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SB44-16/17: Resolution Regarding Sexual Assault Bills in the Sixty-Fifth Legislature

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1 **The Associated Students of the University of Montana**
2 **Resolution Regarding Sexual Assault Bills in the Sixty-Fifth Legislature**
3 **December 7, 2016**
4 **SB44-16/17**

5 **Authored by: Kenzie Lombardi, ASUM Student Political Action Director**
6 **Sponsored by: Sam Forstag, ASUM President**
7

8 Whereas, the Associated Students of the University of Montana (ASUM) represents the
9 interests of the student body;

10
11 Whereas, it is estimated by the National Institute of Justice that nineteen percent of
12 undergraduate women in America have experienced sexual assault, completed or
13 attempted since entering college¹

14 Whereas, campus sexual assault is a threat to UM students of all gender identities;

15
16 Whereas, campus sexual assault is a matter of direct interest to students at the University
17 of Montana and across the United States;

18
19 Whereas, the University of Montana is, and must be, a national leader on the issue of
20 campus sexual assault prevention;

21
22 Whereas, Section 45-5-501 of the Montana Code Annotated (MCA) states in part:

23
24 “(1) (a) As used in 45-5-503, the term “without consent” means:

25 (i) the victim is compelled to submit by force against the victim or another; or

26 (ii) . . . the victim is incapable of consent because the victim is:

27 (A) mentally disordered or incapacitated;

28 (B) physically helpless;

29 (C) overcome by deception, coercion, or surprise; . . .²”

30
31 Whereas, Section 45-5-503 of the MCA states in part:

32
33 “(1) A person who knowingly has sexual intercourse without consent with another person
34 commits the offense of sexual intercourse without consent.³”

35
36 Whereas, Section 45-5-5 of the MCA does not clearly define consent, nor does it
37 criminalize non-forceful sexual intercourse without consent⁴;

¹ Christopher P. Krebs, Christine H. Lindquist, Tara D. Warner, Bonnie S. Fisher, Sandra L. Martin, “The Campus Sexual Assault Study,” *National Institute of Justice*, <https://www.ncjrs.gov/pdffiles1/nij/grants/221153.pdf>

² Montana Code Annotated, Title 45, Chapter 5, Part 5, http://leg.mt.gov/bills/mca_toc/45_5_501.html

³ Montana Code Annotated, Title 45, Chapter 5, Part 5, http://leg.mt.gov/bills/mca_toc/45_5_503.html

⁴ Montana Code Annotated, Title 45, Chapter 5, Part 5, http://leg.mt.gov/bills/mca_toc/45_5_5.html

38 Whereas, Wisconsin Statute 940.225 Section 4 states in part:

39

40 *“‘Consent’, as used in this section, means words or overt actions by a person who*
41 *is competent to give informed consent indicating a freely given agreement to have*
42 *sexual intercourse or sexual contact...⁵”*

43

44 Whereas, Wisconsin law is recognized as an example of an affirmative consent
45 definition;

46

47 Whereas, the University of Montana Discrimination, Harassment, Sexual Misconduct,
48 Stalking, and Retaliation policy follows national best-practice, and states:

49

50 *“Consent is informed, freely given, and mutual. If coercion, intimidation, threats,*
51 *or physical force are used there is no consent. If a person is mentally or*
52 *physically incapacitated or impaired so that such person cannot understand the*
53 *fact, nature or extent of the sexual situation, there is no consent; this includes*
54 *impairment or incapacitation due to alcohol or drug consumption, or being*
55 *asleep or unconscious. There is no consent when there is force, expressed or*
56 *implied, or use of duress or deception upon the victim. Silence does not*
57 *necessarily constitute consent. Past consent to sexual activities does not imply*
58 *ongoing future consent. Whether an individual has taken advantage of a position*
59 *of influence over an alleged victim may be a factor in determining consent;”⁶*

60

61 Whereas, Montana law does not currently follow national best-practice regarding sexual
62 assault;

63

64 Whereas, the inadequacy of Montana law directly affects University of Montana students
65 who are victims of sexual assault;

66

67 Whereas, Montana law should be compatible with the policies of its public institutions;

68

69 Therefore, Let it Be Resolved, that the Associated Students of the University of Montana
70 (ASUM) supports changing Montana law to more thoroughly and clearly define consent;

71

72 Therefore, Let it Further Be Resolved, that ASUM supports changing Montana law to
73 criminalize non-forceful sexual intercourse without consent;

74

75 Therefore, Let it Further Be Resolved, that ASUM supports legislation introduced to the
76 65th Legislature that would achieve these ends.

77

78

⁵ Wisconsin Statute 940.225, <http://www.docs.legis.wisconsin.gov/statutes/statutes/940/II/225>

⁶ Discrimination, Harassment, Sexual Misconduct, Stalking, and Retaliation Policy, The University of Montana, <http://www.umt.edu/policies/Personnel/DiscriminationHarassmentSexualMisconductStalkingRetaliation.php>

79

80

81 Passed by Committee: _____

82

83 Passed by ASUM Senate: _____

84

85

86

87 _____

88 Matt Quist,
SPA Committee Chair

Elizabeth Engebretson,
Chair of the Senate