

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.