

HOUSE BILL 215

Introduced by Brooke, et al.

1/16	Introduced
1/16	Referred to Judiciary
1/16	First Reading
1/25	Hearing
2/02	Tabled in Committee

1 House BILL NO. 215
 2 INTRODUCED BY Senators Yellowtail, Fish, Fisher, Bristle,
 3 Stender, Agnew, Hays, Russell, An, Ford, Cook
 4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LAW OF
 5 DEVIATE SEXUAL CONDUCT BY DECRIMINALIZING CONSENSUAL SEXUAL
 6 RELATIONS BETWEEN PERSONS OF THE SAME SEX; AMENDING SECTIONS
 7 27-2-216, 41-3-102, 45-1-205, 45-2-101, 45-2-103, 45-2-104, 45-5-505,
 8 46-16-216, 46-18-201, 46-18-303, 46-23-502,
 9 50-20-109, AND 61-5-405, MCA; AND PROVIDING AN IMMEDIATE
 10 EFFECTIVE DATE."

11
 12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13 **Section 1.** Section 45-5-505, MCA, is amended to read:

14 "~~45-5-505. Deviate--sexual--conduct~~ Bestiality. (1) A
 15 person who knowingly engages in deviate any form of sexual
 16 relations intercourse with an animal or who causes another
 17 to engage in deviate any form of sexual relations
 18 intercourse with an animal commits the offense of deviate
 19 ~~sexual--conduct~~ bestiality.

20 (2) A person convicted of the offense of ~~deviate--sexual~~
 21 ~~conduct~~ bestiality shall be imprisoned in the state prison
 22 for any term not to exceed 10 years or be fined an amount
 23 not to exceed \$50,000, or both.

24 ~~(3)--The fact that a person seeks--testing--or--receives~~
 25 ~~treatment--for--the--HIV-related--virus--or--another--sexually~~

1 transmitted-disease-may--not--be--used--as--a--basis--for--a
 2 prosecution--under--this--section--and--is--not--admissible--in
 3 evidence--in--a--prosecution--under--this--section."

4 **Section 2.** Section 45-2-101, MCA, is amended to read:

5 "~~45-2-101. General definitions. Unless otherwise~~
 6 specified in the statute, all words will be taken in the
 7 objective standard rather than in the subjective, and unless
 8 a different meaning plainly is required, the following
 9 definitions apply in this title:

10 (1) "Acts" has its usual and ordinary meaning and
 11 includes any bodily movement, any form of communication, and
 12 where when relevant, a failure or omission to take action.

13 (2) "Administrative proceeding" means any proceeding
 14 the outcome of which is required to be based on a record or
 15 documentation prescribed by law or in which a law or a
 16 regulation is particularized in its application to an
 17 individual.

18 (3) "Another" means a person or persons, as defined in
 19 this code, other than the offender.

20 (4) "Benefit" means gain or advantage or anything
 21 regarded by the beneficiary as gain or advantage, including
 22 benefit to any other person or entity in whose welfare he
 23 the beneficiary is interested,--but. Benefit does not include
 24 an advantage promised generally to a group or class of
 25 voters as a consequence of public measures which that a

1 candidate engages to support or oppose.

2 (5) "Bodily injury" means physical pain, illness, or
3 any impairment of physical condition and includes mental
4 illness or impairment.

5 (6) "Cohabit" means to live together under the
6 representation of being married.

7 (7) "Common scheme" means a series of acts or omissions
8 motivated by a purpose to accomplish a single criminal
9 objective or by a common purpose or plan which that results
10 in the repeated commission of the same offense or that
11 affects the same person or the same persons or the property
12 thereof of the same person or persons.

13 (8) "Computer" means an electronic device that performs
14 logical, arithmetic, and memory functions by the
15 manipulation of electronic or magnetic impulses and includes
16 all input, output, processing, storage, software, or
17 communication facilities that are connected or related to
18 such-a that device in a system or network.

19 (9) "Computer network" means the interconnection of
20 communication systems between computers or computers and
21 remote terminals.

22 (10) "Computer program" means an instruction or
23 statement or a series of instructions or statements, in a
24 form acceptable to a computer, that in actual or modified
25 form permits the functioning of a computer or computer

1 system and causes it to perform specified functions.

2 (11) "Computer services" include but are not limited to
3 computer time, data processing, and storage functions.

4 (12) "Computer software" means a set of computer
5 programs, procedures, and associated documentation concerned
6 with the operation of a computer system.

7 (13) "Computer system" means a set of related,
8 connected, or unconnected devices, computer software, or
9 other related computer equipment.

10 (14) "Conduct" means an act or series of acts and the
11 accompanying mental state.

12 (15) "Conviction" means a judgment of conviction or
13 sentence entered upon a plea of guilty or upon a verdict or
14 finding of guilty of an offense rendered by a legally
15 constituted jury or by a court of competent jurisdiction
16 authorized to try the case without a jury.

17 (16) "Correctional institution" means the state prison,
18 county or city jail, or other institution for the
19 incarceration or custody of persons under sentence for
20 offenses or awaiting trial or sentence for offenses.

21 (17) "Deception" means knowingly to:

22 (a) create or confirm in another an impression which
23 that is false and which that the offender does not believe
24 to be true;

25 (b) fail to correct a false impression which that the

1 offender previously has created or confirmed;

2 (c) prevent another from acquiring information
3 pertinent to the disposition of the property involved;

4 (d) sell or otherwise transfer or encumber property,
5 ~~failing-to--disclose~~ without disclosing a lien, adverse
6 claim, or other legal impediment to the enjoyment of the
7 property, whether such the impediment is or is not of value
8 or is or is not a matter of official record; or

9 (e) promise performance which that the offender does
10 not intend to perform or knows will not be performed.
11 Failure to perform, standing alone, is not evidence that the
12 offender did not intend to perform.

13 (18) "Defamatory matter" means anything which that
14 exposes a person or a group, class, or association to
15 hatred, contempt, ridicule, degradation, or disgrace in
16 society or to injury to his the person's or its business or
17 occupation.

18 (19) "Deprive" means to withhold property of another:

19 (a) permanently;

20 (b) for such a period as to appropriate a portion of
21 its value;

22 (c) with the purpose to restore it only upon payment of
23 reward or other compensation; or

24 (d) to dispose of the property and use or deal with the
25 property so as to make it unlikely that the owner will

1 recover it.

2 ~~(20)--"Deviate--sexual-relations"--means-sexual-contact-or~~
3 ~~sexual-intercourse-between-two-persons-of-the--same--sex--or~~
4 ~~any-form-of-sexual-intercourse-with-an-animal--~~

5 ~~(21)~~(20) "Felony" means an offense in which the sentence
6 imposed upon conviction is death or imprisonment in the
7 state prison for any term exceeding 1 year.

8 ~~(22)~~(21) "Forcible felony" means any felony which that
9 involves the use or threat of physical force or violence
10 against any individual.

11 ~~(23)~~(22) A "frisk" is a search by an external patting of
12 a person's clothing.

13 ~~(24)~~(23) "Government" includes any branch, subdivision,
14 or agency of the government of the state or any locality
15 within it.

16 ~~(25)~~(24) "Harm" means loss, disadvantage, or injury or
17 anything so regarded by the person affected, including loss,
18 disadvantage, or injury to any person or entity in whose
19 welfare he the person is interested.

20 ~~(26)~~(25) A "house of prostitution" means any place where
21 prostitution or promotion of prostitution is regularly
22 carried on by one or more persons under the control,
23 management, or supervision of another.

24 ~~(27)~~(26) "Human being" means a person who has been born
25 and is alive.

1 †28†(27) An "illegal article" is an article or thing
2 which that is prohibited by statute, rule, or order from
3 being in the possession of a person subject to official
4 detention.

5 †29†(28) "Inmate" means a person who engages in
6 prostitution in or through the agency of a house of
7 prostitution.

8 †30†(29) "Intoxicating substance" means any controlled
9 substance, as defined in Title 50, chapter 32, and any
10 alcoholic beverage, including but not limited to any
11 beverage containing 1/2 of 1% or more of alcohol by volume.
12 ~~The foregoing definition~~ Intoxicating substance does not
13 ~~extend--to include~~ dealcoholized wine or ~~to~~ any beverage or
14 liquid produced by the process by which beer, ale, port, or
15 wine is produced if it contains less than 1/2 of 1% of
16 alcohol by volume.

17 †31†(30) An "involuntary act" means any act which that
18 is:

- 19 (a) a reflex or convulsion;
- 20 (b) a bodily movement during unconsciousness or sleep;
- 21 (c) conduct during hypnosis or resulting from hypnotic
22 suggestion; or
- 23 (d) a bodily movement that otherwise is not a product
24 of the effort or determination of the actor, either
25 conscious or habitual.

1 †32†(31) "Juror" means any person who is a member of any
2 jury, including a grand jury, impaneled by any court in this
3 state in any action or proceeding or by any officer
4 authorized by law to impanel a jury in any action or
5 proceeding. The term "juror" also includes a person who has
6 been drawn or summoned to attend as a prospective juror.

7 †33†(32) "Knowingly"--a person acts knowingly with
8 respect to conduct or to a circumstance described by a
9 statute defining an offense when he the person is aware of
10 his the person's own conduct or that the circumstance
11 exists. A person acts knowingly with respect to the result
12 of conduct described by a statute defining an offense when
13 he the person is aware that it is highly probable that such
14 the result will be caused by his the conduct. When knowledge
15 of the existence of a particular fact is an element of an
16 offense, such knowledge is established if a person is aware
17 of a high probability of its existence. Equivalent terms,
18 such as "knowing" or "with knowledge", have the same
19 meaning.

20 †34†(33) "Mentally defective" means that a person
21 suffers from a mental disease or defect which that renders
22 him the person incapable of appreciating the nature of his
23 the person's own conduct.

24 †35†(34) "Mentally incapacitated" means that a person is
25 rendered temporarily incapable of appreciating or

controlling ~~his~~ the person's own conduct as a result of the influence of an intoxicating substance.

~~{36}~~{35} "Misdemeanor" means an offense in which the sentence imposed upon conviction is imprisonment in the county jail for any term or a fine, or both, or in which the sentence imposed is imprisonment in the state prison for any term of 1 year or less.

~~{37}~~{36} "Negligently"--a person acts negligently with respect to a result or to a circumstance described by a statute defining an offense when he the person consciously disregards a risk that the result will occur or that the circumstance exists or when he the person disregards a risk of which he the person should be aware that the result will occur or that the circumstance exists. The risk must be of ~~such~~ a nature and degree that to disregard it involves a gross deviation from the standard of conduct that a reasonable person would observe in the actor's situation. "Gross deviation" means a deviation that is considerably greater than lack of ordinary care. Relevant terms, such as "negligent" and "with negligence", have the same meaning.

~~{38}~~{37} "Obtain" means:

(a) in relation to property, to bring about a transfer of interest or possession, whether to the offender or to another; and

(b) in relation to labor or services, to secure the

performance ~~thereof~~ of the labor or service.

~~{39}~~{38} "Obtains or exerts control" includes but is not limited to the taking, the carrying away, or the sale, conveyance, or transfer of title to, interest in, or possession of property.

~~{40}~~{39} "Occupied structure" means any building, vehicle, or other place suitable for human occupancy or night lodging of persons or for carrying on business, whether or not a person is actually present. Each unit of a building consisting of two or more units separately secured or occupied is a separate occupied structure.

~~{41}~~{40} "Offender" means a person who has been or is liable to be arrested, charged, convicted, or punished for a public offense.

~~{42}~~{41} "Offense" means a crime for which a sentence of death or of imprisonment or a fine is authorized. Offenses are classified as felonies or misdemeanors.

~~{43}~~{42} "Official detention" means imprisonment resulting from a conviction for an offense, confinement for an offense, confinement of a person charged with an offense, detention by a peace officer pursuant to arrest, detention for extradition or deportation, or any lawful detention for the purpose of the protection of the welfare of the person detained or for the protection of society. Official detention does not include supervision of probation or

1 parole, constraint incidental to release on bail, or an
2 unlawful arrest unless the person arrested employed physical
3 force, a threat of physical force, or a weapon to escape.

4 †44†(43) "Official proceeding" means a proceeding heard
5 or which that may be heard before any legislative, judicial,
6 administrative, or other governmental agency or official
7 authorized to take evidence under oath, including any
8 referee, hearing examiner, commissioner, notary, or other
9 person taking testimony or deposition in connection with
10 such proceeding.

11 †45†(44) "Other state" means any state or territory of
12 the United States, the District of Columbia, and the
13 Commonwealth of Puerto Rico.

14 †46†(45) "Owner" means a person other than the offender
15 who has possession of or any other interest in the property
16 involved, even though such the interest or possession is
17 unlawful, and without whose consent the offender has no
18 authority to exert control over the property.

19 †47†(46) "Party official" means a person who holds an
20 elective or appointive post in a political party in the
21 United States by virtue of which he the person directs or
22 conducts or participates in directing or conducting party
23 affairs at any level of responsibility.

24 †48†(47) "Peace officer" means any person who by virtue
25 of his office or public employment is vested by law with a

1 duty to maintain public order or to make arrests for
2 offenses while acting within the scope of his authority.

3 †49†(48) "Pecuniary benefit" is benefit in the form of
4 money, property, commercial interests, or anything else the
5 primary significance of which is economic gain.

6 †50†(49) "Person" includes an individual, business
7 association, partnership, corporation, government, or other
8 legal entity and an individual acting or purporting to act
9 for or on behalf of any government or subdivision thereof of
10 government.

11 †51†(50) "Physically helpless" means that a person is
12 unconscious or is otherwise physically unable to communicate
13 unwillingness to act.

14 †52†(51) "Possession" is the knowing control of anything
15 for a sufficient time to be able to terminate control.

16 †53†(52) "Premises" includes any type of structure or
17 building and any real property.

18 †54†(53) "Property" means any tangible or intangible
19 thing of value. Property includes but is not limited to:

- 20 (a) real estate;
- 21 (b) money;
- 22 (c) commercial instruments;
- 23 (d) admission or transportation tickets;
- 24 (e) written instruments which that represent or embody
- 25 rights concerning anything of value, including labor or

1 services, or which that are otherwise of value to the owner;
 2 (f) things growing on, affixed to, or found on land and
 3 things which that are part of or affixed to any building;
 4 (g) electricity, gas, and water;
 5 (h) birds, animals, and fish which that ordinarily are
 6 kept in a state of confinement;
 7 (i) food and drink, samples, cultures, microorganisms,
 8 specimens, records, recordings, documents, blueprints,
 9 drawings, maps, and whole or partial copies, descriptions,
 10 photographs, prototypes, or models thereof;
 11 (j) any other articles, materials, devices, substances,
 12 and any whole or partial copies, descriptions, photographs,
 13 prototypes, or models thereof which that constitute,
 14 represent, evidence, reflect, or record secret scientific,
 15 technical, merchandising, production, or management
 16 information or a secret designed process, procedure,
 17 formula, invention, or improvement; and
 18 (k) electronic impulses, electronically processed or
 19 produced data or information, commercial instruments,
 20 computer software or computer programs, in either machine-
 21 or human-readable form, computer services, any other
 22 tangible or intangible item of value relating to a computer,
 23 computer system, or computer network, and any copies
 24 thereof.
 25 ~~†55†~~(54) "Property of another" means real or personal

1 property in which a person other than the offender has an
 2 interest which that the offender has no authority to defeat
 3 or impair, even though the offender himself may have an
 4 interest in the property.
 5 ~~†56†~~(55) "Public place" means any place to which the
 6 public or any substantial group thereof has access.
 7 ~~†57†~~(56) "Public servant" means any officer or employee
 8 of government, including but not limited to legislators,
 9 judges, and firefighters, and any person participating as a
 10 juror, advisor, consultant, administrator, executor,
 11 guardian, or court-appointed fiduciary. The term does not
 12 include witnesses. The term "public servant" includes one
 13 who has been elected or designated to become a public
 14 servant.
 15 ~~†58†~~(57) "Purposely"--a person acts purposely with
 16 respect to a result or to conduct described by a statute
 17 defining an offense if it is his the person's conscious
 18 object to engage in that conduct or to cause that result.
 19 When a particular purpose is an element of an offense, the
 20 element is established although such the purpose is
 21 conditional, unless the condition negatives the harm or evil
 22 sought to be prevented by the law defining the offense.
 23 Equivalent terms, such as "purpose" and "with the purpose",
 24 have the same meaning.
 25 ~~†59†~~(58) "Serious bodily injury" means bodily injury

1 which that creates a substantial risk of death or which that
 2 causes serious permanent disfigurement or protracted loss or
 3 impairment of the function or process of any bodily member
 4 or organ. It includes serious mental illness or impairment.

5 ~~(60)~~(59) "Sexual contact" means any touching of the
 6 sexual or other intimate parts of the person of another for
 7 the purpose of arousing or gratifying the sexual desire of
 8 either party.

9 ~~(61)~~(60) "Sexual intercourse" means penetration of the
 10 vulva, anus, or mouth of one person by the penis of another
 11 person, penetration of the vulva or anus of one person by
 12 any body member of another person, or penetration of the
 13 vulva or anus of one person by any foreign instrument or
 14 object manipulated by another person for the purpose of
 15 arousing or gratifying the sexual desire of either party.
 16 Any penetration, however slight, is sufficient.

17 (61) "Sexual intercourse with an animal" means any form
 18 of sexual intercourse between an animal and a person.

19 (62) "Solicit" or "solicitation" means to command,
 20 authorize, urge, incite, request, or advise another to
 21 commit an offense.

22 (63) "State" or "this state" means the state of Montana,
 23 all the land and water in respect to which the state of
 24 Montana has either exclusive or concurrent jurisdiction, and
 25 the air space above such land and water.

1 (64) "Statute" means any act of the legislature of this
 2 state.

3 (65) "Stolen property" means property over which control
 4 has been obtained by theft.

5 (66) A "stop" is the temporary detention of a person
 6 that results when a peace officer orders the person to
 7 remain in his the officer's presence.

8 (67) "Tamper" means to interfere with something
 9 improperly, meddle with it, make unwarranted alterations in
 10 its existing condition, or deposit refuse upon it.

11 (68) "Threat" means a menace, however communicated, to:

12 (a) inflict physical harm on the person threatened or
 13 any other person or on property;

14 (b) subject any person to physical confinement or
 15 restraint;

16 (c) commit any criminal offense;

17 (d) accuse any person of a criminal offense;

18 (e) expose any person to hatred, contempt, or ridicule;

19 (f) harm the credit or business repute of any person;

20 (g) reveal any information sought to be concealed by
 21 the person threatened;

22 (h) take action as an official against anyone or
 23 anything, withhold official action, or cause such the action
 24 or withholding;

25 (i) bring about or continue a strike, boycott, or other

1 similar collective action if the property is not demanded or
 2 received for the benefit of the groups ~~which--he~~ that the
 3 person purports to represent; or

4 (j) testify or provide information or withhold
 5 testimony or information with respect to another's legal
 6 claim or defense.

7 (69) (a) "Value" means the market value of the property
 8 at the time and place of the crime or, if ~~such~~ the market
 9 value cannot be satisfactorily ascertained, the cost of the
 10 replacement of the property within a reasonable time after
 11 the crime. If the offender appropriates a portion of the
 12 value of the property, the value ~~shall~~ must be determined as
 13 follows:

14 (i) The value of an instrument constituting an evidence
 15 of debt, such as a check, draft, or promissory note, ~~shall~~
 16 must be considered the amount due or collectible, ~~thereon-or~~
 17 ~~thereby,--such~~ The figure is ordinarily ~~being~~ the face amount
 18 of the indebtedness less any portion ~~thereof--which~~ of the
 19 indebtedness that has been satisfied.

20 (ii) The value of any other instrument ~~which~~ that
 21 creates, releases, discharges, or otherwise affects any
 22 valuable legal right, privilege, or obligation ~~shall~~ must be
 23 considered the amount of economic loss ~~which~~ that the owner
 24 of the instrument might reasonably suffer by virtue of the
 25 loss of the instrument.

1 (iii) The value of electronic impulses, electronically
 2 produced data or information, computer software or programs,
 3 or any other tangible or intangible item relating to a
 4 computer, computer system, or computer network ~~shall~~ must be
 5 considered to be the amount of economic loss that the owner
 6 of the item might reasonably suffer by virtue of the loss of
 7 the item. The determination of the amount of ~~such~~ economic
 8 loss includes but is not limited to consideration of the
 9 value of the owner's right to exclusive use or disposition
 10 of the item.

11 (b) When it cannot be determined if the value of the
 12 property is more or less than \$300 by the standards set
 13 forth in subsection (69)(a) ~~above,~~ its value ~~shall-be~~ is
 14 considered to be an amount less than \$300.

15 (c) Amounts involved in thefts committed pursuant to a
 16 common scheme or the same transaction, whether from the same
 17 person or several persons, may be aggregated in determining
 18 the value of the property.

19 (70) "Vehicle" means any device for transportation by
 20 land, water, or air or by mobile equipment, with provision
 21 for transport of an operator.

22 (71) "Weapon" means any instrument, article, or
 23 substance ~~which~~ that, regardless of its primary function, is
 24 readily capable of being used to produce death or serious
 25 bodily injury.

(72) "Witness" means a person whose testimony is desired in any official proceeding, in any investigation by a grand jury, or in a criminal action, prosecution, or proceeding."

Section 3. Section 27-2-216, MCA, is amended to read:

"27-2-216. Tort actions -- childhood sexual abuse. (1) An action based on intentional conduct brought by a person for recovery of damages for injury suffered as a result of childhood sexual abuse must be commenced not later than:

(a) 3 years after the act of childhood sexual abuse that is alleged to have caused the injury; or

(b) 3 years after the plaintiff discovers or reasonably should have discovered that the injury was caused by the act of childhood sexual abuse.

(2) It is not necessary for a plaintiff to establish which act, in a series of acts of childhood sexual abuse, caused the injury that is the subject of the suit. The plaintiff may compute the period referred to in subsection (1)(a) from the date of the last act by the same perpetrator.

(3) As used in this section, "childhood sexual abuse" means any act committed against a plaintiff who was less than 18 years of age at the time the act occurred and that would have been a violation of 45-5-502, 45-5-503, 45-5-504, 45-5-505, 45-5-507, 45-5-625, or prior similar laws in effect at the time the act occurred.

(4) The provisions of 27-2-401 apply to this section."

Section 4. Section 41-3-102, MCA, is amended to read:

"41-3-102. Definitions. As used in this chapter, the following definitions apply:

(1) "A person responsible for a child's welfare" means the child's parent, guardian, or foster parent; a staff person providing care in a day-care facility; an employee of a public or private residential institution, facility, home, or agency; or any other person legally responsible for the child's welfare in a residential setting.

(2) "Abused or neglected child" means a child whose normal physical or mental health or welfare is harmed or threatened with harm by the acts or omissions of his the child's parent or other person responsible for his the child's welfare.

(3) "Adequate health care" means any medical or nonmedical remedial health care, including the prevention of the withholding of medically indicated treatment or medically indicated psychological care permitted or authorized under state law.

(4) "Child" or "youth" means any person under 18 years of age.

(5) "Department" means the department of family services provided for in 2-15-2401.

(6) "Dependent youth" means a youth:

- 1 (a) who is abandoned;
- 2 (b) who is without parents or guardian or not under the
- 3 care and supervision of a suitable adult;
- 4 (c) who has no proper guidance to provide for his
- 5 necessary physical, moral, and emotional well-being;
- 6 (d) who is destitute;
- 7 (e) who is dependent upon the public for support; or
- 8 (f) whose parent or parents have voluntarily
- 9 relinquished custody of the child and whose legal custody
- 10 has been transferred to a licensed agency.
- 11 (7) "Harm to a child's health or welfare" means the
- 12 harm that occurs whenever the parent or other person
- 13 responsible for the child's welfare:
- 14 (a) inflicts or allows to be inflicted upon the child
- 15 physical or mental injury;
- 16 (b) commits or allows to be committed sexual abuse or
- 17 exploitation of the child;
- 18 (c) causes failure to thrive or otherwise fails to
- 19 supply the child with adequate food or fails to supply
- 20 clothing, shelter, education, or health care, though
- 21 financially able to do so or offered financial or other
- 22 reasonable means to do so;
- 23 (d) abandons the child by leaving him the child under
- 24 circumstances that make reasonable the belief that the
- 25 parent or other person does not intend to resume care of the

- 1 child in the future or by willfully surrendering physical
- 2 custody for a period of 6 months and during that period does
- 3 not manifest to the child and the person having physical
- 4 custody of the child a firm intention to resume physical
- 5 custody or to make permanent legal arrangements for the care
- 6 of the child; or
- 7 (e) is unknown and has been unknown for a period of 90
- 8 days and reasonable efforts to identify and locate the
- 9 parents have failed.
- 10 (8) "Limited emancipation" means a status conferred on
- 11 a dependent youth by a court after a dispositional hearing
- 12 in accordance with 41-3-406 under which the youth is
- 13 entitled to exercise some but not all of the rights and
- 14 responsibilities of a person who is 18 years of age or
- 15 older.
- 16 (9) "Mental injury" means an identifiable and
- 17 substantial impairment of the child's intellectual or
- 18 psychological functioning.
- 19 (10) "Physical injury" means death, permanent or
- 20 temporary disfigurement, or impairment of any bodily organ
- 21 or function and includes death, permanent or temporary
- 22 disfigurement, and impairment of a bodily organ or function
- 23 sustained as a result of excessive corporal punishment.
- 24 (11) "Sexual abuse" means the commission of sexual
- 25 assault, sexual intercourse without consent, indecent

1 exposure, ~~deviate-sexual-conduct~~, or incest, as described in
2 Title 45, chapter 5, part 5.

3 (12) "Sexual exploitation" means allowing, permitting,
4 or encouraging a child to engage in a prostitution offense,
5 as described in 45-5-601 through 45-5-603, or allowing,
6 permitting, or encouraging sexual abuse of children as
7 described in 45-5-625.

8 (13) "Social worker" means an employee of the department
9 of family services whose duties generally involve the
10 provision of either child or adult protective services, or
11 both.

12 (14) "Threatened harm to a child's health or welfare"
13 means substantial risk of harm to the child's health or
14 welfare.

15 (15) "Withholding of medically indicated treatment"
16 means the failure to respond to an infant's life-threatening
17 conditions by providing treatment (including appropriate
18 nutrition, hydration, and medication) that, in the treating
19 physician's or physicians' reasonable medical judgment, will
20 be most likely to be effective in ameliorating or correcting
21 ~~all-such~~ those conditions. However, the term does not
22 include the failure to provide treatment (other than
23 appropriate nutrition, hydration, or medication) to an
24 infant when, in the treating physician's or physicians'
25 reasonable medical judgment:

1 (a) the infant is chronically and irreversibly
2 comatose;

3 (b) the provision of ~~such~~ treatment would:

4 (i) merely prolong dying;

5 (ii) not be effective in ameliorating or correcting all
6 of the infant's life-threatening conditions; or

7 (iii) otherwise be futile in terms of the survival of
8 the infant; or

9 (c) the provision of ~~such~~ treatment would be virtually
10 futile in terms of the survival of the infant and the
11 treatment itself under such circumstances would be inhumane.
12 For purposes of this subsection, "infant" means an infant
13 less than 1 year of age or an infant 1 year of age or older
14 who has been continuously hospitalized since birth, who was
15 born extremely prematurely, or who has a long-term
16 disability. The reference to less than 1 year of age may not
17 be construed to imply that treatment should be changed or
18 discontinued when an infant reaches 1 year of age or to
19 affect or limit any existing protections available under
20 state laws regarding medical neglect of children over 1 year
21 of age.

22 (16) "Youth in need of care" means a youth who is
23 dependent, or is ~~abused~~, or neglected, as defined in this
24 section."

25 **Section 5.** Section 45-1-205, MCA, is amended to read:

1 "45-1-205. General time limitations. (1) (a) A
2 prosecution for deliberate, mitigated, or negligent homicide
3 may be commenced at any time.

4 (b) A prosecution under 45-5-502 through 45-5-505
5 45-5-504, 45-5-507, or 45-5-625 may be commenced within 5
6 years after the victim reaches the age of 18 if the victim
7 was less than 18 years old at the time the offense occurred.

8 (2) Except as otherwise provided by law, prosecutions
9 for other offenses are subject to the following periods of
10 limitation:

11 (a) A prosecution for a felony must be commenced within
12 5 years after it is committed.

13 (b) A prosecution for a misdemeanor must be commenced
14 within 1 year after it is committed.

15 (3) The period prescribed in subsection (2) is extended
16 in a prosecution for theft involving a breach of fiduciary
17 obligation to an aggrieved person as follows:

18 (a) if the aggrieved person is a minor or incompetent,
19 during the minority or incompetency or within 1 year after
20 the termination thereof of the minority or incompetency;

21 (b) in any other instance, within 1 year after the
22 discovery of the offense by the aggrieved person or by a
23 person who has legal capacity to represent an aggrieved
24 person or has a legal duty to report the offense and is not
25 himself a party to the offense or, in the absence of such

1 discovery, within 1 year after the prosecuting officer
2 becomes aware of the offense.

3 (4) The period prescribed in subsection (2) ~~shall~~ must
4 be extended in a prosecution for unlawful use of a computer,
5 and prosecution ~~shall~~ must be brought within 1 year after
6 the discovery of the offense by the aggrieved person or by a
7 person who has legal capacity to represent an aggrieved
8 person or has a legal duty to report the offense and is not
9 himself a party to the offense or, in the absence of such
10 discovery, within 1 year after the prosecuting officer
11 becomes aware of the offense.

12 (5) The period prescribed in subsection (2) is extended
13 in a prosecution for misdemeanor fish and wildlife
14 violations under Title 87, and prosecution must be brought
15 within 3 years after an offense is committed.

16 (6) An offense is committed either when every element
17 occurs or, when the offense is based upon a continuing
18 course of conduct, at the time when the course of conduct is
19 terminated. Time starts to run on the day after the offense
20 is committed.

21 (7) A prosecution is commenced either when an
22 indictment is found or when an information or complaint is
23 filed."

24 **Section 6.** Section 45-2-103, MCA, is amended to read:

25 "45-2-103. General requirements of criminal act and

1 ~~mental~~ state. (1) Except for deliberate homicide as defined
 2 in 45-5-102(1)(b) or an offense which that involves absolute
 3 liability, a person is not guilty of an offense unless, with
 4 respect to each element described by the statute defining
 5 the offense, ~~he~~ the person acts while having one of the
 6 mental states described in subsections ~~(33)~~ (32), ~~(37)~~ (36),
 7 and ~~(58)~~ (57) of 45-2-101.

8 (2) In deliberate homicide under 45-5-102(1)(b), the
 9 offender must ~~act~~ have acted while having the mental state
 10 of purposely or knowingly only as to the underlying felony
 11 referred to in 45-5-102(1)(b).

12 (3) The existence of a mental state may be inferred
 13 from the acts of the accused and the facts and circumstances
 14 connected with the offense.

15 (4) If the statute defining an offense prescribes a
 16 particular mental state with respect to the offense as a
 17 whole without distinguishing among the elements ~~thereof~~ of
 18 the offense, the prescribed mental state applies to each
 19 such element.

20 (5) Knowledge that certain conduct constitutes an
 21 offense or knowledge of the existence, meaning, or
 22 application of the statute defining an offense is not an
 23 element of the offense unless the statute clearly defines it
 24 as such an element of the offense.

25 (6) A person's reasonable belief that ~~his~~ the person's

1 own conduct does not constitute an offense is a defense if:

2 (a) the offense is defined by an administrative
 3 regulation or order which that is not known to ~~him~~ the
 4 person and has not been published or otherwise made
 5 reasonably available to ~~him~~ and ~~he~~ the person could not have
 6 acquired such that knowledge by the exercise of due
 7 diligence pursuant to facts known to ~~him~~ the person;

8 (b) ~~he~~ the person acts in reliance upon a statute which
 9 that later is determined to be invalid;

10 (c) ~~he~~ the person acts in reliance upon an order or
 11 opinion of the Montana supreme court or a United States
 12 appellate court later overruled or reversed; or

13 (d) ~~he~~ the person acts in reliance upon an official
 14 interpretation of the statute, regulation, or order defining
 15 the offense made by a public officer or agency legally
 16 authorized to interpret such the statute, regulation, or
 17 order.

18 (7) If a person's reasonable belief is a defense under
 19 subsection (6), ~~nevertheless~~ he the person may be convicted
 20 of an included offense of which ~~he~~ the person would be
 21 guilty if the law were as ~~he~~ the person believed it to be.

22 (8) Any defense based upon this section is an
 23 affirmative defense."

24 **Section 7.** Section 45-2-104, MCA, is amended to read:

25 "45-2-104. Absolute liability. A person may be guilty

of an offense without having, as to each element thereof of the offense, one of the mental states described in subsections ~~(33)~~ (32), ~~(37)~~ (36), and ~~(58)~~ (57) of 45-2-101 only if the offense is punishable by a fine not exceeding \$500 or the statute defining the offense clearly indicates a legislative purpose to impose absolute liability for the conduct described."

Section 8. Section 46-16-216, MCA, is amended to read:

"46-16-216. Videotaped testimony. (1) For any prosecution commenced under 45-5-502(3), 45-5-503, 45-5-505, or 45-5-507 or for prosecution of any offense against the person provided for in Title 45, chapter 5, involving a victim who is under 16 years of age, the testimony of the victim, at the request of the victim and with the concurrence of the prosecutor, may be recorded by means of videotape for presentation at trial. The recorded testimony may be presented at trial and must be received into evidence. The victim need not be physically present in the courtroom when the videotape is admitted into evidence.

(2) The procedural and evidentiary rules of the state that are applicable to criminal trials within the state apply to the videotape proceedings authorized by this section.

(3) The district court judge, the prosecutor, the victim, the defendant, the defendant's attorney, and other

persons as are considered necessary by the court to make the recordings authorized under this section must be allowed to attend the videotape proceedings.

(4) Videotapes that are part of the court record are subject to a protective order of the court for the purpose of protecting the privacy of the victim."

Section 9. Section 46-18-201, MCA, is amended to read:

"46-18-201. Sentences that may be imposed. (1) Whenever a person has been found guilty of an offense upon a verdict or a plea of guilty, the court may:

(a) defer imposition of sentence, except as provided in 61-8-714 and 61-8-722 for sentences for driving under the influence of alcohol or drugs, for a period, except as otherwise provided, not exceeding 1 year for any misdemeanor or for a period not exceeding 3 years for any felony. The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the period of the deferred imposition. Reasonable restrictions or conditions may include:

- (i) jail base release;
- (ii) jail time not exceeding 180 days;
- (iii) conditions for probation;
- (iv) restitution;
- (v) payment of the costs of confinement;
- (vi) payment of a fine as provided in 46-18-231;

1 (vii) payment of costs as provided in 46-18-232 and
 2 46-18-233;
 3 (viii) payment of costs of court-appointed counsel as
 4 provided in 46-8-113;
 5 (ix) with the approval of the facility or program, order
 6 the offender to be placed in a community corrections
 7 facility or program as provided in 53-30-321;
 8 (x) community service;
 9 (xi) home arrest as provided in Title 46, chapter 18,
 10 part 10;
 11 (xii) any other reasonable conditions considered
 12 necessary for rehabilitation or for the protection of
 13 society; or
 14 (xiii) any combination of the above.
 15 (b) suspend execution of sentence up to the maximum
 16 sentence allowed for each particular offense. The sentencing
 17 judge may impose on the defendant any reasonable
 18 restrictions or conditions during the period of suspended
 19 sentence. Reasonable restrictions or conditions may include
 20 any of those listed in subsection (1)(a).
 21 (c) impose a fine as provided by law for the offense;
 22 (d) require payment of costs as provided in 46-18-232
 23 or payment of costs of court-appointed counsel as provided
 24 in 46-8-113;
 25 (e) commit the defendant to a correctional institution,

1 with or without a fine as provided by law for the offense;
 2 (f) with the approval of the facility or program, order
 3 the offender to be placed in a community corrections
 4 facility or program as provided in 53-30-321;
 5 (g) impose any combination of subsections (1)(b)
 6 through (1)(f).
 7 (2) If a financial obligation is imposed as a condition
 8 under subsection (1)(a), sentence may be deferred for a
 9 period not exceeding 2 years for a misdemeanor or for a
 10 period not exceeding 6 years for a felony, regardless of
 11 whether any other conditions are imposed.
 12 (3) If any restrictions or conditions imposed under
 13 subsection (1)(a) or (1)(b) are violated, the court shall
 14 consider any elapsed time and either expressly allow part or
 15 all of it as a credit against the sentence or reject all or
 16 part as a credit and state its reasons in the order. Credit,
 17 however, must be allowed for jail or home arrest time
 18 already served.
 19 (4) Except as provided in 45-9-202 and 46-18-222, the
 20 imposition or execution of the first 2 years of a sentence
 21 of imprisonment imposed under the following sections may not
 22 be deferred or suspended: 45-5-103, 45-5-202(3) relating to
 23 aggravated assault, 45-5-302(2), 45-5-303(2), 45-5-401(2),
 24 45-5-502(3), 45-5-503(2) and (3), 45-9-101(2), (3), and
 25 (5)(d), 45-9-102(4), and 45-9-103(2).

(5) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a sentence of imprisonment imposed under 45-5-102 may not be deferred or suspended.

(6) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the case of a defendant who has been convicted of a felony on a prior occasion, whether or not the sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was suspended.

(7) If the victim was less than 16 years old, the imposition or execution of the first 30 days of a sentence of imprisonment imposed under 45-5-503, 45-5-504, 45-5-505, or 45-5-507 may not be deferred or suspended. Section 46-18-222 does not apply to the first 30 days of the imprisonment.

(8) In imposing a sentence on a defendant convicted of a sexual offense as defined in 46-23-502, the court may not waive the registration requirement provided in 46-18-254, 46-18-255, and Title 46, chapter 23, part 5.

(9) A person convicted of a sexual offense, as defined in 46-23-502, and sentenced to imprisonment in the state prison shall enroll in the educational phase of the prison's sexual offender program.

(10) In sentencing a nonviolent felony offender, the

court shall first consider alternatives to imprisonment of the offender in the state prison, including placement of the offender in a community corrections facility or program. In considering alternatives to imprisonment, the court shall examine the sentencing criteria contained in 46-18-225. If the offender is subsequently sentenced to the state prison or a the women's correctional facility center, the court shall state its reasons why alternatives to imprisonment were not selected, based on the criteria contained in 46-18-225."

Section 10. Section 46-18-303, MCA, is amended to read:

"46-18-303. Aggravating circumstances. Aggravating circumstances are any of the following:

(1) The offense was deliberate homicide and was committed by a person serving a sentence of imprisonment in the state prison.

(2) The offense was deliberate homicide and was committed by a defendant who had been previously convicted of another deliberate homicide.

(3) The offense was deliberate homicide and was committed by means of torture.

(4) The offense was deliberate homicide and was committed by a person lying in wait or ambush.

(5) The offense was deliberate homicide and was committed as a part of a scheme or operation which that, if

completed, would result in the death of more than one person.

(6) The offense was deliberate homicide as defined in subsection (1)(a) of 45-5-102, and the victim was a peace officer killed while performing his the officer's duty.

(7) The offense was aggravated kidnapping which that resulted in the death of the victim or the death by direct action of the defendant of a person who rescued or attempted to rescue the victim.

(8) The offense was attempted deliberate homicide, aggravated assault, or aggravated kidnapping committed while incarcerated at the state prison by a person who has been previously:

(a) convicted of the offense of deliberate homicide; or

(b) found to be a persistent felony offender pursuant to part 5 of this chapter and one of the convictions was for an offense against the person in violation of Title 45, chapter 5, for which the minimum prison term is not less than 2 years.

(9) The offense was deliberate homicide and was committed by a person during the course of committing sexual assault, sexual intercourse without consent, ~~deviate--sexual~~ ~~conduct,~~ or incest, and the victim was less than 18 years of age."

Section 11. Section 46-23-502, MCA, is amended to read:

"46-23-502. Definitions. As used in 46-18-254, 46-18-255, and this part, the following definitions apply:

(1) "Department" means the department of corrections and human services provided for in Title 2, chapter 15, part 23.

(2) "Sexual offender" means a person who has been convicted of a sexual offense.

(3) "Sexual offense" means:

(a) any violation of 45-5-502(3), 45-5-503, 45-5-505, 45-5-507 (unless the act occurred between two consenting persons 16 years of age or older), or 45-5-625; or

(b) any violation of a law of another state or the federal government reasonably equivalent to a violation listed in subsection (3)(a)."

Section 12. Section 50-20-109, MCA, is amended to read:

"50-20-109. Control of practice of abortion. (1) No An abortion may not be performed within the state of Montana:

(a) except by a licensed physician;

(b) after the first 3 months of pregnancy, except in a hospital licensed by the department;

(c) after viability of the fetus, unless in appropriate medical judgment the abortion is necessary to preserve the life or health of the mother.

(2) An abortion under subsection (1)(c) may only be performed if:

(a) the foregoing judgment of the physician who is to perform the abortion is first certified in writing by him the physician, setting forth in detail the facts relied upon ~~which he relies~~ in making such the judgment; and

(b) two other licensed physicians have first examined the patient and concurred in writing with such the judgment. The ~~foregoing~~ certification and concurrence is not required if a licensed physician certifies that the abortion is necessary to preserve the life of the mother.

(3) The timing and procedure used in performing an abortion under subsection (1)(c) of this section must be such that the viability of the fetus is not intentionally or negligently endangered, as the term "negligently" is defined in 45-2-101~~(37)~~. The fetus may be intentionally endangered or destroyed only if necessary to preserve the life or health of the mother.

(4) ~~No~~ A physician, facility, or other person or agency ~~shall~~ may not engage in solicitation, advertising, or other form of communication having the purpose of inviting, inducing, or attracting any person to come to such the physician, facility, or other person or agency to have an abortion or to purchase abortifacients.

(5) Violation of subsections (1), (2), and (3) ~~of--this section~~ is a felony. Violation of subsection (4) ~~of--this section~~ is a misdemeanor."

Section 13. Section 61-5-405, MCA, is amended to read:

***61-5-405.** Offenses furnishing ground for suspension or revocation of license -- return to licensing jurisdiction of abstracts of court records and reports of conviction. (1) Items enumerated in Article IV(1), subsections (a), (b), (c), and (d) of 61-5-401 refer specifically to 45-5-103, 45-5-104, 61-8-401, 45-2-101~~(21)~~(20), and 61-7-103, respectively.

(2) In addition to convictions mentioned above, the department, for the purpose of suspension, revocation, or limitation of the license to operate a motor vehicle, shall give the same effect to the conduct reported as it would if such the conduct had occurred in this state for:

(a) convictions of perjury or the making of a false affidavit relating to the ownership or operation of a motor vehicle (61-5-303); and

(b) three convictions of reckless driving committed within a period of 12 months (61-8-301).

(3) Court abstracts or reports of conviction received by the department that name an individual licensed in another jurisdiction must be forwarded to the jurisdiction of licensure. The department may not take action against the driver's license or driving privilege of the individual as may be required elsewhere in this title."

NEW SECTION. Section 14. Coordination instruction. The

LC 0055/01

1 code commissioner is instructed to revise any bill passed by
2 the 53rd legislature by deleting any newly enacted reference
3 to "deviate sexual conduct".

4 NEW SECTION. **Section 15.** Effective date. [This act] is
5 effective on passage and approval.

-End-