Exhibit No. 3
Date 1-27-05
Bill No. HB 207

Montana Code Annotated 2003

46-23-509. Sexual offender evaluations and designations -- rulemaking authority. (1) The department shall adopt rules for the qualification of sexual offender evaluators who conduct sexual offender and sexually violent predator evaluations and for determinations by sexual offender evaluators of the risk of a repeat offense and the threat that an offender poses to the public safety.

(2) Prior to sentencing of a person convicted of a sexual offense, the department or a sexual offender evaluator shall provide the court with a sexual offender evaluation report recommending one of the following levels of designation for the offender:

(a) level 1, the risk of a repeat sexual offense is low;

(b) level 2, the risk of a repeat sexual offense is moderate;

(c) level 3, the risk of a repeat sexual offense is high, there is a threat to public safety, and the sexual offender evaluator believes that the offender is a sexually violent predator.

(3) Upon sentencing the offender, the court shall:

(a) review the sexual offender evaluation report, any statement by a victim, and any statement by the offender;

(b) designate the offender as level 1, 2, or 3; and

(c) designate a level 3 offender as a sexually violent predator.

(4) An offender designated as a level 2 offender may petition the sentencing court to change the offender's designation if the offender has enrolled in and successfully completed the treatment phase of either the prison's sexual offender program or of an equivalent program approved by the department. After considering the petition, the court may change the offender's risk level designation if the court finds by clear and convincing evidence that the offender's risk of committing a repeat sexual offense has changed since the time sentence was imposed. The court shall impose one of the three risk levels specified in this section.

(5) If, at the time of sentencing, the sentencing judge did not apply a level designation to a sexual offender who is required to register under this part, the department shall designate the offender as level 1, 2, or 3 when the offender is released from confinement.

History: En. Sec. 12, Ch. 375, L. 1997; amd. Sec. 2, Ch. 358, L. 1999; amd. Sec. 7, Ch. 22, Sp. L. August 2002.

Provided by Montana Legislative Services

CHAPTER NO. 899

HOUSE BILL NO. 3182

By Representatives Briley, Coleman, Langster, Shepard, Pinion, Litz, Maddox, Borchert, Shaw, Tidwell, Hackworth, Fitzhugh, Yokley, Cobb, McCord, Head, Overbey, Hargrove, Todd, Patton, Fowlkes, Garrett, McKee, Bone, Newton, McMillan, Curtiss, Armstrong, Hood, Sargent, Harrison, Lois DeBerry, Rinks, Kent, Tindell, Montgomery, McDaniel, Walker, DuBois, Davidson, Vaughn, Brenda Turner, Hargett, Hagood, Phillip Johnson, Crider, Black, Lynn, Vincent, Davis, Odom, West, Brown, Fraley, Henri Brooks, Marrero, Winningham, Harwell, Godsey, Mumpower, Mike Turner, Hood, Baird, Sontany, McDonald, Pleasant, Buttry, Cochran, Eldridge, Gresham, Wood, Sharp, Harry Brooks, Clem and Mr. Speaker Naifeh

Substituted for: Senate Bill No. 3159

By Senators Kilby, Burchett, Cooper, Burks, Herron, Trail, Graves, Crutchfield, Jackson, McLeary, Norris, Clabough, Kurita, Southerland, Williams

AN ACT to amend Tennessee Code Annotated, Title 28; Title 34; Title 38; Title 39 and Title 40, relative to the continuous satellite monitoring of serious and violent sex offenders and linkage with crime incident information. This act makes appropriations for the serious and violent sexual offender monitoring program for the fiscal year beginning July 1, 2004.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. The title of this act shall be known and may be cited as the "Tennessee Serious and Violent Sex Offender Monitoring Pilot Project Act".

SECTION 2.

(a) It is the intent of the general assembly in enacting the "Tennessee Serious and Violent Sex Offender Monitoring Pilot Project Act" to utilize the latest technological solutions to monitor and track serious criminal offenders and violent sex offenders in a limited number of counties selected for the purpose of providing a cross-section of Tennessee in terms of location, population and geogra phy.

(b) In addition to providing this state with a more efficient and accurate method of monitoring and tracking these serious and predatory criminals, the purpose of the pilot project is to collect at least twelve (12) months of data on the experience of such a monitoring and tracking system in this state. This data will better enable the governor and general assembly to accurately determine the success or failure of such a program, whether it is worth the expenditure necessary to administer it and whether to expand the pilot project into a statewide progra m.

SECTION 3. The general assembly hereby finds and declares the following:

(a) The United States department of justice has published confirmed statistics that over sixty percent (60%) of serious and violent sex offenders in state prisons have a prior conviction history and that the number of prisoners convicted for violent sexual

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assault has increased by an annual percentage of fifteen percent (15%) each year since 1980;

(b) Criminals who commit serious and violent sexual crimes have shown unusually high recidivism rates, thereby posing an unacceptable level of risk to the community;

(c) Intensive supervision of serious offenders and violent sex offenders is a crucial element to both the rehabilitation of the released convict and the safety of the surrounding community;

(d) Mature technological solutions now exist to provide improved supervision and behavioral control of serious offenders and violent sex offenders following their release;

(e) These solutions can now also provide law enforcement and correctional professionals with significant new tools for electronic correlation of the constantly-updated geographic location of supervised serious offenders and violent sexual offenders following their release with the geographic location of reported crimes, both to possibly link released offenders to crimes or to possibly exclude released offenders from ongoing criminal investigations; and

(f) Continuous twenty-four (24) hours a day, seven (7) days a week electronic monitoring of those convicted of serious and violent sexual offenses is a valuable and reasonable requirement for those convicts who are placed on probation; who have failed to register as a sexual offender as required by law; or who have been released from incarceration while they remain under the active supervision of the department of correction, the board of probation and parole, or other state and local agencies.

SECTION 4. Tennessee Code Annotated, Section 40-28-201(a), is amended by renumbering subdivision (2) thereof as subdivision (3) and by inserting a new subdivision (2) as follows:

(2) In addition to the other charges and fees imposed by this section, any person who is under the jurisdiction and supervision of the board and is enrolled in an electronic monitoring and tracking supervision program shall be required to contribute such funds as the board deems necessary and reasonable to cover the applicable costs of said program. The provisions of this subdivision (a)(2) shall also apply to any probationer or parolee for violation of a serious offense or sexually violent offense, as defined in § 40-39-201, transferred to the state of Tennessee from another state under the supervision of the interstate compact for the supervision of probationers or parolees, compiled as part 4 of this chapter.

SECTION 5. Tennessee Code Annotated, Title 40, Chapter 39, is amended by adding the following new part 3:

Section 40-39-301. As used in this part, unless the context otherwise requires:

(a) "Serious offender" means any person who is convicted in the state of Tennessee, on or after July 1, 2004, of any offense which may cause "serious bodily injury" as defined in Tennessee Code Annotated § 39-11-106(a)(34).

"Serious offender" includes any such person who is convicted in any other jurisdiction of any offense which would constitute a serious offense as defined in this chapter. "Serious offender" also includes any person who has been released on probation or parole following a conviction for any serious offense, as defined herein, to the extent that such person continues to be subject to active supervision by the board of probation and parole.

(c) "Violent sexual offender" means any person who is convicted in the state of Tennessee, on or after July 1, 2004, of any sexual offense, as defined in subsection (d) of this section or Tennessee Code Annotated § 40-39-202(16); or any such person who is convicted in any other jurisdiction of any offense which would constitute a sexual offense in Tennessee. "Violent sexual offender" also includes any person who has been released on probation or parole following a conviction for any sexual offense, as defined herein, to the extent that such person continues to be subject to active supervision by the board of probation and parole as defined in law. For the purposes of this section, "violent sexual offender" may include offenders whose sexual offense was reduced by virtue of a plea agreement.

(d) "Sexual offense" means any of the crimes enumerated in § 40-39-202(16), including specifically:

(1) The commission of any act that constitutes the criminal offense of:

(i) Aggravated rape, under § 39-13-502;

(ii) Rape, under § 39-13-503;

(iii) Aggravated sexual battery, under § 39-13-504;

(iv) Sexual battery, under § 39-13-505;

(v) Statutory rape, under § 39-13-506;

(vi) Sexual exploitation of a minor, under § 39-17-1003;

(vii) Aggravated sexual exploitation of a minor, under § 39-17-1004;

(viii) Especially aggravated sexual exploitation of a minor, under § 39-17-1005;

(ix) Incest, under § 39-15-302;

(x) Rape of a child, under § 39-13-522;

(xi) Sexual battery by an authority figure, under § 39-13-527;

(xii) Solicitation of a minor, under § 39-13-528;

(2) Criminal attempt, under § 39-12-101, solicitation, under § 39-12-102, or conspiracy, under § 39-12-103, to commit any of the offenses enumerated within this subdivision (b); or

(3) Criminal responsibility under § 39-11-402(2) for facilitating the commission under § 39-11-403 of, or being an accessory after the fact under, § 39-11-411 to any of the offenses enumerated in this subdivision (b).

Section 40-39-302.

(a) The board of probation and parole is authorized to establish a serious offender and violent sexual offender monitoring program and to promulgate guidelines governing it, consistent with the provisions of this chapter.

(b) The board shall carry out the following duties:

(1) By December 31, 2004, in consultation with all participating state and local law enforcement, the board shall develop implementing guidelines for the continuous satellite-based monitoring of serious offenders and violent sexual offenders. Such a system may provide:

(A) Time-correlated and continuous tracking of the geographic location of the subject using a global positioning system based on satellite and other location tracking technology.

(B) Reporting of subject's violations of prescriptive and proscriptive schedule/location requirements. Frequency of reporting may range from once-a-day (passive) to near real-time (active).

(C) An automated system that provides local and state law enforcement to compare the geographic positions of monitored subjects with reported crime incidents and whether the subject was at or near such reported crime incidents. These alerts will enable authorities to include or exclude monitored subjects from an ongoing investigation.

(2) Prior to December 31, 2004, the board of probation and parole shall contract with a single vendor for the hardware services needed to monitor subject offenders and correlate their movements to reported crime incidents using a system meeting the requirements described in (b)(1)(C).

(3) The board's contract with this vendor may provide for services necessary to implement or facilitate any of the provisions of this chapter including the collection and disposition of the charges and fees provided for in this chapter and Tennessee Code Annotated § 40-28-201(2) and to allow for the reasonable cost of collection of the proceeds.

(4) On or before March 1, 2005, the board shall make a report to a joint meeting of the judiciary committee of the senate and the house of representatives and the joint oversight committee on correction regarding the implementation of this act, and the results of the programs created by this act.

Section 40-39-303.

(a) Notwithstanding any other provision of law, the board of probation and parole may require, as a mandatory condition of release for any person convicted of a sexual offense as defined in § 40-39-301(d), that any person so released under its supervision be enrolled in a satellite-based monitoring program for the full extent of his or her term of probation or parole, consistent with the requirements of § 40-39-302.

(b) The board of probation and parole may require, as a mandatory condition of release for any person convicted of a serious offense as defined in this chapter or for such other offenders as the board deems appropriate, that such person be enrolled in a satellite-based monitoring program for the full extent of such person's term of probation or parole, consistent with the requirements of § 40-39-302.

(c) Offender participation in a location tracking and crime correlation based monitoring and supervision program under this section shall be at the sole discretion of the board and shall conform to the participant payment requirements stated in § 40-39-304, and be based upon such person's ability to pay.

Section 40-39-304.

(a) Intentional tampering with, removal of, or vandalism to a device issued pursuant to a location tracking and crime correlation based monitoring and supervision program described in § 40-39-302 by a person duly enrolled in such a program is a Class A misdemeanor for the first offense, punishable by confinement in the county jail for not less than one hundred eighty (180) days. The minimum one hundred eighty-day sentence provided for this Class A misdemeanor offense is mandatory, and no person committing such offense shall be eligible for suspension of sentence, diversion, or probation until the minimum sentence is served in its entirety. A second or subsequent violation under this section is a Class E felony. Additionally, if the person violating this section is on probation, parole, or any other alternative to incarceration, then the violation shall also constitute sufficient grounds for immediate revocation of probation, parole, or other alternative to incarceration. Any violation of this section shall result in the imposition of the mandatory release condition specified in § 40-39-303(a) and (b).

(b) Any person who knowingly aids, abets, or assists a person duly enrolled in a location tracking and crime correlation based monitoring and supervision program described in § 40-39-302 in tampering with, removing, or vandalizing a device issued pursuant to such program commits a Class A misdemeanor.

Section 40-39-305.

(a) The board of probation and parole is authorized to assess a daily or monthly fee, as the board deems reasonable and necessary to effectuate the purposes of this program, from serious offenders and violent sexual offenders who are required by the board to participate in the sexual offender monitoring program described in § 40-39-302. This fee is intended to offset only the costs associated with the time-correlated tracking of the geographic location of subjects using the location tracking crime correlation system. Fees assessed by the board pursuant to this program may be collected in accordance with § 40-39-302(b)(3).

(b) The board may waive all or any portion of the fees required by this section if it determines that an offender is indigent or financially unable to pay all or any portion of such fee. The board shall waive only that portion of the surcharge which the offender is financiall y unable to pay.

Section 40-39-306.

(a) Notwithstanding any other provision of law, the department of correction, the board of paroles, the Tennessee bureau of investigation, and all local law enforcement agencies are specifically authorized to share criminal incident information (limited to the time, place, and nature of the crime) with each other and the vendor selected by the department to carry out the purposes of this part, and the department is authorized to direct the vendor so chosen to use data collected pursuant to § 40-39-302(b) in preparing corr elation reports as described in that subsection for distribution to and use by state and local law enforcement agencies.

SECTION 6. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or application of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 7. This act shall take effect on July 1, 2004, the public welfare requiring it.

PASSED: May 20, 2004

JIMMY RAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES

JOHN S. WILDER
SPEAKER OF THE SENATE

APPROVED this 7th day of June 2004

PHIL BREDESEN, GOVERNOR