

38-Point Safe Community Challenge Analysis for Montana

ISSUE 1: CHILD MARRIAGE IN MONTANA

- 1.1 *What is the youngest age one can marry?*
- 1.2 *Is parental approval required?*
- 1.3 *Is judicial approval required?*
- 1.4 *Is there a lower age limit if one of the participants is pregnant?*
- 1.5 *Is there a lower age limit if the minor has been married before?*
- 1.6 *Is there a lower age limit if the participant is in the military?*
- 1.7 *Is there a gender difference in the lowest age limit permitted?*

1.1 What is the youngest age one can marry?

16 or 17 years of age is the youngest one can marry. Montana law requires “a marriage application [to have] been completed and signed by both parties to a prospective marriage and at least one party has appeared before the clerk of the district court and paid the marriage license fee of \$53, the clerk of the district court shall issue a license to marry and a marriage certificate form upon being furnished[.]” Montana has strict age limits.

Montana permits marriage between individuals “satisfactory proof that each party to the marriage will have attained 18 years of age at the time the marriage license is effective[.]” § 40-1-202(1), MCA.

The age of the individuals being married must be proven by each applicant providing “a birth certificate or other satisfactory evidence of age” to the “person authorized by law to issue marriage license[.]” § 40-1-203, MCA.

Individuals 16 or 17 years of age may be married if they are “or will have attained 16 years of age and has obtained judicial approval as provided in 40-1-213[.]” § 40-1-202(1), MCA. Judicial approval, including two counseling sessions for the participants, is required as follows pursuant to § 40-1-213, MCA.

(1) The district court may order the clerk of the district court to issue a marriage license and a marriage certificate form to a party 16 or 17 years of age who has no parent capable of consenting to the party's marriage or has the consent of both parents or of the parent having the actual care, parenting authority, and control to the party's marriage, if capable of giving consent, or of the party's guardian. The court must require both parties to participate in a period of marriage counseling involving at least two separate counseling sessions not less than 10 days apart with a designated counselor as a condition of the order for issuance of a marriage license and a marriage certificate form under this section.

(2) A marriage license and a marriage certificate form may be issued under this section only if the court finds that the underaged party is capable of assuming the responsibilities of marriage and the marriage will serve the party's best interests. Pregnancy alone does not establish that the best interests of the party will be served.

1.2 Is parental approval required?

Yes.

1.3 Is judicial approval required?

Yes.

1.4 Is there a lower age limit if one of the participants is pregnant?

No.

1.5 Is there a lower age limit if the minor has been married before?

No.

1.6 Is there a lower age limit if the participant is in the military?

No.

1.7 Is there a gender difference in the lowest age limit permitted?

No.

ISSUE II: CONSENT TO SEXUAL CONTACT

2.1 What is the definition of “consent”?

2.2 Is freely given or affirmative consent required?

2.3 What is the youngest age for a person to consent to sexual contact?

2.4 Is a difference in age accounted for when considering consent?

2.5 Does the law recognize that a developmental disability and/or mental incapacity can impact the ability to consent?

2.6 Does the law recognize that consciousness can impact a person’s ability to consent?

2.7 Does intoxication impact the victim’s ability to consent?

2.8 Is an individual’s ability to consent impacted by their relationship with the perpetrator?

2.1 What is the definition of “consent”?

The criminal code in Montana defines consent, as that term applies to Sexual Assault, Sexual Intercourse Without Consent, and Aggravated Sexual Intercourse Without Consent through § 45-5-501(1)(a), MCA, as “words or overt actions indicating a freely given agreement to have sexual intercourse or sexual contact.”

Further details of consent is provided that:

1. “an expression of lack of consent through words or conduct means there is no consent or that consent has been withdrawn[.]” § 45-5-501(1)(a), MCA(i)
2. “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” § 45-5-501(1)(a), MCA(ii)
3. “lack of consent may be inferred based on all of the surrounding circumstances and must be considered in determining whether a person gave consent[.]” § 45-5-501(1)(a), MCA(iii)

Section 45-5-501(1)(b), MCA, provides that a person is incapable of giving consent to sexual contact if the victim is

[1.] mentally disordered or incapacitated;

[2.] physically helpless;

[3.] overcome by deception, coercion, or surprise;

[4.] less than 16 years old [Pursuant to 45-5-511(1), '[w]hen 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.'];

[5.] incarcerated in an adult or juvenile correctional, detention, or treatment facility or is on probation, conditional release, 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 ['does not apply if the individuals are married to each other and one of the individuals involved is on probation, conditional release, or parole and the other individual is a probation or parole officer of a supervising authority' pursuant to § 45-5-501(1)(c), MCA];

[6.] receiving services from a youth care facility, as defined in 52-2-602, and the perpetrator [does 'not apply if the individuals are married to each other and one of the individuals involved is a patient in or resident of a facility, is a recipient of community-based services, or is receiving services from a youth care facility and the other individual is an employee, contractor, or volunteer of the facility or community-based service' pursuant to § 45-5-501(1)(d), MCA];

(A) has supervisory or disciplinary authority over the victim or is providing treatment to the victim; and

(B) is an employee, contractor, or volunteer of the youth care facility;

[7.] admitted to a mental health facility, as defined in 53-21-102, is admitted to a community-based facility or a residential facility, as those terms are defined in 53-20-102, or is receiving community-based services, as defined in 53-20-102, and the perpetrator [does 'not apply if the individuals are married to each other and one of the individuals involved is a patient in or resident of a facility, is a recipient of community-based services, or is receiving services from a youth care facility and the other individual is an employee, contractor, or volunteer of the facility or community-based service' pursuant to § 45-5-501(1)(d), MCA];

(A) has supervisory or disciplinary authority over the victim or is providing treatment to the victim; and

(B) is an employee, contractor, or volunteer of the facility or community-based service;

[8.] a program participant, as defined in 52-2-802, in a private alternative adolescent residential or outdoor program, pursuant to Title 52, chapter 2, part 8,

and the perpetrator is a person associated with the program, as defined in 52-2-802 [‘does not apply if the individuals are married to each other and one of the individuals involved is a program participant and the other individual is a person associated with the program pursuant to § 45-5-501(e), MCA];

[9.] the victim is a client receiving psychotherapy services and the perpetrator [‘does not apply if the individuals are married to each other and one of the individuals involved is a psychotherapy client and the other individual is a psychotherapist or an employee, contractor, or volunteer of a facility that provides or purports to provide psychotherapy services to the client pursuant to § 45-5-501(1)(f), MCA]:

(A) is providing or purporting to provide psychotherapy services to the victim; or

(B) 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;

[10.] 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 [‘does not apply if the individuals are married to each other pursuant to’ § 45-5-501(1)(g), MCA];

[11.] 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; or

[12.] a parent or guardian involved in a child abuse or neglect proceeding under Title 41, chapter 3, and the perpetrator is:

(A) employed by the department of public health and human services for the purposes of carrying out the department's duties under Title 41, chapter 3; and

(B) directly involved in the parent or guardian's case or involved in the supervision of the case.

Additional statutory provisions regarding sexual conduct, pursuant to § 45-5-511, MCA, includes that

[1.] Evidence concerning the sexual conduct of the victim is inadmissible 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 that is at issue in the prosecution.

[2.] 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).

[3.] Evidence of failure to make a timely complaint or immediate outcry does not raise any presumption as to the credibility of the victim.

2.2 Is freely given or affirmative consent required?

The definition requires “words or overt actions indicating a freely given agreement” to have sexual intercourse or sexual contact. Although the terms “affirmative consent” or “freely given consent” are not utilized verbatim, the terms used for a “freely given agreement” seem to require the same type of freely given affirmative consent. § 45-5-501(1)(a), MCA. Additionally, “[r]esistance by the victim is not required to show lack of consent. Force, fear, or threat is sufficient alone to show lack of consent.” § 45-5-511(5), MCA.

Consent may also be withdrawn through words or conduct. § 45-5-501(1)(a)(i), MCA. An examination of “all the surrounding circumstances” “must be considered in determining whether a person gave consent.” “[L]ack of consent may be inferred based on all of the surrounding circumstances and must be considered in determining whether a person gave consent[.]” § 45-5-501(1)(a), MCA(iii).

2.3 What is the youngest age for a person to consent to sexual contact?

A person is required to be 16 years old to consent pursuant to § 45-5-501(1)(b)(iv), MCA. When lack of consent is based on an individual’s age, pursuant to 45-5-511(1), “[w]hen 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.”]

2.4 Is a difference in age accounted for when considering consent?

Yes. Although consent is officially 16 years of age, an exception that accounts for an age difference when consent is deemed statutorily ineffective exists. Pursuant to § 45-5-501(5)(a), MCA, “consent is ineffective under this section if the victim is...(ii) less than 14 years old and the offender is 3 or more years older than the victim[.]” This section indicates that consent is not statutorily invalid if one person is 14 years of age and the other individual is less than 3 years older than the 14 year old. This indicates that a difference in age below 16 years of age is considered down to 14 years of age so long as the other person is not 3 or more years older than the victim.

2.5 Does the law recognize that a developmental disability and/or mental incapacity can impact the ability to consent?

Yes. Mont. Code Ann. § 45-5-501(1)(b) recognizes a person may be incapable of giving consent because the person is “mentally disordered or incapacitated;” “physically helpless;” or “overcome by deception, coercion, or surprise[.]”

A person’s consent is ineffective if

- (a) it is given by a person who is legally incompetent to authorize the conduct charged to constitute the offense;

(b) it is given by a person who by reason of youth, mental disease or disorder, or intoxication is unable to make a reasonable judgment as to the nature or harmfulness of the conduct charged to constitute the offense;

(c) it is induced by force, duress, or deception;

(d) it is against public policy to permit the conduct or the resulting harm, even though consented to; or

(e) for offenses under 45-5-502 [Sexual Assault], 45-5-503 [Sexual Intercourse Without Consent], 45-5-508 [Aggravated Sexual Intercourse Without Consent], 45-5-601 [Prostitution and Patronizing Prostitution], 45-5-602 [Promoting Prostitution], 45-5-603 [Aggravated Promotion of Prostitution], or Title 45, chapter 5, part 7 [Human Trafficking], it is given by a person who the offender knew or reasonably should have known was a victim of human trafficking, as defined in 45-5-701, or was subjected to force, fraud, or coercion, either of which caused the person to be in the situation where the offense occurred.

§ 45-2-211(2), MCA.

2.6 Does the law recognize that consciousness can impact a person's ability consent?

Yes. Mont. Code Ann. § 45-5-501(1)(b) recognizes a person may be incapable of giving consent because the person is “mentally disordered or incapacitated;” “physically helpless;” or “overcome by deception, coercion, or surprise[.]”

Consent is ineffective if “it is given by a person who by reason of youth, mental disease or disorder, or intoxication is unable to make a reasonable judgment as to the nature or harmfulness of the conduct charged to constitute the offense[.]” § 45-2-211(2)(b), MCA.

2.7 Does intoxication impact the victim's ability to consent?

Yes. Consent is ineffective if: it is given by a person who by reason of youth, mental disease, disorder, or intoxication is unable to make a reasonable judgment as to the nature or harmfulness of the conduct charged to constitute the offense. § 45-2-211(2)(b), MCA.

Yes. Mont. Code Ann. § 45-5-501(1)(b) recognizes a person may be incapable of giving consent because the person is “mentally disordered or incapacitated;” “physically helpless;” or “overcome by deception, coercion, or surprise[.]”

2.8 Is an individual's ability to consent impacted by a supervisory relationship or a position of authority with the perpetrator?

Yes, for purposes of the statutes for Sexual Assault, Sexual Intercourse Without Consent, and Aggravated Sexual Intercourse Without Consent, § 45-5-501(1)(b), MCA, a person is incapable of consent if the individual is

[1.] incarcerated in an adult or juvenile correctional, detention, or treatment facility or is on probation, conditional release, 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 [‘does not apply if the individuals are married to each other and one

of the individuals involved is on probation, conditional release, or parole and the other individual is a probation or parole officer of a supervising authority' pursuant to § 45-5-501(1)(c), MCA];

[2.] receiving services from a youth care facility, as defined in 52-2-602, and the perpetrator [does 'not apply if the individuals are married to each other and one of the individuals involved is a patient in or resident of a facility, is a recipient of community-based services, or is receiving services from a youth care facility and the other individual is an employee, contractor, or volunteer of the facility or community-based service' pursuant to § 45-5-501(1)(d), MCA]:

(A) has supervisory or disciplinary authority over the victim or is providing treatment to the victim; and

(B) is an employee, contractor, or volunteer of the youth care facility;

[3.] admitted to a mental health facility, as defined in 53-21-102, is admitted to a community-based facility or a residential facility, as those terms are defined in 53-20-102, or is receiving community-based services, as defined in 53-20-102, and the perpetrator [does 'not apply if the individuals are married to each other and one of the individuals involved is a patient in or resident of a facility, is a recipient of community-based services, or is receiving services from a youth care facility and the other individual is an employee, contractor, or volunteer of the facility or community-based service' pursuant to § 45-5-501(1)(d), MCA]:

(A) has supervisory or disciplinary authority over the victim or is providing treatment to the victim; and

(B) is an employee, contractor, or volunteer of the facility or community-based service;

[4.] a program participant, as defined in 52-2-802, in a private alternative adolescent residential or outdoor program, pursuant to Title 52, chapter 2, part 8, and the perpetrator is a person associated with the program, as defined in 52-2-802 ['does not apply if the individuals are married to each other and one of the individuals involved is a program participant and the other individual is a person associated with the program pursuant to § 45-5-501(e), MCA];

[5.] the victim is a client receiving psychotherapy services and the perpetrator ['does not apply if the individuals are married to each other and one of the individuals involved is a psychotherapy client and the other individual is a psychotherapist or an employee, contractor, or volunteer of a facility that provides or purports to provide psychotherapy services to the client pursuant to § 45-5-501(1)(f), MCA]:

(A) is providing or purporting to provide psychotherapy services to the victim; or

(B) 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;

[6.] 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 [‘does not apply if the individuals are married to each other pursuant to 45-5-501(1)(g)’];

[7.] 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; or

[8.] a parent or guardian involved in a child abuse or neglect proceeding under Title 41, chapter 3, and the perpetrator is:

(A) employed by the department of public health and human services for the purposes of carrying out the department's duties under Title 41, chapter 3; and

(B) directly involved in the parent or guardian's case or involved in the supervision of the case.

Pursuant to § 45-5-502(5)(a), MCA, and specific to Sexual Assault, consent is ineffective under this section if the victim is:

(i) incarcerated in an adult or juvenile correctional, detention, or treatment facility or is on probation, conditional release, 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 [this does not apply if one of the parties is on probation, conditional release, or parole and the other party is a probation or parole officer of the supervising authority and the parties are married to each other” pursuant to § 45-5-502(5)(b), MCA];

(ii) less than 14 years old and the offender is 3 or more years older than the victim;

(iii) receiving services from a youth care facility, as defined in 52-2-602, and the perpetrator [this “does not apply if the individuals are married to each other and one of the individuals involved is a patient in or resident of a facility, is a recipient of community-based services, or is receiving services from a youth care facility and the other individual is an employee, contractor, or volunteer of the facility or community-based service” pursuant to § 45-5-502(5)(c), MCA]:

(A) has supervisory or disciplinary authority over the victim or is providing treatment to the victim; and

(B) is an employee, contractor, or volunteer of the youth care facility;

(iv) admitted to a mental health facility, as defined in 53-21-102, is admitted to a community-based facility or a residential facility, as those terms are defined in 53-20-102, or is receiving community-based services, as defined in 53-20-102, and the perpetrator [this “does not apply if the individuals are married to each other and one of the individuals involved is a patient in or resident of a facility, is a recipient of community-based services, or is receiving services from a youth

care facility and the other individual is an employee, contractor, or volunteer of the facility or community-based service” pursuant to § 45-5-502(5)(c), MCA]:

(A) has supervisory or disciplinary authority over the victim or is providing treatment to the victim; and

(B) is an employee, contractor, or volunteer of the facility or community-based service;

(v) a program participant, as defined in 52-2-802, in a private alternative adolescent residential or outdoor program, pursuant to Title 52, chapter 2, part 8, and the perpetrator is a person associated with the program, as defined in 52-2-802 [this “does not apply if the individuals are married to each other and one of the individuals involved is a program participant and the other individual is a person associated with the program” pursuant to § 45-5-502(d), MCA];

(vi) the victim is a client receiving psychotherapy services and the perpetrator [this “does not apply if the individuals are married to each other and one of the individuals involved is a psychotherapy client and the other individual is a psychotherapist or an employee, contractor, or volunteer of a facility that provides or purports to provide psychotherapy services to the client” pursuant to § 45-5-502(e), MCA]:

(A) is providing or purporting to provide psychotherapy services to the victim; or

(B) 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; or

(vii) 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 [this “does not apply if the individuals are married to each other” pursuant to § 45-5-502(f), MCA].

ISSUE III: HATE CRIMES LAW IN MONTANA

- 3.1 *Does the state have a hate crimes law?*
 - 3.2 *Does the hate crimes law require data collection on hate crimes?*
 - 3.3 *Does the state criminalize interference with religious worship?*
 - 3.4 *Does the state have a criminal penalty enhancement for crimes or have a separate crime for crimes motivated by race, religion, or ethnicity?*
 - 3.5 *Do criminal penalty enhancements exist for crimes motivated by sexual orientation?*
 - 3.6 *Do criminal penalty enhancements exist for crimes motivated by gender?*
 - 3.7 *Do criminal penalty enhancements exist for crimes motivated by gender identity?*
 - 3.8 *Do criminal penalty enhancements exist for crimes motivated by disability?*
 - 3.9 *Do criminal penalty enhancements exist for crimes motivated by political affiliation?*
 - 3.10 *Do criminal penalty enhancements exist for crimes motivated by age?*
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3.1 Does the state have a hate crimes law?

Yes. Montana Code Annotated § 45-5-221 provides:

(1) A person commits the offense of malicious intimidation or harassment when, because of another person's race, creed, religion, color, national origin, or involvement in civil rights or human rights activities, the person purposely or knowingly, with the intent to terrify, intimidate, threaten, harass, annoy, or offend:

- (a) causes bodily injury to another;
- (b) causes reasonable apprehension of bodily injury in another; or
- (c) damages, destroys, or defaces any property of another or any public property.

(2) For purposes of this section, "deface" includes but is not limited to cross burning or the placing of any word or symbol commonly associated with racial, religious, or ethnic identity or activities on the property of another person without the other person's permission.

3.2 Does the hate crimes law require data collection on hate crimes?

No.

3.3 Does the state criminalize interference with religious worship?

No.

3.4 Does the state have a criminal penalty enhancement for crimes or have a separate crime for crimes motivated by race, religion, or ethnicity?

Yes. Montana Code Annotated § 45-5-221 provides:

(1) A person commits the offense of malicious intimidation or harassment when, because of another person's race, creed, religion, color, national origin, or involvement in civil rights or human rights activities, the person purposely or knowingly, with the intent to terrify, intimidate, threaten, harass, annoy, or offend:

- (a) causes bodily injury to another;
- (b) causes reasonable apprehension of bodily injury in another; or
- (c) damages, destroys, or defaces any property of another or any public property.

(2) For purposes of this section, "deface" includes but is not limited to cross burning or the placing of any word or symbol commonly associated with racial, religious, or ethnic identity or activities on the property of another person without the other person's permission.

Montana Code Annotated § 45-5-222 provides a sentence enhancement for offenses committed because of the victim's race, creed, religion, color, national origin, or involvement in civil rights or human rights activities.

(1) A person who has pleaded guilty or nolo contendere to or who has been found guilty of any offense, except malicious intimidation or harassment, that was committed because of the victim's race, creed, religion, color, national origin, or

involvement in civil rights or human rights activities or that involved damage, destruction, or attempted destruction of a building regularly used for religious worship, in addition to the punishment provided for commission of the offense, may, if the provisions of 46-1-401 have been complied with, be sentenced to a term of imprisonment of not less than 2 years or more than 10 years, except as provided in 46-18-222.

(2) An additional sentence prescribed by subsection (1) must run consecutively to the sentence, except as provided in 46-18-222.

3.5 Do criminal penalty enhancements exist for crimes motivated by sexual orientation?

No.

3.6 Do criminal penalty enhancements exist for crimes motivated by gender?

No.

3.7 Do criminal penalty enhancements exist for crimes motivated by gender identity?

No.

3.8 Do criminal penalty enhancements exist for crimes motivated by disability?

No.

3.8 Do criminal penalty enhancements exist for crimes motivated by political affiliation?

No.

3.9 Do criminal penalty enhancements exist for crimes motivated by age?

No.

ISSUE IV: SEXUAL ASSAULT KIT TESTING IN MONTANA

4.1 *Has the state conducted an inventory of untested rape kits (also called sexual assault evidence kits)?*

4.2 *Has the state conducted testing of the backlog of untested sexual assault kits?*

4.3 *Is there mandatory testing of all new sexual assault kits?*

4.4 *Has a sexual assault kit tracking system been implemented?*

4.5 *Does the state have a Survivors' Right to Notice?*

4.6 *Has the State provided funding for rape kit reform?*

4.1 Has the state conducted an inventory of untested rape kits (also called sexual assault evidence kits)?

Yes. Montana conducted a one-time inventory of untested sexual assault kits.

4.2 Has the state conducted testing of the backlog of untested sexual assault kits?

Yes. All untested sexual assault kits have been tested. This testing occurred through nonlegislative action.

4.3 Is there mandatory testing of all new sexual assault kits?

Yes. Testing of all new sexual assault kits is required so long as the survivor consents to the testing.

Section 46-15-404, Montana Code Annotated, provides:

(1) Following the completion of hospital emergency services and forensic services for a sexual assault medical forensic examination, the health care professional providing the forensic services shall provide the patient the opportunity to sign a written consent to allow law enforcement to submit the sexual assault evidence kit for testing. The written consent must be on a form included in the kit and must indicate whether the patient consents to the release of information about the sexual assault to law enforcement.

(2) A health care facility that obtains written consent to release a sexual assault evidence kit to law enforcement shall notify the investigating law enforcement agency, if known, or the law enforcement agency that has jurisdiction in the area in which the health care facility is located within 24 hours after the kit is collected.

(3) (a) A health care facility that did not obtain written consent to release the sexual assault evidence kit to law enforcement shall inform the individual from whom the kit was obtained that the evidence will be forwarded to the office of victim services of the department of justice as an anonymous kit.

(b) The office of victim services shall store a sexual assault evidence kit for a minimum of 1 year before the kit may be destroyed.

(c) The individual from whom an anonymous sexual assault evidence kit was obtained or the individual's agent may provide consent for the kit to be tested at any time during that 1-year period.

(4) (a) A law enforcement agency that receives notice from a health care facility as provided in subsection (2) shall take possession of the sexual assault evidence kit from the health care facility within 5 business days after the evidence is collected.

(b) If the law enforcement agency determines that the alleged sexual assault occurred within the jurisdiction of another law enforcement agency and that it does not otherwise have jurisdiction over that alleged assault, the law enforcement agency in possession of the sexual assault evidence kit shall notify the law enforcement agency that has jurisdiction within 5 days after receiving the kit from the health care facility and shall forward the evidence to that jurisdiction.

(5) An investigating law enforcement agency that takes possession of a sexual assault evidence kit shall submit the evidence and an accompanying police report to a publicly accredited crime laboratory for forensic analysis within 30

days after receiving the kit from either a health care facility or another law enforcement agency.

(6) The failure of a law enforcement agency to submit a request for analysis within the time limits provided in this section does not constitute grounds in a criminal or civil proceeding to challenge the validity of a DNA evidence association, and a court may not exclude any evidence obtained from the sexual assault evidence kit on those grounds.

Additionally, section 46-15-412, MCA, provides that “Except for a sexual assault evidence kit that is submitted to the department of justice as provided in 46-15-411(2)(a), a local law enforcement agency shall submit all other kits to the division of forensic science within 30 days after the local law enforcement agency receives the kit.” This statutory section terminates June 30, 2023.

4.4 Has a sexual assault kit tracking system been implemented?

Yes. This system was implemented through legislative action.

Montana Code Annotated section 46-15-405 provides:

- (1) The department of justice shall create, operate, and maintain a statewide sexual assault evidence kit tracking system. The tracking system must:
 - (a) track the status of a sexual assault evidence kit from the collection site through the criminal justice process, including the initial collection at a health care facility, inventory and storage by law enforcement agencies, analysis at a crime laboratory, and storage or destruction after completion of analysis;
 - (b) allow law enforcement agencies, health care facilities, a crime laboratory, and other entities that receive, maintain, store, or preserve sexual assault evidence kits to update the status and location of the kits; and
 - (c) allow an individual to anonymously access the tracking system to track the location and status of the individual's sexual assault evidence kit.
- (2) The department of justice shall adopt rules for developing and using the sexual assault evidence kit tracking system. Law enforcement agencies, health care facilities, and crime laboratories shall use the tracking system as provided in the rules.
- (3) Information contained in the sexual assault evidence kit tracking system is confidential and not subject to public disclosure.

4.5 Does the state have a Survivors' Right to Notice?

No. There are certain notice requirements for victims of crimes, but not a specific Survivors' Right to Notice. The state does have a requirement in section 46-15-406, MCA, that the Department of Justice prepare a model form for health care facilities and law enforcement agencies to use that details the statutory rights of victims of sexual assault, including:

- (1) a victim may receive a sexual assault medical forensic examination and have evidence collected using a sexual assault evidence kit even if the victim does not want to participate in a criminal investigation;

- (2) a victim may not be billed for the cost of administering the sexual assault medical forensic examination or collecting evidence for the sexual assault evidence kit;
- (3) on request by a sexual assault victim to the investigating law enforcement agency, the victim may receive the following information:
 - (a) contact information for the officer investigating the case;
 - (b) the current status of the case;
 - (c) whether the case has been submitted to the office of the prosecuting attorney for review;
 - (d) whether the case has been closed and the documented reason for closure;
 - (e) if available, contact information for a local community-based victim services program;
 - (f) notifications of the victim's legal rights, including the right to file a petition requesting an order of protection; and
 - (g) the notices required by 46-24-203 [Prompt Notification To Victims And Witnesses Of Certain Offenses], 46-24-204 [Scheduling changes], and 46-24-206 [Property return -- right to be heard on disposition of evidence].

4.6 Has the State provided funding for rape kit reform?

Yes. The Department of justice has provided funding for rape kit reform. Additionally, the local law enforcement agency and the state Department of Justice is supposed to pay the sexual assault medical forensic examination of victims. Section 46-15-411, MCA, provides:

- (1) The local law enforcement agency within whose jurisdiction an alleged incident of sexual intercourse without consent, sexual assault, or incest occurs shall pay for the sexual assault medical forensic examination of a victim of the alleged offense when the examination is directed by the agency or when evidence obtained by the examination is used for the investigation, prosecution, or resolution of an offense.
- (2) (a) The department of justice shall, as long as funds are available from an appropriation made for this purpose, pay for the sexual assault medical forensic examination of a victim of an alleged incident of sexual intercourse without consent, sexual assault, or incest if the cost is not the responsibility of a local law enforcement agency under subsection (1).
 - (b) In administering the provisions of subsection (2)(a), the department shall:
 - (i) identify priorities for funding services, activities, and criteria for the receipt of program funds;
 - (ii) monitor the expenditure of funds by organizations receiving funds under this section;
 - (iii) evaluate the effectiveness of services and activities under this section; and
 - (iv) adopt rules necessary to implement this subsection (2).
- (3) This section does not require a law enforcement agency or the state to pay any costs of treatment for injuries resulting from the alleged offense.

ISSUE V: SPOUSAL RAPE IN MONTANA

5.1 *Is spousal rape, when a spouse rapes a partner who is unconscious, drugged, or otherwise incapacitated, treated differently than if the individuals are not spouses?*

5.2 *Does an exception for spousal rape exist under laws criminalizing statutory rape?*

5.3 *Does an exception for spousal rape exist under laws criminalizing certain sexual contact between people with a supervisory relationship?*

5.1 Is spousal rape, when a spouse rapes a partner who is unconscious, drugged, or otherwise incapacitated, treated differently than if the individuals are not spouses?

Yes.

5.2 Does an exception for spousal rape exist under laws criminalizing statutory rape?

Yes. Statutory rape occurs when an adult has sex with a minor (an individual under 18 years of age). Section 45-5-503(1), MCA, does not allow a conviction under the section for statutory rape under the Sexual Intercourse Without Consent statute “based on the age of the person’s spouse, as provided in 45-5-501(1)(b)(iv).”

5.3 Does an exception for spousal rape exist under laws criminalizing certain sexual contact between people with a supervisory relationship?

Yes. Certain provisions for who can consent to sexual contact do not apply if individuals are married.

Pursuant to 45-5-501(b), a “victim is incapable of consent because the victim is:...

(v) incarcerated in an adult or juvenile correctional, detention, or treatment facility or is on probation, conditional release, 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 [does “not apply if the individuals are married to each other and one of the individuals involved is on probation, conditional release, or parole and the other individual is a probation or parole officer of a supervising authority” pursuant to § 45-5-501(c), MCA];

(vi) receiving services from a youth care facility, as defined in 52-2-602, and the perpetrator [does “not apply if the individuals are married to each other and one of the individuals involved is a patient in or resident of a facility, is a recipient of community-based services, or is receiving services from a youth care facility and the other individual is an employee, contractor, or volunteer of the facility or community-based service” pursuant to § 45-5-5019(d), MCA]:

(A) has supervisory or disciplinary authority over the victim or is providing treatment to the victim; and

(B) is an employee, contractor, or volunteer of the youth care facility;

(vii) admitted to a mental health facility, as defined in 53-21-102, is admitted to a community-based facility or a residential facility, as those terms are defined in 53-20-102, or is receiving community-based services, as defined in 53-20-102, and the perpetrator [does “not apply if the individuals are married to each other and one of the individuals involved is a patient in or resident of a facility, is a recipient of community-based services, or is receiving services from a youth care facility and the other individual is an employee, contractor, or volunteer of the facility or community-based service” pursuant to § 45-5-5019(d), MCA]:

(A) has supervisory or disciplinary authority over the victim or is providing treatment to the victim; and

(B) is an employee, contractor, or volunteer of the facility or community-based service;

(viii) a program participant, as defined in 52-2-802, in a private alternative adolescent residential or outdoor program, pursuant to Title 52, chapter 2, part 8, and the perpetrator is a person associated with the program, as defined in 52-2-802 [does “not apply if the individuals are married to each other and one of the individuals involved is a program participant and the other individual is a person associated with the program” pursuant to § 45-5-501(e), MCA];

(ix) the victim is a client receiving psychotherapy services and the perpetrator [“does not apply if the individuals are married to each other and one of the individuals involved is a psychotherapy client and the other individual is a psychotherapist or an employee, contractor, or volunteer of a facility that provides or purports to provide psychotherapy services to the client” pursuant to § 45-5-501(f), MCA]:

(A) is providing or purporting to provide psychotherapy services to the victim; or

(B) 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;

(x) 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 [“does not apply if the individuals are married to each other” pursuant to § 45-5-5019(g), MCA][.]

ISSUE VI: STATUTE OF LIMITATIONS FOR SEXUAL CRIMES IN MONTANA

- 6.1 *Has this state eliminated the statute of limitations for all felony sex crimes?*
- 6.2 *In cases when a victim chooses not to report or delays reporting the crime, is the statute of limitations reduced?*
- 6.3 *Is the statute of limitations impacted by DNA evidence?*
- 6.4 *What is the state's statute of limitations for its most serious felony sex crimes?*

6.1 Has this state eliminated the statute of limitations for all felony sex crimes?

No. Although Montana did eliminate the statute of limitations for some sex crimes (applying to offenses after May 7, 2019), others still have statutes of limitation. Montana Code Annotated 45-5-205(1)(c) “allows a prosecution for an offense under 45-5-502 [Sexual Assault], 45-5-503 [Sexual Intercourse Without Consent], 45-5-504 [Indecent Exposure], 45-5-507 [Incest], 45-5-508 [Aggravated Sexual Intercourse Without Consent], 45-5-602 [Promoting Prostitution], 45-5-603 [Aggravated Promotion of Prostitution], 45-5-625 [Sexual Abuse of Children], 45-5-627 [Ritual Abuse of Minor], 45-5-704 [Sexual Servitude], or 45-5-705 [Patronizing Victim of Sexual Servitude] may be commenced at any time if the victim was less than 18 years of age at the time that the offense occurred.”

6.2 In cases when a victim chooses not to report or delays reporting the crime, is the statute of limitations reduced?

No. Choosing to report or not report, or delaying reporting of the crime does not impact the statute of limitations.

6.3 Is the statute of limitations impacted by DNA evidence?

Yes. Pursuant to § 45-1-205(9), MCA, “[i]f a suspect is conclusively identified by DNA testing after a time period prescribed in subsection (1)(b) has expired, a prosecution may be commenced within 1 year after the suspect is conclusively identified by DNA testing.”

6.4 What is the state’s statute of limitations for its most serious felony sex crimes?

The statute of limitation for some serious crimes has been eliminated for some felony sex crimes (applying to offenses after May 7, 2019). Montana Code Annotated § 45-5-205(1)(c) allows a prosecution for Sexual Assault (§ 45-5-502, MCA); Sexual Intercourse Without Consent (§ 45-5-503); Indecent Exposure (§ 45-5-504, MCA); Incest (§ 45-5-507, MCA); Aggravated Sexual Intercourse Without Consent (§ 45-5-508, MCA); Promoting Prostitution (§ 45-5-602, MCA); Aggravated Promotion of Prostitution (§ 45-5-603, MCA); Sexual Abuse of Children (§ 45-5-625, MCA); Ritual Abuse of Minor (§ 45-5-627, MCA); Sexual Servitude (§ 45-5-704, MCA), or Patronizing Victim of Sexual Servitude (§ 45-5-705, MCA) to “be commenced at any time if the victim was less than 18 years of age at the time that the offense occurred.”

Otherwise the statute of limitations is 10 years or less unless some other exception applies, such as for newly discovered DNA evidence. § 45-1-205(b), MCA.

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