

Moore  
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Jensen  
Billard

*B. Harty*  
*Johnson*  
*Sliter*  
*DENNY*  
*Bergman*  
*Josh ORR*  
SB BILL NO. 201

INTRODUCED BY

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR A DEATH SENTENCE FOR A PERSON CONVICTED TWICE OF SEXUAL INTERCOURSE WITHOUT CONSENT WHO INFLECTED SERIOUS BODILY INJURY ON A PERSON DURING THE COMMISSION OF EACH OFFENSE; AND AMENDING SECTIONS 45-5-503 AND 46-18-303, MCA."

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

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

"45-5-503. (Temporary) Sexual intercourse without consent. (1) A person who knowingly has sexual intercourse without consent with another person commits the offense of sexual intercourse without consent. A person may not be convicted under this section based on the age of the person's spouse, as provided in 45-5-501(1)(b)(iii).

(2) A person convicted of sexual intercourse without consent shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 2 years or more than 100 years and may be fined not more than \$50,000, except as provided in 46-18-222.

(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, the offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 4 years or more than 100 years and may be fined not more than \$50,000, except as provided in 46-18-222.

(b) If two or more persons are convicted of sexual intercourse without consent with the same victim in an incident in which each offender was present at the location where another offender's offense occurred during a time period in which each offender could have reasonably known of the other's offense, each offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 5 years or more than 100 years and may be fined not more than \$50,000, except as provided in 46-18-222.

(4) In addition to any sentence imposed under subsection (2) or (3), after determining the financial

1 resources and future ability of the offender to pay restitution as required by 46-18-242, the court shall  
2 require the offender, if able, to pay the victim's reasonable medical and counseling costs that result from  
3 the offense. The amount, method, and time of payment must be determined in the same manner as  
4 provided for in 46-18-244.

5 (5) As used in subsection (3), an act "in the course of committing sexual intercourse without  
6 consent" includes an attempt to commit the offense or flight after the attempt or commission.

7 **45-5-503. (Effective July 1, 1997) Sexual intercourse without consent.** (1) A person who  
8 knowingly has sexual intercourse without consent with another person commits the offense of sexual  
9 intercourse without consent. A person may not be convicted under this section based on the age of the  
10 person's spouse, as provided in 45-5-501(1)(b)(iii).

11 (2) A person convicted of sexual intercourse without consent shall be punished by life  
12 imprisonment or by imprisonment in the state prison for a term of not less than 2 years or more than 100  
13 years and may be fined not more than \$50,000, except as provided in 46-18-219 and 46-18-222.

14 (3) (a) If the victim is less than 16 years old and the offender is 3 or more years older than the  
15 victim or if the offender inflicts bodily injury upon anyone in the course of committing sexual intercourse  
16 without consent, the offender shall be punished by life imprisonment or by imprisonment in the state prison  
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19 (b) If two or more persons are convicted of sexual intercourse without consent with the same  
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24 in 46-18-219 and 46-18-222.

25 (c) If the offender was previously convicted of an offense under this section or of an offense under  
26 the laws of another state or of the United States that if committed in this state would be an offense under  
27 this section, the offender shall be:

28 (i) punished by death as provided in 46-18-301 through 46-18-310; or

29 (ii) if the court determines that the sentence of death cannot be imposed under 46-18-301 through  
30 46-18-310, punished as provided in 46-18-219.

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5 provided for in 46-18-244.

6 (5) As used in subsection (3), an act "in the course of committing sexual intercourse without  
7 consent" includes an attempt to commit the offense or flight after the attempt or commission."  
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9 **Section 2.** Section 46-18-303, MCA, is amended to read:

10 **"46-18-303. Aggravating circumstances.** Aggravating circumstances are any of the following:

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

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

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

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

17 (5) The offense was deliberate homicide and was committed as a part of a scheme or operation  
18 ~~which~~ that, if completed, would result in the death of more than one person.

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

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

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

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

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

29 (9) The offense was deliberate homicide and was committed by a person during the course of  
30 committing sexual assault, sexual intercourse without consent, deviate sexual conduct, or incest, and the

1 victim was less than 18 years of age.

2       (10) The offense was sexual intercourse without consent and the defendant has a previous  
3 conviction of sexual intercourse without consent in this state or of an offense under the laws of another  
4 state or of the United States that if committed in this state would be the offense of sexual intercourse  
5 without consent and the defendant inflicted serious bodily injury upon a person in the course of committing  
6 each offense."

7

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0201, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act providing for a death sentence for a person twice convicted of sexual intercourse without consent who inflicts serious bodily injury on the victim.

ASSUMPTIONS:

1. The Department of Justice (DOJ) is responsible for representing the state in all capital cases following the conviction and imposition of sentence. In addition, the DOJ frequently assists local prosecutors during trial and sentencing of cases in which the death sentence may be imposed. Currently, the DOJ is handling approximately seven death penalty cases. Of the seven, four of the cases were handled at the prosecution and/or sentencing level by the County Prosecutor Services Bureau. All appeals in state and federal courts have been handled by attorneys in the Appellate Legal Services Bureau.
2. Capital cases require a significantly greater investment of attorney time than other criminal cases, both in preparation for sentencing and in the appeals that follow. For example, in one death penalty case, approximately 1200 hours of attorney time were spent during the year in which the offender's first petition for post-conviction relief was filed in state district court. In another case--the only case in which the death penalty was carried out in recent history--attorneys spent over 700 hours during the final four weeks prior to the execution.
3. Because the investment of attorney time depends greatly on the facts and issues involved in the case, the impact to the DOJ cannot be predicted with certainty. It is assumed that a death sentence will be imposed in approximately one-half of the cases that qualify for a death sentence under the bill. Based on the figures provided by the Department of Corrections (DOC), it is assumed that one additional death sentence will be imposed during the next biennium if SB 201 is passed. The DOJ would likely absorb the additional workload with existing staff. (See technical note.)
4. The length of the appeal process in the most recent death sentence execution was 22 years, but the national average is significantly less.
5. A total of 9 offenders were re-convicted of 45-5-503, MCA, sexual intercourse without consent between fiscal years 1990-1995. The average time served for these offenders is 12.6 years.
6. The DOC assumes that this bill applies to offenses committed after 10/1/97.
7. Because of the length of the appeals process in death penalty cases, this bill would have no fiscal impact on the DOC in fiscal 1998 or 1999.
8. This legislation increases the availability of the death penalty. Therefore, the number of appeals from district court to the supreme court could increase.

FISCAL IMPACT:

The cost of appeals funded from the District Court Criminal Reimbursement Program (general fund statutory appropriation) may increase. This potential increase cannot be estimated.

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

Defense costs in capital cases are paid out of the district court reimbursement fund and, if funding runs out, by the counties. These costs will also increase.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

There may be long-range negative fiscal impact as the number of years of incarceration for these offenders could increase from 12.6 to an unknown number up to 22 years. The DOC would also incur the cost of execution.

TECHNICAL NOTES:

If HB 222 passes, it will require stricter time deadlines in capital cases. The DOJ has requested additional funding for implementing the deadlines required by HB 222, and the additional staff would be responsible for handling any capital cases that result from SB 201/202. However, if HB 222 passes and additional funds are not appropriated, the DOJ would not be able to handle any new capital cases with existing resources.

David Lewis 1/25/97  
DAVID LEWIS, BUDGET DIRECTOR DATE  
Office of Budget and Program Planning

William Glaser 1/27/97  
WILLIAM GLASER, PRIMARY SPONSOR DATE

Fiscal Note for SB0201, as introduced

**SB 201**

1 INTRODUCED BY *B. J. Fisher* *Sliter* *DENNY*  
2 *Adams* *SB BILL NO. 201* *Bryman* *Josh* *ORR*  
3 *Boyd* *Mr. E. Blom* *Kottel* *Ellis* *Clark* *Brainard* *Kelly*  
4 *Anderson* *Foster* *Wagner* *Wiseman* *John*  
5 *Sims* A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR A DEATH SENTENCE FOR A PERSON  
6 CONVICTED TWICE OF SEXUAL INTERCOURSE WITHOUT CONSENT WHO INFLICTED SERIOUS BODILY  
7 INJURY ON A PERSON DURING THE COMMISSION OF EACH OFFENSE; AND AMENDING SECTIONS  
8 45-5-503 AND 46-18-303, MCA." *Knox* *Beaudry* *Jayla* *Barnett* *Bookout*  
*Holland* *Smith* *Ball* *Hayne* *Simpson* *Storck*

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25 (c) If the offender was previously convicted of an offense under this section or of an offense under  
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19 (6) The offense was deliberate homicide as defined in ~~subsection (1)(a) of 45-5-102 (1)(a)~~, and the  
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2 INTRODUCED BY GLASER, KOTTEL, ELLIS, CLARK, BRAINARD, KEATING, BITNEY, AHNER, LAWSON,  
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4 resources and future ability of the offender to pay restitution as required by 46-18-242, the court shall  
5 require the offender, if able, to pay the victim's reasonable medical and counseling costs that result from  
6 the offense. The amount, method, and time of payment must be determined in the same manner as  
7 provided for in 46-18-244.

8 (5) As used in subsection (3), an act "in the course of committing sexual intercourse without  
9 consent" includes an attempt to commit the offense or flight after the attempt or commission.

10 **45-5-503. (Effective July 1, 1997) Sexual intercourse without consent.** (1) A person who  
11 knowingly has sexual intercourse without consent with another person commits the offense of sexual  
12 intercourse without consent. A person may not be convicted under this section based on the age of the  
13 person's spouse, as provided in 45-5-501(1)(b)(iii).

14 (2) A person convicted of sexual intercourse without consent shall be punished by life  
15 imprisonment or by imprisonment in the state prison for a term of not less than 2 years or more than 100  
16 years and may be fined not more than \$50,000, except as provided in 46-18-219 and 46-18-222.

17 (3) (a) If the victim is less than 16 years old and the offender is 3 or more years older than the  
18 victim or if the offender inflicts bodily injury upon anyone in the course of committing sexual intercourse  
19 without consent, the offender shall be punished by life imprisonment or by imprisonment in the state prison  
20 for a term of not less than 4 years or more than 100 years and may be fined not more than \$50,000,  
21 except as provided in 46-18-219 and 46-18-222.

22 (b) If two or more persons are convicted of sexual intercourse without consent with the same  
23 victim in an incident in which each offender was present at the location where another offender's offense  
24 occurred during a time period in which each offender could have reasonably known of the other's offense,  
25 each offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of  
26 not less than 5 years or more than 100 years and may be fined not more than \$50,000, except as provided  
27 in 46-18-219 and 46-18-222.

28 (c) If the offender was previously convicted of an offense under this section or of an offense under  
29 the laws of another state or of the United States that if committed in this state would be an offense under  
30 this section AND IF THE OFFENDER INFLECTED SERIOUS BODILY INJURY UPON A PERSON IN THE

1 COURSE OF COMMITTING EACH OFFENSE, the offender shall be:

2 (i) punished by death as provided in 46-18-301 through 46-18-310; or

3 (ii) if the court determines that the sentence of death cannot be imposed under 46-18-301 through  
 4 46-18-310, punished as provided in 46-18-219.

5 (4) In addition to any sentence imposed under subsection (2) or (3), after determining the financial  
 6 resources and future ability of the offender to pay restitution as required by 46-18-242, the court shall  
 7 require the offender, if able, to pay the victim's reasonable medical and counseling costs that result from  
 8 the offense. The amount, method, and time of payment must be determined in the same manner as  
 9 provided for in 46-18-244.

10 (5) As used in subsection (3), an act "in the course of committing sexual intercourse without  
 11 consent" includes an attempt to commit the offense or flight after the attempt or commission."

12  
 13 **Section 2.** Section 46-18-303, MCA, is amended to read:

14 **"46-18-303. Aggravating circumstances.** Aggravating circumstances are any of the following:

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

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

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

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

21 (5) The offense was deliberate homicide and was committed as a part of a scheme or operation  
 22 ~~which that~~, if completed, would result in the death of more than one person.

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

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

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

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

30 (b) found to be a persistent felony offender pursuant to part 5 of this chapter and one of the



1 convictions was for an offense against the person in violation of Title 45, chapter 5, for which the minimum  
2 prison term is not less than 2 years.

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

6 (10) The offense was sexual intercourse without consent and the defendant has a previous  
7 conviction of sexual intercourse without consent in this state or of an offense under the laws of another  
8 state or of the United States that if committed in this state would be the offense of sexual intercourse  
9 without consent and the defendant inflicted serious bodily injury upon a person in the course of committing  
10 each offense."

11

-END-

SENATE BILL NO. 201

INTRODUCED BY GLASER, KOTTEL, ELLIS, CLARK, BRAINARD, KEATING, BITNEY, AHNER, LAWSON, SLITER, DENNY, BERGMAN, TASH, ORR, ADAMS, EMERSON, FOSTER, DEVLIN, WAGNER, WISEMAN, COLE, FELAND, COBB, JORE, MOOD, CURTISS, ANDERSON, SIMON, HOLLAND, SMITH, BANKHEAD, KNOX, BEAUDRY, TAYLOR, BARNETT, BOOKOUT, HAYNE, SIMPSON, STOVALL

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR A DEATH SENTENCE FOR A PERSON CONVICTED TWICE OF SEXUAL INTERCOURSE WITHOUT CONSENT WHO INFLICTED SERIOUS BODILY INJURY ON A PERSON DURING THE COMMISSION OF EACH OFFENSE; AND AMENDING SECTIONS 45-5-503 AND 46-18-303, MCA."

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

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

"45-5-503. (Temporary) Sexual intercourse without consent. (1) A person who knowingly has sexual intercourse without consent with another person commits the offense of sexual intercourse without consent. A person may not be convicted under this section based on the age of the person's spouse, as provided in 45-5-501(1)(b)(iii).

(2) A person convicted of sexual intercourse without consent shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 2 years or more than 100 years and may be fined not more than \$50,000, except as provided in 46-18-222.

(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, the offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 4 years or more than 100 years and may be fined not more than \$50,000, except as provided in 46-18-222.

(b) If two or more persons are convicted of sexual intercourse without consent with the same victim in an incident in which each offender was present at the location where another offender's offense occurred during a time period in which each offender could have reasonably known of the other's offense, each offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of

1 not less than 5 years or more than 100 years and may be fined not more than \$50,000, except as provided  
2 in 46-18-222.

3 (4) In addition to any sentence imposed under subsection (2) or (3), after determining the financial  
4 resources and future ability of the offender to pay restitution as required by 46-18-242, the court shall  
5 require the offender, if able, to pay the victim's reasonable medical and counseling costs that result from  
6 the offense. The amount, method, and time of payment must be determined in the same manner as  
7 provided for in 46-18-244.

8 (5) As used in subsection (3), an act "in the course of committing sexual intercourse without  
9 consent" includes an attempt to commit the offense or flight after the attempt or commission.

10 **45-5-503. (Effective July 1, 1997) Sexual intercourse without consent.** (1) A person who  
11 knowingly has sexual intercourse without consent with another person commits the offense of sexual  
12 intercourse without consent. A person may not be convicted under this section based on the age of the  
13 person's spouse, as provided in 45-5-501(1)(b)(iii).

14 (2) A person convicted of sexual intercourse without consent shall be punished by life  
15 imprisonment or by imprisonment in the state prison for a term of not less than 2 years or more than 100  
16 years and may be fined not more than \$50,000, except as provided in 46-18-219 and 46-18-222.

17 (3) (a) If the victim is less than 16 years old and the offender is 3 or more years older than the  
18 victim or if the offender inflicts bodily injury upon anyone in the course of committing sexual intercourse  
19 without consent, the offender shall be punished by life imprisonment or by imprisonment in the state prison  
20 for a term of not less than 4 years or more than 100 years and may be fined not more than \$50,000,  
21 except as provided in 46-18-219 and 46-18-222.

22 (b) If two or more persons are convicted of sexual intercourse without consent with the same  
23 victim in an incident in which each offender was present at the location where another offender's offense  
24 occurred during a time period in which each offender could have reasonably known of the other's offense,  
25 each offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of  
26 not less than 5 years or more than 100 years and may be fined not more than \$50,000, except as provided  
27 in 46-18-219 and 46-18-222.

28 (c) If the offender was previously convicted of an offense under this section or of an offense under  
29 the laws of another state or of the United States that if committed in this state would be an offense under  
30 this section AND IF THE OFFENDER INFLICTED SERIOUS BODILY INJURY UPON A PERSON IN THE

1 COURSE OF COMMITTING EACH OFFENSE, the offender shall be:

2 (i) punished by death as provided in 46-18-301 through 46-18-310; or

3 (ii) if the court determines that the sentence of death cannot be imposed under 46-18-301 through  
4 46-18-310, punished as provided in 46-18-219.

5 (4) In addition to any sentence imposed under subsection (2) or (3), after determining the financial  
6 resources and future ability of the offender to pay restitution as required by 46-18-242, the court shall  
7 require the offender, if able, to pay the victim's reasonable medical and counseling costs that result from  
8 the offense. The amount, method, and time of payment must be determined in the same manner as  
9 provided for in 46-18-244.

10 (5) As used in subsection (3), an act "in the course of committing sexual intercourse without  
11 consent" includes an attempt to commit the offense or flight after the attempt or commission."

12  
13 **Section 2.** Section 46-18-303, MCA, is amended to read:

14 **"46-18-303. Aggravating circumstances.** Aggravating circumstances are any of the following:

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16 imprisonment in the state prison.

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18 previously convicted of another deliberate homicide.

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

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

21 (5) The offense was deliberate homicide and was committed as a part of a scheme or operation  
22 ~~which~~ that, if completed, would result in the death of more than one person.

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

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

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

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

30 (b) found to be a persistent felony offender pursuant to part 5 of this chapter and one of the

1 convictions was for an offense against the person in violation of Title 45, chapter 5, for which the minimum  
2 prison term is not less than 2 years.

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

6 (10) The offense was sexual intercourse without consent and the defendant has a previous  
7 conviction of sexual intercourse without consent in this state or of an offense under the laws of another  
8 state or of the United States that if committed in this state would be the offense of sexual intercourse  
9 without consent and the defendant inflicted serious bodily injury upon a person in the course of committing  
10 each offense."

11

-END-