

SENATE BILL NO. 78

Introduced: 01/07/83

Referred to Committee on Judiciary: 01/07/83

Hearing: 01/17/83

Report: 01/20/83, Do Not Pass. Report Adopted.

On Motion, 1/21/83, Reconsider. Motion Failed.

Bill Killed.

1 *Senate* BILL NO. *78*  
 2 INTRODUCED BY *Richard Manning* *Harry K. Berg* *Lee*  
 3 *J. Jacobson* *Christiane* *Walt* *E. Smith*  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE MANDATORY  
 5 MINIMUM SENTENCES FOR CERTAIN SEXUAL CRIMES AGAINST CHILDREN  
 6 LESS THAN 13 YEARS OLD AND TO PROVIDE FOR A VIDEOTAPE  
 7 PRESENTATION OF THE VICTIM'S TESTIMONY AT TRIAL; AMENDING  
 8 SECTIONS 45-5-502, 45-5-503, AND 46-15-401, MCA."

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

11 Section 1. Section 45-5-502, MCA, is amended to read:

12 "45-5-502. Sexual assault. (1) A person who knowingly  
 13 subjects another not his spouse to any sexual contact  
 14 without consent commits the offense of sexual assault.

15 (2) A person convicted of sexual assault shall be  
 16 fined not to exceed \$500 or be imprisoned in the county jail  
 17 for any term not to exceed 6 months.

18 (3) 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 assault, he shall be imprisoned in the  
 22 state prison for any term not to exceed 20 years and may be  
 23 fined not more than \$50,000.

24 (4) If the victim is less than 13 years old and the  
 25 offender is 5 or more years older than the victim or if the

1 victim is less than 13 years old and the offender inflicts  
 2 bodily injury upon the victim in the course of committing  
 3 sexual assault, the offender shall be imprisoned in the  
 4 state prison for a term of not less than 2 years or more  
 5 than 20 years, except as provided in 46-18-222. On a second  
 6 or subsequent offense the offender shall be imprisoned in  
 7 the state prison for a term of not less than 10 years or  
 8 more than 40 years, except as provided in 46-18-222.

9 ~~(4)(5)~~ An act "in the course of committing sexual  
 10 assault" shall include an attempt to commit the offense or  
 11 flight after the attempt or commission.

12 ~~(5)(6)~~ Consent is ineffective under this section if  
 13 the victim is less than 14 years old and the offender is 3  
 14 or more years older than the victim."

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

16 "45-5-503. Sexual intercourse without consent. (1) A  
 17 person who knowingly has sexual intercourse without consent  
 18 with a person of the opposite sex not his spouse commits the  
 19 offense of sexual intercourse without consent.

20 (2) A person convicted of sexual intercourse without  
 21 consent shall be imprisoned in the state prison for a term  
 22 of not less than 2 years or more than 20 years and may be  
 23 fined not more than \$50,000, except as provided in  
 24 46-18-222.

25 (3) If the victim is less than 16 years old and the

-2- INTRODUCED BILL

SB 78

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

~~(4) If the victim is less than 13 years old and the offender is 5 or more years older than the victim or if the victim is less than 13 years old and the offender inflicts bodily injury upon the victim in the course of committing sexual intercourse without consent, the offender shall be imprisoned in the state prison for a term of not less than 10 years or more than 40 years, except as provided in 46-18-222.~~

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

~~(5)(6)~~ No evidence concerning the sexual conduct of the victim is admissible in prosecutions under this section, except:

(a) evidence of the victim's past sexual conduct with the offenders;

(b) evidence of specific instances of the victim's sexual activity to show the origin of semen, pregnancy, or

disease which is at issue in the prosecution under this section.

~~(6)(7)~~ If the defendant proposes for any purpose to offer evidence described in subsection ~~(5)(6)(a)~~ or ~~(5)(6)(b)~~, the trial judge shall order a hearing out of the presence of the jury to determine whether the proposed evidence is admissible under subsection ~~(5)(6)~~.

~~(7)(8)~~ Evidence of failure to make a timely complaint or immediate outcry does not raise any presumption as to the credibility of the victim."

Section 3. Section 46-15-401, MCA, is amended to read:

"46-15-401. When videotaped testimony admissible. For any prosecution commenced under subsection (3) or (4) of 45-5-502(3) or 45-5-503, the testimony of the victim, at the request of such victim and with the concurrence of the prosecuting attorney, may be recorded by means of videotape for presentation at trial. The testimony so recorded may be presented at trial and shall be received into evidence. The victim need not be physically present in the courtroom when the videotape is admitted into evidence."

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