

Unofficial Draft Copy

As of: April 7, 2016 (10:51am)

LC1j3b

**** Bill No. ****

Introduced By *****

By Request of the *****

A Bill for an Act entitled: "An Act providing a maximum penalty when the offender is 18 years of age or younger, it is a first offense, and no force was used; amending section 45-5-503, 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. 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)(a)(ii)(D).

(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 46-18-219, 46-18-222, and subsections (3) and (4) of this section.

(3) (a) If the victim is less than 16 years old and the offender is 4 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

Unofficial Draft Copy

As of: April 7, 2016 (10:51am)

LC1j3b

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 46-18-219 and 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 46-18-219 and 46-18-222.

(c) If the offender was previously convicted of an offense under this section or of an offense under the laws of another state or of the United States that if committed in this state would be an offense under this section and if the offender inflicted serious bodily injury upon a person in the course of committing each offense, the offender shall be:

(i) punished by death as provided in 46-18-301 through 46-18-310, unless the offender is less than 18 years of age at the time of the commission of the offense; or

(ii) punished as provided in 46-18-219.

(4) (a) If the victim was 12 years of age or younger and the offender was 18 years of age or older at the time of the offense, the offender:

(i) shall be punished by imprisonment in a state prison for a term of 100 years. The court may not suspend execution or defer

Unofficial Draft Copy

As of: April 7, 2016 (10:51am)

LC1j3b

imposition of the first 25 years of a sentence of imprisonment imposed under this subsection (4)(a)(i) except as provided in 46-18-222, and during the first 25 years of imprisonment, the offender is not eligible for parole.

(ii) may be fined an amount not to exceed \$50,000; and

(iii) shall be ordered to enroll in and successfully complete the educational phase and the cognitive and behavioral phase of a sexual offender treatment program provided or approved by the department of corrections.

(b) If the offender is released after the mandatory minimum period of imprisonment, the offender is subject to supervision by the department of corrections for the remainder of the offender's life and shall participate in the program for continuous, satellite-based monitoring provided for in 46-23-1010.

(5) If the victim is at least 14 years of age and the offender is 18 years of age or younger and it is a first offense and no evidence of force or coercion is present, the offender may be punished by no more than 5 years imprisonment in the state prison and may be fined no more than \$10,000.

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

~~(6)~~(7) As used in subsections (3) and (4), an act "in the

Unofficial Draft Copy

As of: April 7, 2016 (10:51am)

LC1j3b

course of committing sexual intercourse without consent" includes an attempt to commit the offense or flight after the attempt or commission.

~~(7)~~(8) If as a result of sexual intercourse without consent a child is born, the offender who has been convicted of an offense under this section and who is the biological parent of the child resulting from the sexual intercourse without consent forfeits all parental and custodial rights to the child if the provisions of 46-1-401 have been followed."

{*Internal References to 45-5-503:*

27-2-216	39-51-2111	40-4-219	40-15-102
40-15-116	41-5-206	42-2-608	44-5-311
45-1-205	45-5-501	45-5-512	45-5-512
45-5-512	45-5-628	45-8-405	46-1-502
46-16-226	46-18-104	46-18-104	46-18-111
46-18-201	46-18-203	46-18-203	46-18-205
46-18-205	46-18-205	46-18-207	46-18-207
46-18-219	46-18-222	46-18-222	46-18-231
46-23-502	46-23-506	46-23-1011	46-23-1011 }

- END -

{Name : Julianne Burkhardt
Title : Legislative Attorney
Agency: Legislative Services
Phone : 4025
E-Mail: jburkhardt@mt.gov}