

Montana

45-5-201. Assault. (1) A person commits the offense of assault if the person:

- (a) purposely or knowingly causes bodily injury to another;
- (b) negligently causes bodily injury to another with a weapon;
- (c) purposely or knowingly makes physical contact of an insulting or provoking nature with any individual; or
- (d) purposely or knowingly causes reasonable apprehension of bodily injury in another.

(2) A person convicted of assault shall be fined not to exceed \$500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

History: En. by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, ; amd. Sec. 1, Ch. 261, L. 1979; amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 1, Ch. 188, L. 1991; amd. Sec. 4, Ch. 432, L. 1999.

45-5-501. Definition. (1) As used in 45-5-503, the term "without consent" means:

- (a) the victim is compelled to submit by force against the victim or another; or
- (b) the victim is incapable of consent because the victim is:
 - (i) mentally defective or incapacitated;
 - (ii) physically helpless;
 - (iii) overcome by deception, coercion, or surprise;
 - (iv) less than 16 years old; or

(v) incarcerated in an adult or juvenile correctional, detention, or treatment facility and the perpetrator is an employee, contractor, or volunteer of the facility and has supervisory or disciplinary authority over the victim, unless the act is part of a lawful search.

(2) As used in subsection (1), the term "force" means:

- (a) the infliction, attempted infliction, or threatened infliction of bodily injury or the commission of a forcible felony by the offender; or
- (b) the threat of substantial retaliatory action that causes the victim to reasonably believe that the offender has the ability to execute the threat.

History: En. by Sec. 1, Ch. 513, L. 1973; amd. Sec. 2, Ch. 405, L. 1975; amd. Sec. 15, Ch. 359, L. 1977; R.C.M. 1947, ; amd. Sec. 3, Ch. 175, L. 1991; amd. Sec. 1, Ch. 218, L. 1991; amd. Secs. 1, 8, Ch. 687, L. 1991; amd. Sec. 1, Ch. 84, L. 1999; amd. Sec. 1, Ch. 562, L. 2001.

45-5-502. Sexual assault. (1) A person who knowingly subjects another person to any sexual contact without consent commits the offense of sexual assault.

(2) A person convicted of sexual assault shall be fined not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(3) 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 assault, the offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 4 years, unless the judge makes a written finding that there is good cause to impose a term of less than 4 years and imposes a term of less than 4 years, or more than 100 years and may be fined not more than \$50,000.

(4) An act "in the course of committing sexual assault" includes an attempt to commit the offense or flight after the attempt or commission.

(5) Consent is ineffective under this section if:

- (a) the victim is incarcerated in an adult or juvenile correctional, detention, or treatment facility and the perpetrator is an employee, contractor, or volunteer of the facility and has supervisory or disciplinary authority over the victim, unless the act is part of a lawful search; or
- (b) the victim is less than 14 years old and the offender is 3 or more years older than the victim.

History: En. by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, ; amd. Sec. 1, Ch. 687, L. 1979; amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 1, Ch. 172, L. 1985; amd. Sec. 1, Ch. 564, L. 1991; amd. Sec. 2, Ch. 687, L. 1991; amd. Sec. 1, Ch. 550, L. 1995; amd. Sec. 2, Ch. 84, L. 1999; amd. Sec. 1, Ch. 450, L. 2003.

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)(b)(iv).

(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 and 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 46-18-219 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.

(d) If the victim was incarcerated in an adult or juvenile correctional, detention, or treatment facility at the time of the offense and the offender had supervisory or disciplinary authority over the victim, the offender shall be punished by imprisonment in the state prison for a term of not more than 5 years or fined an amount not to exceed \$50,000, or both.

(4) 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.

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

History: En. by Sec. 1, Ch. 513, L. 1973; amd. Sec. 1, Ch. 2, L. 1975; amd. Sec. 1, Ch. 129, L. 1975; amd. Sec. 1, Ch. 94, L. 1977; amd. Sec. 16, Ch. 359, L. 1977; amd. Sec. 10, Ch. 584, L. 1977; R.C.M. 1947, ; amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 2, Ch. 172, L. 1985; amd. Sec. 1, Ch. 356, L. 1985; amd. Sec. 1, Ch. 644, L. 1985; amd. Sec. 1, Ch. 175, L. 1991; amd. Sec. 2, Ch. 218, L. 1991; amd. Sec. 3, Ch. 687, L. 1991; amd. Sec. 1, Ch. 85, L. 1993; amd. Sec. 8, Ch. 482, L. 1995; amd. Sec. 2, Ch. 550, L. 1995; amd. Sec. 1, Ch. 312, L. 1997; amd. Sec. 3, Ch. 84, L. 1999; amd. Sec. 4, Ch. 523, L. 1999; amd. Sec. 85, Ch. 114, L. 2003.

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

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

(3) The fact that a person seeks testing or receives treatment for the HIV-related virus or another sexually transmitted disease may not be used as a basis for a prosecution under this section and is not admissible in evidence in a prosecution under this section.

History: En. by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, ; amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 2, Ch. 175, L. 1991; amd. Sec. 7, Ch. 687, L. 1991.

45-5-511. Provisions generally applicable to sexual crimes. (1) When criminality depends on the victim being less than 16 years old, it is a defense for the offender to prove that he reasonably believed the child to be above that age. Such belief shall not be deemed reasonable if the child is less than 14 years old.

(2) No evidence concerning the sexual conduct of the victim is admissible in prosecutions under this part except evidence of the victim's past sexual conduct with the offender or evidence of specific instances of the victim's sexual activity to show the origin of semen, pregnancy, or disease which is at issue in the prosecution.

(3) If the defendant proposes for any purpose to offer evidence described in subsection (2), the trial judge shall order a hearing out of the presence of the jury to determine whether the proposed evidence is admissible under subsection (2).

(4) Evidence of failure to make a timely complaint or immediate outcry does not raise any presumption as to the credibility of the victim.

(5) Resistance by the victim is not required to show lack of consent. Force, fear, or threat is sufficient alone to show lack of consent.

History: En. by Sec. 1, Ch. 513, L. 1973; amd. Sec. 17, Ch. 359, L. 1977; R.C.M. 1947, ; amd. Sec. 3, Ch. 407, L. 1979; MCA 1981, ; redes. by Code Commissioner, 1983; amd. Sec. 3, Ch. 172, L. 1985; amd. Sec. 1, Ch. 425, L. 1987; amd. Sec. 6, Ch. 687, L. 1991.

45-5-212. Assault on minor. (1) A person commits the offense of assault on a minor if the person commits an offense under 45-5-201, and at the time of the offense, the victim is under 14 years of age and the offender is 18 years of age or older.

(2) A person convicted of assault on a minor shall be imprisoned in a state prison for a term not to exceed 5 years or be fined not more than \$50,000, or both.

History: En. Sec. 5, Ch. 432, L. 1999.
