



# 65TH LEGISLATURE SEXUAL ASSAULT BILLS: EXPLAINED

A 2015-2016 Interim Law & Justice Committee study (SJ 24) informed much of what MCADSV focused on with this session. The committee included the following members: Rep. Eck (D-Missoula), Rep. Hill Smith (D-Missoula), Rep. Laszloffy (R-Laurel), Rep. Lavin (R-Kalispell), Rep. Mortenson (R-Billings), Rep. Pease-Lopez (D-Billings), Sen. Kary (R-Billings), Sen. Malek (D-Missoula), Sen. Moe (D-Great Falls), Sen. Sales (R-Bozeman), Sen. Sands (D-Missoula), and Sen. Swandal (R-Wilsall). It led to bills concerning the definition of consent, the statute of limitations for child sex abuse victims, parental rights of rapists, incest statutes, and sex offender treatment.

## **SB 29: Amending Definition of Consent in SIWOC**

Sponsored by Sen. Diane Sands (D-Missoula), SB 29 amends the definition of “consent” and creates the crime of aggravated sexual intercourse without consent. While the current definition requires use of force, we know that a large percentage of victims experience a freeze response to sexual violence and that nearly 80% of Montana’s survivors knew their attacker. When you look at those facts, it’s not surprising that many victims are unable or unwilling to “fight back” as others would expect. A consent definition that doesn’t rely upon force is the first step in recognizing that reality and in our justice system responding appropriately.

SB 29 was passed by the legislature with nearly unanimous support and is scheduled to go into effect on October 1, 2017.

## **SB 22: Terminating Parental Rights of Rapists**

Introduced by Sen. Sue Malek (D-Missoula), SB 22 creates a private civil cause of action for the termination of parental rights of a rapist if a child was conceived as a result of the rape. At times when there was no prosecution for the underlying crime, this would give victims the opportunity to terminate parental rights of the rapist. The petitioner will still need to provide clear and convincing evidence (which is the highest standard under civil law) that the child was conceived by rape. Courts will still be required to comply with ICWA if that applies to the situation. As amended in the Senate, the bill allows for a survivor to still pursue child support after the perpetrator’s custody rights have been terminated.

According to the National Conference of State Legislatures, there are anywhere between 17,000 to 32,000 pregnancies caused by rape each year in the United States and we know that the lifetime costs of a rape can be over \$122,000. As a legal services provider for SA survivors, MCADSV has often been asked, “Can I terminate the parental rights of my rapist?”. SB 22 relieves the survivor of the challenges of maintaining a connection to the perpetrator. And with the amendment, the bill allows the survivor to do what is best for herself and her child without the immense financial burden of serving as a single parent and rape survivor simultaneously.

SB 22 is scheduled to go into effect on October 1, 2017.

## **SB 30: Extending Statute of Limitations for Child Sex Abuse**

Brought by Sen. Diane Sands (D-Missoula), SB 30 increases the statute of limitations for reporting child sex abuse from 10 years after the victim turns 18 years old to 20 years after they turn 18 years old.



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Experts and victims' advocates understand that child sex abuse is most often committed by a person that the child knows, such as a family member or family friend. In expanding the statute of limitations, SB 30 takes into account the time it takes for a survivor to overcome a power dynamic within their family or to come to terms with what they experienced in their youth.

With tremendous bipartisan support in both the Senate and House, SB 30 was passed by the legislature. It will take effect on October 1, 2017.

## **SB 26: Revising Mandatory Minimums for Statutory Rape**

Brought by Sen. Sue Malek (D-Missoula), this law revises mandatory minimums for statutory rape. If the victim is at least 14 years of age, and the perpetrator is 18 or younger, the maximum sentence that can be given for a SIWOC is five years. However, (1) the court must find that the perpetrator has not been previously convicted of a sexual offense; (2) a psychosexual evaluation has been conducted and it has been concluded that registration is not necessary or in the interest of public safety, and (3) the conduct has to be found to be consensual.

SB 26 is set to take effect on October 1, 2017. MCADSV did not take a position in support of or opposition to this bill.

## **SB 17: Revising Sex Offender Registration for Juvenile Offenders**

Introduced by Sen. Swandal (R-Wilsall), SB 17 amends 45-5-1513 to state that a youth who has committed a sexual offense is exempt from registry unless the youth has already been convicted of one sexual offense and the court determines the registry is necessary to protect the public interest. It has been signed into law and will go into effect on October 1, 2017. While MCADSV did watch this bill go through the process, we did not take a position.

## **HB 482: Revising Incest Laws**

HB 482, sponsored by Rep. Jenny Eck (D-Helena), came at the request of the Law & Justice Interim Committee following a Montana Supreme Court case that raised the issue of the (remote) possibility of an incest victim being charged as an accomplice to the crime. The bill provided that a person under the age of 18 is not legally responsible for the crime of incest and that consent is ineffective if a stepson/stepdaughter is under 18 and the stepfather/stepmother is more than 4 years older. HB 482 will take effect October 1, 2017.

## **HB 129: Addressing Non-Consensual Pornography**

Sponsored by Rep. Ellie Hill Smith (D-Missoula), HB 129 intended to make it a crime to distribute photo/video/other visual medium of an identifiable (adult) victim engaged in sexual conduct or showing intimate parts, wherein the image was created without the victim's consent. As such, it would only cover crimes where victim was incapacitated, asleep, or otherwise unaware they were being recorded. This was the only bill from the interim committee's study that MCADSV actively opposed and it failed on the Senate floor.



# 2017 END OF SESSION POLICY RECAP

## **SB 153: Creating the Offense of Strangulation**

Sponsored by Sen. Margie MacDonald (D-Billings), SB 153 creates the offense of strangulation of a partner or family member, with a punishment of 2 to 20 years in state prison, a fine of not more than \$50,000, and a required counseling assessment. Often mis-termed as “choking”, strangulation is when a person (a) applies pressure on the throat or neck of someone; or (b) blocks air flow to the nose and mouth of someone. Serial strangulation is an indicator of lethality in domestic violence relationships but Montana was one of only 7 states that had not passed some sort of statute that directly addresses it.

SB 153 had broad bipartisan support in the legislature and the law is effective as of May 19, 2017.

## **HB 609: Discriminating Against Transgender Montanans**

HB 609, sponsored by Rep. Carl Glimm (R-Kila), would have forced individuals to use the public facility, such as a school locker room or library bathroom, as designated by their original birth certificate/biological sex. For example, a transgender man would have to use a women’s restroom. It posed a tremendous threat to the safety and well-being of the transgender and LGBTQ community. MCADSV partnered with other organizations to amplify the voices of transgender Montanans and allies from across the state and the bill was successfully tabled in House Judiciary Committee.

## **SB 66: Increasing Crime Victims Compensation Benefits**

Brought by Sen. Cynthia Wolken (D-Missoula), this bill was recommended by the interim Commission on Sentencing and proposed to change the deadline to apply for Crime Victim Compensation services from 1 year from the date of victimization to 2 years. The bill also proposed to increase the funeral benefit to \$7,000 (currently at \$3,500), add crime scene cleanup and relocation as a benefit, and increase the mental health counseling for secondary victims to \$4,000 (currently at \$2,000). This would include counseling for children who witness a crime. Unfortunately, Senate Judiciary voted down this bill in committee and we were unable to revive it.

## **HB 133: Addressing Mandatory Minimums**

Introduced by Rep. McConnell (D-Missoula), HB 133 no longer allows judges to rely on psychosexual evaluation to avoid 25 year mandatory minimum for child sexual abuse cases. However, it also lowered the mandatory minimum to 10 years. HB 133 takes effect July 1, 2017 and applies to crimes committed after June 30, 2017.

## **HB 600: Revising Victims' Rights Laws**

HB 600, sponsored by Rep. Garner (R-Kalispell), is a response to the passage of CI-116/Marsy’s Law. It provides that law enforcement must make a reasonable attempt to give victim’s rights cards to the person known to be a primary victim of a crime. If a victim received a card, the criminal justice system must treat that victim as asserting their rights and other victims not originally known to law enforcement may assert their rights at any time. Victims will have the ability to waive their rights/notifications at any time. It won’t preclude information sharing with domestic violence shelters/crisis lines, victim services providers, or MDT responding to the crime, or pursuant to court order, but victims may request that their information not be shared with these teams. UPDATE: The implementation of Marsy’s Law has been stayed by the MT Supreme Court pending litigation. This means that CI-116 is not currently in effect.