

HOUSE BILL NO. 598

INTRODUCED BY RAPP-SVRCEK, MERCER, MILES, VAN VALKENBURG,
COBB, CRIPPEN, REGAN, PINSONEAULT, D. BROWN, DARKO

IN THE HOUSE

FEBRUARY 4, 1987 INTRODUCED AND REFERRED TO COMMITTEE
ON JUDICIARY.

FEBRUARY 16, 1987 COMMITTEE RECOMMEND BILL
DO PASS. REPORT ADOPTED.

FEBRUARY 17, 1987 PRINTING REPORT.

FEBRUARY 18, 1987 ON MOTION, CONSIDERATION PASSED
FOR THE DAY.

FEBRUARY 19, 1987 SECOND READING, DO PASS.

FEBRUARY 20, 1987 ENGROSSING REPORT.

 THIRD READING, PASSED.
 AYES, 90; NOES, 1.

 TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 21, 1987 INTRODUCED AND REFERRED TO COMMITTEE
ON JUDICIARY.

MARCH 27, 1987 COMMITTEE RECOMMEND BILL BE
CONCURRED IN. REPORT ADOPTED.

MARCH 30, 1987 SECOND READING, CONCURRED IN.

 ON MOTION, RULES SUSPENDED AND BILL
 PLACED ON THIRD READING THIS DAY.

 THIRD READING, CONCURRED IN.
 AYES, 50; NOES, 0.

 RETURNED TO HOUSE.

MARCH 31, 1987

IN THE HOUSE

RECEIVED FROM SENATE.

SENT TO ENROLLING.

1 *House* BILL NO. *598*
 2 INTRODUCED BY *App State* *Mace Miles Van Valkenburg Cobb*
 3 *Opp* *Tim Small* *Casey Brown* *Starko*
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE THAT
 5 RESISTANCE BY THE VICTIM IS NOT REQUIRED TO SHOW THAT AN ACT
 6 THAT IS AN ELEMENT OF A SEXUAL OFFENSE WAS WITHOUT CONSENT
 7 OF THE VICTIM; AND AMENDING SECTION 45-5-511, MCA."
 8

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 10 Section 1. Section 45-5-511, MCA, is amended to read:
 11 "45-5-511. Provisions generally applicable to sexual
 12 crimes. (1) When criminality depends on the victim being
 13 less than 16 years old, it is a defense for the offender to
 14 prove that he reasonably believed the child to be above that
 15 age. Such belief shall not be deemed reasonable if the child
 16 is less than 14 years old.
 17 (2) Whenever the definition of an offense excludes
 18 conduct with a spouse, the exclusion shall be deemed to
 19 extend to persons living as husband and wife regardless of
 20 the legal status of their relationship. The exclusion shall
 21 be inoperative as respects spouses living apart whether
 22 under a decree of judicial separation or otherwise. Where
 23 the definition of an offense excludes conduct with a spouse,
 24 this shall not preclude conviction of a spouse in a sexual
 25 act which he or she causes another person, not within the

1 exclusion, to perform.
 2 (3) In a prosecution under the preceding sections on
 3 sexual crimes (45-5-502 through 45-5-504) in which the
 4 victim's lack of consent is based solely upon his incapacity
 5 to consent because he was mentally incapacitated, it is a
 6 defense to such prosecution that the victim was a voluntary
 7 social companion of the defendant and the intoxicating
 8 substance was voluntarily and knowingly taken.
 9 (4) No evidence concerning the sexual conduct of the
 10 victim is admissible in prosecutions under this part except:
 11 (a) evidence of the victim's past sexual conduct with
 12 the offender;
 13 (b) evidence of specific instances of the victim's
 14 sexual activity to show the origin of semen, pregnancy, or
 15 disease which is at issue in the prosecution.
 16 (5) If the defendant proposes for any purpose to offer
 17 evidence described in subsection (4)(a) or (4)(b), the trial
 18 judge shall order a hearing out of the presence of the jury
 19 to determine whether the proposed evidence is admissible
 20 under subsection (4).
 21 (6) Evidence of failure to make a timely complaint or
 22 immediate outcry does not raise any presumption as to the
 23 credibility of the victim.
 24 (7) Resistance by the victim is not required to show
 25 lack of consent. Force, fear, or threat is sufficient alone



-2- INTRODUCED BILL
 HB-598

LC 1527/01

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-End-

APPROVED BY COMMITTEE
ON JUDICIARY

1 INTRODUCTION BY *House* BILL NO. *598*
 2 *Rep. Frank Marcel Miles Van Valkenburg Cobb*
 3 *Rep. Jim Furumell Dave Brown Marko*
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 3 *Rep. Jim Bennett, Dave Bran, Marko*
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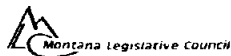
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