

SENATE BILL NO. 29

INTRODUCED BY D. SANDS

BY REQUEST OF THE LAW AND JUSTICE INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO SEXUAL CRIMES; PROVIDING FOR THE CRIME OF AGGRAVATED SEXUAL ASSAULT; REMOVING THE REQUIREMENT OF FORCE FROM THE DEFINITION OF "CONSENT"; ~~REVISING THE DEFINITIONS OF "MENTALLY DISORDERED" AND "MENTALLY INCAPACITATED" FOR ALL CRIMES;~~ REVISING PENALTIES FOR SEXUAL INTERCOURSE WITHOUT CONSENT; AMENDING SECTIONS 45-2-101, 45-5-501, 45-5-503, 46-18-219, ~~AND 46-18-222, AND 46-23-502,~~ MCA; AND PROVIDING AN APPLICABILITY DATE."

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

NEW SECTION. **Section 1. Aggravated sexual intercourse without consent.** (1) A person who uses force while knowingly having sexual intercourse with another person without consent or with another person who is incapable of consent commits the offense of aggravated sexual intercourse without consent.

(2) A person convicted of aggravated sexual intercourse without consent shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 10 years or more than 100 years and may be fined not more than \$50,000, except as provided in 46-18-219 and 46-18-222.

~~Section 2. Section 45-2-101, MCA, is amended to read:~~

~~"45-2-101. General definitions. Unless otherwise specified in the statute, all words must be taken in the objective standard rather than in the subjective, and unless a different meaning plainly is required, the following definitions apply in this title:~~

~~(1) "Acts" has its usual and ordinary meaning and includes any bodily movement, any form of communication, and when relevant, a failure or omission to take action.~~

~~(2) "Administrative proceeding" means a proceeding the outcome of which is required to be based on a record or documentation prescribed by law or in which a law or a regulation is particularized in its application to an individual.~~

~~(3) "Another" means a person or persons other than the offender.~~



- 1 ~~———(4) (a) "Benefit" means gain or advantage or anything regarded by the beneficiary as gain or advantage,~~
2 ~~including benefit to another person or entity in whose welfare the beneficiary is interested.~~
- 3 ~~———(b) Benefit does not include an advantage promised generally to a group or class of voters as a~~
4 ~~consequence of public measures that a candidate engages to support or oppose.~~
- 5 ~~———(5) "Bodily injury" means physical pain, illness, or an impairment of physical condition and includes~~
6 ~~mental illness or impairment.~~
- 7 ~~———(6) "Child" or "children" means any individual or individuals under 18 years of age, unless a different age~~
8 ~~is specified.~~
- 9 ~~———(7) "Cohabit" means to live together under the representation of being married.~~
- 10 ~~———(8) "Common scheme" means a series of acts or omissions motivated by a purpose to accomplish a~~
11 ~~single criminal objective or by a common purpose or plan that results in the repeated commission of the same~~
12 ~~offense or that affects the same person or the same persons or the property of the same person or persons.~~
- 13 ~~———(9) "Computer" means an electronic device that performs logical, arithmetic, and memory functions by~~
14 ~~the manipulation of electronic or magnetic impulses and includes all input, output, processing, storage, software,~~
15 ~~or communication facilities that are connected or related to that device in a system or network.~~
- 16 ~~———(10) "Computer network" means the interconnection of communication systems between computers or~~
17 ~~computers and remote terminals.~~
- 18 ~~———(11) "Computer program" means an instruction or statement or a series of instructions or statements, in~~
19 ~~a form acceptable to a computer, that in actual or modified form permits the functioning of a computer or computer~~
20 ~~system and causes it to perform specified functions.~~
- 21 ~~———(12) "Computer services" include but are not limited to computer time, data processing, and storage~~
22 ~~functions.~~
- 23 ~~———(13) "Computer software" means a set of computer programs, procedures, and associated documentation~~
24 ~~concerned with the operation of a computer system.~~
- 25 ~~———(14) "Computer system" means a set of related, connected, or unconnected devices, computer software,~~
26 ~~or other related computer equipment.~~
- 27 ~~———(15) "Conduct" means an act or series of acts and the accompanying mental state.~~
- 28 ~~———(16) "Conviction" means a judgment of conviction or sentence entered upon a plea of guilty or nolo~~
29 ~~contendere or upon a verdict or finding of guilty of an offense rendered by a legally constituted jury or by a court~~
30 ~~of competent jurisdiction authorized to try the case without a jury.~~

1 ~~———— (17) "Correctional institution" means a state prison, detention center, multijurisdictional detention center,~~
 2 ~~private detention center, regional correctional facility, private correctional facility, or other institution for the~~
 3 ~~incarceration of inmates under sentence for offenses or the custody of individuals awaiting trial or sentence for~~
 4 ~~offenses.~~

5 ~~———— (18) "Deception" means knowingly to:~~

6 ~~———— (a) create or confirm in another an impression that is false and that the offender does not believe to be~~
 7 ~~true;~~

8 ~~———— (b) fail to correct a false impression that the offender previously has created or confirmed;~~

9 ~~———— (c) prevent another from acquiring information pertinent to the disposition of the property involved;~~

10 ~~———— (d) sell or otherwise transfer or encumber property without disclosing a lien, adverse claim, or other legal~~
 11 ~~impediment to the enjoyment of the property, whether the impediment is or is not of value or is or is not a matter~~
 12 ~~of official record; or~~

13 ~~———— (e) promise performance that the offender does not intend to perform or knows will not be performed.~~

14 ~~Failure to perform, standing alone, is not evidence that the offender did not intend to perform.~~

15 ~~———— (19) "Defamatory matter" means anything that exposes a person or a group, class, or association to~~
 16 ~~hatred, contempt, ridicule, degradation, or disgrace in society or to injury to the person's or its business or~~
 17 ~~occupation.~~

18 ~~———— (20) "Deprive" means:~~

19 ~~———— (a) to withhold property of another:~~

20 ~~———— (i) permanently;~~

21 ~~———— (ii) for such a period as to appropriate a portion of its value; or~~

22 ~~———— (iii) with the purpose to restore it only upon payment of reward or other compensation; or~~

23 ~~———— (b) to dispose of the property of another and use or deal with the property so as to make it unlikely that~~
 24 ~~the owner will recover it.~~

25 ~~———— (21) "Deviate sexual relations" means any form of sexual intercourse with an animal.~~

26 ~~———— (22) "Document" means, with respect to offenses involving the medicaid program, any application, claim,~~
 27 ~~form, report, record, writing, or correspondence, whether in written, electronic, magnetic, microfilm, or other form.~~

28 ~~———— (23) "Felony" means an offense in which the sentence imposed upon conviction is death or imprisonment~~
 29 ~~in a state prison for a term exceeding 1 year.~~

30 ~~———— (24) "Forcible felony" means a felony that involves the use or threat of physical force or violence against~~

1 any individual.

2 ~~———— (25) A "frisk" is a search by an external patting of a person's clothing.~~

3 ~~———— (26) "Government" includes a branch, subdivision, or agency of the government of the state or a locality~~
4 ~~within it.~~

5 ~~———— (27) "Harm" means loss, disadvantage, or injury or anything so regarded by the person affected, including~~
6 ~~loss, disadvantage, or injury to a person or entity in whose welfare the affected person is interested.~~

7 ~~———— (28) A "house of prostitution" means a place where prostitution or promotion of prostitution is regularly~~
8 ~~carried on by one or more persons under the control, management, or supervision of another.~~

9 ~~———— (29) "Human being" means a person who has been born and is alive.~~

10 ~~———— (30) An "illegal article" is an article or thing that is prohibited by statute, rule, or order from being in the~~
11 ~~possession of a person subject to official detention.~~

12 ~~———— (31) "Inmate" means a person who is confined in a correctional institution.~~

13 ~~———— (32) (a) "Intoxicating substance" means a controlled substance, as defined in Title 50, chapter 32, and~~
14 ~~an alcoholic beverage, including but not limited to a beverage containing 1/2 of 1% or more of alcohol by volume.~~

15 ~~———— (b) Intoxicating substance does not include dealcoholized wine or a beverage or liquid produced by the~~
16 ~~process by which beer, ale, port, or wine is produced if it contains less than 1/2 of 1% of alcohol by volume.~~

17 ~~———— (33) An "involuntary act" means an act that is:~~

18 ~~———— (a) a reflex or convulsion;~~

19 ~~———— (b) a bodily movement during unconsciousness or sleep;~~

20 ~~———— (c) conduct during hypnosis or resulting from hypnotic suggestion; or~~

21 ~~———— (d) a bodily movement that otherwise is not a product of the effort or determination of the actor, either~~
22 ~~conscious or habitual.~~

23 ~~———— (34) "Juror" means a person who is a member of a jury, including a grand jury, impaneled by a court in~~
24 ~~this state in an action or proceeding or by an officer authorized by law to impanel a jury in an action or~~
25 ~~proceeding. The term "juror" also includes a person who has been drawn or summoned to attend as a prospective~~
26 ~~juror.~~

27 ~~———— (35) "Knowingly" --a person acts knowingly with respect to conduct or to a circumstance described by a~~
28 ~~statute defining an offense when the person is aware of the person's own conduct or that the circumstance exists.~~

29 ~~A person acts knowingly with respect to the result of conduct described by a statute defining an offense when~~
30 ~~the person is aware that it is highly probable that the result will be caused by the person's conduct. When~~

1 knowledge of the existence of a particular fact is an element of an offense, knowledge is established if a person
2 is aware of a high probability of its existence. Equivalent terms, such as "knowing" or "with knowledge", have the
3 same meaning.

4 ~~———— (36) "Medicaid" means the Montana medical assistance program provided for in Title 53, chapter 6.~~

5 ~~———— (37) "Medicaid agency" has the meaning in 53-6-155.~~

6 ~~———— (38) "Medicaid benefit" means the provision of anything of pecuniary value to or on behalf of a recipient
7 under the medicaid program.~~

8 ~~———— (39) (a) "Medicaid claim" means a communication, whether in oral, written, electronic, magnetic, or other
9 form:~~

10 ~~———— (i) that is used to claim specific services or items as payable or reimbursable under the medicaid
11 program; or~~

12 ~~———— (ii) that states income, expense, or other information that is or may be used to determine entitlement to
13 or the rate of payment under the medicaid program.~~

14 ~~———— (b) The term includes related documents submitted as a part of or in support of the claim.~~

15 ~~———— (40) "Mentally disordered" means that a person suffers from a mental disease or disorder that renders
16 the person incapable of appreciating the nature of the person's own conduct that substantially impairs the
17 person's ability to appraise or control the person's own conduct or to appraise the conduct of others.~~

18 ~~———— (41) "Mentally incapacitated" means that a person is rendered temporarily incapable of appreciating or
19 controlling the person's own conduct a person's ability to appraise or control the person's own conduct or to
20 appraise the conduct of others is substantially impaired as a result of the influence of an intoxicating substance.~~

21 ~~———— (42) "Misdemeanor" means an offense for which the sentence imposed upon conviction is imprisonment
22 in the county jail for a term or a fine, or both, or for which the sentence imposed is imprisonment in a state prison
23 for a term of 1 year or less.~~

24 ~~———— (43) "Negligently"--a person acts negligently with respect to a result or to a circumstance described by
25 a statute defining an offense when the person consciously disregards a risk that the result will occur or that the
26 circumstance exists or when the person disregards a risk of which the person should be aware that the result will
27 occur or that the circumstance exists. The risk must be of a nature and degree that to disregard it involves a gross
28 deviation from the standard of conduct that a reasonable person would observe in the actor's situation. "Gross
29 deviation" means a deviation that is considerably greater than lack of ordinary care. Relevant terms, such as
30 "negligent" and "with negligence", have the same meaning.~~

1 ~~———— (44) "Nolo contendere" means a plea in which the defendant does not contest the charge or charges~~
2 ~~against the defendant and neither admits nor denies the charge or charges.~~

3 ~~———— (45) "Obtain" means:~~

4 ~~———— (a) in relation to property, to bring about a transfer of interest or possession, whether to the offender or~~
5 ~~to another; and~~

6 ~~———— (b) in relation to labor or services, to secure the performance of the labor or service.~~

7 ~~———— (46) "Obtains or exerts control" includes but is not limited to the taking, the carrying away, or the sale,~~
8 ~~conveyance, or transfer of title to, interest in, or possession of property.~~

9 ~~———— (47) "Occupied structure" means any building, vehicle, or other place suitable for human occupancy or~~
10 ~~night lodging of persons or for carrying on business, whether or not a person is actually present, including any~~
11 ~~outbuilding that is immediately adjacent to or in close proximity to an occupied structure and that is habitually~~
12 ~~used for personal use or employment. Each unit of a building consisting of two or more units separately secured~~
13 ~~or occupied is a separate occupied structure.~~

14 ~~———— (48) "Offender" means a person who has been or is liable to be arrested, charged, convicted, or punished~~
15 ~~for a public offense.~~

16 ~~———— (49) "Offense" means a crime for which a sentence of death or of imprisonment or a fine is authorized.~~
17 ~~Offenses are classified as felonies or misdemeanors.~~

18 ~~———— (50) (a) "Official detention" means imprisonment resulting from a conviction for an offense, confinement~~
19 ~~for an offense, confinement of a person charged with an offense, detention by a peace officer pursuant to arrest,~~
20 ~~detention for extradition or deportation, or lawful detention for the purpose of the protection of the welfare of the~~
21 ~~person detained or for the protection of society:~~

22 ~~———— (b) Official detention does not include supervision of probation or parole, constraint incidental to release~~
23 ~~on bail, or an unlawful arrest unless the person arrested employed physical force, a threat of physical force, or~~
24 ~~a weapon to escape.~~

25 ~~———— (51) "Official proceeding" means a proceeding heard or that may be heard before a legislative, a judicial,~~
26 ~~an administrative, or another governmental agency or official authorized to take evidence under oath, including~~
27 ~~any referee, hearings examiner, commissioner, notary, or other person taking testimony or deposition in~~
28 ~~connection with the proceeding.~~

29 ~~———— (52) "Other state" means a state or territory of the United States, the District of Columbia, and the~~
30 ~~Commonwealth of Puerto Rico.~~

1 ~~———— (53) "Owner" means a person other than the offender who has possession of or other interest in the~~
2 ~~property involved, even though the interest or possession is unlawful, and without whose consent the offender~~
3 ~~has no authority to exert control over the property.~~

4 ~~———— (54) "Party official" means a person who holds an elective or appointive post in a political party in the~~
5 ~~United States by virtue of which the person directs or conducts or participates in directing or conducting party~~
6 ~~affairs at any level of responsibility.~~

7 ~~———— (55) "Peace officer" means a person who by virtue of the person's office or public employment is vested~~
8 ~~by law with a duty to maintain public order or to make arrests for offenses while acting within the scope of the~~
9 ~~person's authority.~~

10 ~~———— (56) "Pecuniary benefit" is benefit in the form of money, property, commercial interests, or anything else~~
11 ~~the primary significance of which is economic gain.~~

12 ~~———— (57) "Person" includes an individual, business association, partnership, corporation, government, or other~~
13 ~~legal entity and an individual acting or purporting to act for or on behalf of a government or subdivision of~~
14 ~~government.~~

15 ~~———— (58) "Physically helpless" means that a person is unconscious or is otherwise physically unable to~~
16 ~~communicate unwillingness to act.~~

17 ~~———— (59) "Possession" is the knowing control of anything for a sufficient time to be able to terminate control.~~

18 ~~———— (60) "Premises" includes any type of structure or building and real property.~~

19 ~~———— (61) "Property" means a tangible or intangible thing of value. Property includes but is not limited to:~~

20 ~~———— (a) real estate;~~

21 ~~———— (b) money;~~

22 ~~———— (c) commercial instruments;~~

23 ~~———— (d) admission or transportation tickets;~~

24 ~~———— (e) written instruments that represent or embody rights concerning anything of value, including labor or~~
25 ~~services, or that are otherwise of value to the owner;~~

26 ~~———— (f) things growing on, affixed to, or found on land and things that are part of or affixed to a building;~~

27 ~~———— (g) electricity, gas, and water;~~

28 ~~———— (h) birds, animals, and fish that ordinarily are kept in a state of confinement;~~

29 ~~———— (i) food and drink, samples, cultures, microorganisms, specimens, records, recordings, documents,~~
30 ~~blueprints, drawings, maps, and whole or partial copies, descriptions, photographs, prototypes, or models thereof;~~

1 ~~———(j) other articles, materials, devices, substances, and whole or partial copies, descriptions, photographs,~~
 2 ~~prototypes, or models thereof that constitute, represent, evidence, reflect, or record secret scientific, technical,~~
 3 ~~merchandising, production, or management information or a secret designed process, procedure, formula,~~
 4 ~~invention, or improvement; and~~

5 ~~———(k) electronic impulses, electronically processed or produced data or information, commercial~~
 6 ~~instruments, computer software or computer programs, in either machine- or human-readable form, computer~~
 7 ~~services, any other tangible or intangible item of value relating to a computer, computer system, or computer~~
 8 ~~network, and copies thereof.~~

9 ~~———(62) "Property of another" means real or personal property in which a person other than the offender has~~
 10 ~~an interest that the offender has no authority to defeat or impair, even though the offender may have an interest~~
 11 ~~in the property.~~

12 ~~———(63) "Public place" means a place to which the public or a substantial group has access.~~

13 ~~———(64) (a) "Public servant" means an officer or employee of government, including but not limited to~~
 14 ~~legislators, judges, and firefighters, and a person participating as a juror, adviser, consultant, administrator,~~
 15 ~~executor, guardian, or court-appointed fiduciary. The term "public servant" includes one who has been elected~~
 16 ~~or designated to become a public servant.~~

17 ~~———(b) The term does not include witnesses.~~

18 ~~———(65) "Purposely" --a person acts purposely with respect to a result or to conduct described by a statute~~
 19 ~~defining an offense if it is the person's conscious object to engage in that conduct or to cause that result. When~~
 20 ~~a particular purpose is an element of an offense, the element is established although the purpose is conditional,~~
 21 ~~unless the condition negatives the harm or evil sought to be prevented by the law defining the offense. Equivalent~~
 22 ~~terms, such as "purpose" and "with the purpose", have the same meaning.~~

23 ~~———(66) (a) "Serious bodily injury" means bodily injury that:~~

24 ~~———(i) creates a substantial risk of death;~~

25 ~~———(ii) causes serious permanent disfigurement or protracted loss or impairment of the function or process~~
 26 ~~of a bodily member or organ; or~~

27 ~~———(iii) at the time of injury, can reasonably be expected to result in serious permanent disfigurement or~~
 28 ~~protracted loss or impairment of the function or process of a bodily member or organ.~~

29 ~~———(b) The term includes serious mental illness or impairment.~~

30 ~~———(67) "Sexual contact" means touching of the sexual or other intimate parts of the person of another,~~

- 1 directly or through clothing, in order to knowingly or purposely:
- 2 ~~—— (a) cause bodily injury to or humiliate, harass, or degrade another; or~~
- 3 ~~—— (b) arouse or gratify the sexual response or desire of either party.~~
- 4 ~~—— (68) (a) "Sexual intercourse" means penetration of the vulva, anus, or mouth of one person by the penis~~
- 5 ~~of another person, penetration of the vulva or anus of one person by a body member of another person, or~~
- 6 ~~penetration of the vulva or anus of one person by a foreign instrument or object manipulated by another person~~
- 7 ~~to knowingly or purposely:~~
- 8 ~~—— (i) cause bodily injury or humiliate, harass, or degrade; or~~
- 9 ~~—— (ii) arouse or gratify the sexual response or desire of either party:~~
- 10 ~~—— (b) For purposes of subsection (68)(a), any penetration, however slight, is sufficient.~~
- 11 ~~—— (69) "Solicit" or "solicitation" means to command, authorize, urge, incite, request, or advise another to~~
- 12 ~~commit an offense.~~
- 13 ~~—— (70) "State" or "this state" means the state of Montana, all the land and water in respect to which the state~~
- 14 ~~of Montana has either exclusive or concurrent jurisdiction, and the air space above the land and water.~~
- 15 ~~—— (71) "Statute" means an act of the legislature of this state.~~
- 16 ~~—— (72) "Stolen property" means property over which control has been obtained by theft.~~
- 17 ~~—— (73) A "stop" is the temporary detention of a person that results when a peace officer orders the person~~
- 18 ~~to remain in the peace officer's presence.~~
- 19 ~~—— (74) "Tamper" means to interfere with something improperly, meddle with it, make unwarranted~~
- 20 ~~alterations in its existing condition, or deposit refuse upon it.~~
- 21 ~~—— (75) "Telephone" means any type of telephone, including but not limited to a corded, uncoded, cellular,~~
- 22 ~~or satellite telephone.~~
- 23 ~~—— (76) "Threat" means a menace, however communicated, to:~~
- 24 ~~—— (a) inflict physical harm on the person threatened or any other person or on property;~~
- 25 ~~—— (b) subject any person to physical confinement or restraint;~~
- 26 ~~—— (c) commit a criminal offense;~~
- 27 ~~—— (d) accuse a person of a criminal offense;~~
- 28 ~~—— (e) expose a person to hatred, contempt, or ridicule;~~
- 29 ~~—— (f) harm the credit or business repute of a person;~~
- 30 ~~—— (g) reveal information sought to be concealed by the person threatened;~~

1 ~~_____ (h) take action as an official against anyone or anything, withhold official action, or cause the action or~~
2 ~~withholding;~~

3 ~~_____ (i) bring about or continue a strike, boycott, or other similar collective action if the person making the~~
4 ~~threat demands or receives property that is not for the benefit of groups that the person purports to represent;~~
5 ~~or~~

6 ~~_____ (j) testify or provide information or withhold testimony or information with respect to another's legal claim~~
7 ~~or defense.~~

8 ~~_____ (77) (a) "Value" means the market value of the property at the time and place of the crime or, if the market~~
9 ~~value cannot be satisfactorily ascertained, the cost of the replacement of the property within a reasonable time~~
10 ~~after the crime. If the offender appropriates a portion of the value of the property, the value must be determined~~
11 ~~as follows:~~

12 ~~_____ (i) The value of an instrument constituting an evidence of debt, such as a check, draft, or promissory~~
13 ~~note, is considered the amount due or collectible. The figure is ordinarily the face amount of the indebtedness~~
14 ~~less any portion of the indebtedness that has been satisfied.~~

15 ~~_____ (ii) The value of any other instrument that creates, releases, discharges, or otherwise affects any valuable~~
16 ~~legal right, privilege, or obligation is considered the amount of economic loss that the owner of the instrument~~
17 ~~might reasonably suffer by virtue of the loss of the instrument.~~

18 ~~_____ (iii) The value of electronic impulses, electronically produced data or information, computer software or~~
19 ~~programs, or any other tangible or intangible item relating to a computer, computer system, or computer network~~
20 ~~is considered to be the amount of economic loss that the owner of the item might reasonably suffer by virtue of~~
21 ~~the loss of the item. The determination of the amount of economic loss includes but is not limited to consideration~~
22 ~~of the value of the owner's right to exclusive use or disposition of the item.~~

23 ~~_____ (b) When it cannot be determined if the value of the property is more or less than \$1,500 by the~~
24 ~~standards set forth in subsection (77)(a), its value is considered to be an amount less than \$1,500.~~

25 ~~_____ (c) Amounts involved in thefts committed pursuant to a common scheme or the same transaction,~~
26 ~~whether from the same person or several persons, may be aggregated in determining the value of the property.~~

27 ~~_____ (78) "Vehicle" means a device for transportation by land, water, or air or by mobile equipment, with~~
28 ~~provision for transport of an operator.~~

29 ~~_____ (79) "Weapon" means an instrument, article, or substance that, regardless of its primary function, is~~
30 ~~readily capable of being used to produce death or serious bodily injury.~~

1 ~~_____ (80) "Witness" means a person whose testimony is desired in an official proceeding, in any investigation~~
 2 ~~by a grand jury, or in a criminal action, prosecution, or proceeding."~~

3

4 **Section 2.** Section 45-5-501, MCA, is amended to read:

5 **"45-5-501. Definitions.** (1) (a) As used in 45-5-502, 45-5-503, and [section 1], the term ~~"without consent"~~
 6 "consent" means words or overt actions indicating a freely given agreement to have sexual intercourse or sexual
 7 contact and is further defined but not limited by the following:

8 (i) the victim is compelled to submit by force against the victim or another; or an expression of lack of
 9 consent through words or conduct means there is no consent or that consent has been withdrawn;

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

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

14 ~~(ii)(b) subject~~ Subject to subsections ~~(1)(b)~~ (1)(c) and ~~(1)(e)~~ (1)(d), the victim is incapable of consent
 15 because the victim is:

16 ~~(A)(i)~~ (i) mentally disordered or incapacitated;

17 ~~(B)(ii)~~ (ii) physically helpless;

18 ~~(C)(iii)~~ (iii) overcome by deception, coercion, or surprise;

19 ~~(D)(iv)~~ (iv) less than 16 years old;

20 ~~(E)(v)~~ (v) incarcerated in an adult or juvenile correctional, detention, or treatment facility or is on probation
 21 or parole and the perpetrator is an employee, contractor, or volunteer of the supervising authority and has
 22 supervisory or disciplinary authority over the victim, unless the act is part of a lawful search;

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

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

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

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

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

30 ~~(B)~~ (B) is an employee, contractor, or volunteer of the facility or community-based service.

1 ~~(b)(c)~~ Subsection ~~(1)(a)(ii)(E)~~ (1)(b)(v) does not apply if the individuals are married to each other and one
 2 of the individuals involved is on probation or parole and the other individual is a probation or parole officer of a
 3 supervising authority.

4 ~~(e)(d)~~ Subsections ~~(1)(a)(ii)(F)~~ (1)(b)(vi) and ~~(1)(a)(ii)(G)~~ (1)(b)(vii) do not apply if the individuals are
 5 married to each other and one of the individuals involved is a patient in or resident of a facility, is a recipient of
 6 community-based services, or is receiving services from a youth care facility and the other individual is an
 7 employee, contractor, or volunteer of the facility or community-based service.

8 (2) As used in ~~subsection (1)~~ [section 1], the term "force" means:

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

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

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

14 (a) "Parole":

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

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

18 (b) "Probation" means:

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

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

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

25

26 **Section 3.** Section 45-5-503, MCA, is amended to read:

27 "**45-5-503. Sexual intercourse without consent.** (1) A person who knowingly has sexual intercourse
 28 ~~without consent~~ with another person without consent or with another person who is incapable of consent commits
 29 the offense of sexual intercourse without consent. A person may not be convicted under this section based on
 30 the age of the person's spouse, as provided in 45-5-501~~(1)(a)(ii)(D)~~(1)(b)(iv).

1 (2) A person convicted of sexual intercourse without consent shall be punished by life imprisonment or
 2 by imprisonment in the state prison for a term of ~~not less than 2 years or more than 100~~ not more than 20 years
 3 and may be fined not more than \$50,000, except as provided in 46-18-219, 46-18-222, and subsections (3) and
 4 (4) of this section.

5 (3) (a) If the victim is less than 16 years old and the offender is 4 or more years older than the victim or
 6 if the offender inflicts bodily injury upon anyone in the course of committing sexual intercourse without consent,
 7 the offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less
 8 than 4 years or more than 100 years and may be fined not more than \$50,000, except as provided in 46-18-219
 9 and 46-18-222.

10 (b) If two or more persons are convicted of sexual intercourse without consent with the same victim in
 11 an incident in which each offender was present at the location where another offender's offense occurred during
 12 a time period in which each offender could have reasonably known of the other's offense, each offender shall be
 13 punished by life imprisonment or by imprisonment in the state prison for a term of not less than 5 years or more
 14 than 100 years and may be fined not more than \$50,000, except as provided in 46-18-219 and 46-18-222.

15 (c) If the offender was previously convicted of an offense under this section or of an offense under the
 16 laws of another state or of the United States that if committed in this state would be an offense under this section
 17 and if the offender inflicted serious bodily injury upon a person in the course of committing each offense, the
 18 offender shall be:

19 (i) punished by death as provided in 46-18-301 through 46-18-310, unless the offender is less than 18
 20 years of age at the time of the commission of the offense; or

21 (ii) punished as provided in 46-18-219.

22 (4) (a) If the victim was 12 years of age or younger and the offender in the course of committing sexual
 23 intercourse without consent A VIOLATION OF THIS SECTION was 18 years of age or older at the time of the offense,
 24 the offender:

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

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

30 (iii) shall be ordered to enroll in and successfully complete the educational phase and the cognitive and

1 behavioral phase of a sexual offender treatment program provided or approved by the department of corrections.

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

5 (5) In addition to any sentence imposed under subsection (2) or (3), after determining the financial
6 resources and future ability of the offender to pay restitution as required by 46-18-242, the court shall require the
7 offender, if able, to pay the victim's reasonable medical and counseling costs that result from the offense. The
8 amount, method, and time of payment must be determined in the same manner as provided for in 46-18-244.

9 (6) As used in subsections (3) and (4), an act "in the course of committing sexual intercourse without
10 consent" includes an attempt to commit the offense or flight after the attempt or commission.

11 (7) If as a result of sexual intercourse without consent a child is born, the offender who has been
12 convicted of an offense under this section and who is the biological parent of the child resulting from the sexual
13 intercourse without consent forfeits all parental and custodial rights to the child if the provisions of 46-1-401 have
14 been followed."

15

16 **Section 4.** Section 46-18-219, MCA, is amended to read:

17 **"46-18-219. Life sentence without possibility of release.** (1) (a) Except as provided in subsection (3),
18 if an offender convicted of one of the following offenses was previously convicted of one of the following offenses
19 or of an offense under the laws of another state or of the United States that, if committed in this state, would be
20 one of the following offenses, the offender must be sentenced to life in prison, unless the death penalty is
21 applicable and imposed:

22 (i) 45-5-102, deliberate homicide;

23 (ii) 45-5-303, aggravated kidnapping;

24 ~~(iii) 45-5-503, sexual intercourse without consent;~~

25 ~~(iv)(iii) 45-5-625, sexual abuse of children; or~~

26 ~~(v)(iv) 45-5-627, except subsection (1)(b), ritual abuse of a minor; or~~

27 (v) [section 1], aggravated sexual intercourse without consent.

28 (b) Except as provided in subsection (3), if an offender convicted of one of the following offenses was
29 previously convicted of two of the following offenses, two of any combination of the offenses listed in subsection
30 (1)(a) or the following offenses, or two of any offenses under the laws of another state or of the United States that,

1 if committed in this state, would be one of the offenses listed in subsection (1)(a) or this subsection, the offender
2 must be sentenced to life in prison, unless the death penalty is applicable and imposed:

- 3 (i) 45-5-103, mitigated deliberate homicide;
4 (ii) 45-5-202, aggravated assault;
5 (iii) 45-5-302, kidnapping;
6 (iv) 45-5-401, robbery; or
7 (v) 45-5-603, aggravated promotion of prostitution.

8 (2) Except as provided in 46-23-210 and subsection (3) of this section, an offender sentenced under
9 subsection (1):

- 10 (a) shall serve the entire sentence;
11 (b) shall serve the sentence in prison;
12 (c) may not for any reason, except a medical reason, be transferred for any length of time to another type
13 of institution, facility, or program;
14 (d) may not be paroled; and
15 (e) may not be given time off for good behavior or otherwise be given an early release for any reason.

16 (3) If the offender was previously sentenced for either of two or three offenses listed in subsection (1),
17 pursuant to any of the exceptions listed in 46-18-222, then the provisions of subsections (1) and (2) of this section
18 do not apply to the offender's present sentence.

19 (4) The imposition or execution of the sentences prescribed by this section may not be deferred or
20 suspended. In the event of a conflict between this section and any provision of 46-18-201 or 46-18-205, this
21 section prevails.

22 (5) (a) For purposes of this section, "prison" means a secure detention facility in which inmates are
23 locked up 24 hours a day and that is operated by this state, another state, the federal government, or a private
24 contractor.

25 (b) Prison does not include a work release center, prerelease center, boot camp, or any other type of
26 facility that does not provide secure detention."
27

28 **Section 5.** Section 46-18-222, MCA, is amended to read:

29 **"46-18-222. Exceptions to mandatory minimum sentences, restrictions on deferred imposition**
30 **and suspended execution of sentence, and restrictions on parole eligibility.** Mandatory minimum sentences

1 prescribed by the laws of this state, mandatory life sentences prescribed by 46-18-219, the restrictions on
 2 deferred imposition and suspended execution of sentence prescribed by 46-18-201(1)(b), 46-18-205,
 3 46-18-221(3), 46-18-224, and 46-18-502(3), and restrictions on parole eligibility prescribed by 45-5-503(4),
 4 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(b), and 45-5-625(4) do not apply if:

5 (1) the offender was less than 18 years of age at the time of the commission of the offense for which the
 6 offender is to be sentenced;

7 (2) the offender's mental capacity, at the time of the commission of the offense for which the offender
 8 is to be sentenced, was significantly impaired, although not so impaired as to constitute a defense to the
 9 prosecution. However, a voluntarily induced intoxicated or drugged condition may not be considered an
 10 impairment for the purposes of this subsection.

11 (3) the offender, at the time of the commission of the offense for which the offender is to be sentenced,
 12 was acting under unusual and substantial duress, although not such duress as would constitute a defense to the
 13 prosecution;

14 (4) the offender was an accomplice, the conduct constituting the offense was principally the conduct of
 15 another, and the offender's participation was relatively minor;

16 (5) in a case in which the threat of bodily injury or actual infliction of bodily injury is an actual element
 17 of the crime, no serious bodily injury was inflicted on the victim unless a weapon was used in the commission of
 18 the offense; or

19 (6) the offense was committed under 45-5-502(3), 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3),
 20 45-5-603(2)(b), ~~or 45-5-625(4)~~, or [section 1] and the judge determines, based on the findings contained in a
 21 psychosexual evaluation report prepared by a qualified sexual offender evaluator pursuant to the provisions of
 22 46-23-509, that treatment of the offender while incarcerated, while in a residential treatment facility, or while in
 23 a local community affords a better opportunity for rehabilitation of the offender and for the ultimate protection of
 24 the victim and society, in which case the judge shall include in its judgment a statement of the reasons for its
 25 determination."

26

27 **SECTION 6. SECTION 46-23-502, MCA, IS AMENDED TO READ:**

28 **"46-23-502. Definitions.** As used in 46-18-255 and this part, the following definitions apply:

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

30 (2) "Mental abnormality" means a congenital or acquired condition that affects the mental, emotional,

1 or volitional capacity of a person in a manner that predisposes the person to the commission of one or more
2 sexual offenses to a degree that makes the person a menace to the health and safety of other persons.

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

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

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

8 (6) "Registration agency" means:

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

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

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

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

16 (8) "Sexual offender evaluator" means a person qualified under rules established by the department to
17 conduct psychosexual evaluations of sexual offenders and sexually violent predators.

18 (9) "Sexual offense" means:

19 (a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-301 (if the victim
20 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 than 18
21 years of age and the offender is not a parent of the victim), 45-5-303 (if the victim is less than 18 years of age and
22 the offender is not a parent of the victim), 45-5-502 (if the offender is a professional licensed under Title 37 and
23 commits the offense during any treatment, consultation, interview, or evaluation of a person's physical or mental
24 condition, ailment, disease, or injury), 45-5-502(3) (if the victim is less than 16 years of age and the offender is
25 3 or more years older than the victim), 45-5-503, 45-5-504(2)(c), 45-5-504(3) (if the victim is less than 16 years
26 of age and the offender is 4 or more years older than the victim), 45-5-507 (if the victim is less than 18 years of
27 age and the offender is 3 or more years older than the victim or if the victim is 12 years of age or younger and
28 the offender is 18 years of age or older at the time of the offense), section 1, 45-5-601(3), 45-5-602(3),
29 45-5-603(1)(b) or (2)(b), 45-5-625, 45-5-704, or 45-5-705; or

30 (b) any violation of a law of another state, a tribal government, or the federal government that is

1 reasonably equivalent to a violation listed in subsection (9)(a) or for which the offender was required to register
2 as a sexual offender after an adjudication or conviction.

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

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

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

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

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

12 (13) "Violent offense" means:

13 (a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-102, 45-5-103,
14 45-5-202, 45-5-206 (third or subsequent offense), 45-5-210(1)(b), (1)(c), or (1)(d), 45-5-212, 45-5-213, 45-5-302
15 (if the victim is not a minor), 45-5-303 (if the victim is not a minor), 45-5-401, 45-6-103, or 45-9-132; or

16 (b) any violation of a law of another state, a tribal government, or the federal government reasonably
17 equivalent to a violation listed in subsection (13)(a)."

18
19 **NEW SECTION. Section 7. Codification instruction.** [Section 1] is intended to be codified as an
20 integral part of Title 45, chapter 5, part 5, and the provisions of Title 45, chapter 5, part 5, apply to [section 1].

21
22 **NEW SECTION. Section 8. Applicability.** [This act] applies to crimes committed on or after [the
23 effective date of this act].

24 - END -