

Sex Crimes: Definitions and Penalties

Montana

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Sexual Intercourse Without Consent

Question	Answer
How is it defined?	<ul style="list-style-type: none">• A person who knowingly has sexual intercourse without consent or with another person who is incapable of consent 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.
What are the punishments for this crime?	<p>A person convicted of sexual intercourse without consent shall be punished:</p> <ul style="list-style-type: none">• By life imprisonment, or• By imprisonment for a term not more than 20 years and may be fined not more than \$50,000, except as provided otherwise. <p>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 on anyone in the course of committing sexual intercourse without consent, the offender shall be punished:</p> <ul style="list-style-type: none">• By life imprisonment, or• By imprisonment 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 otherwise. <p>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:</p> <ul style="list-style-type: none">• Life imprisonment, or• By imprisonment for not less than 5 years or more than 100 years and may be fined not more than \$50,000, except as provided otherwise. <p>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 on a person in the course of committing each offense, the offender shall be punished:</p> <ul style="list-style-type: none">• By death as provided in certain sections, unless the offender is less than 18 years of age at the time of the commission of the offense; or

- By life sentence without possibility of release as provided in 46-18-219.

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:

- Shall be punished by imprisonment for a term of 100 years. The court may not suspend execution or defer imposition of the first 25 years of this sentence of imprisonment, and during the first 25 years of imprisonment, the offender is not eligible for parole;
- May be fined an amount not to exceed \$50,000; and
- Shall be ordered to complete a sexual offender treatment program.
- 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 a monitoring program

If the victim is at least 14 years of age and the offender is 18 years of age or younger, the offender may be punished by imprisonment of not more than 5 years and may be fined not more than \$10,000 if:

- The offender has not previously been found to have committed or been adjudicated for a sexual offense;
- A psychosexual evaluation of the offender has been prepared and the court finds that registration is not necessary for protection of the public and that relief from registration is in the public's best interest; and
- The court finds that the alleged conduct was consensual as indicated by words or overt actions indicating a freely given agreement to have sexual intercourse or sexual contact.

Anything else I should know?

- If as a result of sexual intercourse without consent a child is born, the offender 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.
- **“sexual intercourse”** means:
 - penetration of the vulva, anus, or mouth of one person by the penis of another person, penetration of the vulva or anus of one person by a body member of another person, or penetration of the vulva or anus of one person by a foreign instrument or object manipulated by another person to knowingly or purposely:
 - cause bodily injury or humiliate, harass, or degrade; or
 - arouse or gratify the sexual response or desire of either party.
 - any penetration, however slight, is sufficient
- **“consent”** means:
 - words or overt actions indicating a freely given agreement to have sexual intercourse or sexual contact and is further defined but not limited by the following:
 - (A) an expression of lack of consent through words or conduct means there is no consent or that consent has been withdrawn;
 - (B) a current or previous dating or social or sexual relationship by itself or the manner of dress of the person involved with the accused in the conduct at issue does not constitute consent; and
 - (C) lack of consent may be inferred based on all of the surrounding circumstances and must be

- considered in determining whether a person gave consent
- the victim is incapable of consent because the victim is:
 - (A) mentally disordered or incapacitated;
 - (B) physically helpless;
 - (C) overcome by deception, coercion, or surprise;
 - (D) less than 16 years old;
 - (E) incarcerated in an adult or juvenile correctional, detention, or treatment facility or is on probation or parole and the perpetrator is an employee, contractor, or volunteer of the supervising authority and has supervisory or disciplinary authority over the victim, unless the act is part of a lawful search;
 - (F) receiving services from a youth care facility, and the perpetrator:
 - (I) has supervisory or disciplinary authority over the victim or is providing treatment to the victim; and
 - (II) is an employee, contractor, or volunteer of the youth care facility;
 - (G) admitted to a mental health facility, is admitted to a community-based facility or a residential facility, or is receiving community-based services, and the perpetrator:
 - (I) has supervisory or disciplinary authority over the victim or is providing treatment to the victim; and
 - (II) is an employee, contractor, or volunteer of the facility or community-based service;
 - (H) a witness in a criminal investigation or a person who is under investigation in a criminal matter and the perpetrator is a law enforcement officer who is involved with the case in which the victim is a witness or is being investigated;
 - (I) a program participant in a private alternative adolescent residential or outdoor program, and the perpetrator is a worker affiliated with the program;
 - (J) a student of an elementary, middle, junior high, or high school, whether public or nonpublic, and the perpetrator is not a student of an elementary, middle, junior high, or high school and is an employee, contractor, or volunteer of any school who has ever had instructional, supervisory, disciplinary, or other authority over the student in a school setting;
 - (K) a parent or guardian involved in a child abuse or neglect proceeding, and the perpetrator is:
 - employed by the department of public health and human services for the purposes of carrying out the department's duties; and
 - directly involved in the parent or guardian's case or involved in the supervision of the case; or
 - (L) the victim is a client receiving psychotherapy services and the perpetrator:
 - is providing or purporting to provide psychotherapy services to the victim; or
 - is an employee, contractor, or volunteer of a facility that provides or purports to provide psychotherapy services to the victim and the perpetrator has supervisory or disciplinary authority over the victim.
 - Evidence of failure to make a timely complaint or immediate outcry does not raise any presumption as to the credibility of the victim. Mt. Code Ann. § 45-5-511(4)
 - Resistance by the victim is not required to show lack of consent. Force, fear, or threat is sufficient alone to

	<p>show lack of consent. Mt. Code Ann. § 45-5-511(5)</p> <ul style="list-style-type: none"> • It is unconstitutional to impose the death penalty for non-homicidal crimes against individuals, including the rape of a child. Kennedy v. Louisiana, 128 S.Ct. 2641, 554 U.S. 407, 171 L.Ed.2d 525 (2008). • A person convicted of a first offense under 45-5-502(3), 45-5-503(3), or 45-5-507(4) or (5) (or of a second or subsequent offense under 45-5-502(3), 45-5-503, or 45-5-507) may, in addition to the sentence imposed under those sections, be sentenced to chemical treatments that reduce sexual fantasies, sex drive, or both, administered by the department of corrections or its agent. Failure to continue treatment as ordered by the department of corrections constitutes a criminal contempt of court for failure to comply with the sentence, for which the sentencing court shall impose a term of incarceration without possibility of parole of not less than 10 years or more than 100 years. Mt. Code Ann. § 45-5-512.
Statutory citation(s):	<ul style="list-style-type: none"> • Mt. Code Ann. § 45-5-503

Sexual Assault

Question	Answer
How is it defined?	<ul style="list-style-type: none"> • A person who knowingly subjects another person to any sexual contact without consent. • Consent is ineffective if the victim is: <ul style="list-style-type: none"> • incarcerated in an adult or juvenile correctional, detention, or treatment facility or is on probation or parole and the perpetrator is an employee, contractor, or volunteer of the supervising authority and has supervisory or disciplinary authority over the victim, unless the act is part of a lawful search; • less than 14 years old and the offender is 3 or more years older than the victim; • receiving services from a youth care facility, and the perpetrator: <ul style="list-style-type: none"> • has supervisory or disciplinary authority over the victim or is providing treatment to the victim; and • is an employee, contractor, or volunteer of the youth care facility; • admitted to a mental health facility, is admitted to a community-based facility or a residential facility, or is receiving community-based services, and the perpetrator: <ul style="list-style-type: none"> • has supervisory or disciplinary authority over the victim or is providing treatment to the victim; and • is an employee, contractor, or volunteer of the facility or community-based service; • a program participant in a private alternative adolescent residential or outdoor program, and the perpetrator is a worker affiliated with the program; • a student of an elementary, middle, junior high, or high school, whether public or nonpublic, and the perpetrator is not a student of an elementary, middle, junior high, or high school and is an employee, contractor, or volunteer of any school who has ever had instructional, supervisory,

	<p>disciplinary, or other authority over the student in a school setting; or</p> <ul style="list-style-type: none"> • the victim is a client receiving psychotherapy services and the perpetrator: <ul style="list-style-type: none"> • is providing or purporting to provide psychotherapy services to the victim; or • is an employee, contractor, or volunteer of a facility that provides or purports to provide psychotherapy services to the victim and the perpetrator has supervisory or disciplinary authority over the victim.
<p>What are the punishments for this crime?</p>	<ul style="list-style-type: none"> • On a first conviction for sexual assault: <ul style="list-style-type: none"> • The offender shall be fined an amount not to exceed \$500, or be imprisoned for a term not to exceed 6 months, or both. • On a second conviction for sexual assault: <ul style="list-style-type: none"> • The offender shall be fined an amount not to exceed \$1,000, or be imprisoned for a term not to exceed 1 year, or both. • On a third and subsequent conviction for sexual assault: <ul style="list-style-type: none"> • The offender shall be fined an amount not to exceed \$10,000, or be imprisoned for a term not to exceed 5 years, or both. • 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: <ul style="list-style-type: none"> • Life imprisonment, or • By imprisonment 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.
<p>Anything else I should know?</p>	<ul style="list-style-type: none"> • Consent: <ul style="list-style-type: none"> • words or overt actions indicating a freely given agreement to have sexual intercourse or sexual contact and is further defined but not limited by the following: <ul style="list-style-type: none"> • (A) an expression of lack of consent through words or conduct means there is no consent or that consent has been withdrawn; • (B) a current or previous dating or social or sexual relationship by itself or the manner of dress of the person involved with the accused in the conduct at issue does not constitute consent; and • (C) lack of consent may be inferred based on all of the surrounding circumstances and must be considered in determining whether a person gave consent • the victim is incapable of consent because the victim is: <ul style="list-style-type: none"> • (A) mentally disordered or incapacitated; • (B) physically helpless; • (C) overcome by deception, coercion, or surprise; • (D) less than 16 years old; • (E) incarcerated in an adult or juvenile correctional, detention, or treatment facility or is on probation or parole and the perpetrator is an employee, contractor, or volunteer of the

supervising authority and has supervisory or disciplinary authority over the victim, unless the act is part of a lawful search;

- (F) receiving services from a youth care facility, and the perpetrator:
 - (I) has supervisory or disciplinary authority over the victim or is providing treatment to the victim; and
 - (II) is an employee, contractor, or volunteer of the youth care facility;
- (G) admitted to a mental health facility, is admitted to a community-based facility or a residential facility, or is receiving community-based services, and the perpetrator:
 - (I) has supervisory or disciplinary authority over the victim or is providing treatment to the victim; and
 - (II) is an employee, contractor, or volunteer of the facility or community-based service;
- (H) a witness in a criminal investigation or a person who is under investigation in a criminal matter and the perpetrator is a law enforcement officer who is involved with the case in which the victim is a witness or is being investigated;
- (I) a program participant in a private alternative adolescent residential or outdoor program, and the perpetrator is a worker affiliated with the program;
- (J) a student of an elementary, middle, junior high, or high school, whether public or nonpublic, and the perpetrator is not a student of an elementary, middle, junior high, or high school and is an employee, contractor, or volunteer of any school who has ever had instructional, supervisory, disciplinary, or other authority over the student in a school setting;
- (K) a parent or guardian involved in a child abuse or neglect proceeding, and the perpetrator is:
 - employed by the department of public health and human services for the purposes of carrying out the department's duties; and
 - directly involved in the parent or guardian's case or involved in the supervision of the case; or
- (L) the victim is a client receiving psychotherapy services and the perpetrator:
 - is providing or purporting to provide psychotherapy services to the victim; or
 - is an employee, contractor, or volunteer of a facility that provides or purports to provide psychotherapy services to the victim and the perpetrator has supervisory or disciplinary authority over the victim.
- Evidence of failure to make a timely complaint or immediate outcry does not raise any presumption as to the credibility of the victim. Mt. Code Ann. § 45-5-511(4)
- Resistance by the victim is not required to show lack of consent. Force, fear, or threat is sufficient alone to show lack of consent. Mt. Code Ann. § 45-5-511(5)
- **Sexual contact:**
 - touching of the sexual or other intimate parts of the person of another, directly or through clothing, in order to knowingly or purposely:
 - cause bodily injury to or humiliate, harass, or degrade another; or
 - arouse or gratify the sexual response or desire of either party.
- A person convicted of a first offense under 45-5-502(3), 45-5-503(3), or 45-5-507(4) or (5) (or of a second or subsequent offense under 45-5-502(3), 45-5-503, or 45-5-507) may, in addition to the

	<p>sentence imposed under those sections, be sentenced to chemical treatments that reduce sexual fantasies, sex drive, or both, administered by the department of corrections or its agent. Failure to continue treatment as ordered by the department of corrections constitutes a criminal contempt of court for failure to comply with the sentence, for which the sentencing court shall impose a term of incarceration without possibility of parole of not less than 10 years or more than 100 years. Mt. Code Ann. § 45-5-512.</p>
Statutory citation(s):	<ul style="list-style-type: none"> • Mt. Code Ann. § 45-5-502

Statutory Rape

Question	Answer
How is it defined?	<ul style="list-style-type: none"> • “Statutory rape” is commonly used to refer to sexual penetration that is illegal because it involves a youth. • Montana has no specific statutory rape statute, but “statutory rape” is captured under <i>Mt. Code Ann. § 45-5-503</i>: <ul style="list-style-type: none"> • If the victim is less than 16 years old and the offender is 4 or more years older than the victim, or • 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.
What are the punishments for this crime?	<ul style="list-style-type: none"> • If the victim is less than 16 years old and the offender is 4 or more years older than the victim: <ul style="list-style-type: none"> • The offender shall be punished by life imprisonment or imprisonment not less than 4 years or more than 100 years, and may be fined not more than \$50,000, except as provided otherwise. • 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: <ul style="list-style-type: none"> • Shall be punished by imprisonment for a term of 100 years. • The court shall not suspend execution or defer imposition of the first 10 years, except as provided otherwise. • During the first 10 years, the offender is not eligible for parole. • May be fined an amount not to exceed \$50,000, and • 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.
Anything else I should know?	<ul style="list-style-type: none"> • When criminality depends on the victim being less than 16 years old, it is a defense for the offender to prove that the offender reasonably believed the child to be above that age. The belief may not be considered reasonable if the child is less than 14 years old. Mt. Code Ann. § 45-5-511(1) • A person convicted of a first offense under 45-5-502(3), 45-5-503(3), or 45-5-507(4) or (5) (or of a second or subsequent offense under 45-5-502(3), 45-5-503, or 45-5-507) may, in addition to the

	<p>sentence imposed under those sections, be sentenced to chemical treatments that reduce sexual fantasies, sex drive, or both, administered by the department of corrections or its agent. Failure to continue treatment as ordered by the department of corrections constitutes a criminal contempt of court for failure to comply with the sentence, for which the sentencing court shall impose a term of incarceration without possibility of parole of not less than 10 years or more than 100 years. Mt. Code Ann. § 45-5-512.</p> <ul style="list-style-type: none"> • A person may not be convicted based on the age of the person's spouse. • Evidence of failure to make a timely complaint or immediate outcry does not raise any presumption as to the credibility of the victim. Mt. Code Ann. § 45-5-511(4)
Statutory citation(s):	<ul style="list-style-type: none"> • Mt. Code Ann. § 45-5-503

Indecent Exposure

Question	Answer
How is it defined?	<p>A person commits the offense of indecent exposure if:</p> <ul style="list-style-type: none"> • The person knowingly or purposely exposes the person's genitals or intimate parts by any means, including electronic communication, under circumstances in which the person knows the conduct is likely to cause affront or alarm in order to: <ul style="list-style-type: none"> • Abuse, humiliate, harass, or degrade another, or • Arouse or gratify the person's own sexual response or desire or the sexual response or desire of any person. • A person commits the offense of indecent exposure to a minor if the person knows the conduct will be observed by a person who is under 16 years of age and the offender is more than 4 years older than the victim.
What are the punishments for this crime?	<ul style="list-style-type: none"> • First conviction: <ul style="list-style-type: none"> • Imprisonment for not more than 6 months, or fined not more than \$500, or both. • On a second conviction: <ul style="list-style-type: none"> • Imprisonment for not more than 1 year, or fined not more than \$1,000, or both. • On a third or subsequent conviction: <ul style="list-style-type: none"> • Imprisonment for not more than 10 years, and fined not more than \$10,000, or both. • Indecent exposure to a minor: <ul style="list-style-type: none"> • Imprisonment for not less than 4 years, or fined not more than \$50,000, 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, or both.

Anything else I should know?	• N/A
Statutory citation(s):	• Mont. Code Anno. § 45-5-504

“Deviate Sexual Conduct” (including Sodomy)

Question	Answer
How is it defined?	<ul style="list-style-type: none"> • A person who knowingly engages in deviate sexual relations, or • Who causes another to engage in deviate sexual relations.
What are the punishments for this crime?	<ul style="list-style-type: none"> • Imprisonment for not more than 10 years, or fine not exceeding \$50,000, or both. • However, following the Supreme Court of the United States’ decision in <i>Lawrence v. Texas</i>, it is unconstitutional to prohibit private sexual conduct between consenting adults. <i>Lawrence v. Texas</i>, 539 U.S. 558 (2003).
Anything else I should know?	<ul style="list-style-type: none"> • Deviate sexual relations: <ul style="list-style-type: none"> • May consist of sexual contact • Does not require penetration • Prohibits a broader range of sexual acts between persons of the same sex and between persons and animals
Statutory citation(s):	• Mt. Code Ann. § 45-8-218

Incest

Question	Answer
How is it defined?	<p>A person commits the offense of incest if:</p> <ul style="list-style-type: none"> • The person knowingly marries, cohabits with, or has sexual intercourse with, or has sexual contact with an: <ul style="list-style-type: none"> • Ancestor, descendant, brother or sister of the whole or half blood, or any stepson or stepdaughter.

<p>What are the punishments for this crime?</p>	<ul style="list-style-type: none"> • Life imprisonment, or imprisonment not to exceed 100 years, or fine not to exceed \$50,000. • If the victim is under 16 years of age 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 incest: <ul style="list-style-type: none"> • The offender shall be punished by life imprisonment or by imprisonment for not less than 4 years or more than 100 years, and may be fined not more than \$50,000. • 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: <ul style="list-style-type: none"> • Shall be punished by imprisonment for a term of 100 years. • The court shall not suspend execution or defer imposition of the first 25 years, except as provided otherwise. • During the first 25 years, the offender is not eligible for parole. • May be fined an amount not to exceed \$50,000, and • Shall be ordered to enroll in and successfully complete the educational phase and the cognitive and behavior phase of a sexual offender treatment program provided or approved by the department of corrections. • Offender shall also be required to pay the victim's reasonable costs of counseling that result from the offense. • 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. • Consent is a defense to incest with or upon a stepson or stepdaughter, but consent is ineffective if the stepson or stepdaughter is less than 18 years of age and the stepparent is 4 or more years older than the stepson or stepdaughter. • A person who is less than 18 years of age is not legally responsible or legally accountable for the offense of incest and is considered a victim of the offense of incest if the other person in the incestuous relationship is 4 or more years older than the victim.
<p>Anything else I should know?</p>	<p>The relationships referred to in this subsection include:</p> <ul style="list-style-type: none"> • Blood relationships without regard to legitimacy; • Relationships of parent and child by adoption; and • Relationships involving a stepson or stepdaughter. <p>Sexual contact: touching of the sexual or other intimate parts of the person of another, directly or through clothing, in order to knowingly or purposely:</p> <ul style="list-style-type: none"> • cause bodily injury to or humiliate, harass, or degrade another; or • arouse or gratify the sexual response or desire of either party. <p>Sexual intercourse: penetration of the vulva, anus, or mouth of one person by the penis of another person, penetration of the vulva or anus of one person by a body member of another person, or penetration of the vulva or anus of one person by a foreign instrument or object manipulated by another person to knowingly or purposely:</p>

- cause bodily injury or humiliate, harass, or degrade; or
- arouse or gratify the sexual response or desire of either party.
- any penetration, however slight, is sufficient

Cohabit: to live together under the representation of being married.

A person convicted of a first offense under 45-5-502(3), 45-5-503(3), or 45-5-507(4) or (5) (or of a second or subsequent offense under 45-5-502(3), 45-5-503, or 45-5-507) may, in addition to the sentence imposed under those sections, be sentenced to chemical treatments that reduce sexual fantasies, sex drive, or both, administered by the department of corrections or its agent. Failure to continue treatment as ordered by the department of corrections constitutes a criminal contempt of court for failure to comply with the sentence, for which the sentencing court shall impose a term of incarceration without possibility of parole of not less than 10 years or more than 100 years. Mt. Code Ann. § 45-5-512.

Statutory
citation(s):

- Mt. Code Ann. § 45-5-507