

SENATE BILL NO. 155

INTRODUCED BY R. WEBB

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A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE MANDATORY MINIMUM SENTENCES FOR CERTAIN SEXUAL OFFENSES WHEN THE VICTIM IS 12 YEARS OF AGE OR YOUNGER; AMENDING SECTIONS 45-5-503, 45-5-507, AND 45-5-625, MCA; AND PROVIDING AN APPLICABILITY DATE."

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

Section 1. Section 45-5-503, MCA, is amended to read:

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

(2) A person convicted of sexual intercourse without consent shall be punished by life imprisonment or by imprisonment in the state prison for a term of not more than 20 years and may be fined not more than \$50,000, except as provided in 46-18-219, 46-18-222, and subsections (3), (4), and (5) of this section.

(3) (a) If the victim is less than 16 years old and the offender is 4 or more years older than the victim or if the offender inflicts bodily injury on anyone in the course of committing sexual intercourse without consent, 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, except as provided in 46-18-219 and 46-18-222.

(b) If two or more persons are convicted of sexual intercourse without consent with the same victim in an incident in which each offender was present at the location where another offender's offense occurred during a time period in which each offender could have reasonably known of the other's offense, each offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 5 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.

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

1 offender shall be:

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

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

5 (4) (a) If the victim was 12 years of age or younger and the offender in the course of committing a
6 violation of this section was 18 years of age or older at the time of the offense, the offender:

7 (i) shall be punished by imprisonment in a state prison for a term of 100 years. The court may not
8 suspend execution or defer imposition of the first ~~40~~ 25 years of a sentence of imprisonment imposed under this
9 subsection (4)(a)(i) except as provided in 46-18-222(1) through (5), and during the first ~~40~~ 25 years of
10 imprisonment, the offender is not eligible for parole. The exception provided in 46-18-222(6) does not apply.

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

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

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

17 (5) If the victim is at least 14 years of age and the offender is 18 years of age or younger, the offender
18 may be punished by imprisonment in the state prison for a term of not more than 5 years and may be fined not
19 more than \$10,000 if:

20 (a) the offender has not previously been found to have committed or been adjudicated for a sexual
21 offense as defined in 46-23-502;

22 (b) a psychosexual evaluation of the offender has been prepared and the court finds that registration is
23 not necessary for protection of the public and that relief from registration is in the public's best interest; and

24 (c) the court finds that the alleged conduct was consensual as indicated by words or overt actions
25 indicating a freely given agreement to have sexual intercourse or sexual contact.

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

30 (7) As used in subsections (3) and (4), an act "in the course of committing sexual intercourse without

1 consent" includes an attempt to commit the offense or the act of flight after the attempt or commission.

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

6

7 **Section 2.** Section 45-5-507, MCA, is amended to read:

8 **"45-5-507. Incest.** (1) A person commits the offense of incest if the person knowingly marries, cohabits
9 with, has sexual intercourse with, or has sexual contact, as defined in 45-2-101, with an ancestor, a descendant,
10 a brother or sister of the whole or half blood, or any stepson or stepdaughter. The relationships referred to in this
11 subsection include blood relationships without regard to legitimacy, relationships of parent and child by adoption,
12 and relationships involving a stepson or stepdaughter.

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

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

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

22 (4) If the victim is under 16 years of age and the offender is 3 or more years older than the victim or if
23 the offender inflicts bodily injury upon anyone in the course of committing incest, the offender shall be punished
24 by life imprisonment or by imprisonment in the state prison for a term of not less than 4 years or more than 100
25 years and may be fined not more than \$50,000.

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

28 (i) shall be punished by imprisonment in a state prison for a term of 100 years. The court may not
29 suspend execution or defer imposition of the first ~~40~~ 25 years of a sentence of imprisonment imposed under this
30 subsection (5)(a)(i) except as provided in 46-18-222(1) through (5), and during the first ~~40~~ 25 years of

1 imprisonment, the offender is not eligible for parole. The exception provided in 46-18-222(6) does not apply.

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

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

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

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

12

13 **Section 3.** Section 45-5-625, MCA, is amended to read:

14 **"45-5-625. Sexual abuse of children.** (1) A person commits the offense of sexual abuse of children if
15 the person:

16 (a) knowingly employs, uses, or permits the employment or use of a child in an exhibition of sexual
17 conduct, actual or simulated;

18 (b) knowingly photographs, films, videotapes, develops or duplicates the photographs, films, or
19 videotapes, or records a child engaging in sexual conduct, actual or simulated;

20 (c) knowingly, by any means of communication, including electronic communication or in person,
21 persuades, entices, counsels, coerces, encourages, directs, or procures a child under 16 years of age or a
22 person the offender believes to be a child under 16 years of age to engage in sexual conduct, actual or simulated,
23 or to view sexually explicit material or acts for the purpose of inducing or persuading a child to participate in any
24 sexual activity that is illegal;

25 (d) knowingly processes, develops, prints, publishes, transports, distributes, sells, exhibits, or advertises
26 any visual or print medium, including a medium by use of electronic communication in which a child is engaged
27 in sexual conduct, actual or simulated;

28 (e) knowingly possesses any visual or print medium, including a medium by use of electronic
29 communication in which a child is engaged in sexual conduct, actual or simulated;

30 (f) finances any of the activities described in subsections (1)(a) through (1)(d) and (1)(g), knowing that

1 the activity is of the nature described in those subsections;

2 (g) possesses with intent to sell any visual or print medium, including a medium by use of electronic
3 communication in which a child is engaged in sexual conduct, actual or simulated;

4 (h) knowingly travels within, from, or to this state with the intention of meeting a child under 16 years of
5 age or a person the offender believes to be a child under 16 years of age in order to engage in sexual conduct,
6 actual or simulated; or

7 (i) knowingly coerces, entices, persuades, arranges for, or facilitates a child under 16 years of age or
8 a person the offender believes to be a child under 16 years of age to travel within, from, or to this state with the
9 intention of engaging in sexual conduct, actual or simulated.

10 (2) (a) Except as provided in subsection (2)(b), (2)(c), or (4), a person convicted of the offense of sexual
11 abuse of children shall be punished by life imprisonment or by imprisonment in the state prison for a term not to
12 exceed 100 years and may be fined not more than \$10,000.

13 (b) Except as provided in 46-18-219, if the victim is under 16 years of age, a person convicted of the
14 offense of sexual abuse of children shall be punished by life imprisonment or by imprisonment in the state prison
15 for a term of not less than 4 years or more than 100 years and may be fined not more than \$10,000.

16 (c) Except as provided in 46-18-219, a person convicted of the offense of sexual abuse of children for
17 the possession of material, as provided in subsection (1)(e), shall be fined not to exceed \$10,000 or be
18 imprisoned in the state prison for a term not to exceed 10 years, or both.

19 (3) An offense is not committed under subsections (1)(d) through (1)(g) if the visual or print medium is
20 processed, developed, printed, published, transported, distributed, sold, possessed, or possessed with intent to
21 sell, or if the activity is financed, as part of a sexual offender information or treatment course or program
22 conducted or approved by the department of corrections.

23 (4) (a) If the victim was 12 years of age or younger and the offender was 18 years of age or older at the
24 time of the offense, 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 ~~40~~ 25 years of a sentence of imprisonment imposed under this
27 subsection (4)(a)(i) except as provided in 46-18-222(1) through (5), and during the first ~~40~~ 25 years of
28 imprisonment, the offender is not eligible for parole. The exception provided in 46-18-222(6) does not apply.

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) As used in this section, the following definitions apply:

6 (a) "Electronic communication" means a sign, signal, writing, image, sound, data, or intelligence of any
7 nature transmitted or created in whole or in part by a wire, radio, electromagnetic, photoelectronic, or
8 photo-optical system.

9 (b) "Sexual conduct" means:

10 (i) actual or simulated:

11 (A) sexual intercourse, whether between persons of the same or opposite sex;

12 (B) penetration of the vagina or rectum by any object, except when done as part of a recognized medical
13 procedure;

14 (C) bestiality;

15 (D) masturbation;

16 (E) sadomasochistic abuse;

17 (F) lewd exhibition of the genitals, breasts, pubic or rectal area, or other intimate parts of any person;

18 or

19 (G) defecation or urination for the purpose of the sexual stimulation of the viewer; or

20 (ii) depiction of a child in the nude or in a state of partial undress with the purpose to abuse, humiliate,
21 harass, or degrade the child or to arouse or gratify the person's own sexual response or desire or the sexual
22 response or desire of any person.

23 (c) "Simulated" means any depicting of the genitals or pubic or rectal area that gives the appearance of
24 sexual conduct or incipient sexual conduct.

25 (d) "Visual medium" means:

26 (i) any film, photograph, videotape, negative, slide, or photographic reproduction that contains or
27 incorporates in any manner any film, photograph, videotape, negative, or slide; or

28 (ii) any disk, diskette, or other physical media that allows an image to be displayed on a computer or other
29 video screen and any image transmitted to a computer or other video screen by telephone line, cable, satellite
30 transmission, or other method."

