

SENATE BILL NO. 60

INTRODUCED BY R. DRISCOLL

BY REQUEST OF THE DEPARTMENT OF JUSTICE

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING INDECENT EXPOSURE LAWS; CREATING THE OFFENSE OF INDECENT EXPOSURE TO A MINOR; PROVIDING PENALTIES; REVISING SEXUAL OFFENDER REGISTRY PROVISIONS RELATED TO THE OFFENSE OF INDECENT EXPOSURE; 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 person commits the offense of indecent exposure if the person knowingly or purposely exposes the person's genitals by any means, including electronic communication as defined in 45-5-625(5)(a), 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.

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

(c) On a third or subsequent conviction, the person shall be ~~punished by life imprisonment or by imprisonment~~ FINED AN AMOUNT NOT TO EXCEED \$10,000 OR BE IMPRISONED in a state prison for a term of not less than 5 years ~~or more than 100 years and may be fined not more than an amount not to exceed \$10,000, OR BOTH.~~

(3) (a) A person commits the offense of indecent exposure to a minor if the person commits an offense under subsection (1) and the person knows the conduct will be observed by a person who is under 16 years of age and the offender is 18 years of age or older ~~MORE THAN 3 YEARS OLDER THAN THE VICTIM.~~

(b) A person convicted of the offense of indecent exposure to a minor shall be fined an amount not to



1 exceed \$10,000 \$50,000 or be imprisoned in the state prison for a term of not ~~more~~ LESS than 40 years 4 YEARS,
 2 UNLESS THE JUDGE MAKES A WRITTEN FINDING THAT THERE IS GOOD CAUSE TO IMPOSE A TERM OF LESS THAN 4 YEARS
 3 AND IMPOSES A TERM OF LESS THAN 4 YEARS, OR MORE THAN 100 YEARS, or both."

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

6 **"46-23-502. Definitions.** As used in 46-18-255 and this part, the following definitions apply:

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

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

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

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

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

16 (6) "Registration agency" means:

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

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

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

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

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

26 (9) "Sexual offense" means:

27 (a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-301 (if the victim
 28 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
 29 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
 30 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

1 age and the offender is 3 or more years older than the victim), 45-5-503, ~~45-5-504(1) 45-5-504(2)(a) or (2)(b)~~ (if
 2 the victim is under less than 18 years of age and the offender is 18 years of age or older), 45-5-504(2)(c),
 3 45-5-504(3) (IF THE VICTIM IS LESS THAN 16 YEARS OF AGE AND THE OFFENDER IS 3 OR MORE YEARS OLDER THAN THE
 4 VICTIM), or (3), 45-5-507 (if the victim is under less than 18 years of age and the offender is 3 or more years older
 5 than the victim or if the victim is 12 years of age or younger and the offender is 18 years of age or older at the
 6 time of the offense), 45-5-601(3), 45-5-602(3), 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)."

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