

HOUSE BILL NO. 365

INTRODUCED BY D. MOORE

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A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING INDECENCY LAWS; PROVIDING THAT INDECENT EXPOSURE OF A PERSON'S PRIVATE PARTS OR SIMULATED PRIVATE PARTS IN A PUBLIC PLACE IN SUCH A WAY THAT A REASONABLE PERSON WOULD BE OFFENDED OR ALARMED CONSTITUTES THE OFFENSE OF INDECENT EXPOSURE; PROVIDING PENALTIES; AND AMENDING SECTIONS 45-5-504 AND 46-23-502, MCA."

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

Section 1. Section 45-5-504, MCA, is amended to read:

"45-5-504. Indecent exposure. (1) ~~A Except as provided in subsection (2), a person commits the offense of indecent exposure if the person knowingly or purposely ~~exposes the person's genitals under circumstances in which the person knows the conduct is likely to cause affront or alarm in order to:~~~~

~~_____ (a) abuse, humiliate, harass, or degrade another; or~~

~~_____ (b) arouse or gratify the person's own sexual response or desire or the sexual response or desire of any person.~~ (a) exposes the person's genitals, pubic hair, or anus or exposes the areola or nipple of the person's breast with anything less than a fully opaque covering while in a public place or visible from a public place without taking reasonable precautions to prevent exposure, and disregards whether a reasonable person would be offended or alarmed by the act; or

(b) exposes any device, costume, or covering that gives the appearance of or simulates the genitals, pubic hair, anus region, or pubic hair region or exposes any device worn as a cover over the nipple or areola of the female breast that simulates and gives the realistic appearance of a nipple or areola while in a public place or visible from a public place without taking reasonable precautions to prevent exposure, and disregards whether a reasonable person would be offended or alarmed by the act.

(2) Indecent exposure does not include an act of breastfeeding by a mother.

~~(2)(3)~~ (a) A person convicted of the offense of indecent exposure shall be fined an amount not to exceed \$500 or be imprisoned in the county jail for a term of not more than 6 months, or both.

(b) On a second conviction, the person shall be fined an amount not to exceed \$1,000 or be imprisoned



1 in the county jail for a term of not more than 1 year, or both.

2 (c) On a third or subsequent conviction, the person shall be punished ~~by life imprisonment or by~~
3 imprisonment in a state prison for a term of not ~~less~~ more than 5 years ~~or more than 100 years~~ and may be fined
4 not more than ~~\$10,000~~ \$5,000, or both."

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6 **Section 2.** Section 46-23-502, MCA, is amended to read:

7 **"46-23-502. Definitions.** As used in 46-18-255 and this part, the following definitions apply:

8 (1) "Department" means the department of corrections provided for in 2-15-2301.

9 (2) "Mental abnormality" means a congenital or acquired condition that affects the mental, emotional,
10 or volitional capacity of a person in a manner that predisposes the person to the commission of one or more
11 sexual offenses to a degree that makes the person a menace to the health and safety of other persons.

12 (3) "Municipality" means an entity that has incorporated as a city or town.

13 (4) "Personality disorder" means a personality disorder as defined in the fourth edition of the Diagnostic
14 and Statistical Manual of Mental Disorders adopted by the American psychiatric association.

15 (5) "Predatory sexual offense" means a sexual offense committed against a stranger or against a person
16 with whom a relationship has been established or furthered for the primary purpose of victimization.

17 (6) "Registration agency" means:

18 (a) if the offender resides in a municipality, the police department of that municipality; or

19 (b) if the offender resides in a place other than a municipality, the sheriff's office of the county in which
20 the offender resides.

21 (7) (a) "Residence" means the location at which a person regularly resides, regardless of the number
22 of days or nights spent at that location, that can be located by a street address, including a house, apartment
23 building, motel, hotel, or recreational or other vehicle.

24 (b) The term does not mean a homeless shelter.

25 (8) "Sexual offender evaluator" means a person qualified under rules established by the department to
26 conduct sexual offender and sexually violent predator evaluations.

27 (9) "Sexual offense" means:

28 (a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-301 (if the victim
29 is less than 18 years of age and the offender is not a parent of the victim), 45-5-302 (if the victim is less than 18
30 years of age and the offender is not a parent of the victim), 45-5-303 (if the victim is less than 18 years of age and

1 the offender is not a parent of the victim), 45-5-310, 45-5-311, 45-5-502(3) (if the victim is less than 16 years of
2 age and the offender is 3 or more years older than the victim), 45-5-503, 45-5-504(1) (if the victim is under 18
3 years of age and the offender is 18 years of age or older), 45-5-504~~(2)(e)~~(3)(c), 45-5-507 (if the victim is under
4 18 years of age and the offender is 3 or more years older than the victim or if the victim is 12 years of age or
5 younger and the offender is 18 years of age or older at the time of the offense), 45-5-601(3), 45-5-602(3),
6 45-5-603(1)(b) or (2)(b), or 45-5-625; or

7 (b) any violation of a law of another state, a tribal government, or the federal government that is
8 reasonably equivalent to a violation listed in subsection (9)(a) or for which the offender was required to register
9 as a sexual offender after an adjudication or conviction.

10 (10) "Sexual or violent offender" means a person who has been convicted of or, in youth court, found to
11 have committed or been adjudicated for a sexual or violent offense.

12 (11) "Sexually violent predator" means a person who:

13 (a) has been convicted of or, in youth court, found to have committed or been adjudicated for a sexual
14 offense and who suffers from a mental abnormality or a personality disorder that makes the person likely to
15 engage in predatory sexual offenses; or

16 (b) has been convicted of a sexual offense against a victim 12 years of age or younger and the offender
17 is 18 years of age or older.

18 (12) "Transient" means an offender who has no residence.

19 (13) "Violent offense" means:

20 (a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-102, 45-5-103,
21 45-5-202, 45-5-206 (third or subsequent offense), 45-5-210(1)(b), (1)(c), or (1)(d), 45-5-212, 45-5-213, 45-5-302
22 (if the victim is not a minor), 45-5-303 (if the victim is not a minor), 45-5-401, 45-6-103, or 45-9-132; or

23 (b) any violation of a law of another state, a tribal government, or the federal government reasonably
24 equivalent to a violation listed in subsection (13)(a)."

25 - END -