

## 1 HOUSE BILL NO. 379

2 INTRODUCED BY G. MACLAREN

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING AN EVALUATION BY THE DEPARTMENT OF  
5 CORRECTIONS FOR THE PURPOSES OF ASSIGNMENT OF A RECIDIVISM RISK LEVEL FOR CERTAIN  
6 PREVIOUSLY CONVICTED SEXUAL OFFENDERS WHO ARE REGISTERED IN THE STATE SEXUAL  
7 OFFENDER REGISTRY BUT HAVE NOT BEEN ASSIGNED A RECIDIVISM RISK LEVEL; PROVIDING A  
8 PENALTY FOR THOSE SEXUAL OFFENDERS WHO FAIL TO REPORT FOR EVALUATION AND  
9 ASSIGNMENT OF A RECIDIVISM RISK LEVEL; PROVIDING AN APPROPRIATION; AND PROVIDING AN  
10 IMMEDIATE EFFECTIVE DATE, A RETROACTIVE APPLICABILITY DATE, AND A TERMINATION DATE."  
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12 WHEREAS, the Montana Legislature enacted the sexual offender registration program in 1989 and  
13 substantially revised the registration requirements in 1997; and

14 WHEREAS, the 1997 amendments required the Department of Corrections to evaluate sexual offenders  
15 then being convicted as to their risk of reoffending and assign risk levels to those offenders, level 1 indicating a  
16 low risk of reoffending, level 2 indicating moderate risk of reoffending, and level 3 indicating a high risk of  
17 reoffending; and

18 WHEREAS, for various reasons, such as conviction of an offender before 1997, 1098 of the 1563  
19 currently registered sexual or sexual and violent offenders were registered but never assigned a risk level, the  
20 risk level being used to determine such things as the frequency of auditing an offender's location by the  
21 Department of Corrections and the extent of community dissemination of the offender's location by the  
22 Department; and

23 WHEREAS, the ratio of level 3 offenders to all offenders currently being convicted, based upon  
24 evaluations by the Department of Corrections, is approximately 25%; and

25 WHEREAS, if this same percentage of level 3 offenders for current convictions is applied to currently  
26 registered but unevaluated sexual offenders, it means that there are well over 200 level 3 offenders, also called  
27 sexually violent predators, living in Montana communities whose identities and locations as level 3 offenders are  
28 unknown to Montana law enforcement agencies, Montana communities in which they live, and to Montana  
29 families; and

30 WHEREAS, the Legislature believes it would materially assist Montana law enforcement agencies in

1 managing sexual offenders to require that currently registered but unevaluated sexual offenders be evaluated  
2 by the Department of Corrections in order to determine whether additional administrative steps, such as more  
3 frequent location determinations and community dissemination of those locations, need to be taken for those  
4 currently undesignated and therefore unknown level 3 offenders.

5         THEREFORE, the Legislature intends that registered but unevaluated offenders be evaluated by the  
6 Department of Corrections but that, once evaluated, only civil administrative tools for the management of the  
7 offenders and not criminal punishments be applied retroactively to unevaluated offenders, pursuant to the power  
8 of the Legislature to protect the safety and welfare of Montana residents, in order that those offenders not be  
9 subject to ex post facto or double jeopardy laws, but that a criminal offense of failure to report for evaluation to  
10 the Department of Corrections may be constitutionally created and applied because it involves the creation of a  
11 separate, current offense.

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13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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15         NEW SECTION. Section 1. Department to evaluate and designate certain registered sex offenders

16 -- **procedure -- report.** (1) The department shall determine which offenders registered pursuant to 46-23-504  
17 have not been assigned a risk level designation pursuant to 46-23-509 and shall notify those offenders of their  
18 obligation to be evaluated pursuant to [section 2] and this section.

19         (2) The department shall create a procedure, subject to the contested case procedures of the Montana  
20 Administrative Procedure Act, for evaluation of offenders who are registered but for whom a risk level has not  
21 been designated that the department considers to be efficient and constitutionally sound. An offender must be  
22 granted a hearing as part of that procedure for the limited purposes of proving that the offender is not currently  
23 dangerous. The determinations of the department pursuant to this section are reviewable by a district court  
24 pursuant to 2-4-702.

25         (3) Once assessed by the department pursuant to this section, an offender is subject to the requirements  
26 of 46-23-504(4), 46-23-506, 46-23-508, and 46-23-1010.

27         (4) The department shall adopt rules for the implementation of this section.

28         (5) The department shall provide a report to the legislature pursuant to 5-11-210 on the department's  
29 implementation of this section.

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