

Montana's Core "Sex Assault" Statutes

Ole Olson, Assistant Attorney General.

Sexual Intercourse Without Consent: Elements

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.

45-2-101(68) (a) "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:

- (i) cause bodily injury or humiliate, harass, or degrade; or
- (ii) arouse or gratify the sexual response or desire of either party.

(b) For purposes of subsection (68)(a), any penetration, however slight, is sufficient.

Defendant not guilty.

GIVEN: _____

DISTRICT JUDGE

Sexual Intercourse Without Consent: Definitions

“Without Consent”

"Without Consent": 45-5-501

COMPELLED TO SUBMIT BY FORCE, FEAR, OR THREAT AGAINST VICTIM OR ANOTHER PERSON

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

"Resistance 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)

DEFINITION OF CONSENT

- "Bodily injury" means pain, illness, or an impairment of physical condition and includes mental illness or impairment.
- over the victim by coercion, or surprise;
- Under 16 or under the authority of someone else.

"Without Consent": Incapable of Consent

"MENTALLY DEFECTIVE OR INCAPACITATED"

- "Mentally defective" means that a person suffers from a mental disease or defect that renders the person incapable of appreciating the nature of the person's own conduct. (Mont. Code Ann. § 45-2-101(40))
- "Mentally incapacitated" means that a person is rendered temporarily incapable of appreciating or controlling the person's own conduct as a result of the influence of an intoxicating substance. (Mont. Code Ann. § 45-2-101(41))

No distinction between voluntary and involuntary intoxication.

“Without Consent”: Incapable of Consent

“Physically helpless”

"Physically helpless" means that a person is unconscious or is otherwise physically unable to communicate unwillingness to act. 45-2-101(58)



“Deception Coercion Surprise?”



Mental State Instruction

“KNOWINGLY”

45-2-101(35) "Knowingly"--a person acts knowingly with respect to conduct or to a circumstance described by a statute defining an offense when the person is aware of the person's own conduct or that the circumstance exists.

A person acts knowingly with respect to the result of conduct described by a statute defining an offense when the person is aware that it is highly probable that the result will be caused by the person's conduct.

When knowledge of the existence of a particular fact is an element of an offense, knowledge is established if a person is aware of a high probability of its existence.

Sexual Assault: Elements

INSTRUCTION NO. _____

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

1. The Defendant subjected the Victim to sexual contact;

AND

2. The act of sexual contact was without the consent of victim

AND

3. The Defendant acted knowingly.

GIVEN: _____

DISTRICT JUDGE

Sexual Assault: Definitions

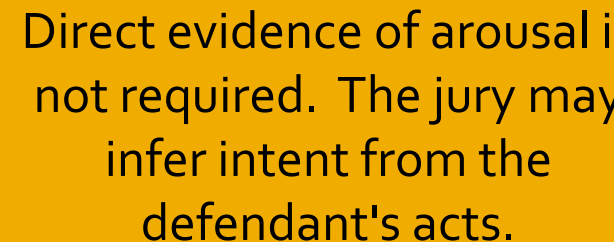
INSTRUCTION NO. _____

“Sexual Contact means 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 harm to or humiliate, harass, or degrade another

OR

arouse or gratify the sexual response or desire of either party



Direct evidence of arousal is not required. The jury may infer intent from the defendant's acts.

GIVEN: _____

DISTRICT JUDGE

Sexual Assault: Definitions

- “SEXUAL “Sexual Contact means touching of the sexual or other intimate parts of the person of another,
- Genitals directly or through clothing
 - Female breasts.
 - Buttocks.
 - Sexual or intimate impositions that provoke outrage, disgust or shame in the victim.
 - Ordering a seven year old girl to masturbate the Defendant’s penis until he reaches ejaculation.
 - Naked adult male in bed with a female child, rubbing his leg on hers.
 - Adult male rubbing buttocks and inner thigh of eleven-year-old female.

Sexual Assault: Definitions

“WITHOUT CONSENT”

- Retains its “ordinary meaning.”

1 : to give assent or approval : agree <consent to being tested>

2 *archaic* : to be in concord in opinion or sentiment

Merriam Webster Dictionary, Online, 2013

Sexual Assault: Definitions

Stevens, as a professional massage therapist, had no “implicit permission” to sexually touch his clients until he told them to stop. The professional relationship defined the limits . . .



Sexual Assault: Definitions

“WITHOUT CONSENT”

- The following persons are incapable of consent:
 - less than 14 years old and the offender is 3 or more years older than the victim;
 - Person's under official supervisory or disciplinary authority of the offender, including treatment providers.

Ole Olson
Assistant Attorney General
Montana Department of Justice
PO Box 201401
Helena, MT 59620-1401
Tel: (406) 444-2026
Fax: (406) 444-3549