

HOUSE BILL NO. 547

INTRODUCED BY MILES, KEENAN, RAPP-SVRCEK,
BRADLEY, SPAETH, HALLIGAN, REGAN

IN THE HOUSE

January 29, 1985	Introduced and referred to Committee on Judiciary.
February 8, 1985	Committee recommend bill do pass. Report adopted. Bill printed and placed on members' desks.
February 9, 1985	Second reading, do pass.
February 11, 1985	Considered correctly engrossed.
February 12, 1985	Third reading, passed. Transmitted to Senate.

IN THE SENATE

February 13, 1985	Introduced and referred to Committee on Judiciary.
March 11, 1985	Committee recommend bill be concurrent in. Report adopted.
March 13, 1985	Second reading, concurred in.
March 15, 1985	Third reading, concurred in. Ayes, 48; Noes, 0. Returned to House.

IN THE HOUSE

March 16, 1985

Received from Senate.

Sent to enrolling.

Reported correctly enrolled.

HOUSE BILL NO. 547

INTRODUCED BY ~~Miles Kamman~~ ~~Raymond Bradley~~
~~Spencer Kelly~~

A BILL FOR AN ACT ENTITLED: "AN ACT EXTENDING THE PROHIBITION AGAINST THE ADMISSIBILITY OF EVIDENCE OF A VICTIM'S SEXUAL PAST IN CASES OF SEXUAL INTERCOURSE WITHOUT CONSENT TO ALL SEXUAL CRIMES; ALLOWING THE IMPOSITION OF BOTH JAIL TIME AND A FINE AFTER A CONVICTION OF SEXUAL ASSAULT; AMENDING SECTIONS 45-5-502, 45-5-503, AND 45-5-511, 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 not his spouse to any sexual contact without consent commits the offense of sexual assault.

(2) A person convicted of sexual assault shall be fined not to exceed \$500 or be imprisoned in the county jail for any term not to exceed 6 months, 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, he shall be imprisoned in the state prison for any term not to exceed 20 years and may be fined not more than \$50,000.

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

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

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 not his spouse commits the offense of sexual intercourse without consent.

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

(4) An act "in the course of committing sexual intercourse without consent" shall include an attempt to

1 commit the offense or flight after the attempt or
2 commission.

3 ~~(5)--No evidence concerning the sexual conduct of the~~
4 ~~victim is admissible in prosecutions under this section;~~
5 ~~except:~~

6 ~~(a)--evidence of the victim's past sexual conduct with~~
7 ~~the offender;~~

8 ~~(b)--evidence of specific instances of the victim's~~
9 ~~sexual activity to show the origin of semen, pregnancy, or~~
10 ~~disease which is at issue in the prosecution under this~~
11 ~~section;~~

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

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

20 Section 3. Section 45-5-511, MCA, is amended to read:

21 "45-5-511. Provisions generally applicable to sexual
22 crimes. (1) When criminality depends on the victim being
23 less than 16 years old, it is a defense for the offender to
24 prove that he reasonably believed the child to be above that
25 age. Such belief shall not be deemed reasonable if the child

1 is less than 14 years old.

2 (2) Whenever the definition of an offense excludes
3 conduct with a spouse, the exclusion shall be deemed to
4 extend to persons living as husband and wife regardless of
5 the legal status of their relationship. The exclusion shall
6 be inoperative as respects spouses living apart whether
7 under a decree of judicial separation or otherwise. Where
8 the definition of an offense excludes conduct with a spouse,
9 this shall not preclude conviction of a spouse in a sexual
10 act which he or she causes another person, not within the
11 exclusion, to perform.

12 (3) In a prosecution under the preceding sections on
13 sexual crimes (45-5-502 through 45-5-504) in which the
14 victim's lack of consent is based solely upon his incapacity
15 to consent because he was mentally incapacitated, it is a
16 defense to such prosecution that the victim was a voluntary
17 social companion of the defendant and the intoxicating
18 substance was voluntarily and knowingly taken.

19 (4) No evidence concerning the sexual conduct of the
20 victim is admissible in prosecutions under this part except:

21 (a) evidence of the victim's past sexual conduct with
22 the offender;

23 (b) evidence of specific instances of the victim's
24 sexual activity to show the origin of semen, pregnancy, or
25 disease which is at issue in the prosecution.

1 (5) If the defendant proposes for any purpose to offer
2 evidence described in subsection (4)(a) or (4)(b), the trial
3 judge shall order a hearing out of the presence of the jury
4 to determine whether the proposed evidence is admissible
5 under subsection (4).

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

-End-

APPROVED BY COMMITTEE
ON JUDICIARY

1 HOUSE BILL NO. 547
 2 INTRODUCED BY Miles Korman - Ray J. Smith - Bradley
 3 Spencer Halley - Finner
 4 A BILL FOR AN ACT ENTITLED: "AN ACT EXTENDING THE
 5 PROHIBITION AGAINST THE ADMISSIBILITY OF EVIDENCE OF A
 6 VICTIM'S SEXUAL PAST IN CASES OF SEXUAL INTERCOURSE WITHOUT
 7 CONSENT TO ALL SEXUAL CRIMES; ALLOWING THE IMPOSITION OF
 8 BOTH JAIL TIME AND A FINE AFTER A CONVICTION OF SEXUAL
 9 ASSAULT; AMENDING SECTIONS 45-5-502, 45-5-503, AND 45-5-511,
 10 MCA."

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13 Section 1. Section 45-5-502, MCA, is amended to read:
14 "45-5-502. Sexual assault. (1) A person who knowingly
15 subjects another not his spouse to any sexual contact
16 without consent commits the offense of sexual assault.

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

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

1 (4) An act "in the course of committing sexual
2 assault" shall include an attempt to commit the offense or
3 flight after the attempt or commission.

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

7 Section 2. Section 45-5-503, MCA, is amended to read:
8 "45-5-503. Sexual intercourse without consent. (1) A
9 person who knowingly has sexual intercourse without consent
10 with a person of the opposite sex not his spouse commits the
11 offense of sexual intercourse without consent.

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

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18 offender is 3 or more years older than the victim or if the
19 offender inflicts bodily injury upon anyone in the course of
20 committing sexual intercourse without consent, he shall be
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25 intercourse without consent" shall include an attempt to



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2 commission.

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

6 ~~(a) evidence of the victim's past sexual conduct with~~
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9 ~~sexual activity to show the origin of semen, pregnancy, or~~
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12 ~~(6) If the defendant proposes for any purpose to offer~~
13 ~~evidence described in subsection (5)(a) or (5)(b), the trial~~
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20 Section 3. Section 45-5-511, MCA, is amended to read:

21 "45-5-511. Provisions generally applicable to sexual
22 crimes. (1) When criminality depends on the victim being
23 less than 16 years old, it is a defense for the offender to
24 prove that he reasonably believed the child to be above that
25 age. Such belief shall not be deemed reasonable if the child

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2 (2) Whenever the definition of an offense excludes
3 conduct with a spouse, the exclusion shall be deemed to
4 extend to persons living as husband and wife regardless of
5 the legal status of their relationship. The exclusion shall
6 be inoperative as respects spouses living apart whether
7 under a decree of judicial separation or otherwise. Where
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10 act which he or she causes another person, not within the
11 exclusion, to perform.

12 (3) In a prosecution under the preceding sections on
13 sexual crimes (45-5-502 through 45-5-504) in which the
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16 defense to such prosecution that the victim was a voluntary
17 social companion of the defendant and the intoxicating
18 substance was voluntarily and knowingly taken.

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 3 Spaeth Hollyon

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