

HOUSE BILL NO. 44
INTRODUCED BY WALDRON

IN THE HOUSE

January 7, 1985	Introduced and referred to Committee on Human Services and Aging.
January 10, 1985	Committee recommend bill do pass as amended. Report adopted. Bill printed and placed on members' desks.
January 12, 1985	Second reading, do pass. Considered correctly engrossed.
January 14, 1985	Third reading, passed. Transmitted to Senate.

IN THE SENATE

January 15, 1985	Introduced and referred to Committee on Judiciary.
March 19, 1985	Committee recommend bill be concurred in as amended. Report adopted.
March 22, 1985	Second reading, concurred in.
March 25, 1985	Third reading, concurred in. Ayes, 48; Noes, 1. Returned to House with amendments.

IN THE HOUSE

March 26, 1985	Received from Senate.
April 2, 1985	Second reading, amendments not concurred in.
	On motion, Conference Committee requested.
April 12, 1985	Conference Committee appointed.
April 17, 1985	Conference Committee reported.
April 18, 1985	Second reading, Conference Committee report adopted.
	Third reading, Conference Committee report adopted.
	Conference Committee report adopted by Senate.
April 19, 1985	Sent to enrolling.
	Reported correctly enrolled.

1 HOUSE BILL NO. 44
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4 A BILL FOR AN ACT ENTITLED: "AN ACT DIRECTING THE COURTS TO
5 REQUIRE PAYMENT OF A VICTIM'S COUNSELING COSTS BY A
6 DEFENDANT CONVICTED OF THE OFFENSE OF INCEST OR SEXUAL
7 INTERCOURSE WITHOUT CONSENT; AMENDING SECTIONS 45-5-503 AND
8 45-5-507, MCA; AND PROVIDING AN APPLICABILITY DATE."

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

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

12 "45-5-503. Sexual intercourse without consent. (1) A
13 person who knowingly has sexual intercourse without consent
14 with a person of the opposite sex not his spouse commits the
15 offense of sexual intercourse without consent.

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

21 (3) (a) If the victim is less than 16 years old and
22 the offender is 3 or more years older than the victim or if
23 the offender inflicts bodily injury upon anyone in the
24 course of committing sexual intercourse without consent, he
25 shall be imprisoned in the state prison for any term of not

1 less than 2 years or more than 40 years and may be fined not
2 more than \$50,000, except as provided in 46-18-222.

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

7 (4) In addition to any sentence imposed under
8 subsection (2) or (3), the court shall require the offender
9 to pay the victim's costs of counseling that result from the
10 offense. The amount, method, and time of payment must be
11 determined in the same manner as provided for in 46-18-244.

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

15 (a) evidence of the victim's past sexual conduct with
16 the offender;

17 (b) evidence of specific instances of the victim's
18 sexual activity to show the origin of semen, pregnancy, or
19 disease which is at issue in the prosecution under this
20 section.

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

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

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

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

14 (2) Consent is a defense under this section to incest
15 with or upon a stepson or stepdaughter, but consent is
16 ineffective if the victim is less than 18 years old.

17 (3) A person convicted of incest shall be imprisoned
18 in the state prison for any term not to exceed 10 years or
19 be fined an amount not to exceed \$50,000, or both.

20 (4) In addition to any sentence imposed under
21 subsection (3), the court shall require the offender to pay
22 the victim's costs of counseling that result from the
23 offense. The amount, method, and time of payment must be
24 determined in the same manner as provided for in 46-18-244."

25 NEW SECTION. Section 3. Applicability. This act

1 applies to offenses committed on or after October 1, 1985.

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APPROVED BY COMM. ON HUMAN SERVICES AND AGING

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8 subsection (2) or (3), AFTER DETERMINING THE FINANCIAL
9 RESOURCES AND FUTURE ABILITY OF THE OFFENDER TO PAY
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(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

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(4)(b) 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.

(4) In addition to any sentence imposed under subsection (2) or (3), AFTER DETERMINING THE FINANCIAL RESOURCES AND FUTURE ABILITY OF THE OFFENDER TO PAY RESTITUTION AS REQUIRED BY 46-18-242, the court shall require the offender to pay the victim's costs of counseling that result from the offense. The amount, method, and time of payment must be determined in the same manner as provided for in 46-18-244.

(5) 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 offender;

(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) If the defendant proposes for any purpose to offer evidence described in subsection (5)(a) or (5)(b), the trial

1 judge shall order a hearing out of the presence of the jury
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-End-

SENATE STANDING COMMITTEE REPORT

Page 1 of 2

March 19 19 85

MR. PRESIDENT

We, your committee on JUDICIARY
having had under consideration HOUSE BILL No. 44
third reading copy (blue color)
(Senator Pinsoneault)

REQUIRE PAYMENT OF VICTIM COUNSELING BY OFFENDER; RAPE OR INCEST

Respectfully report as follows: That HOUSE BILL No. 44

be amended as follows:

- 1. Title, line 4. Following: "ACT" Strike: "DIRECTING" Insert: "AUTHORIZING"
2. Title, line 6. Following: "DEFENDANT" Insert: "WHO IS FINANCIALLY ABLE AND WHO IS"
3. Page 2, line 10. Following: "court" Strike: "shall" Insert: "may"
4. Page 2, line 11. Following: "offender" Insert: ", if able," Following: "victim's" Insert: "reasonable"

DICKRACK

DICKRACK

CONTINUED [Signature]
Senator Joe Mazurek Chairman

Page 2 of 2

HOUSE BILL NO. 44

- 5. Page 4, line 1. Following: "court" Strike: "shall" Insert: "may"
6. Page 4, line 2. Following: line 1 Insert: ", if able," Following: "victim's" Insert: "reasonable"

AND AS AMENDED
BE CONCURRED IN

[Signature]
Senator Joe Mazurek, Chairman

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A BILL FOR AN ACT ENTITLED: "AN ACT DIRECTING AUTHORIZING
THE COURTS TO REQUIRE PAYMENT OF A VICTIM'S COUNSELING COSTS
BY A DEFENDANT WHO IS FINANCIALLY ABLE AND WHO IS CONVICTED
OF THE OFFENSE OF INCEST OR SEXUAL INTERCOURSE WITHOUT
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consent shall be imprisoned in the state prison for a term
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(4)(b) 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
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(4) In addition to any sentence imposed under
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RESOURCES AND FUTURE ABILITY OF THE OFFENDER TO PAY
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require the offender, IF ABLE, to pay the victim's
REASONABLE costs of counseling that result from the offense.
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CONFERENCE COMMITTEE REPORT

Report No...1.....

....April..16. 19.85....

MR. SPEAKER

We, your _____ Conference Committee on

Senate Amendments to House Bill 44, REFERENCE COPY, salmon

met and considered Judiciary Report of March 19, 1985

We recommend as follows:

1. Page 2, line 11.
Following: "~~shall~~"
Strike: "MAY"
Insert: "shall"

2. Page 4, line 2.
Following: "~~shall~~"
Strike: "MAY"
Insert: "shall"

And that this Conference Committee report be adopted.

FOR THE SENATE

Pinsonneault
Pinsonneault, Chm.

Daniels
Daniels

Bob Brown
Brown

FOR THE HOUSE

Bob Gilbert
Gilbert

Hannah
Hannah

Miles
Miles

Waldron
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ADOPT REJECT

GA

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