

HOUSE BILL NO. 113

INTRODUCED BY LEE, VAN VALKENBURG

IN THE HOUSE

JANUARY 8, 1991                   INTRODUCED AND REFERRED TO COMMITTEE  
ON JUDICIARY.

                                  FIRST READING.

JANUARY 12, 1991                   COMMITTEE RECOMMEND BILL  
DO PASS AS AMENDED. REPORT ADOPTED.

JANUARY 14, 1991                   PRINTING REPORT.

JANUARY 15, 1991                   SECOND READING, DO PASS.

JANUARY 16, 1991                   ENGROSSING REPORT.

JANUARY 17, 1991                   THIRD READING, PASSED.  
AYES, 100; NOES, 0.

                                  TRANSMITTED TO SENATE.

IN THE SENATE

JANUARY 17, 1991                   INTRODUCED AND REFERRED TO COMMITTEE  
ON JUDICIARY.

JANUARY 18, 1991                   FIRST READING.

JANUARY 28, 1991                   COMMITTEE RECOMMEND BILL BE  
CONCURRED IN AS AMENDED. REPORT  
ADOPTED.

JANUARY 29, 1991                   SECOND READING, CONCURRED IN.

JANUARY 30, 1991                   THIRD READING, CONCURRED IN.  
AYES, 48; NOES, 0.

                                  RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

FEBRUARY 1, 1991                   SECOND READING, AMENDMENTS NOT  
CONCURRED IN.

FEBRUARY 4, 1991                   ON MOTION, CONFERENCE COMMITTEE  
REQUESTED AND APPOINTED.

IN THE SENATE

FEBRUARY 5, 1991

ON MOTION, CONFERENCE COMMITTEE  
REQUESTED AND APPOINTED.

IN THE HOUSE

MARCH 8, 1991

CONFERENCE COMMITTEE REPORTED.

IN THE SENATE

MARCH 8, 1991

CONFERENCE COMMITTEE REPORTED.

IN THE HOUSE

MARCH 11, 1991

SECOND READING, CONFERENCE COMMITTEE  
REPORT ADOPTED.

MARCH 12, 1991

THIRD READING, CONFERENCE COMMITTEE  
REPORT ADOPTED.

IN THE SENATE

MARCH 16, 1991

SECOND READING, CONFERENCE COMMITTEE  
REPORT ADOPTED.

MARCH 18, 1991

THIRD READING, CONFERENCE COMMITTEE  
REPORT ADOPTED.

IN THE HOUSE

MARCH 19, 1991

RECEIVED FROM SENATE.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 HOUSE BILL NO. 113  
2 INTRODUCED BY Thomas Lee Van Valkenburg

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO DEFINE THE TERM  
5 "FORCE" AS IT RELATES TO SEXUAL INTERCOURSE WITHOUT CONSENT  
6 AND TO DEVIATE SEXUAL CONDUCT; AND AMENDING SECTIONS  
7 45-5-501 AND 45-5-503, MCA."

8  
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 **Section 1.** Section 45-5-501, MCA, is amended to read:

11 **"45-5-501. Definition. (1)** As used in 45-5-503 and  
12 45-5-505, the term "without consent" means:

13 ~~(2)(a)~~ **(a)** the victim is compelled to submit by force ~~or by~~  
14 ~~threat of imminent death, bodily injury, or kidnapping to be~~  
15 ~~inflicted on anyone against himself or another; or~~

16 ~~(2)(b)~~ **(b)** the victim is incapable of consent because he  
17 is:

18 ~~(a)(i)~~ **(i)** mentally defective or incapacitated;

19 ~~(a)(ii)~~ **(ii)** physically helpless; or

20 ~~(a)(iii)~~ **(iii)** less than 16 years old.

21 **(2)** As used in subsection (1), the term "force" means:

22 **(a)** the infliction or attempted infliction of bodily  
23 injury or the commission of another crime by the offender;

24 **(b)** the threatened infliction of bodily injury or the  
25 threat of another crime by the offender that causes the

1 victim to reasonably believe that the offender has the  
2 present ability to execute the threat; or

3 (c) the threat of retaliatory action that causes the  
4 victim to reasonably believe that the offender has the  
5 ability to execute the threat."

6 **Section 2.** Section 45-5-503, MCA, is amended to read:

7 **"45-5-503. Sexual intercourse without consent. (1)** A  
8 person who knowingly has sexual intercourse without consent  
9 with a person of the opposite sex commits the offense of  
10 sexual intercourse without consent. A person may not be  
11 convicted under this section based on the age of his spouse  
12 as provided in 45-5-501~~(2)(c)~~(1)(b)(iii).

13 **(2)** A person convicted of sexual intercourse without  
14 consent shall be imprisoned in the state prison for a term  
15 of not less than 2 years or more than 20 years and may be  
16 fined not more than \$50,000, except as provided in  
17 46-18-222.

18 **(3) (a)** If the victim is less than 16 years old and the  
19 offender is 3 or more years older than the victim or if the  
20 offender inflicts bodily injury upon anyone in the course of  
21 committing sexual intercourse without consent, he shall be  
22 imprisoned in the state prison for any term of not less than  
23 2 years or more than 40 years and may be fined not more than  
24 \$50,000, except as provided in 46-18-222.

25 **(b)** An act "in the course of committing sexual

LC 0364/01

1 intercourse without consent" shall include an attempt to  
2 commit the offense or flight after the attempt or  
3 commission.

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

-End-

APPROVED BY COMMITTEE  
ON JUDICIARY

HOUSE BILL NO. 113

INTRODUCED BY LEE, VAN VALKENBURG

A BILL FOR AN ACT ENTITLED: "AN ACT TO DEFINE THE TERM  
"FORCE" AS IT RELATES TO SEXUAL INTERCOURSE WITHOUT CONSENT  
AND TO DEVIATE SEXUAL CONDUCT; AND AMENDING SECTIONS  
45-5-501 AND 45-5-503, MCA."

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

**Section 1.** Section 45-5-501, MCA, is amended to read:

"45-5-501. Definition. (1) As used in 45-5-503 and  
45-5-505, the term "without consent" means:

~~(1)(a) the victim is compelled to submit by force or-by  
threat-of-imminent-death,-bodily-injury,-or-kidnapping-to-be  
inflicted-on-anyone against himself or another; or~~

~~(2)(b) the victim is incapable of consent because he  
is:~~

~~(a)(i) mentally defective or incapacitated;~~

~~(b)(ii) physically helpless; or~~

~~(c)(iii) less than 16 years old.~~

(2) As used in subsection (1), the term "force" means:

(a) the infliction or attempted infliction of bodily  
injury or the commission of another-crime A FORCIBLE FELONY  
by the offender;

(b) the threatened infliction of bodily injury or the

threat of another crime by the offender that causes the  
victim to reasonably believe that the offender has the  
present ability to execute the threat; or

(c) the threat of SIGNIFICANT OR SUBSTANTIAL  
retaliatory action that causes the victim to reasonably  
believe that the offender has the ability to execute the  
threat."

**Section 2.** Section 45-5-503, MCA, is amended to read:

"45-5-503. Sexual intercourse without consent. (1) A  
person who knowingly has sexual intercourse without consent  
with a person of the opposite sex commits the offense of  
sexual intercourse without consent. A person may not be  
convicted under this section based on the age of his spouse  
as provided in 45-5-501~~(2)(c)~~(1)(b)(iii).

(2) A person convicted of sexual intercourse without  
consent shall be imprisoned in the state prison for a term  
of not less than 2 years or more than 20 years and may be  
fined not more than \$50,000, except as provided in  
46-18-222.

(3) (a) 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 intercourse without consent, he shall be  
imprisoned in the state prison for any term of not less than  
2 years or more than 40 years and may be fined not more than

**SECOND READING**

1 \$50,000, except as provided in 46-18-222.

2 (b) An act "in the course of committing sexual  
3 intercourse without consent" shall include an attempt to  
4 commit the offense or flight after the attempt or  
5 commission.

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

-End-

HOUSE BILL NO. 113

INTRODUCED BY LEE, VAN VALKENBURG

A BILL FOR AN ACT ENTITLED: "AN ACT TO DEFINE THE TERM "FORCE" AS IT RELATES TO SEXUAL INTERCOURSE WITHOUT CONSENT AND TO DEVIATE SEXUAL CONDUCT; AND AMENDING SECTIONS 45-5-501 AND 45-5-503, MCA."

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

Section 1. Section 45-5-501, MCA, is amended to read:

"45-5-501. Definition. (1) As used in 45-5-503 and 45-5-505, the term "without consent" means:

{1}(a) the victim is compelled to submit by force or-by threat-of-imminent-death, bodily-injury, or-kidnapping-to-be inflicted-on-anyone against himself or another; or

{2}(b) the victim is incapable of consent because he is:

{a}(i) mentally defective or incapacitated;

{b}(ii) physically helpless; or

{c}(iii) less than 16 years old.

(2) As used in subsection (1), the term "force" means:

(a) the infliction or attempted infliction of bodily injury or the commission of another-crime A FORCIBLE FELONY by the offender;

(b) the threatened infliction of bodily injury or the

threat of another crime by the offender that causes the victim to reasonably believe that the offender has the present ability to execute the threat; or

(c) the threat of SIGNIFICANT OR SUBSTANTIAL retaliatory action that causes the victim to reasonably believe that the offender has the ability to execute the threat."

Section 2. Section 45-5-503, MCA, is amended to read:

"45-5-503. Sexual intercourse without consent. (1) A person who knowingly has sexual intercourse without consent with a person of the opposite sex commits the offense of sexual intercourse without consent. A person may not be convicted under this section based on the age of his spouse as provided in 45-5-501{2}{c}(1)(b)(iii).

(2) A person convicted of sexual intercourse without consent shall be imprisoned in the state prison for a term of not less than 2 years or more than 20 years and may be fined not more than \$50,000, except as provided in 46-18-222.

(3) (a) 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 intercourse without consent, he shall be imprisoned in the state prison for any term of not less than 2 years or more than 40 years and may be fined not more than

THIRD READING



1 \$50,000, except as provided in 46-18-222.

2 (b) An act "in the course of committing sexual  
3 intercourse without consent" shall include an attempt to  
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5 commission.

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7 subsection (2) or (3), after determining the financial  
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9 restitution as required by 46-18-242, the court shall  
10 require the offender, if able, to pay the victim's  
11 reasonable costs of counseling that result from the offense.  
12 The amount, method, and time of payment must be determined  
13 in the same manner as provided for in 46-18-244."

-End-



SENATE STANDING COMMITTEE REPORT

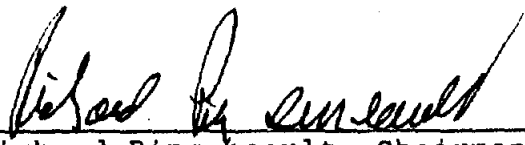
Page 1 of 1  
January 28, 1991


MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 113 (third reading copy -- blue), respectfully report that House Bill No. 113 be amended and as so amended be concurred in:

1. Page 2, line 4.

Strike: "SIGNIFICANT OR SUBSTANTIAL"

Signed:   
Richard Pinsoheault, Chairman

 1/28/91  
Amd. Coord.

SB 1/28 2:45  
Sec. of Senate

SENATE  
HB 113

## 1 HOUSE BILL NO. 113

2 INTRODUCED BY LEE, VAN VALKENBURG

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO DEFINE THE TERM  
5 "FORCE" AS IT RELATES TO SEXUAL INTERCOURSE WITHOUT CONSENT  
6 AND TO DEVIATE SEXUAL CONDUCT; AND AMENDING SECTIONS  
7 45-5-501 AND 45-5-503, MCA."

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9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:10 **Section 1.** Section 45-5-501, MCA, is amended to read:11 "45-5-501. Definition. (1) As used in 45-5-503 and  
12 45-5-505, the term "without consent" means:13 ~~{1}(a)~~ the victim is compelled to submit by force ~~or-by~~  
14 ~~threat-of-imminent-death,-bodily-injury,-or-kidnapping-to-be~~  
15 ~~inflicted-on-anyone against himself or another; or~~16 ~~{2}(b)~~ the victim is incapable of consent because he  
17 is:18 ~~{a}(i)~~ mentally defective or incapacitated;19 ~~{b}(ii)~~ physically helpless; or20 ~~{c}(iii)~~ less than 16 years old.

21 (2) As used in subsection (1), the term "force" means:

22 (a) the infliction or attempted infliction of bodily  
23 injury or the commission of another-crime A FORCIBLE FELONY  
24 by the offender;25 (b) the threatened infliction of bodily injury or the1 threat of another crime by the offender that causes the  
2 victim to reasonably believe that the offender has the  
3 present ability to execute the threat; or4 (c) the threat of SIGNIFICANT---OR---SUBSTANTIAL  
5 retaliatory action that causes the victim to reasonably  
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14 as provided in 45-5-501~~{2}(c)(1)(b)(iii)~~.15 (2) A person convicted of sexual intercourse without  
16 consent shall be imprisoned in the state prison for a term  
17 of not less than 2 years or more than 20 years and may be  
18 fined not more than \$50,000, except as provided in  
19 46-18-222.20 (3) (a) If the victim is less than 16 years old and the  
21 offender is 3 or more years older than the victim or if the  
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REFERENCE BILL

HB 113

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-End-

Conference Committee  
on House Bill 113  
Report No. 1, March 8, 1991

Page 1 of 1

Mr. Speaker and Mr. President:

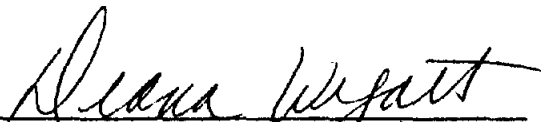
We, your Conference Committee on House Bill 113 met and considered the Senate Committee on Judiciary amendments, dated January 28, 1991, and recommend that House Bill 113 (reference copy -- salmon) be amended as follows:

1. Page 2, line 4.  
Following: "SUBSTANTIAL"  
Insert: "substantial"

And this Conference Committee report be adopted.

For the House:

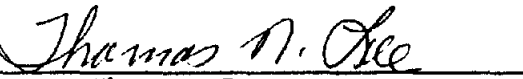
For the Senate:

  
Rep. Diana Wyatt, Chair

  
Sen. Mike Halligan

  
Rep. Howard Toole

  
Sen. Paul Svrcek

  
Rep. Thomas Lee

  
Sen. Bruce Crippen

ADOPT

REJECT

HB 113

500951CC.HSF

HOUSE BILL NO. 113

INTRODUCED BY LEE, VAN VALKENBURG

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(2) A person convicted of sexual intercourse without consent shall be imprisoned in the state prison for a term of not less than 2 years or more than 20 years and may be fined not more than \$50,000, except as provided in 46-18-222.

(3) (a) 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 intercourse without consent, he shall be imprisoned in the state prison for any term of not less than 2 years or more than 40 years and may be fined not more than



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13 in the same manner as provided for in 46-18-244."

-End-