BY THE COUNSELING PROVIDER. THE COUNSELING PROVIDER MUST BE APPROVED BY THE COURT AND BE A PERSON  
6 LICENSED UNDER TITLE 37, CHAPTER 17, 22, OR 23, OR A PROFESSIONAL PERSON AS DEFINED IN 53-21-102. THE  
7 OFFENDER SHALL COMPLETE A MINIMUM OF 40 HOURS OF COUNSELING."

8

9           **SECTION 2. SECTION 46-18-111, MCA, IS AMENDED TO READ:**

10           **"46-18-111. Presentence investigation -- when required.** (1) (a) Upon the acceptance of a plea or  
11 upon a verdict or finding of guilty to one or more felony offenses, the district court shall direct the probation officer  
12 to make a presentence investigation and report. The district court shall consider the presentence investigation  
13 report prior to sentencing.

14           (b) If the defendant was convicted of an offense under 45-5-502, 45-5-503, 45-5-504, 45-5-505,  
15 45-5-507, 45-5-625, 45-5-627, 45-5-601(3), 45-5-602(3), or 45-5-603(2)(c) or if the defendant was convicted  
16 under 46-23-507 and the offender was convicted of failure to register as a sexual offender pursuant to Title 46,  
17 chapter 23, part 5, the investigation must include a psychosexual evaluation of the defendant and a  
18 recommendation as to treatment of the defendant in the least restrictive environment, considering the risk the  
19 defendant presents to the community and the defendant's needs, unless the defendant was sentenced under  
20 46-18-219. The evaluation must be completed by a sex offender therapist who is a member of the Montana sex  
21 offender treatment association or has comparable credentials acceptable to the department of labor and industry.  
22 The psychosexual evaluation must be made available to the county attorney's office, the defense attorney, the  
23 probation and parole officer, and the sentencing judge. All costs related to the evaluation must be paid by the  
24 defendant. If the defendant is determined by the district court to be indigent, all costs related to the evaluation  
25 are the responsibility of the district court and must be paid by the county or the state, or both, under Title 3,  
26 chapter 5, part 9.

27           (c) If the defendant was convicted of an offense under 45-5-212(2)(b) or (2)(c), the investigation must  
28 include a mental health evaluation of the defendant and a recommendation as to treatment of the defendant in  
29 the least restrictive environment, considering the risk the defendant presents to the community and the  
30 defendant's needs. The evaluation must be completed by a qualified psychiatrist, licensed clinical psychologist,

1 advanced practice registered nurse, or other professional with comparable credentials acceptable to the  
2 department of labor and industry. The mental health evaluation must be made available to the county attorney's  
3 office, the defense attorney, the probation and parole officer, and the sentencing judge. All costs related to the  
4 evaluation must be paid by the defendant. If the defendant is determined by the district court to be indigent, all  
5 costs related to the evaluation are the responsibility of the district court and must be paid by the county or the  
6 state, or both, under Title 3, chapter 5, part 9.

7 ~~(e)~~(d) When, pursuant to 46-14-311, the court has ordered a presentence investigation and a report  
8 pursuant to this section, the mental evaluation required by 46-14-311 must be attached to the presentence  
9 investigation report and becomes part of the report. The report must be made available to persons and entities  
10 as provided in 46-18-113.

11 (2) The court shall order a presentence investigation report unless the court makes a finding that a report  
12 is unnecessary. Unless the court makes that finding, a defendant convicted of any offense not enumerated in  
13 subsection (1) that may result in incarceration for 1 year or more may not be sentenced before a written  
14 presentence investigation report by a probation and parole officer is presented to and considered by the district  
15 court. The district court may order a presentence investigation for a defendant convicted of a misdemeanor only  
16 if the defendant was convicted of a misdemeanor that the state originally charged as a sexual or violent offense  
17 as defined in 46-23-502.

18 (3) The defendant shall pay to the department of corrections a \$50 fee at the time that the report is  
19 completed, unless the court determines that the defendant is not able to pay the fee within a reasonable time.  
20 The fee may be retained by the department and used to finance contracts entered into under 53-1-203(5)."

21  
22 NEW SECTION. Section 3. Applicability. [This act] applies to proceedings begun after [the effective  
23 date of this act].

24 - END -