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

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

Whereas, it is estimated by the National Institute of Justice that nineteen percent of undergraduate women in America have experienced sexual assault, completed or attempted since entering college\(^1\)

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

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

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

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

\[
(1) (a) \text{As used in 45-5-503, the term “without consent” means: (i) the victim is compelled to submit by force against the victim or another; or (ii) the victim is incapable of consent because the victim is: (A) mentally disordered or incapacitated; (B) physically helpless; (C) overcome by deception, coercion, or surprise;...} \]

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

\[
(1) \text{A person who knowingly has sexual intercourse without consent with another person commits the offense of sexual intercourse without consent.} \]

Whereas, Section 45-5-5 of the MCA does not clearly define consent, nor does it criminalize non-forceful sexual intercourse without consent\(^4\);

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\(^3\) 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
Whereas, Wisconsin Statute 940.225 Section 4 states in part:

"'Consent', as used in this section, means words or overt actions by a person who is competent to give informed consent indicating a freely given agreement to have sexual intercourse or sexual contact..."  

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

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

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

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

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

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

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

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

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

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5 Wisconsin Statute 940.225, http://www.docs.legis.wisconsin.gov/statutes/statutes/940/II/225  
Passed by Committee: _____________________________

Passed by ASUM Senate: __________________________

Matt Quist, SPA Committee Chair

Elizabeth Engebretson, Chair of the Senate