

SENATE BILL NO. 107

INTRODUCED BY FACEY, SCHWADERER, HILL

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A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATING TO DEVIATE SEXUAL CONDUCT;  
REVISING THE DEFINITION OF "DEVIATE SEXUAL CONDUCT"; AND AMENDING SECTIONS 27-2-216,  
41-3-102, 45-1-205, 45-2-101, 45-5-505, 46-1-502, ~~46-18-205~~, AND 52-3-803, MCA."

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

**Section 1.** 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 2.** Section 41-3-102, MCA, is amended to read:

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

- (1) (a) "Abandon", "abandoned", and "abandonment" mean:
  - (i) leaving a child under circumstances that make reasonable the belief that the parent does not intend  
to resume care of the child in the future;
  - (ii) willfully surrendering physical custody for a period of 6 months and during that period not manifesting

1 to the child and the person having physical custody of the child a firm intention to resume physical custody or to  
2 make permanent legal arrangements for the care of the child;

3 (iii) that the parent is unknown and has been unknown for a period of 90 days and that reasonable efforts  
4 to identify and locate the parent have failed; or

5 (iv) the voluntary surrender, as defined in 40-6-402, by a parent of a newborn who is no more than 30  
6 days old to an emergency services provider, as defined in 40-6-402.

7 (b) The terms do not include the voluntary surrender of a child to the department solely because of  
8 parental inability to access publicly funded services.

9 (2) "A person responsible for a child's welfare" means:

10 (a) the child's parent, guardian, or foster parent or an adult who resides in the same home in which the  
11 child resides;

12 (b) a person providing care in a day-care facility;

13 (c) an employee of a public or private residential institution, facility, home, or agency; or

14 (d) any other person responsible for the child's welfare in a residential setting.

15 (3) "Abused or neglected" means the state or condition of a child who has suffered child abuse or  
16 neglect.

17 (4) (a) "Adequate health care" means any medical care or nonmedical remedial health care recognized  
18 by an insurer licensed to provide disability insurance under Title 33, including the prevention of the withholding  
19 of medically indicated treatment or medically indicated psychological care permitted or authorized under state  
20 law.

21 (b) This chapter may not be construed to require or justify a finding of child abuse or neglect for the sole  
22 reason that a parent or legal guardian, because of religious beliefs, does not provide adequate health care for  
23 a child. However, this chapter may not be construed to limit the administrative or judicial authority of the state to  
24 ensure that medical care is provided to the child when there is imminent substantial risk of serious harm to the  
25 child.

26 (5) "Best interests of the child" means the physical, mental, and psychological conditions and needs of  
27 the child and any other factor considered by the court to be relevant to the child.

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

29 (7) (a) "Child abuse or neglect" means:

30 (i) actual physical or psychological harm to a child;

- 1 (ii) substantial risk of physical or psychological harm to a child; or  
2 (iii) abandonment.
- 3 (b) (i) The term includes:  
4 (A) actual physical or psychological harm to a child or substantial risk of physical or psychological harm  
5 to a child by the acts or omissions of a person responsible for the child's welfare; or  
6 (B) exposing a child to the criminal distribution of dangerous drugs, as prohibited by 45-9-101, the  
7 criminal production or manufacture of dangerous drugs, as prohibited by 45-9-110, or the operation of an unlawful  
8 clandestine laboratory, as prohibited by 45-9-132.
- 9 (ii) For the purposes of this subsection (7), "dangerous drugs" means the compounds and substances  
10 described as dangerous drugs in Schedules I through IV in Title 50, chapter 32, part 2.
- 11 (c) In proceedings under this chapter in which the federal Indian Child Welfare Act is applicable, this term  
12 has the same meaning as "serious emotional or physical damage to the child" as used in 25 U.S.C. 1912(f).
- 13 (d) The term does not include self-defense, defense of others, or action taken to prevent the child from  
14 self-harm that does not constitute physical or psychological harm to a child.
- 15 (8) "Concurrent planning" means to work toward reunification of the child with the family while at the  
16 same time developing and implementing an alternative permanent plan.
- 17 (9) "Department" means the department of public health and human services provided for in 2-15-2201.
- 18 (10) "Family group decisionmaking meeting" means a meeting that involves family members in either  
19 developing treatment plans or making placement decisions, or both.
- 20 (11) "Indian child" means any unmarried person who is under 18 years of age and who is either:  
21 (a) a member of an Indian tribe; or  
22 (b) eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.
- 23 (12) "Indian child's tribe" means:  
24 (a) the Indian tribe in which an Indian child is a member or eligible for membership; or  
25 (b) in the case of an Indian child who is a member of or eligible for membership in more than one Indian  
26 tribe, the Indian tribe with which the Indian child has the more significant contacts.
- 27 (13) "Indian custodian" means any Indian person who has legal custody of an Indian child under tribal  
28 law or custom or under state law or to whom temporary physical care, custody, and control have been transferred  
29 by the child's parent.
- 30 (14) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians

1 recognized by:

2 (a) the state of Montana; or

3 (b) the United States secretary of the interior as being eligible for the services provided to Indians or  
4 because of the group's status as Indians, including any Alaskan native village as defined in federal law.

5 (15) "Limited emancipation" means a status conferred on a youth by a court in accordance with 41-1-503  
6 under which the youth is entitled to exercise some but not all of the rights and responsibilities of a person who  
7 is 18 years of age or older.

8 (16) "Parent" means a biological or adoptive parent or stepparent.

9 (17) "Parent-child legal relationship" means the legal relationship that exists between a child and the  
10 child's birth or adoptive parents, as provided in Title 40, chapter 6, part 2, unless the relationship has been  
11 terminated by competent judicial decree as provided in 40-6-234, Title 42, or part 6 of this chapter.

12 (18) "Permanent placement" means reunification of the child with the child's parent, adoption, placement  
13 with a legal guardian, placement with a fit and willing relative, or placement in another planned permanent living  
14 arrangement until the child reaches 18 years of age.

15 (19) "Physical abuse" means an intentional act, an intentional omission, or gross negligence resulting  
16 in substantial skin bruising, internal bleeding, substantial injury to skin, subdural hematoma, burns, bone  
17 fractures, extreme pain, permanent or temporary disfigurement, impairment of any bodily organ or function, or  
18 death.

19 (20) "Physical neglect" means either failure to provide basic necessities, including but not limited to  
20 appropriate and adequate nutrition, protective shelter from the elements, and appropriate clothing related to  
21 weather conditions, or failure to provide cleanliness and general supervision, or both, or exposing or allowing the  
22 child to be exposed to an unreasonable physical or psychological risk to the child.

23 (21) (a) "Physical or psychological harm to a child" means the harm that occurs whenever the parent or  
24 other person responsible for the child's welfare:

25 (i) inflicts or allows to be inflicted upon the child physical abuse, physical neglect, or psychological abuse  
26 or neglect;

27 (ii) commits or allows sexual abuse or exploitation of the child;

28 (iii) induces or attempts to induce a child to give untrue testimony that the child or another child was  
29 abused or neglected by a parent or other person responsible for the child's welfare;

30 (iv) causes malnutrition or a failure to thrive or otherwise fails to supply the child with adequate food or

1 fails to supply clothing, shelter, education, or adequate health care, though financially able to do so or offered  
2 financial or other reasonable means to do so;

3 (v) exposes or allows the child to be exposed to an unreasonable risk to the child's health or welfare by  
4 failing to intervene or eliminate the risk; or

5 (vi) abandons the child.

6 (b) The term does not include a youth not receiving supervision solely because of parental inability to  
7 control the youth's behavior.

8 (22) (a) "Protective services" means services provided by the department:

9 (i) to enable a child alleged to have been abused or neglected to remain safely in the home;

10 (ii) to enable a child alleged to have been abused or neglected who has been removed from the home  
11 to safely return to the home; or

12 (iii) to achieve permanency for a child adjudicated as a youth in need of care when circumstances and  
13 the best interests of the child prevent reunification with parents or a return to the home.

14 (b) The term includes emergency protective services provided pursuant to 41-3-301, voluntary protective  
15 services provided pursuant to 41-3-302, and court-ordered protective services provided pursuant to parts 4 and  
16 6 of this chapter.

17 (23) (a) "Psychological abuse or neglect" means severe maltreatment through acts or omissions that are  
18 injurious to the child's emotional, intellectual, or psychological capacity to function, including the commission of  
19 acts of violence against another person residing in the child's home.

20 (b) The term may not be construed to hold a victim responsible for failing to prevent the crime against  
21 the victim.

22 (24) "Qualified expert witness" as used in cases involving an Indian child in proceedings subject to the  
23 federal Indian Child Welfare Act means:

24 (a) a member of the Indian child's tribe who is recognized by the tribal community as knowledgeable in  
25 tribal customs as they pertain to family organization and child-rearing practices;

26 (b) a lay expert witness who has substantial experience in the delivery of child and family services to  
27 Indians and extensive knowledge of prevailing social and cultural standards and child-rearing practices within the  
28 Indian child's tribe; or

29 (c) a professional person who has substantial education and experience in providing services to children  
30 and families and who possesses significant knowledge of and experience with Indian culture, family structure,

1 and child-rearing practices in general.

2 (25) "Reasonable cause to suspect" means cause that would lead a reasonable person to believe that  
3 child abuse or neglect may have occurred or is occurring, based on all the facts and circumstances known to the  
4 person.

5 (26) "Residential setting" means an out-of-home placement where the child typically resides for longer  
6 than 30 days for the purpose of receiving food, shelter, security, guidance, and, if necessary, treatment.

7 (27) (a) "Sexual abuse" means the commission of sexual assault, sexual intercourse without consent,  
8 indecent exposure, ~~deviate sexual conduct~~, sexual abuse, ritual abuse of a minor, or incest, as described in Title  
9 45, chapter 5.

10 (b) Sexual abuse does not include any necessary touching of an infant's or toddler's genital area while  
11 attending to the sanitary or health care needs of that infant or toddler by a parent or other person responsible for  
12 the child's welfare.

13 (28) "Sexual exploitation" means allowing, permitting, or encouraging a child to engage in a prostitution  
14 offense, as described in 45-5-601 through 45-5-603, or allowing, permitting, or encouraging sexual abuse of  
15 children as described in 45-5-625.

16 (29) (a) "Social worker" means an employee of the department who, before the employee's field  
17 assignment, has been educated or trained in a program of social work or a related field that includes cognitive  
18 and family systems treatment or who has equivalent verified experience or verified training in the investigation  
19 of child abuse, neglect, and endangerment.

20 (b) This definition does not apply to any provision of this code that is not in this chapter.

21 (30) "Treatment plan" means a written agreement between the department and the parent or guardian  
22 or a court order that includes action that must be taken to resolve the condition or conduct of the parent or  
23 guardian that resulted in the need for protective services for the child. The treatment plan may involve court  
24 services, the department, and other parties, if necessary, for protective services.

25 (31) "Unfounded" means that after an investigation, the investigating person has determined that the  
26 reported abuse, neglect, or exploitation has not occurred.

27 (32) "Unsubstantiated" means that after an investigation, the investigator was unable to determine by a  
28 preponderance of the evidence that the reported abuse, neglect, or exploitation has occurred.

29 (33) (a) "Withholding of medically indicated treatment" means the failure to respond to an infant's  
30 life-threatening conditions by providing treatment, including appropriate nutrition, hydration, and medication, that,

1 in the treating physician's or physicians' reasonable medical judgment, will be most likely to be effective in  
 2 ameliorating or correcting the conditions.

3 (b) The term does not include the failure to provide treatment, other than appropriate nutrition, hydration,  
 4 or medication, to an infant when, in the treating physician's or physicians' reasonable medical judgment:

5 (i) the infant is chronically and irreversibly comatose;

6 (ii) the provision of treatment would:

7 (A) merely prolong dying;

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

9 (C) otherwise be futile in terms of the survival of the infant; or

10 (iii) the provision of treatment would be virtually futile in terms of the survival of the infant and the  
 11 treatment itself under the circumstances would be inhumane. For purposes of this subsection (33), "infant" means  
 12 an infant less than 1 year of age or an infant 1 year of age or older who has been continuously hospitalized since  
 13 birth, who was born extremely prematurely, or who has a long-term disability. The reference to less than 1 year  
 14 of age may not be construed to imply that treatment should be changed or discontinued when an infant reaches  
 15 1 year of age or to affect or limit any existing protections available under state laws regarding medical neglect  
 16 of children 1 year of age or older.

17 (34) "Youth in need of care" means a youth who has been adjudicated or determined, after a hearing,  
 18 to be or to have been abused, neglected, or abandoned."

19

20 **Section 3.** Section 45-1-205, MCA, is amended to read:

21 **"45-1-205. General time limitations.** (1) (a) A prosecution for deliberate, mitigated, or negligent  
 22 homicide may be commenced at any time.

23 (b) Except as provided in subsection (9), a prosecution for a felony offense under 45-5-502, 45-5-503,  
 24 or 45-5-507(4) or (5) may be commenced within 10 years after it is committed, except that it may be commenced  
 25 within 10 years after the victim reaches 18 years of age if the victim was less than 18 years of age at the time that  
 26 the offense occurred. A prosecution for a misdemeanor offense under those provisions may be commenced  
 27 within 1 year after the offense is committed, except that it may be commenced within 5 years after the victim  
 28 reaches 18 years of age if the victim was less than 18 years of age at the time that the offense occurred.

29 (c) Except as provided in subsection (9), a prosecution under 45-5-504, ~~45-5-505~~, 45-5-507(1), (2), (3),  
 30 or (6), 45-5-625, or 45-5-627 may be commenced within 5 years after the victim reaches 18 years of age if the

1 victim was less than 18 years of age at the time that the offense occurred.

2 (2) Except as provided in subsection (7)(b) or as otherwise provided by law, prosecutions for other  
3 offenses are subject to the following periods of limitation:

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

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

6 (3) The periods prescribed in subsection (2) are extended in a prosecution for theft involving a breach  
7 of fiduciary obligation to an aggrieved person as follows:

8 (a) if the aggrieved person is a minor or incompetent, during the minority or incompetency or within 1  
9 year after the termination of the minority or incompetency;

10 (b) in any other instance, within 1 year after the discovery of the offense by the aggrieved person or by  
11 a person who has legal capacity to represent an aggrieved person or has a legal duty to report the offense and  
12 is not personally a party to the offense or, in the absence of discovery, within 1 year after the prosecuting officer  
13 becomes aware of the offense.

14 (4) The period prescribed in subsection (2) must be extended in a prosecution for unlawful use of a  
15 computer, and prosecution must be brought within 1 year after the discovery of the offense by the aggrieved  
16 person or by a person who has legal capacity to represent an aggrieved person or has a legal duty to report the  
17 offense and is not personally a party to the offense or, in the absence of discovery, within 1 year after the  
18 prosecuting officer becomes aware of the offense.

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

21 (6) The period prescribed in subsection (2)(b) is extended in a prosecution for misdemeanor violations  
22 of the laws regulating the activities of outfitters and guides under Title 37, chapter 47, and prosecution must be  
23 brought within 3 years after an offense is committed.

24 (7) (a) An offense is committed either when every element occurs or, when the offense is based upon  
25 a continuing course of conduct, at the time when the course of conduct is terminated. Time starts to run on the  
26 day after the offense is committed.

27 (b) A prosecution for theft under 45-6-301 may be commenced at any time during the 5 years following  
28 the date of the theft, whether or not the offender is in possession of or otherwise exerting unauthorized control  
29 over the property at the time the prosecution is commenced. After the 5-year period ends, a prosecution may be  
30 commenced at any time if the offender is still in possession of or otherwise exerting unauthorized control over

1 the property, except that the prosecution must be commenced within 1 year after the investigating officer  
2 discovers that the offender still possesses or is otherwise exerting unauthorized control over the property.

3 (8) A prosecution is commenced either when an indictment is found or an information or complaint is  
4 filed.

5 (9) If a suspect is conclusively identified by DNA testing after a time period prescribed in subsection  
6 (1)(b) or (1)(c) has expired, a prosecution may be commenced within 1 year after the suspect is conclusively  
7 identified by DNA testing.

8 (10) A prosecution for reckless driving resulting in death may be commenced within 3 years after the  
9 offense is committed.

10 (11) A prosecution of careless driving resulting in death may be commenced within 3 years after the  
11 offense is committed."

12

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

14 **"45-2-101. General definitions.** Unless otherwise specified in the statute, all words must be taken in  
15 the objective standard rather than in the subjective, and unless a different meaning plainly is required, the  
16 following definitions apply in this title:

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

19 (2) "Administrative proceeding" means a proceeding the outcome of which is required to be based on  
20 a record or documentation prescribed by law or in which a law or a regulation is particularized in its application  
21 to an individual.

22 (3) "Another" means a person or persons other than the offender.

23 (4) (a) "Benefit" means gain or advantage or anything regarded by the beneficiary as gain or advantage,  
24 including benefit to another person or entity in whose welfare the beneficiary is interested.

25 (b) Benefit does not include an advantage promised generally to a group or class of voters as a  
26 consequence of public measures that a candidate engages to support or oppose.

27 (5) "Bodily injury" means physical pain, illness, or an impairment of physical condition and includes  
28 mental illness or impairment.

29 (6) "Child" or "children" means any individual or individuals under 18 years of age, unless a different age  
30 is specified.

1 (7) "Cohabit" means to live together under the representation of being married.

2 (8) "Common scheme" means a series of acts or omissions motivated by a purpose to accomplish a  
3 single criminal objective or by a common purpose or plan that results in the repeated commission of the same  
4 offense or that affects the same person or the same persons or the property of the same person or persons.

5 (9) "Computer" means an electronic device that performs logical, arithmetic, and memory functions by  
6 the manipulation of electronic or magnetic impulses and includes all input, output, processing, storage, software,  
7 or communication facilities that are connected or related to that device in a system or network.

8 (10) "Computer network" means the interconnection of communication systems between computers or  
9 computers and remote terminals.

10 (11) "Computer program" means an instruction or statement or a series of instructions or statements, in  
11 a form acceptable to a computer, that in actual or modified form permits the functioning of a computer or computer  
12 system and causes it to perform specified functions.

13 (12) "Computer services" include but are not limited to computer time, data processing, and storage  
14 functions.

15 (13) "Computer software" means a set of computer programs, procedures, and associated documentation  
16 concerned with the operation of a computer system.

17 (14) "Computer system" means a set of related, connected, or unconnected devices, computer software,  
18 or other related computer equipment.

19 (15) "Conduct" means an act or series of acts and the accompanying mental state.

20 (16) "Conviction" means a judgment of conviction or sentence entered upon a plea of guilty or nolo  
21 contendere or upon a verdict or finding of guilty of an offense rendered by a legally constituted jury or by a court  
22 of competent jurisdiction authorized to try the case without a jury.

23 (17) "Correctional institution" means a state prison, detention center, multijurisdictional detention center,  
24 private detention center, regional correctional facility, private correctional facility, or other institution for the  
25 incarceration of inmates under sentence for offenses or the custody of individuals awaiting trial or sentence for  
26 offenses.

27 (18) "Deception" means knowingly to:

28 (a) create or confirm in another an impression that is false and that the offender does not believe to be  
29 true;

30 (b) fail to correct a false impression that the offender previously has created or confirmed;

- 1 (c) prevent another from acquiring information pertinent to the disposition of the property involved;
- 2 (d) sell or otherwise transfer or encumber property without disclosing a lien, adverse claim, or other legal  
3 impediment to the enjoyment of the property, whether the impediment is or is not of value or is or is not a matter  
4 of official record; or
- 5 (e) promise performance that the offender does not intend to perform or knows will not be performed.  
6 Failure to perform, standing alone, is not evidence that the offender did not intend to perform.
- 7 (19) "Defamatory matter" means anything that exposes a person or a group, class, or association to  
8 hatred, contempt, ridicule, degradation, or disgrace in society or to injury to the person's or its business or  
9 occupation.
- 10 (20) "Deprive" means:
- 11 (a) to withhold property of another:
- 12 (i) permanently;
- 13 (ii) for such a period as to appropriate a portion of its value; or  
14 (iii) with the purpose to restore it only upon payment of reward or other compensation; or
- 15 (b) to dispose of the property of another and use or deal with the property so as to make it unlikely that  
16 the owner will recover it.
- 17 (21) "Deviate sexual relations" means ~~sexual contact or sexual intercourse between two persons of the~~  
18 ~~same sex~~ or any form of sexual intercourse with an animal.
- 19 (22) "Document" means, with respect to offenses involving the medicaid program, any application, claim,  
20 form, report, record, writing, or correspondence, whether in written, electronic, magnetic, microfilm, or other form.
- 21 (23) "Felony" means an offense in which the sentence imposed upon conviction is death or imprisonment  
22 in a state prison for a term exceeding 1 year.
- 23 (24) "Forcible felony" means a felony that involves the use or threat of physical force or violence against  
24 any individual.
- 25 (25) A "frisk" is a search by an external patting of a person's clothing.
- 26 (26) "Government" includes a branch, subdivision, or agency of the government of the state or a locality  
27 within it.
- 28 (27) "Harm" means loss, disadvantage, or injury or anything so regarded by the person affected, including  
29 loss, disadvantage, or injury to a person or entity in whose welfare the affected person is interested.
- 30 (28) A "house of prostitution" means a place where prostitution or promotion of prostitution is regularly

1 carried on by one or more persons under the control, management, or supervision of another.

2 (29) "Human being" means a person who has been born and is alive.

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

5 (31) "Inmate" means a person who is confined in a correctional institution.

6 (32) (a) "Intoxicating substance" means a controlled substance, as defined in Title 50, chapter 32, and  
7 an alcoholic beverage, including but not limited to a beverage containing 1/2 of 1% or more of alcohol by volume.

8 (b) Intoxicating substance does not include dealcoholized wine or a beverage or liquid produced by the  
9 process by which beer, ale, port, or wine is produced if it contains less than 1/2 of 1% of alcohol by volume.

10 (33) An "involuntary act" means an act that is:

11 (a) a reflex or convulsion;

12 (b) a bodily movement during unconsciousness or sleep;

13 (c) conduct during hypnosis or resulting from hypnotic suggestion; or

14 (d) a bodily movement that otherwise is not a product of the effort or determination of the actor, either  
15 conscious or habitual.

16 (34) "Juror" means a person who is a member of a jury, including a grand jury, impaneled by a court in  
17 this state in an action or proceeding or by an officer authorized by law to impanel a jury in an action or  
18 proceeding. The term "juror" also includes a person who has been drawn or summoned to attend as a prospective  
19 juror.

20 (35) "Knowingly"--a person acts knowingly with respect to conduct or to a circumstance described by a  
21 statute defining an offense when the person is aware of the person's own conduct or that the circumstance exists.  
22 A person acts knowingly with respect to the result of conduct described by a statute defining an offense when  
23 the person is aware that it is highly probable that the result will be caused by the person's conduct. When  
24 knowledge of the existence of a particular fact is an element of an offense, knowledge is established if a person  
25 is aware of a high probability of its existence. Equivalent terms, such as "knowing" or "with knowledge", have the  
26 same meaning.

27 (36) "Medicaid" means the Montana medical assistance program provided for in Title 53, chapter 6.

28 (37) "Medicaid agency" has the meaning in 53-6-155.

29 (38) "Medicaid benefit" means the provision of anything of pecuniary value to or on behalf of a recipient  
30 under the medicaid program.

1 (39) (a) "Medicaid claim" means a communication, whether in oral, written, electronic, magnetic, or other  
2 form:

3 (i) that is used to claim specific services or items as payable or reimbursable under the medicaid  
4 program; or

5 (ii) that states income, expense, or other information that is or may be used to determine entitlement to  
6 or the rate of payment under the medicaid program.

7 (b) The term includes related documents submitted as a part of or in support of the claim.

8 (40) "Mentally defective" means that a person suffers from a mental disease or defect that renders the  
9 person incapable of appreciating the nature of the person's own conduct.

10 (41) "Mentally incapacitated" means that a person is rendered temporarily incapable of appreciating or  
11 controlling the person's own conduct as a result of the influence of an intoxicating substance.

12 (42) "Misdemeanor" means an offense for which the sentence imposed upon conviction is imprisonment  
13 in the county jail for a term or a fine, or both, or for which the sentence imposed is imprisonment in a state prison  
14 for a term of 1 year or less.

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

22 (44) "Nolo contendere" means a plea in which the defendant does not contest the charge or charges  
23 against the defendant and neither admits nor denies the charge or charges.

24 (45) "Obtain" means:

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

27 (b) in relation to labor or services, to secure the performance of the labor or service.

28 (46) "Obtains or exerts control" includes but is not limited to the taking, the carrying away, or the sale,  
29 conveyance, or transfer of title to, interest in, or possession of property.

30 (47) "Occupied structure" means any building, vehicle, or other place suitable for human occupancy or

1 night lodging of persons or for carrying on business, whether or not a person is actually present, including any  
2 outbuilding that is immediately adjacent to or in close proximity to an occupied structure and that is habitually  
3 used for personal use or employment. Each unit of a building consisting of two or more units separately secured  
4 or occupied is a separate occupied structure.

5 (48) "Offender" means a person who has been or is liable to be arrested, charged, convicted, or punished  
6 for a public offense.

7 (49) "Offense" means a crime for which a sentence of death or of imprisonment or a fine is authorized.  
8 Offenses are classified as felonies or misdemeanors.

9 (50) (a) "Official detention" means imprisonment resulting from a conviction for an offense, confinement  
10 for an offense, confinement of a person charged with an offense, detention by a peace officer pursuant to arrest,  
11 detention for extradition or deportation, or lawful detention for the purpose of the protection of the welfare of the  
12 person detained or for the protection of society.

13 (b) Official detention does not include supervision of probation or parole, constraint incidental to release  
14 on bail, or an unlawful arrest unless the person arrested employed physical force, a threat of physical force, or  
15 a weapon to escape.

16 (51) "Official proceeding" means a proceeding heard or that may be heard before a legislative, a judicial,  
17 an administrative, or another governmental agency or official authorized to take evidence under oath, including  
18 any referee, hearings examiner, commissioner, notary, or other person taking testimony or deposition in  
19 connection with the proceeding.

20 (52) "Other state" means a state or territory of the United States, the District of Columbia, and the  
21 Commonwealth of Puerto Rico.

22 (53) "Owner" means a person other than the offender who has possession of or other interest in the  
23 property involved, even though the interest or possession is unlawful, and without whose consent the offender  
24 has no authority to exert control over the property.

25 (54) "Party official" means a person who holds an elective or appointive post in a political party in the  
26 United States by virtue of which the person directs or conducts or participates in directing or conducting party  
27 affairs at any level of responsibility.

28 (55) "Peace officer" means a person who by virtue of the person's office or public employment is vested  
29 by law with a duty to maintain public order or to make arrests for offenses while acting within the scope of the  
30 person's authority.

1 (56) "Pecuniary benefit" is benefit in the form of money, property, commercial interests, or anything else  
2 the primary significance of which is economic gain.

3 (57) "Person" includes an individual, business association, partnership, corporation, government, or other  
4 legal entity and an individual acting or purporting to act for or on behalf of a government or subdivision of  
5 government.

6 (58) "Physically helpless" means that a person is unconscious or is otherwise physically unable to  
7 communicate unwillingness to act.

8 (59) "Possession" is the knowing control of anything for a sufficient time to be able to terminate control.

9 (60) "Premises" includes any type of structure or building and real property.

10 (61) "Property" means a tangible or intangible thing of value. Property includes but is not limited to:

11 (a) real estate;

12 (b) money;

13 (c) commercial instruments;

14 (d) admission or transportation tickets;

15 (e) written instruments that represent or embody rights concerning anything of value, including labor or  
16 services, or that are otherwise of value to the owner;

17 (f) things growing on, affixed to, or found on land and things that are part of or affixed to a building;

18 (g) electricity, gas, and water;

19 (h) birds, animals, and fish that ordinarily are kept in a state of confinement;

20 (i) food and drink, samples, cultures, microorganisms, specimens, records, recordings, documents,  
21 blueprints, drawings, maps, and whole or partial copies, descriptions, photographs, prototypes, or models thereof;

22 (j) other articles, materials, devices, substances, and whole or partial copies, descriptions, photographs,  
23 prototypes, or models thereof that constitute, represent, evidence, reflect, or record secret scientific, technical,  
24 merchandising, production, or management information or a secret designed process, procedure, formula,  
25 invention, or improvement; and

26 (k) electronic impulses, electronically processed or produced data or information, commercial  
27 instruments, computer software or computer programs, in either machine- or human-readable form, computer  
28 services, any other tangible or intangible item of value relating to a computer, computer system, or computer  
29 network, and copies thereof.

30 (62) "Property of another" means real or personal property in which a person other than the offender has

1 an interest that the offender has no authority to defeat or impair, even though the offender may have an interest  
2 in the property.

3 (63) "Public place" means a place to which the public or a substantial group has access.

4 (64) (a) "Public servant" means an officer or employee of government, including but not limited to  
5 legislators, judges, and firefighters, and a person participating as a juror, adviser, consultant, administrator,  
6 executor, guardian, or court-appointed fiduciary. The term "public servant" includes one who has been elected  
7 or designated to become a public servant.

8 (b) The term does not include witnesses.

9 (65) "Purposely"--a person acts purposely with respect to a result or to conduct described by a statute  
10 defining an offense if it is the person's conscious object to engage in that conduct or to cause that result. When  
11 a particular purpose is an element of an offense, the element is established although the purpose is conditional,  
12 unless the condition negatives the harm or evil sought to be prevented by the law defining the offense. Equivalent  
13 terms, such as "purpose" and "with the purpose", have the same meaning.

14 (66) (a) "Serious bodily injury" means bodily injury that:

15 (i) creates a substantial risk of death;

16 (ii) causes serious permanent disfigurement or protracted loss or impairment of the function or process  
17 of a bodily member or organ; or

18 (iii) at the time of injury, can reasonably be expected to result in serious permanent disfigurement or  
19 protracted loss or impairment of the function or process of a bodily member or organ.

20 (b) The term includes serious mental illness or impairment.

21 (67) "Sexual contact" means touching of the sexual or other intimate parts of the person of another,  
22 directly or through clothing, in order to knowingly or purposely:

23 (a) cause bodily injury to or humiliate, harass, or degrade another; or

24 (b) arouse or gratify the sexual response or desire of either party.

25 (68) (a) "Sexual intercourse" means penetration of the vulva, anus, or mouth of one person by the penis  
26 of another person, penetration of the vulva or anus of one person by a body member of another person, or  
27 penetration of the vulva or anus of one person by a foreign instrument or object manipulated by another person  
28 to knowingly or purposely:

29 (i) cause bodily injury to or humiliate, harass, or degrade; or

30 (ii) arouse or gratify the sexual response or desire of either party.

- 1 (b) For purposes of subsection (68)(a), any penetration, however slight, is sufficient.
- 2 (69) "Solicit" or "solicitation" means to command, authorize, urge, incite, request, or advise another to  
3 commit an offense.
- 4 (70) "State" or "this state" means the state of Montana, all the land and water in respect to which the state  
5 of Montana has either exclusive or concurrent jurisdiction, and the air space above the land and water.
- 6 (71) "Statute" means an act of the legislature of this state.
- 7 (72) "Stolen property" means property over which control has been obtained by theft.
- 8 (73) A "stop" is the temporary detention of a person that results when a peace officer orders the person  
9 to remain in the peace officer's presence.
- 10 (74) "Tamper" means to interfere with something improperly, meddle with it, make unwarranted  
11 alterations in its existing condition, or deposit refuse upon it.
- 12 (75) "Telephone" means any type of telephone, including but not limited to a corded, uncoded, cellular,  
13 or satellite telephone.
- 14 (76) "Threat" means a menace, however communicated, to:
- 15 (a) inflict physical harm on the person threatened or any other person or on property;
- 16 (b) subject any person to physical confinement or restraint;
- 17 (c) commit a criminal offense;
- 18 (d) accuse a person of a criminal offense;
- 19 (e) expose a person to hatred, contempt, or ridicule;
- 20 (f) harm the credit or business repute of a person;
- 21 (g) reveal information sought to be concealed by the person threatened;
- 22 (h) take action as an official against anyone or anything, withhold official action, or cause the action or  
23 withholding;
- 24 (i) bring about or continue a strike, boycott, or other similar collective action if the person making the  
25 threat demands or receives property that is not for the benefit of groups that the person purports to represent;
- 26 or
- 27 (j) testify or provide information or withhold testimony or information with respect to another's legal claim  
28 or defense.
- 29 (77) (a) "Value" means the market value of the property at the time and place of the crime or, if the market  
30 value cannot be satisfactorily ascertained, the cost of the replacement of the property within a reasonable time

1 after the crime. If the offender appropriates a portion of the value of the property, the value must be determined  
2 as follows:

3 (i) The value of an instrument constituting an evidence of debt, such as a check, draft, or promissory  
4 note, is considered the amount due or collectible. The figure is ordinarily the face amount of the indebtedness  
5 less any portion of the indebtedness that has been satisfied.

6 (ii) The value of any other instrument that creates, releases, discharges, or otherwise affects any valuable  
7 legal right, privilege, or obligation is considered the amount of economic loss that the owner of the instrument  
8 might reasonably suffer by virtue of the loss of the instrument.

9 (iii) The value of electronic impulses, electronically produced data or information, computer software or  
10 programs, or any other tangible or intangible item relating to a computer, computer system, or computer network  
11 is considered to be the amount of economic loss that the owner of the item might reasonably suffer by virtue of  
12 the loss of the item. The determination of the amount of economic loss includes but is not limited to consideration  
13 of the value of the owner's right to exclusive use or disposition of the item.

14 (b) When it cannot be determined if the value of the property is more or less than \$1,500 by the  
15 standards set forth in subsection (77)(a), its value is considered to be an amount less than \$1,500.

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

18 (78) "Vehicle" means a device for transportation by land, water, or air or by mobile equipment, with  
19 provision for transport of an operator.

20 (79) "Weapon" means an instrument, article, or substance that, regardless of its primary function, is  
21 readily capable of being used to produce death or serious bodily injury.

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

24

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

26 **"45-5-505. Deviate sexual conduct.** (1) A person who knowingly engages in deviate sexual relations  
27 or who causes another to engage in deviate sexual relations commits the offense of deviate sexual conduct.

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

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

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

3

4 **Section 6.** Section 46-1-502, MCA, is amended to read:

5 **"46-1-502. Mediation.** (1) At any time after the commencement of a prosecution and before the verdict,  
 6 the court may, at its suggestion or upon motion of a party and with the consent of all the parties, refer the  
 7 proceeding to mediation by a mediator chosen by the court.

8 (2) The proceeding may not be referred for mediation if the offense charged is:

9 (a) deliberate homicide, as described in 45-5-102;

10 (b) mitigated deliberate homicide, as described in 45-5-103;

11 (c) intimidation, as described in 45-5-203;

12 (d) partner or family member assault, as described in 45-5-206;

13 (e) assault on a minor, as described in 45-5-212;

14 (f) stalking, as described in 45-5-220;

15 (g) aggravated kidnapping, as described in 45-5-303;

16 (h) a sex crime, as described in 45-5-502, 45-5-503, 45-5-504, ~~45-5-505~~, or 45-5-507;

17 (i) endangering the welfare of children, as described in 45-5-622;

18 (j) sexual abuse of children, as described in 45-5-625; or

19 (k) ritual abuse of a minor, as described in 45-5-627.

20 (3) Any aspect of or issue in the proceeding may be the subject of the mediation, including but not limited  
 21 to the charge, a plea bargain, or a recommended sentence.

22 (4) At any point during mediation, a party may withdraw from the mediation without penalty or sanction.

23 (5) This section does not prohibit the parties from engaging in traditional plea negotiations."  
 24

25 ~~Section 7.~~ Section 46-18-205, MCA, is amended to read:

26 ~~"46-18-205. Mandatory minimum sentences -- restrictions on deferral or suspension.~~ (1) If the  
 27 victim was less than 16 years of age, the imposition or execution of the first 30 days of a sentence of  
 28 imprisonment imposed under the following sections may not be deferred or suspended and the provisions of  
 29 46-18-222 do not apply to the first 30 days of the imprisonment:

30 ~~(a) 45-5-503, sexual intercourse without consent;~~

1 ~~—— (b) 45-5-504, indecent exposure; or~~  
 2 ~~—— (c) 45-5-505, deviate sexual conduct; or~~  
 3 ~~—— (d)(e) 45-5-507, incest.~~  
 4 ~~—— (2) Except as provided in 45-9-202 and 46-18-222, the imposition or execution of the first 2 years of a~~  
 5 ~~sentence of imprisonment imposed under the following sections may not be deferred or suspended:~~  
 6 ~~—— (a) 45-5-103(4), mitigated deliberate homicide;~~  
 7 ~~—— (b) 45-5-202, aggravated assault;~~  
 8 ~~—— (c) 45-5-302(2), kidnapping;~~  
 9 ~~—— (d) 45-5-303(2), aggravated kidnapping;~~  
 10 ~~—— (e) 45-5-401(2), robbery;~~  
 11 ~~—— (f) 45-5-502(3), sexual assault;~~  
 12 ~~—— (g) 45-5-503(2) and (3), sexual intercourse without consent;~~  
 13 ~~—— (h) 45-5-603, aggravated promotion of prostitution;~~  
 14 ~~—— (i) 45-9-101(2), (3), and (5)(d), criminal distribution of dangerous drugs;~~  
 15 ~~—— (j) 45-9-102(4), criminal possession of dangerous drugs; and~~  
 16 ~~—— (k) 45-9-103(2), criminal possession with intent to distribute dangerous drugs.~~  
 17 ~~—— (3) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a sentence of~~  
 18 ~~imprisonment imposed under 45-5-102, deliberate homicide, may not be deferred or suspended.~~  
 19 ~~—— (4) The provisions of this section do not apply to sentences imposed pursuant to 45-5-503(4),~~  
 20 ~~45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(c), or 45-5-625(4)."~~

21  
 22 **Section 7.** Section 52-3-803, MCA, is amended to read:  
 23 **"52-3-803. Definitions.** As used in this part, the following definitions apply:  
 24 (1) "Abuse" means:  
 25 (a) the infliction of physical or mental injury; or  
 26 (b) the deprivation of food, shelter, clothing, or services necessary to maintain the physical or mental  
 27 health of an older person or a person with a developmental disability without lawful authority. A declaration made  
 28 pursuant to 50-9-103 constitutes lawful authority.  
 29 (2) "Department" means the department of public health and human services provided for in 2-15-2201.  
 30 (3) "Exploitation" means:

1 (a) the unreasonable use of an older person or a person with a developmental disability or of a power  
2 of attorney, conservatorship, or guardianship with regard to an older person or a person with a developmental  
3 disability in order to obtain control of or to divert to the advantage of another the ownership, use, benefit, or  
4 possession of or interest in the person's money, assets, or property by means of deception, duress, menace,  
5 fraud, undue influence, or intimidation with the intent or result of permanently depriving the older person or person  
6 with a developmental disability of the ownership, use, benefit, or possession of or interest in the person's money,  
7 assets, or property;

8 (b) an act taken by a person who has the trust and confidence of an older person or a person with a  
9 developmental disability to obtain control of or to divert to the advantage of another the ownership, use, benefit,  
10 or possession of or interest in the person's money, assets, or property by means of deception, duress, menace,  
11 fraud, undue influence, or intimidation with the intent or result of permanently depriving the older person or person  
12 with a developmental disability of the ownership, use, benefit, or possession of or interest in the person's money,  
13 assets, or property;

14 (c) the unreasonable use of an older person or a person with a developmental disability or of a power  
15 of attorney, conservatorship, or guardianship with regard to an older person or a person with a developmental  
16 disability done in the course of an offer or sale of insurance or securities in order to obtain control of or to divert  
17 to the advantage of another the ownership, use, benefit, or possession of the person's money, assets, or property  
18 by means of deception, duress, menace, fraud, undue influence, or intimidation with the intent or result of  
19 permanently depriving the older person or person with a developmental disability of the ownership, use, benefit,  
20 or possession of the person's money, assets, or property.

21 (4) "Incapacitated person" has the meaning given in 72-5-101.

22 (5) "Long-term care facility" means a facility defined in 50-5-101.

23 (6) "Mental injury" means an identifiable and substantial impairment of a person's intellectual or  
24 psychological functioning or well-being.

25 (7) "Neglect" means the failure of a person who has assumed legal responsibility or a contractual  
26 obligation for caring for an older person or a person with a developmental disability or who has voluntarily  
27 assumed responsibility for the person's care, including an employee of a public or private residential institution,  
28 facility, home, or agency, to provide food, shelter, clothing, or services necessary to maintain the physical or  
29 mental health of the older person or the person with a developmental disability.

30 (8) "Older person" means a person who is at least 60 years of age. For purposes of prosecution under

1 52-3-825(2) or (3), the person 60 years of age or older must be unable to provide personal protection from abuse,  
2 sexual abuse, neglect, or exploitation because of a mental or physical impairment or because of frailties or  
3 dependencies brought about by advanced age.

4 (9) "Person with a developmental disability" means a person 18 years of age or older who has a  
5 developmental disability, as defined in 53-20-102.

6 (10) "Physical injury" means death, permanent or temporary disfigurement, or impairment of any bodily  
7 organ or function.

8 (11) "Sexual abuse" means the commission of sexual assault, sexual intercourse without consent,  
9 indecent exposure, deviate sexual conduct, ~~or incest,~~ or sexual abuse of children as described in Title 45, chapter  
10 5, part 5, and Title 45, chapter 8, part 2."

11  
12 **NEW SECTION. Section 8. Directions to code commissioner.** Section 45-5-505 is intended to be  
13 renumbered and codified as an integral part of Title 45, chapter 8, part 2.

14 - END -