

SENATE BILL NO. 348

INTRODUCED BY J. TREBAS, D. EMRICH, B. USHER, B. MERCER, G. NIKOLAKAKOS, K. BOGNER, B. BEARD

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING PENALTIES FOR THE CRIME OF SEXUAL ASSAULT; PROVIDING THAT OFFENDERS WHO COMMIT A SECOND OFFENSE OF SEXUAL ASSAULT MUST REGISTER AS A SEXUAL OFFENDER; AND AMENDING SECTIONS 45-5-502 AND 46-23-502, MCA."

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 subsections (3) and (4):

(a) on a first conviction for sexual assault, the offender shall be fined an amount not to exceed \$500 \$1,000 or be imprisoned in the county jail for a term not to exceed 6 months 1 year, or both;

(b) on a second conviction for sexual assault, the offender shall be fined an amount not to exceed \$1,000 \$5,000 or be imprisoned in the county jail for a term not to exceed 1 year 5 years, or both; and

(c) 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 10 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 purporting to provide psychotherapy services to the victim, 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

1 finding that there is good cause to impose a term of less than 4 years and imposes a term of less than 4 years,
2 or more than 100 years and may be fined not more than \$50,000.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 victim; or

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

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

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

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

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

18 (f) Subsection (6)(a)(vii) does not apply if the individuals are married to each other."
19

20 **Section 2.** Section 46-23-502, MCA, is amended to read:

21 **"46-23-502. Definitions.** As used in Title 45, chapter 5, part 3 and parts 5 through 7, 46-18-255, and
22 this part, the following definitions apply:

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

24 (2) "Foreign offenses" means a conviction for a sexual offense involving any of the conduct listed
25 in this section that was obtained under the laws of Canada, the United Kingdom, Australia, or New Zealand, or
26 under the laws of any foreign country when the United States department of state, in its country reports on
27 human rights practices, has concluded that an independent judiciary generally or vigorously enforced the right
28 to a fair trial in that country during the year in which the conviction was obtained.

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

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

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

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

9 (7) "Registration agency" means:

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

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

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

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

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

19 (10) (a) "Sexual offense" means any violation, attempt, solicitation, or conspiracy to commit a
20 violation, or flight after the attempt or commission of the following:

21 (i) 45-5-301, unlawful restraint, if the victim is less than 18 years of age and the offender is not a
22 parent of the victim;

23 (ii) 45-5-302, kidnapping, if the victim is less than 18 years of age and the offender is not a parent
24 of the victim;

25 (iii) 45-5-303, aggravated kidnapping, if the victim is less than 18 years of age and the offender is
26 not a parent of the victim;

27 (iv) ~~45-5-502(2)(c)~~45-5-502(2)(b) and (2)(c), (3), and (4), sexual assault;

28 (v) 45-5-503, sexual intercourse without consent;

- 1 (vi) 45-5-504(2)(c) and (3), indecent exposure;
- 2 (vii) 45-5-507, incest, if the victim is less than 18 years of age and the offender is 3 or more years
3 older than the victim, or if the victim is 12 years of age or younger and the offender is 18 years of age or older
4 at the time of the offense;
- 5 (viii) 45-5-508, aggravated sexual intercourse without consent;
- 6 (ix) 45-5-601(2)(b) and (3), prostitution;
- 7 (x) 45-5-622(2)(b)(ii), endangering the welfare of children;
- 8 (xi) 45-5-625, sexual abuse of children;
- 9 (xii) 45-5-627(1)(a), ritual abuse of a minor;
- 10 (xiii) 45-5-705, patronizing a victim of sex trafficking;
- 11 (xiv) 45-5-706, aggravated sex trafficking;
- 12 (xv) 45-5-711, child sex trafficking;
- 13 (xvi) 45-8-218, deviate sexual conduct; or
- 14 (xvii) any violation of a law of another state, a tribal government, the federal government, or the
15 military or a foreign entity that is reasonably equivalent to a violation listed in subsections (10)(a)(i) through
16 (10)(a)(xvi) or for which the offender was required to register as a sexual offender after an adjudication or
17 conviction.
- 18 (b) The term does not include the exceptions provided for in 45-5-501, 45-5-502, and 45-5-503.
- 19 (11) "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 (12) "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 (13) "Transient" means an offender who has no residence.
- 28 (14) "Violent offense" means:

- 1 (a) any violation of or attempt, solicitation, or conspiracy to commit a violation of:
- 2 (i) 45-5-102, deliberate homicide;
- 3 (ii) 45-5-103, mitigated deliberate homicide;
- 4 (iii) 45-5-202, aggravated assault;
- 5 (iv) 45-5-206 (third or subsequent offense), partner or family member assault;
- 6 (v) 45-5-210(1)(b), (1)(c), or (1)(d), assault on a peace officer or judicial officer;
- 7 (vi) 45-5-212, assault on a minor;
- 8 (vii) 45-5-213, assault with a weapon;
- 9 (viii) 45-5-215, strangulation of a partner or family member;
- 10 (ix) 45-5-302 (if the victim is not a minor), kidnapping;
- 11 (x) 45-5-303 (if the victim is not a minor), aggravated kidnapping;
- 12 (xi) 45-5-401, robbery;
- 13 (xii) 45-6-103, arson; or
- 14 (xiii) 45-9-132, operation of unlawful clandestine laboratory; or
- 15 (b) any violation of a law of another state, a tribal government, the federal government, or the
- 16 military or a foreign entity reasonably equivalent to a violation listed in subsection (14)(a)."

17 - END -