# 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

CONCURRED IN.

FEBRUARY 1, 1991

FEBRUARY 4, 1991

ON MOTION, CONFERENCE COMMITTEE REQUESTED AND APPOINTED.

SECOND READING, AMENDMENTS NOT

# 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.

52nd Legislature

LC 0364/01

LC 0364/01

INTRODUCED BY Themes Jue Var Valkentry 1 2 3 A BILL FOR AN ACT ENTITLED: "AN ACT TO DEFINE THE TERM 4 "FORCE" AS IT RELATES TO SEXUAL INTERCOURSE WITHOUT CONSENT 5 AND TO DEVIATE SEXUAL CONDUCT; AND AMENDING SECTIONS 6 45-5-501 AND 45-5-503, MCA." 7 8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: 9 10 Section 1. Section 45-5-501, MCA, is amended to read: \*45-5-501. Definition. (1) As used in 45-5-503 and 11 45-5-505, the term "without consent" means: 12 (1)(a) the victim is compelled to submit by force or-by 13 14 threat-of-imminent-death; bodily-injury; or-kidnapping-to-be inflicted-on-anyone against himself or another; or 15 16 t2;(b) the victim is incapable of consent because he 17 is: (i) mentally defective or incapacitated; 18 19 tb)(ii) physically helpless; or 20 (iii) less than 16 years old. (2) As used in subsection (1), the term "force" means: 21 (a) the infliction or attempted infliction of bodily 22 injury or the commission of another crime by the offender; 23 (b) the threatened infliction of bodily injury or the 24 25 threat of another crime by the offender that causes the

Montana Legislative Council

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	<b>45-5-503. Sexual intercourse without consent. (1)</b> 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 <del>(2)(c)(l)(liii)</del> .
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

-2- INTRODUCED BILL HB // 3

## LC 0364/01

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

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

-End-

## 52nd Legislature

HB 0113/02

#### APPROVED BY COMMITTEE ON JUDICIARY

1	HOUSE BILL NO. 113	1	threat of another crime by the offender that causes the
2	INTRODUCED BY LEE, VAN VALKENBURG	2	victim to reasonably believe that the offender has the
3		3	present ability to execute the threat; or
4	A BILL FOR AN ACT ENTITLED: "AN ACT TO DEFINE THE TERM	4	(c) the threat of SIGNIFICANT OR SUBSTANTIAL
5	"FORCE" AS IT RELATES TO SEXUAL INTERCOURSE WITHOUT CONSENT	5	retaliatory action that causes the victim to reasonably
6	AND TO DEVIATE SEXUAL CONDUCT; AND AMENDING SECTIONS	6	believe that the offender has the ability to execute the
7	45-5-501 AND 45-5-503, MCA."	7	threat."
8		8	Section 2. Section 45-5-503, MCA, is amended to read:
9	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:	9	<b>*45-5-503. Sexual intercourse without consent. (1) A</b>
10	Section 1. Section 45-5-501, MCA, is amended to read:	10	person who knowingly has sexual intercourse without consent
11	<b>"45-5-501. Definition.</b> <u>(1)</u> As used in 45-5-503 and	11	with a person of the opposite sex commits the offense of
12	45-5-505, the term "without consent" means:	12	sexual intercourse without consent. A person may not be
13	<pre>ft;(a) the victim is compelled to submit by force or-by</pre>	13	convicted under this section based on the age of his spouse
14	threat-of-imminent-death;-bodily-injury;-or-kidnapping-to-be	14	as provided in 45-5-501 <del>(2)(c)(iii)</del> .
15	inflicted-on-anyone against himself or another; or	15	(2) A person convicted of sexual intercourse without
16	<pre>f?)(b) the victim is incapable of consent because he</pre>	16	consent shall be imprisoned in the state prison for a term
17	is:	17	of not less than 2 years or more than 20 years and may be
18	<pre>ta;(i) mentally defective or incapacitated;</pre>	18	fined not more than \$50,000, except as provided in
19	<pre>tb;(ii) physically helpless; or</pre>	19	46-18-222.
20	te; <u>(iii)</u> less than 16 years old.	20	(3) (a) If the victim is less than 16 years old and the
21	(2) As used in subsection (1), the term "force" means:	21	offender is 3 or more years older than the victim or if the
22	(a) the infliction or attempted infliction of bodily	22	offender inflicts bodily injury upon anyone in the course of
23	injury or the commission of another-crime A FORCIBLE FELONY	23	committing sexual intercourse without consent, he shall be
24	by the offender;	24	imprisoned in the state prison for any term of not less than
25	(b) the threatened infliction of bodily injury or the	25	2 years or more than 40 years and may be fined not more than SECOND READING



HB 0113/02

HB 113

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HB 113

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

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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-

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2	INTRODUCED BY LEE, VAN VALKENBURG	2	victim to reasonably believe that the offen
3		3	present ability to execute the threat; or
4	A BILL FOR AN ACT ENTITLED: "AN ACT TO DEFINE THE TERM	4	(c) the threat of SIGNIFICANT OR
5	"FORCE" AS IT RELATES TO SEXUAL INTERCOURSE WITHOUT CONSENT	5	retaliatory action that causes the victim to
6	AND TO DEVIATE SEXUAL CONDUCT; AND AMENDING SECTIONS	6	believe that the offender has the ability to e
7	45-5-501 AND 45-5-503, MCA."	7	threat."
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9	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:	9	*45-5-503. Sexual intercourse without con
10	Section 1. Section 45-5-501, MCA, is amended to read:	10	person who knowingly has sexual intercourse witho
11	<b>"45-5-501. Definition.</b> (1) As used in 45-5-503 and	11	with a person of the opposite sex commits the
12	45-5-505, the term "without consent" means:	12	sexual intercourse without consent. A person m
13	(1)(a) the victim is compelled to submit by force or-by	13	convicted under this section based on the age of
14	threat-of-imminent-death7-bodily-injury7-or-kidnapping-to-be	14	as provided in 45-5-501 <del>(2)(c)(1)(b)(111)</del> .
15	inflicted-on-anyone against himself or another; or	15	(2) A person convicted of sexual intercour
16	<pre>f2)(b) the victim is incapable of consent because he</pre>	16	consent shall be imprisoned in the state prison
17	is:	17	of not less than 2 years or more than 20 years a
18	<pre>fat(i) mentally defective or incapacitated;</pre>	18	fined not more than \$50,000, except as p
19	<pre>(b)(ii) physically helpless; or</pre>	19	46-18-222.
20	<pre>fe;(iii) less than 16 years old.</pre>	20	(3) (a) If the victim is less than 16 years

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;
- (b) the threatened infliction of bodily injury or the 25



HB 0113/02

1	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; or
4	(c) the threat of SIGNIFICANT OR SUBSTANTIAL
5	retaliatory action that causes the victim to reasonably
6	believe that the offender has the ability to execute the
7	threat."
8	Section 2. Section 45-5-503, MCA, is amended to read:
9	<b>*45-5-503.</b> Sexual intercourse without consent. (1) A
10	person who knowingly has sexual intercourse without consent
11	with a person of the opposite sex commits the offense of
12	sexual intercourse without consent. A person may not be
13	convicted under this section based on the age of his spouse
14	as provided in 45-5-501 <del>(2)(c)(1)(b)(111)</del> .
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
22	offender inflicts bodily injury upon anyone in the course of
23	committing sexual intercourse without consent, he shall be
24	imprisoned in the state prison for any term of not less than
25	2 years or more than 40 years and may be fined not more than THIRD READING

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HB 113

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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 resources and future ability of the offender to pay 8 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-

-3-

# 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: Pinsoheault, Chairman

Richard

2:45  $\frac{SB}{Sec. of Senate}$ 

SENATE HB 113

### 52nd Legislature

### HB 0113/03

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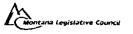
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1	HOUSE BILL NO. 113
2	INTRODUCED BY LEE, VAN VALKENBURG
3	
4	A BILL FOR AN ACT ENTITLED: "AN ACT TO DEFINE THE TERM
5	"FORCE" AS IT RELATES TO SEXUAL INTERCOURSE WITHOUT CONSENT
6	AND TO DEVIATE SEXUAL CONDUCT; AND AMENDING SECTIONS
7	45-5-501 AND 45-5-503, MCA."
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	<b>"45-5-501. Definition.</b> <u>(1)</u> As used in 45-5-503 and
12	45-5-505, the term "without consent" means:
13	$t^{\frac{1}{2}}(a)$ the victim is compelled to submit by force or-by
14	threat-of-imminent-death7-bodily-injury7-or-kidnapping-to-be
15	inflicted-on-anyone against himself or another; or
16	<pre>t2;(b) the victim is incapable of consent because he</pre>
17	is:
18	<pre>{a)(i) mentally defective or incapacitated;</pre>
19	<pre>(b)(ii) physically helpless; or</pre>
20	<del>(c)</del> (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 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

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.

(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
REFERENCE BILL

HB 0113/03

-2-

HB 113

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

-End-

-3-

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: "<u>SUBSTANTIAL</u>" Insert: "substantial"

And this Conference Committee report be adopted.

For the House:

Wyatt Diana

Rep. Howard Toole

For the Senate: Sen. Mike Halli NE Sen Sv Paul

Sen. Bruce Cruppen

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ADOPT

REJECT

1	HOUSE BILL NO. 113	1	threat of
2	INTRODUCED BY LEE, VAN VALKENBURG	2	<u>victim</u> to
3		3	<u>present a</u> t
4	A BILL FOR AN ACT ENTITLED: "AN ACT TO DEFINE THE TERM	4	<u>(c)</u> t
5	"FORCE" AS IT RELATES TO SEXUAL INTERCOURSE WITHOUT CONSENT	5	SUBSTANTIA
6	AND TO DEVIATE SEXUAL CONDUCT; AND AMENDING SECTIONS	6	reasonably
7	45-5-501 AND 45-5-503, MCA."	7	execute th
8		8	Sectio
9	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:	9	<b>*45-5</b> -
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14	threat-of-imminent-death7-bodily-injury7-or-kidnapping-to-be	14	as provide
15	inflicted-on-anyone against himself or another; or	15	(2)
16	<pre>f2}(b) the victim is incapable of consent because he</pre>	16	consent s
17	is:	17	of not les
18	<pre>ta;(i) mentally defective or incapacitated;</pre>	18	fined no
19	<pre>tb;(ii) physically helpless; or</pre>	19	46-18-222
20	<del>(c)<u>(iii)</u> less than 16 years old.</del>	20	(3)
21	(2) As used in subsection (1), the term "force" means:	21	offender
22	(a) the infliction or attempted infliction of bodily	22	offender
23	injury or the commission of another-crime A FORCIBLE FELONY	23	committing
24	by the offender;	24	imprisone
25	(b) the threatened infliction of bodily injury or the	25	2 vears of

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3	present ability to execute the threat; or
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5	SUBSTANTIAL retaliatory action that causes the victim to
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25 2 years or more than 40 years and may be fined not more than

-2- HB 113 REFERENCE BILL: Includes Conference Committee report Dated 3-8-91

HB 113

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

-End-

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