

SENATE BILL NO. 156

INTRODUCED BY G. PERRY

BY REQUEST OF THE DEPARTMENT OF JUSTICE

A BILL FOR AN ACT ENTITLED: "AN ACT STRENGTHENING THE REGISTRATION REQUIREMENTS AND OTHER PROVISIONS APPLICABLE TO SEXUAL OFFENDERS; AMENDING PROVISIONS GOVERNING YOUTH COURT, CRIMINAL PROSECUTION AND PENALTIES, DEFINITIONS, PROBATION AND PAROLE, REGISTRATION OF TRANSIENTS, AND DISSEMINATION OF INFORMATION ABOUT SEXUAL OFFENDERS; AMENDING SECTIONS 41-5-206, 41-5-216, 41-5-1513, 45-5-503, 45-5-625, 46-1-202, 46-18-111, 46-18-201, 46-18-203, 46-23-502, 46-23-504, 46-23-505, 46-23-506, 46-23-508, 46-23-509, AND 46-23-1011, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

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

**Section 1.** Section 41-5-206, MCA, is amended to read:

**"41-5-206. Filing in district court prior to formal proceedings in youth court.** (1) The county attorney may, in the county attorney's discretion and in accordance with the procedure provided in 46-11-201, file with the district court a motion for leave to file an information in the district court if:

(a) the youth charged was 12 years of age or older at the time of the conduct alleged to be unlawful and the unlawful act would if it had been committed by an adult constitute:

(i) sexual intercourse without consent as defined in 45-5-503;

(ii) deliberate homicide as defined in 45-5-102;

(iii) mitigated deliberate homicide as defined in 45-5-103;

(iv) assault on a peace officer or judicial officer as defined in 45-5-210; or

(v) the attempt, as defined in 45-4-103, of or accountability, as provided in 45-2-301, for either deliberate or mitigated deliberate homicide; or

(b) the youth charged was 16 years of age or older at the time of the conduct alleged to be unlawful and the unlawful act is one or more of the following:

(i) negligent homicide as defined in 45-5-104;

(ii) arson as defined in 45-6-103;



1 (iii) aggravated assault as defined in 45-5-202;  
 2 (iv) sexual assault as provided in 45-5-502(3);  
 3 ~~(iv)~~(v) assault with a weapon as defined in 45-5-213;  
 4 ~~(v)~~(vi) robbery as defined in 45-5-401;  
 5 ~~(vi)~~(vii) burglary or aggravated burglary as defined in 45-6-204;  
 6 ~~(vii)~~(viii) aggravated kidnapping as defined in 45-5-303;  
 7 ~~(viii)~~(ix) possession of explosives as defined in 45-8-335;  
 8 ~~(ix)~~(x) criminal distribution of dangerous drugs as defined in 45-9-101;  
 9 ~~(x)~~(xi) criminal possession of dangerous drugs as defined in 45-9-102(4) through (6);  
 10 ~~(xi)~~(xii) criminal possession with intent to distribute as defined in 45-9-103(1);  
 11 ~~(xii)~~(xiii) criminal production or manufacture of dangerous drugs as defined in 45-9-110;  
 12 ~~(xiii)~~(xiv) use of threat to coerce criminal street gang membership or use of violence to coerce criminal  
 13 street gang membership; as defined in 45-8-403;  
 14 ~~(xiv)~~(xv) escape as defined in 45-7-306;  
 15 ~~(xv)~~(xvi) attempt, as defined in 45-4-103, of or accountability, as provided in 45-2-301, for any of the acts  
 16 enumerated in subsections (1)(b)(i) through ~~(1)(b)(xiv)~~ (1)(b)(xv).

17 (2) The county attorney shall file with the district court a petition for leave to file an information in district  
 18 court if the youth was 17 years of age at the time the youth committed an offense listed under subsection (1).

19 (3) The district court shall grant leave to file the information if it appears from the affidavit or other  
 20 evidence supplied by the county attorney that there is probable cause to believe that the youth has committed  
 21 the alleged offense. Within 30 days after leave to file the information is granted, the district court shall conduct  
 22 a hearing to determine whether the matter must be transferred back to the youth court, unless the hearing is  
 23 waived by the youth or by the youth's counsel in writing or on the record. The hearing may be continued on  
 24 request of either party for good cause. The district court may not transfer the case back to the youth court unless  
 25 the district court finds, by a preponderance of the evidence, that:

26 (a) a youth court proceeding and disposition will serve the interests of community protection;

27 (b) the nature of the offense does not warrant prosecution in district court; and

28 (c) it would be in the best interests of the youth if the matter was prosecuted in youth court.

29 (4) The filing of an information in district court terminates the jurisdiction of the youth court over the youth  
 30 with respect to the acts alleged in the information. A youth may not be prosecuted in the district court for a

1 criminal offense originally subject to the jurisdiction of the youth court unless the case has been filed in the district  
2 court as provided in this section. A case may be transferred to district court after prosecution as provided in  
3 41-5-208 or 41-5-1605.

4 (5) An offense not enumerated in subsection (1) that arises during the commission of a crime  
5 enumerated in subsection (1) may be:

6 (a) tried in youth court;

7 (b) transferred to district court with an offense enumerated in subsection (1) upon motion of the county  
8 attorney and order of the district court. The district court shall hold a hearing before deciding the motion.

9 (6) If a youth is found guilty in district court of an offense enumerated in subsection (1), the court shall  
10 sentence the youth pursuant to 41-5-2503 and Titles 45 and 46. A youth who is sentenced to the department or  
11 a state prison must be evaluated and placed by the department in an appropriate juvenile or adult correctional  
12 facility. The department shall confine the youth in an institution that it considers proper, including a state youth  
13 correctional facility under the procedures of 52-5-111. However, a youth under 16 years of age may not be  
14 confined in a state prison facility. During the period of confinement, school-aged youth with disabilities must be  
15 provided an education consistent with the requirements of the federal Individuals With Disabilities Education Act,  
16 20 U.S.C. 1400, et seq.

17 (7) If a youth's case is filed in the district court and remains in the district court after the transfer hearing,  
18 the youth may be detained in a jail or other adult detention facility pending final disposition of the youth's  
19 case if the youth is kept in an area that provides physical separation from adults accused or convicted of criminal  
20 offenses."

21

22 **Section 2.** Section 41-5-216, MCA, is amended to read:

23 **"41-5-216. Disposition of youth court, law enforcement, and department records.** (1) Formal youth  
24 court records, law enforcement records, and department records that are not exempt from sealing under  
25 subsections (4) and (6) and that pertain to a youth covered by this chapter must be physically sealed on the  
26 youth's 18th birthday. In those cases in which jurisdiction of the court or any agency is extended beyond the  
27 youth's 18th birthday, the records must be physically sealed upon termination of the extended jurisdiction.

28 (2) Except as provided in subsection (6), when the records pertaining to a youth pursuant to this section  
29 are sealed, an agency, other than the department, that has in its possession copies of the sealed records shall  
30 destroy the copies of the records. Anyone violating the provisions of this subsection is subject to contempt of

1 court.

2 (3) Except as provided in subsection (6), this section does not prohibit the destruction of records with  
3 the consent of the youth court judge or county attorney after 10 years from the date of sealing.

4 (4) The requirements for sealed records in this section do not apply to medical records, fingerprints, DNA  
5 records, photographs, youth traffic records, records in any case in which the youth did not fulfill all requirements  
6 of the court's judgment or disposition, records referred to in 42-3-203, ~~or~~ reports referred to in 45-5-624(7), or the  
7 information referred to in 46-23-508, in any instance in which the youth was required to register, pursuant to Title  
8 46, chapter 23, part 5, as a sexual offender.

9 (5) After formal youth court records, law enforcement records, and department records are sealed, they  
10 are not open to inspection except, upon order of the youth court, for good cause, including when a youth commits  
11 a new offense, to:

12 (a) those persons and agencies listed in 41-5-215(2); and

13 (b) adult probation professional staff preparing a presentence report on a youth who has reached the  
14 age of majority.

15 (6) (a) When formal youth court records, law enforcement records, and department records are sealed  
16 under subsection (1), the electronic records of the management information system maintained by the department  
17 of public health and human services and by the department relating to the youth whose records are being sealed  
18 must be preserved for the express purpose of research and program evaluation as provided in subsection (6)(b).

19 (b) The department of public health and human services and the department shall disassociate the  
20 offense and disposition information from the name of the youth in the respective management information system.  
21 The offense and disposition information must be maintained separately and may be used only:

22 (i) for research and program evaluation authorized by the department of public health and human  
23 services or by the department and subject to any applicable laws; and

24 (ii) as provided in Title 5, chapter 13.

25 (7) (a) Informal youth court records for a youth for whom formal proceedings have been filed must be  
26 physically sealed on the youth's 18th birthday or, in those cases in which jurisdiction of the court or any agency  
27 is extended beyond the youth's 18th birthday, upon termination of the extended jurisdiction and may ~~only~~ be  
28 inspected only pursuant to subsection (5).

29 (b) The informal youth court records may be maintained and inspected only by youth court personnel  
30 upon a new offense prior to the youth's 18th birthday.

1 (c) Except as provided in subsection (7)(a), when a youth becomes 18 years of age or when extended  
 2 supervision ends and the youth was ~~only~~ involved only in informal proceedings, informal youth court records that  
 3 are in hard-copy form must be destroyed and any electronic records in the youth court management information  
 4 system must disassociate the offense and disposition information from the name of the youth and may be used  
 5 only for the following purposes:

6 (i) for research and program evaluation authorized by the office of the court administrator and subject  
 7 to any applicable laws; and

8 (ii) as provided in Title 5, chapter 13.

9 (8) Nothing in this section prohibits the intra-agency use or information sharing of formal or informal youth  
 10 court records within the juvenile probation management information system. Electronic records of the youth court  
 11 may not be shared except as provided in 41-5-1524. If a person authorized under 41-5-215 is in need of a copy  
 12 of a record that is in electronic form, the juvenile probation officer shall make only a physical copy of the record  
 13 that is authorized and the person receiving the record shall destroy the record after it has fulfilled its purpose or  
 14 as provided in subsection (2) of this section.

15 (9) Nothing in this section prohibits the intra-agency use or information sharing of formal or informal youth  
 16 court records within the department's youth management information system. Electronic records of the  
 17 department's youth management information system may not be shared except as provided in subsection (5).  
 18 If a person authorized under 41-5-215 is in need of a copy of a record that is in electronic form, the department  
 19 shall make only a physical copy of the record that is authorized and the person receiving the record shall destroy  
 20 the record after it has fulfilled its purpose or as provided in subsection (2) of this section."

21

22 **Section 3.** Section 41-5-1513, MCA, is amended to read:

23 **"41-5-1513. Disposition -- delinquent youth -- restrictions.** (1) If a youth is found to be a delinquent  
 24 youth, the youth court may enter its judgment making one or more of the following dispositions:

25 (a) any one or more of the dispositions provided in 41-5-1512;

26 (b) subject to 41-5-1504, 41-5-1512(1)(o)(i), and 41-5-1522, commit the youth to the department for  
 27 placement in a state youth correctional facility and recommend to the department that the youth not be released  
 28 until the youth reaches 18 years of age. The provisions of 41-5-355 relating to alternative placements apply to  
 29 placements under this subsection (1)(b). The court may not place a youth adjudicated to be a delinquent youth  
 30 in a state youth correctional facility for an act that would be a misdemeanor if committed by an adult unless:

1 (i) the youth committed four or more misdemeanors in the prior 12 months;  
2 (ii) a psychiatrist or a psychologist licensed by the state or a licensed clinical professional counselor or  
3 a licensed clinical social worker has evaluated the youth and recommends placement in a state youth correctional  
4 facility; and  
5 (iii) the court finds that the youth will present a danger to the public if the youth is not placed in a state  
6 youth correctional facility.

7 (c) require a youth found to be a delinquent youth, as the result of the commission of an offense that  
8 would be a ~~sexual offense~~ or violent offense, as defined in 46-23-502, if committed by an adult, to register and  
9 remain registered as a ~~sexual or~~ violent offender pursuant to Title 46, chapter 23, part 5. The youth court shall  
10 retain jurisdiction in a disposition under this subsection to ensure registration compliance.

11 (d) in the case of a delinquent youth who has been adjudicated for a sexual offense, as defined in  
12 46-23-502, and is required to register as a sexual offender pursuant to Title 46, chapter 23, part 5, may exempt  
13 the youth from the duty to register if the court finds that the:

14 (i) youth has not previously been found to have committed, or been adjudicated for, a sexual offense,  
15 as defined in 46-23-502; and

16 (ii) registration is not necessary for protection of the public and that relief from registration is in the public's  
17 best interest.

18 ~~(d)~~(e) in the case of a delinquent youth who is determined by the court to be a serious juvenile offender,  
19 the judge may specify that the youth be placed in a state youth correctional facility, subject to the provisions of  
20 subsection (2), if the judge finds that the placement is necessary for the protection of the public. The court may  
21 order the department to notify the court within 5 working days before the proposed release of a youth from a youth  
22 correctional facility. Once a youth is committed to the department for placement in a state youth correctional  
23 facility, the department is responsible for determining an appropriate date of release or an alternative placement.

24 ~~(e)~~(f) impose a fine as authorized by law if the violation alleged would constitute a criminal offense if  
25 committed by an adult.

26 (2) If a youth has been adjudicated for a sex offense, the youth court may require completion of sex  
27 offender treatment before a youth is discharged.

28 (3) The court may not order a local government entity to pay for care, treatment, intervention, or  
29 placement. A court may order a local government entity to pay for evaluation and in-state transportation of a  
30 youth.

1 (4) The court may not order a state government entity to pay for care, treatment, intervention, placement,  
2 or evaluation that results in a deficit in the account established for that district under 41-5-130 without approval  
3 from the cost containment review panel."  
4

5 **Section 4.** Section 45-5-503, MCA, is amended to read:

6 **"45-5-503. Sexual intercourse without consent.** (1) A person who knowingly has sexual intercourse  
7 without consent with another person commits the offense of sexual intercourse without consent. A person may  
8 not be convicted under this section based on the age of the person's spouse, as provided in 45-5-501(1)(b)(iv).

9 (2) A person convicted of sexual intercourse without consent shall be punished by life imprisonment or  
10 by imprisonment in the state prison for a term of not less than 2 years or more than 100 years and may be fined  
11 not more than \$50,000, except as provided in 46-18-219 and 46-18-222.

12 (3) (a) If the victim is less than 16 years old and the offender is 3 or more years older than the victim or  
13 if the offender inflicts bodily injury upon anyone in the course of committing sexual intercourse without consent,  
14 the offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less  
15 than 4 years or more than 100 years and may be fined not more than \$50,000, except as provided in 46-18-219  
16 and 46-18-222.

17 (b) If the victim was 12 years of age or younger and the offender was 18 years of age or older at the time  
18 of the offense, the offender shall be punished by imprisonment for not less than 25 years, without possibility of  
19 parole, followed by a period of probation for the rest of the offender's life, and not more than life imprisonment,  
20 without possibility of parole.

21 ~~(b)~~(c) If two or more persons are convicted of sexual intercourse without consent with the same victim  
22 in an incident in which each offender was present at the location where another offender's offense occurred  
23 during a time period in which each offender could have reasonably known of the other's offense, each offender  
24 shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 5 years  
25 or more than 100 years and may be fined not more than \$50,000, except as provided in 46-18-219 and  
26 46-18-222.

27 ~~(c)~~(d) If the offender was previously convicted of an offense under this section or of an offense under  
28 the laws of another state or of the United States that if committed in this state would be an offense under this  
29 section and if the offender inflicted serious bodily injury upon a person in the course of committing each offense,  
30 the offender shall be:

1 (i) punished by death as provided in 46-18-301 through 46-18-310, unless the offender is less than 18  
2 years of age at the time of the commission of the offense; or

3 (ii) punished as provided in 46-18-219.

4 ~~(d)~~(e) If the victim was incarcerated in an adult or juvenile correctional, detention, or treatment facility  
5 at the time of the offense and the offender had supervisory or disciplinary authority over the victim, the offender  
6 shall be punished by imprisonment in the state prison for a term of not more than 5 years or fined an amount not  
7 to exceed \$50,000, or both.

8 (4) In addition to any sentence imposed under subsection (2) or (3), after determining the financial  
9 resources and future ability of the offender to pay restitution as required by 46-18-242, the court shall require the  
10 offender, if able, to pay the victim's reasonable medical and counseling costs that result from the offense. The  
11 amount, method, and time of payment must be determined in the same manner as provided for in 46-18-244.

12 (5) As used in subsection (3), an act "in the course of committing sexual intercourse without consent"  
13 includes an attempt to commit the offense or flight after the attempt or commission."  
14

15 **Section 5.** Section 45-5-625, MCA, is amended to read:

16 **"45-5-625. Sexual abuse of children.** (1) A person commits the offense of sexual abuse of children if  
17 the person:

18 (a) knowingly employs, uses, or permits the employment or use of a child in an exhibition of sexual  
19 conduct, actual or simulated;

20 (b) knowingly photographs, films, videotapes, develops or duplicates the photographs, films, or  
21 videotapes, or records a child engaging in sexual conduct, actual or simulated;

22 (c) knowingly, by any means of communication, including electronic communication as defined in  
23 45-8-213, persuades, entices, counsels, or procures a child under 16 years of age or a person the offender  
24 believes to be a child under 16 years of age to engage in sexual conduct, actual or simulated;

25 (d) knowingly processes, develops, prints, publishes, transports, distributes, sells, exhibits, or advertises  
26 any visual or print medium, including a medium by use of electronic communication, as defined in 45-8-213, in  
27 which a child is engaged in sexual conduct, actual or simulated;

28 (e) knowingly possesses any visual or print medium, including a medium by use of electronic  
29 communication, as defined in 45-8-213, in which a child is engaged in sexual conduct, actual or simulated;

30 (f) finances any of the activities described in subsections (1)(a) through (1)(d) and (1)(g), knowing that



1 the activity is of the nature described in those subsections; or

2 (g) possesses with intent to sell any visual or print medium, including a medium by use of electronic  
3 communication, as defined in 45-8-213, in which a child is engaged in sexual conduct, actual or simulated.

4 (2) (a) A person convicted of the offense of sexual abuse of children shall be punished by life  
5 imprisonment or by imprisonment in the state prison for a term not to exceed 100 years and may be fined not  
6 more than \$10,000.

7 (b) Except as provided in 46-18-219, if the victim is under 16 years of age, a person convicted of the  
8 offense of sexual abuse of children shall be punished by life imprisonment or by imprisonment in the state prison  
9 for a term of not less than 4 years or more than 100 years and may be fined not more than \$10,000.

10 (c) Except as provided in 46-18-219, a person convicted of the offense of sexual abuse of children for  
11 the possession of material, as provided in subsection (1)(e), shall be fined not to exceed \$10,000 or be  
12 imprisoned in the state prison for a term not to exceed 10 years, or both.

13 (d) If the victim was 12 years of age or younger and the offender was 18 years of age or older at the time  
14 of the offense, the offender shall be punished by imprisonment for not less than 25 years, without possibility of  
15 parole, followed by a period of probation for the rest of the offender's life, and not more than life imprisonment,  
16 without possibility of parole.

17 (3) An offense is not committed under subsections (1)(d) through (1)(g) if the visual or print medium is  
18 processed, developed, printed, published, transported, distributed, sold, possessed, or possessed with intent to  
19 sell, or if the activity is financed, as part of a sex offender information or treatment course or program conducted  
20 or approved by the department of corrections."

21

22 **Section 6.** Section 46-1-202, MCA, is amended to read:

23 **"46-1-202. Definitions.** As used in this title, unless the context requires otherwise, the following  
24 definitions apply:

25 (1) "Advanced practice registered nurse" means an individual certified as an advanced practice  
26 registered nurse provided for in 37-8-202, with a clinical specialty in psychiatric mental health nursing.

27 (2) "Arraignment" means the formal act of calling the defendant into open court to enter a plea answering  
28 a charge.

29 (3) "Arrest" means taking a person into custody in the manner authorized by law.

30 (4) "Arrest warrant" means a written order from a court directed to a peace officer or to some other

1 person specifically named commanding that officer or person to arrest another. The term includes the original  
2 warrant of arrest and a copy certified by the issuing court.

3 (5) "Bail" means the security given for the primary purpose of ensuring the presence of the defendant  
4 in a pending criminal proceeding.

5 (6) "Charge" means a written statement that accuses a person of the commission of an offense, that is  
6 presented to a court, and that is contained in a complaint, information, or indictment.

7 (7) "Conviction" means a judgment or sentence entered upon a guilty or nolo contendere plea or upon  
8 a verdict or finding of guilty rendered by a legally constituted jury or by a court of competent jurisdiction authorized  
9 to try the case without a jury.

10 (8) "Court" means a place where justice is judicially administered and includes the judge of the court.

11 (9) "Included offense" means an offense that:

12 (a) is established by proof of the same or less than all the facts required to establish the commission of  
13 the offense charged;

14 (b) consists of an attempt to commit the offense charged or to commit an offense otherwise included in  
15 the offense charged; or

16 (c) differs from the offense charged only in the respect that a less serious injury or risk to the same  
17 person, property, or public interest or a lesser kind of culpability suffices to establish its commission.

18 (10) "Judge" means a person who is vested by law with the power to perform judicial functions.

19 (11) "Judgment" means an adjudication by a court that the defendant is guilty or not guilty, and if the  
20 adjudication is that the defendant is guilty, it includes the sentence pronounced by the court.

21 (12) (a) "Make available for examination and reproduction" means to make material and information that  
22 is subject to disclosure available upon request at a designated place during specified reasonable times and to  
23 provide suitable facilities or arrangements for reproducing it. The parties may by mutual consent make other or  
24 additional arrangements.

25 (b) The term does not mean that the disclosing party is required to make copies at its expense, to deliver  
26 the materials or information to the other party, or to supply the facilities or materials required to carry out tests  
27 on disclosed items. ~~The parties may by mutual consent make other or additional arrangements.~~

28 (13) "New trial" means a reexamination of the issue in the same court before another jury after a verdict  
29 or finding has been rendered.

30 (14) "Notice to appear" means a written direction that is issued by a peace officer and that requests a

1 person to appear before a court at a stated time and place to answer a charge for the alleged commission of an  
2 offense.

3 (15) "Offense" means a violation of any penal statute of this state or any ordinance of its political  
4 subdivisions.

5 (16) "Parole" means the release to the community of a prisoner by a decision of the board of pardons and  
6 parole prior to the expiration of the prisoner's term subject to conditions imposed by the board of pardons and  
7 parole and the supervision of the department of corrections.

8 (17) "Peace officer" means any person who by virtue of the person's office or public employment is vested  
9 by law with a duty to maintain public order and make arrests for offenses while acting within the scope of the  
10 person's authority.

11 (18) "Persistent felony offender" means an offender who has previously been convicted of a felony and  
12 who is presently being sentenced for a second felony committed on a different occasion than the first. An offender  
13 is considered to have been previously convicted of a felony if:

14 (a) the previous felony conviction was for an offense committed in this state or any other jurisdiction for  
15 which a sentence of imprisonment in excess of 1 year could have been imposed;

16 (b) less than 5 years have elapsed between the commission of the present offense and either:

17 (i) the previous felony conviction; or

18 (ii) the offender's release on parole or otherwise from prison or other commitment imposed as a result  
19 of a previous felony conviction; and

20 (c) the offender has not been pardoned on the ground of innocence and the conviction has not been set  
21 aside at the postconviction hearing.

22 (19) "Place of trial" means the geographical location and political subdivision in which the court that will  
23 hear the cause is situated.

24 (20) "Preliminary examination" means a hearing before a judge for the purpose of determining if there  
25 is probable cause to believe a felony has been committed by the defendant.

26 (21) "Probation", except as otherwise provided by law, means release by the court without imprisonment  
27 of a defendant found guilty of a crime. The release is subject to the supervision of the department of corrections  
28 upon direction of the court.

29 (22) "Prosecutor" means an elected or appointed attorney who is vested by law with the power to initiate  
30 and carry out criminal proceedings on behalf of the state or a political subdivision.

1 (23) "Same transaction" means conduct consisting of a series of acts or omissions that are motivated by:

2 (a) a purpose to accomplish a criminal objective and that are necessary or incidental to the  
3 accomplishment of that objective; or

4 (b) a common purpose or plan that results in the repeated commission of the same offense or effect upon  
5 the same person or the property of the same person.

6 (24) "Search warrant" means an order that is:

7 (a) in writing;

8 (b) in the name of the state;

9 (c) signed by a judge;

10 (d) a particular description of the place, object, or person to be searched and the evidence, contraband,  
11 or person to be seized; and

12 (e) directed to a peace officer and commands the peace officer to search for evidence, contraband, or  
13 persons.

14 (25) "Sentence" means the judicial disposition of a criminal proceeding upon a plea of guilty or nolo  
15 contendere or upon a verdict or finding of guilty.

16 (26) "Statement" means:

17 (a) a writing signed or otherwise adopted or approved by a person;

18 (b) a video or audio recording of a person's communications or a transcript of the communications; and

19 (c) a writing containing a summary of a person's oral communications or admissions.

20 (27) "Summons" means a written order issued by the court that commands a person to appear before  
21 a court at a stated time and place to answer a charge for the offense set forth in the order.

22 (28) "Superseded notes" means handwritten notes, including field notes, that have been substantially  
23 incorporated into a statement. The notes may not be considered a statement and are not subject to disclosure  
24 except as provided in 46-15-324.

25 (29) "Temporary road block" means any structure, device, or means used by a peace officer for the  
26 purpose of controlling all traffic through a point on the highway where all vehicles may be slowed or stopped.

27 (30) "Witness" means a person whose testimony is desired in a proceeding or investigation by a grand  
28 jury or in a criminal action, prosecution, or proceeding.

29 (31) "Work product" means legal research, records, correspondence, reports, and memoranda, both  
30 written and oral, to the extent that they contain the opinions, theories, and conclusions of the prosecutor, defense

1 counsel, or their staff or investigators."  
2

3 **Section 7.** Section 46-18-111, MCA, is amended to read:

4 **"46-18-111. Presentence investigation -- when required.** (1) Upon the acceptance of a plea or upon  
5 a verdict or finding of guilty to one or more felony offenses, the district court shall direct the probation officer to  
6 make a presentence investigation and report. The district court shall consider the presentence investigation report  
7 prior to sentencing. If the defendant was convicted of an offense under 45-5-502, 45-5-503, 45-5-504, 45-5-505,  
8 45-5-507, 45-5-625, or 45-5-627; and, for the purposes of 45-5-507, was required to register as a sexual offender  
9 pursuant to Title 46, chapter 23, part 5, the investigation must include a psychosexual evaluation of the defendant  
10 and a recommendation as to treatment of the defendant in the least restrictive environment, considering the risk  
11 the defendant presents to the community and the defendant's needs, unless the defendant was sentenced under  
12 46-18-219. The evaluation must be completed by a sex offender therapist who is a member of the Montana sex  
13 offender treatment association or has comparable credentials acceptable to the department of labor and industry.  
14 The psychosexual evaluation must be made available to the county attorney's office, the defense attorney, the  
15 probation and parole officer, and the sentencing judge. All costs related to the evaluation must be paid by the  
16 defendant. If the defendant is determined by the district court to be indigent, all costs related to the evaluation  
17 are the responsibility of the district court and must be paid by the county or the state, or both, under Title 3,  
18 chapter 5, part 9.

19 (2) The court shall order a presentence report unless the court makes a finding that a report is  
20 unnecessary. Unless the court makes that finding, a defendant convicted of any offense not enumerated in  
21 subsection (1) that may result in incarceration for 1 year or more may not be sentenced before a written  
22 presentence investigation report by a probation and parole officer is presented to and considered by the district  
23 court. The district court may order a presentence investigation for a defendant convicted of a misdemeanor only  
24 if the defendant was convicted of a misdemeanor that the state originally charged as a sexual or violent offense  
25 as defined in 46-23-502.

26 (3) The defendant shall pay to the department of corrections a \$50 fee at the time that the report is  
27 completed, unless the court determines that the defendant is not able to pay the fee within a reasonable time.  
28 The fee may be retained by the department and used to finance contracts entered into under 53-1-203(4)."  
29

30 **Section 8.** Section 46-18-201, MCA, is amended to read:

1           **"46-18-201. Sentences that may be imposed.** (1) (a) Whenever a person has been found guilty of an  
2 offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may defer imposition  
3 of sentence, except as otherwise specifically provided by statute, for a period:

4           (i) not exceeding 1 year for a misdemeanor or for a period not exceeding 3 years for a felony; or

5           (ii) not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for a felony if a  
6 financial obligation is imposed as a condition of sentence for either the misdemeanor or the felony, regardless  
7 of whether any other conditions are imposed.

8           (b) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the  
9 case of an offender who has been convicted of a felony on a prior occasion, whether or not the sentence was  
10 imposed, imposition of the sentence was deferred, or execution of the sentence was suspended.

11           (2) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or  
12 nolo contendere, a sentencing judge may suspend execution of sentence, except as otherwise specifically  
13 provided by statute, for a period up to the maximum sentence allowed or for a period of 6 months, whichever is  
14 greater, for each particular offense.

15           (3) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or  
16 nolo contendere, a sentencing judge may impose a sentence that may include:

17           (a) a fine as provided by law for the offense;

18           (b) payment of costs<sub>1</sub> as provided in 46-18-232<sub>1</sub> or payment of costs of assigned counsel as provided  
19 in 46-8-113;

20           (c) a term of incarceration, as provided in Title 45 for the offense, at a county detention center or at a  
21 state prison to be designated by the department of corrections;

22           (d) commitment of:

23           (i) an offender not referred to in subsection (3)(d)(ii) to the department of corrections, with a  
24 recommendation for placement in an appropriate correctional facility or program; however, all but the first 5 years  
25 of the commitment to the department of corrections must be suspended; or

26           (ii) a youth transferred to district court under 41-5-206 and found guilty in the district court of an offense  
27 enumerated in 41-5-206 to the department of corrections for a period determined by the court for placement in  
28 an appropriate correctional facility or program;

29           (e) with the approval of the facility or program, placement of the offender in a community corrections  
30 facility or program as provided in 53-30-321;

1 (f) with the approval of the prerelease center or prerelease program and confirmation by the department  
2 of corrections that space is available, placement of the offender in a prerelease center or prerelease program for  
3 a period not to exceed 1 year;

4 (g) chemical treatment of sex offenders, as provided in 45-5-512, if applicable, that is paid for by and for  
5 a period of time determined by the department of corrections, but not exceeding the period of state supervision  
6 of the person; or

7 (h) any combination of subsections (2) through (3)(g).

8 (4) When deferring imposition of sentence, ~~or~~ suspending all or a portion of execution of sentence, or  
9 imposing probation pursuant to 45-5-503 or 45-5-625, the sentencing judge may impose upon the offender any  
10 reasonable restrictions or conditions during the period of the deferred imposition of sentence, ~~or~~ suspension of  
11 sentence, or probation imposed pursuant to 45-5-503 or 45-5-625. Reasonable restrictions or conditions imposed  
12 under 45-5-503, 45-5-625, or subsection (1)(a) or (2) of this section may include but are not limited to:

13 (a) limited release during employment hours as provided in 46-18-701;

14 (b) incarceration in a detention center not exceeding 180 days;

15 (c) conditions for probation;

16 (d) payment of the costs of confinement;

17 (e) payment of a fine as provided in 46-18-231;

18 (f) payment of costs as provided in 46-18-232 and 46-18-233;

19 (g) payment of costs of assigned counsel as provided in 46-8-113;

20 (h) with the approval of the facility or program, an order that the offender be placed in a community  
21 corrections facility or program as provided in 53-30-321;

22 (i) with the approval of the prerelease center or prerelease program and confirmation by the department  
23 of corrections that space is available, an order that the offender be placed in a prerelease center or prerelease  
24 program for a period not to exceed 1 year;

25 (j) community service;

26 (k) home arrest as provided in Title 46, chapter 18, part 10;

27 (l) payment of expenses for use of a judge pro tempore or special master as provided in 3-5-116;

28 (m) with the approval of the department of corrections and with a signed statement from an offender that  
29 the offender's participation in the boot camp incarceration program is voluntary, an order that the offender  
30 complete the boot camp incarceration program established pursuant to 53-30-403;

- 1 (n) participation in a day reporting program provided for in 53-1-203;
- 2 (o) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the  
3 protection of the victim or society; or
- 4 (p) any combination of the restrictions or conditions listed in subsections (4)(a) through (4)(p).
- 5 (5) In addition to any other penalties imposed, if a person has been found guilty of an offense upon a  
6 verdict of guilty or a plea of guilty or nolo contendere and the sentencing judge finds that a victim, as defined in  
7 46-18-243, has sustained a pecuniary loss, the sentencing judge shall, as part of the sentence, require payment  
8 of full restitution to the victim, as provided in 46-18-241 through 46-18-249, whether or not any part of the  
9 sentence is deferred or suspended.
- 10 (6) In addition to any of the penalties, restrictions, or conditions imposed pursuant to subsections (1)  
11 through (5), the sentencing judge may include the suspension of the license or driving privilege of the person to  
12 be imposed upon the failure to comply with any penalty, restriction, or condition of the sentence. A suspension  
13 of the license or driving privilege of the person must be accomplished as provided in 61-5-214 through 61-5-217.
- 14 (7) In imposing a sentence on an offender convicted of a sexual or violent offense, as defined in  
15 46-23-502, the sentencing judge may not waive the registration requirement provided in Title 46, chapter 23, part  
16 5.
- 17 (8) If a felony sentence includes probation, the department of corrections shall supervise the offender  
18 unless the court specifies otherwise."

19

20 **Section 9.** Section 46-18-203, MCA, is amended to read:

21 **"46-18-203. Revocation of suspended or deferred sentence.** (1) Upon the filing of a petition for  
22 revocation showing probable cause that the offender has violated any condition of a sentence, ~~or~~ any condition  
23 of a deferred imposition of sentence, or any condition of probation imposed pursuant to 45-5-503 or 45-5-625,  
24 the judge may issue an order for a hearing on revocation. The order must require the offender to appear at a  
25 specified time and place for the hearing and be served by delivering a copy of the petition and order to the  
26 offender personally. The judge may also issue an arrest warrant directing any peace officer or a probation and  
27 parole officer to arrest the offender and bring the offender before the court.

28 (2) The petition for a revocation must be filed with the sentencing court during the period of suspension  
29 or deferral. Expiration of the period of suspension or deferral after the petition is filed does not deprive the court  
30 of its jurisdiction to rule on the petition.



1 (3) The provisions pertaining to bail, as set forth in Title 46, chapter 9, are applicable to persons arrested  
2 pursuant to this section.

3 (4) Without unnecessary delay, the offender must be brought before the judge, and the offender must  
4 be advised of:

5 (a) the allegations of the petition;

6 (b) the opportunity to appear and to present evidence in the offender's own behalf;

7 (c) the opportunity to question adverse witnesses; and

8 (d) the right to be represented by counsel at the revocation hearing pursuant to Title 46, chapter 8, part

9 1.

10 (5) A hearing is required before a suspended or deferred sentence can be revoked or the terms or  
11 conditions of the sentence can be modified, unless:

12 (a) the offender admits the allegations and waives the right to a hearing; or

13 (b) the relief to be granted is favorable to the offender and the prosecutor, after having been given notice  
14 of the proposed relief and a reasonable opportunity to object, has not objected. An extension of the term of  
15 probation is not favorable to the offender for the purposes of this subsection (5)(b).

16 (6) (a) At the hearing, the prosecution shall prove, by a preponderance of the evidence, that there has  
17 been a violation of:

18 (i) the terms and conditions of the suspended or deferred sentence; or

19 (ii) the terms of the probation imposed pursuant to 45-5-503 or 45-5-625 because of the requirements  
20 of 46-23-1011(4)(d).

21 (b) However, when a failure to pay restitution is the basis for the petition, the offender may excuse the  
22 violation by showing sufficient evidence that the failure to pay restitution was not attributable to a failure on the  
23 offender's part to make a good faith effort to obtain sufficient means to make the restitution payments as ordered.

24 (7) (a) If the judge finds that the offender has violated the terms and conditions of the suspended or  
25 deferred sentence, the judge may:

26 (i) continue the suspended or deferred sentence without a change in conditions;

27 (ii) continue the suspended sentence with modified or additional terms and conditions;

28 (iii) revoke the suspension of sentence and require the offender to serve either the sentence imposed  
29 or any sentence that could have been imposed that does not include a longer imprisonment or commitment term  
30 than the original sentence; or

1 (iv) if the sentence was deferred, impose any sentence that might have been originally imposed.

2 (b) If a suspended or deferred sentence is revoked, the judge shall consider any elapsed time and either  
3 expressly allow all or part of the time as a credit against the sentence or reject all or part of the time as a credit.  
4 The judge shall state the reasons for the judge's determination in the order. Credit must be allowed for time  
5 served in a detention center or home arrest time already served.

6 (c) If a judge finds that an offender has not violated a term or condition of a suspended or deferred  
7 sentence, that judge is not prevented from setting, modifying, or adding conditions of probation as provided in  
8 46-23-1011.

9 (8) If the judge finds that the prosecution has not proved, by a preponderance of the evidence, that there  
10 has been a violation of the terms and conditions of the suspended or deferred sentence, the petition must be  
11 dismissed and the offender, if in custody, must be immediately released.

12 (9) The provisions of this section apply to any offender whose suspended or deferred sentence is subject  
13 to revocation regardless of the date of the offender's conviction and regardless of the terms and conditions of the  
14 offender's original sentence."  
15

16 **Section 10.** Section 46-23-502, MCA, is amended to read:

17 **"46-23-502. Definitions.** As used in 46-18-255 and this part, the following definitions apply:

18 (1) "Department" means the department of corrections provided for in 2-15-2301.

19 (2) "Mental abnormality" means a congenital or acquired condition that affects the mental, emotional,  
20 or volitional capacity of a person in a manner that predisposes the person to the commission of one or more  
21 sexual offenses to a degree that makes the person a menace to the health and safety of other persons.

22 (3) "Municipality" means an entity that has incorporated as a city or town.

23 ~~(3)~~(4) "Personality disorder" means a personality disorder as defined in the fourth edition of the  
24 Diagnostic and Statistical Manual of Mental Disorders adopted by the American psychiatric association.

25 ~~(4)~~(5) "Predatory sexual offense" means a sexual offense committed against a stranger or against a  
26 person with whom a relationship has been established or furthered for the primary purpose of victimization.

27 (6) "Registration agency" means:

28 (a) if the offender resides in a municipality, the police department of that municipality; or

29 (b) if the offender resides in a place other than a municipality, the sheriff's office of the county in which  
30 the offender resides.

1 (7) (a) "Residence" means the location at which a person regularly resides, regardless of the number  
 2 of days or nights spent at that location, that can be located by a street address, including a house, apartment  
 3 building, motel, hotel, or recreational or other vehicle.

4 (b) The term does not mean a homeless shelter.

5 ~~(5)~~(8) "Sexual offender evaluator" means a person qualified under rules established by the department  
 6 to conduct sexual offender and sexually violent predator evaluations.

7 ~~(6)~~(9) "Sexual offense" means:

8 (a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-301 (if the victim  
 9 is less than 18 years of age and the offender is not a parent of the victim), 45-5-302 (if the victim is less than 18  
 10 years of age and the offender is not a parent of the victim), 45-5-303 (if the victim is less than 18 years of age and  
 11 the offender is not a parent of the victim), 45-5-502(3), 45-5-503, 45-5-504(1) (if the victim is under 18 years of  
 12 age and the offender is 18 years of age or older), 45-5-504(2)(c), 45-5-507 (if the victim is under 18 years of age  
 13 and the offender is 3 or more years older than the victim), 45-5-603(1)(b), or 45-5-625; or

14 (b) any violation of a law of another state, a tribal government, or the federal government that is  
 15 reasonably equivalent to a violation listed in subsection (6)(a) or for which the offender was required to register  
 16 as a sex offender after an adjudication or conviction.

17 ~~(7)~~(10) "Sexual or violent offender" means a person who has been convicted of, or, in youth court, found  
 18 to have committed or been adjudicated for, a sexual or violent offense.

19 ~~(8)~~(11) "Sexually violent predator" means a person who:

20 (a) has been convicted of, or, in youth court, found to have committed or been adjudicated for, a sexual  
 21 offense and who suffers from a mental abnormality or a personality disorder that makes the person likely to  
 22 engage in predatory sexual offenses; or

23 (b) has been convicted of, or, in youth court, found to have committed or been adjudicated for, a sexual  
 24 offense against a victim 12 years of age or younger and the offender is 18 years of age or older.

25 (12) "Transient" means an offender who has no residence.

26 ~~(9)~~(13) "Violent offense" means:

27 (a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-102, 45-5-103,  
 28 45-5-202, 45-5-206 (third or subsequent offense), 45-5-210(1)(b), (1)(c), or (1)(d), 45-5-212, 45-5-213, 45-5-302  
 29 (if the victim is not a minor), 45-5-303 (if the victim is not a minor), 45-5-401, 45-6-103, or 45-9-132; or

30 (b) any violation of a law of another state, a tribal government, or the federal government reasonably

1 equivalent to a violation listed in subsection ~~(9)~~ (13)(a)."

2

3 **Section 11.** Section 46-23-504, MCA, is amended to read:

4 **"46-23-504. Persons required to register -- procedure.** (1) ~~A~~ Except as provided in 41-5-1513, a  
5 sexual or violent offender:

6 (a) shall register immediately upon conclusion of the sentencing hearing if the offender is not sentenced  
7 to confinement or is not sentenced to the department and placed in confinement by the department;

8 (b) must be registered as provided in 46-23-503 at least 10 days prior to release from confinement if  
9 sentenced to confinement or sentenced to the department and placed in confinement by the department;

10 (c) shall register within ~~40~~ 3 business days of entering a county of this state for the purpose of residing  
11 or setting up a temporary ~~domicile~~ residence for 10 days or more or for an aggregate period exceeding 30 days  
12 in a calendar year; and

13 (d) who is a transient shall register within 3 business days of entering a county of this state.

14 (2) Registration under subsection (1)(a), ~~or (1)(c), or (1)(d)~~ must be with the ~~chief of police of the~~  
15 ~~municipality or the sheriff of the county if the offender resides in an area other than a municipality. Whichever law~~  
16 ~~enforcement official the offender registers with~~ appropriate registration agency. If an offender registers with a  
17 police department, the department shall notify the other official sheriff's office of the county in which the  
18 municipality is located of the registration. The probation officer having supervision over an offender required to  
19 register under subsection (1)(a) shall verify the offender's registration status with the appropriate ~~law enforcement~~  
20 registration agency.

21 (3) At the time of registering, the offender shall sign a statement in writing giving the information required  
22 by subsections (3)(a) through (3)(g) and any other information required by the department of justice. The ~~chief~~  
23 ~~of police or sheriff~~ registration agency shall fingerprint the offender, unless the offender's fingerprints are on file  
24 with the department of justice, and shall photograph the offender. Within 3 days, the ~~chief of police or sheriff~~  
25 registration agency shall send copies of the statement, fingerprints, and photographs to the department of justice.  
26 The information collected from the offender at the time of registration must include the:

27 (a) name of the offender and any aliases used by the offender;

28 (b) offender's social security number;

29 (c) residence information required by subsection (4);

30 (d) name and address of any business or other place where the offender is or will be an employee;

- 1           (e) name and address of any school where the offender will be a student;  
 2           (f) offender's driver's license number; and  
 3           (g) description and license number of any motor vehicle owned or operated by the offender.  
 4           (4) (a) If, at the time of registration, the offender regularly resides in more than one county or  
 5 municipality, the offender shall register with the registration agency of each county or municipality in which the  
 6 offender resides. If an offender resides in more than one location within the same county or municipality, the  
 7 registration agency may require the offender to provide all of the locations where the offender regularly resides  
 8 and to designate one of them as the offender's primary residence.  
 9           (b) Registration of more than one residence pursuant to this section is an exception from the single  
 10 residence rule provided in 1-1-215.  
 11           (5) A transient shall report monthly, in person, to the registration agency with which the transient  
 12 registered pursuant to subsection (1)(d). The transient shall report on a day specified by the registration agency  
 13 and during the normal business hours of that agency. On that day, the transient shall provide the registration  
 14 agency with the information listed in subsections (3)(a) through (3)(g). The registration agency to which the  
 15 transient reports may also require the transient to provide the locations where the transient stayed during the  
 16 previous 30 days and may stay during the next 30 days.  
 17           ~~(4)~~(6) (a) The department of justice shall mail a registration verification form:  
 18           (i) each 90 days to an offender designated as a level 3 offender under 46-23-509; and  
 19           (ii) each 180 days to an offender designated as a level 2 offender under 46-23-509; and  
 20           ~~(ii)~~(iii) each year to a violent offender or an offender designated as a level 1 or level 2 offender under  
 21 46-23-509.  
 22           (b) If the offender is a transient, the department of justice shall mail the offender's registration verification  
 23 form to the registration agency with which the offender last registered.  
 24           ~~(b)~~(c) The form must require the offender's current address and notarized signature. Within 10 days after  
 25 receipt of the form, the offender shall complete the form and return it to the department registration agency where  
 26 the offender last registered or, if the offender was initially registered pursuant to subsection (1)(b), to the  
 27 registration agency in the county or municipality in which the offender is located. A sexual offender shall return  
 28 the form to the appropriate registration agency in person, and at the time that the sexual offender returns the  
 29 registration verification form, the registration agency shall take a photograph of the offender.  
 30           (7) Within 3 days after receipt of a registration verification form, the registration agency shall provide a

1 copy of the form and most recent photograph to the department of justice.

2 (5)(8) The offender is responsible, if able to pay, for costs associated with registration. The fees charged  
3 for registration may not exceed the actual costs of registration. The department of justice may adopt a rule  
4 establishing fees to cover registration costs incurred by the department of justice in maintaining registration and  
5 address verification records. The fees must be deposited in the general fund.

6 (6)(9) The clerk of the district court in the county in which a person is convicted of a sexual or violent  
7 offense shall notify the sheriff in that county of the conviction within 10 days after entry of the judgment."  
8

9 **Section 12.** Section 46-23-505, MCA, is amended to read:

10 **"46-23-505. Notice of change of ~~address name or residence or student, employment, or transient~~**  
11 **status -- duty to inform -- forwarding of information.** (1) If an offender required to register under this part has  
12 a change of ~~address name or residence or a change in student, employment, or transient status~~, the offender  
13 shall within ~~40~~ 3 business days of the change ~~give written~~ appear in person and give notification of the ~~new~~  
14 ~~address change~~ to the registration agency with whom the offender last registered or, if the offender was initially  
15 registered under 46-23-504(1)(b), to the ~~department and to the chief of police of the municipality or sheriff of the~~  
16 ~~county registration agency for the county or municipality~~ from which the offender is moving. ~~The agency or~~  
17 ~~department shall, within 3 days after receipt of the new address, forward it to the department of justice, which~~  
18 ~~shall forward a copy of the new address and photograph to the sheriff having jurisdiction over the new address~~  
19 ~~and to the chief of police of the municipality of the new address if the new address is in a municipality.~~

20 (2) If an offender required to register under this part is a transient, the offender shall provide written  
21 notification to the registration agency with which the offender last registered or, if the offender initially registered  
22 pursuant to 46-23-504(1)(b), shall provide notice within 3 business days to the registration agency in the county  
23 or municipality in which the offender resides.

24 (3) Within 3 business days after receipt of the information concerning the new name or residence or  
25 change in the student, employment, or transient status, the registration agency shall forward the information to  
26 the department of justice, which shall forward a copy of the information and photograph to:

27 (a) in the event of a change in residence, the registration agency for the county to which the offender  
28 moves and, if the offender lives in a municipality, the registration agency for that municipality to which the offender  
29 moves;

30 (b) in the event of a change of name or of student, employment, or transient status, the registration

1 agency of the appropriate county or municipality."

2

3 **Section 13.** Section 46-23-506, MCA, is amended to read:

4 **"46-23-506. Duration of registration.** (1) A sexual offender required to register under this part shall  
5 register for the remainder of the offender's life, except as provided in subsection (3) or during a period of time  
6 during which the offender is in prison.

7 (2) A violent offender required to register under this part shall register:

8 (a) for the 10 years following release from confinement or, if not confined following sentencing, for the  
9 10 years following the conclusion of the sentencing hearing, but the offender is not relieved of the duty to register  
10 until a petition is granted under subsection (3)(a); or

11 (b) if convicted during the 10-year period provided in subsection (2)(a) of failing to register or keep  
12 registration current or of a felony, for the remainder of the offender's life unless relieved of the duty to register as  
13 provided in subsection (3)(b).

14 (3) (a) An offender required to register for 10 years under subsection (2)(a) may, after the 10 years have  
15 passed, petition the sentencing court or the district court for the judicial district in which the offender resides for  
16 an order relieving the offender of the duty to register. The petition must be served on the county attorney in the  
17 county where the petition is filed. The petition must be granted if the defendant has not been convicted under  
18 subsection (2)(b).

19 (b) Except as provided in subsection (5), at any time after 10 years of registration for a level 1 sex  
20 offender and at any time after 25 years of registration for a level 2 sex offender, an offender ~~required to register~~  
21 ~~for life~~ may petition the sentencing court or the district court for the judicial district in which the offender resides  
22 for an order relieving the offender of the duty to register. The petition must be served on the county attorney in  
23 the county where the petition is filed. Prior to a hearing on the petition, the county attorney shall mail a copy of  
24 the petition to the victim of the last offense for which the offender was convicted if the victim's address is  
25 reasonably available. The court shall consider any written or oral statements of the victim. The court may grant  
26 the petition upon finding that:

27 (i) the offender has remained a law-abiding citizen; and

28 (ii) continued registration is not necessary for public protection and that relief from registration is in the  
29 best interests of society.

30 (4) The offender may move that all or part of the proceedings in a hearing under subsection (3) be closed

1 to the public, or the judge may close them on the judge's own motion. If a proceeding under subsection (3)(b) is  
 2 closed to the public, the judge shall permit a victim of the offense to be present unless the judge determines that  
 3 exclusion of the victim is necessary to protect the offender's right of privacy or the safety of the victim. If the victim  
 4 is present, the judge, at the victim's request, shall permit the presence of an individual to provide support to the  
 5 victim unless the judge determines that exclusion of the individual is necessary to protect the offender's right to  
 6 privacy.

7 (5) Subsection (3) does not apply to an offender who was convicted of:

8 (a) a violation of 45-5-503 if:

9 (i) the victim was compelled to submit by force, as defined in 45-5-501, against the victim or another; or

10 (ii) at the time the offense occurred, the victim was under 12 years of age;

11 (b) a violation of 45-5-507 if at the time the offense occurred the victim was under 12 years of age and  
 12 the offender was 3 or more years older than the victim;

13 (c) a second or subsequent sexual offense that requires registration; or

14 (d) a sexual offense and was designated as a sexually violent predator under 46-23-509."  
 15

16 **Section 14.** Section 46-23-508, MCA, is amended to read:

17 **"46-23-508. Dissemination of information.** (1) Information maintained under this part is confidential  
 18 criminal justice information, as defined in 44-5-103, except that:

19 (a) the name and address of a registered sexual or violent offender are public criminal justice information,  
 20 as defined in 44-5-103; and

21 (b) ~~a law enforcement~~ the department of justice or the registration agency shall release any offender  
 22 registration information that it possesses relevant to the public if the department of justice or the registration  
 23 agency determines that a registered offender is a risk to the safety of the community and that disclosure of the  
 24 registration information that it possesses may protect the public and, at a minimum:

25 (i) if the offender is also a violent offender, the department of justice shall, and the registration agency  
 26 may, disseminate to the victim and the public:

27 (A) the offender's name; and

28 (B) the offenses for which the offender is required to register under this part;

29 ~~(ii) if an offender was given a level 1 designation under 46-23-509, the agency with which the offender~~  
 30 ~~is registered shall notify the agency in whose jurisdiction the offense occurred of the registration; the department~~



1 of justice shall, and the registration agency may, disseminate to the victim and the public:

2 (A) the offender's address;

3 (B) the name, photograph, and physical description of the offender;

4 (C) the offender's date of birth; and

5 (D) the offenses for which the offender is required to register under this part;

6 ~~(ii)(iii)~~ if an offender was given a level 1 designation and committed an offense against a minor or was  
 7 given a level 2 designation under 46-23-509, the department of justice shall, and the registration agency with  
 8 which the offender is registered may disseminate the offender's name to the public with the notation that the  
 9 offender is a sexual or violent offender and may notify a victim of the offense and any agency, organization, or  
 10 group serving persons who have characteristics similar to those of a previous victim of the offender of may,  
 11 disseminate to the victim and the public:

12 (A) the offender's address;

13 (B) the type of victim targeted by the offense;

14 (C) the name, photograph, and physical description of the offender;

15 (D) the offender's date of birth;

16 (E) the license plate number and a description of any vehicle owned or operated by the offender;

17 ~~(D)(F)~~ the offenses for which the offender is required to register under this part; and

18 ~~(E)(G)~~ any conditions imposed by the court upon the offender for the safety of the public; and

19 ~~(iii)(iv)~~ if an offender was given a level 3 designation under 46-23-509, the department of justice and the  
 20 registration agency shall give the victim and the public notification that includes the information contained in  
 21 subsection (1)(b)(ii). The agency shall notification must also include the date of the offender's release from  
 22 confinement or, if not confined, the date the offender was sentenced, with a notation that the offender was not  
 23 confined, and shall must include the community in which the offense occurred.

24 (c) prior to release of information under subsection (1)(b), a law enforcement registration agency may,  
 25 in its sole discretion, request an in camera review by a district court of the determination by the law enforcement  
 26 registration agency under subsection (1)(b). The court shall review a request under this subsection (1)(c) and  
 27 shall, as soon as possible, render its opinion so that release of the information is not delayed beyond release of  
 28 the offender from confinement.

29 (2) The identity of a victim of an offense for which registration is required under this part may not be  
 30 released by a law enforcement registration agency without the permission of the victim.

1           (3) ~~A state or local law enforcement agency may use the internet to disseminate the information allowed~~  
2 ~~by this section to the public. Dissemination to the public of information allowed or required by this section may~~  
3 ~~be done by newspaper, paper flyers, the internet, or any other media determined by the disseminating entity. In~~  
4 ~~determining the method of dissemination, the disseminating entity should consider the level of risk posed by the~~  
5 ~~offender to the public.~~

6           (4) The department of justice shall develop a model community notification policy to assist registration  
7 agencies in implementing the dissemination provisions of this section."

8

9           **Section 15.** Section 46-23-509, MCA, is amended to read:

10           **"46-23-509. Sexual offender evaluations and designations -- rulemaking authority.** (1) The  
11 department shall adopt rules for the qualification of sexual offender evaluators who conduct sexual offender and  
12 sexually violent predator evaluations and for determinations by sexual offender evaluators of the risk of a repeat  
13 offense and the threat that an offender poses to the public safety.

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

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

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

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

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

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

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

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

26           (4) An offender designated as a level 2 offender or given a level designation by another state, the federal  
27 government, or the department under subsection (6) that is determined by the court to be similar to level 2 may  
28 petition the sentencing court or the district court for the judicial district in which the offender resides to change  
29 the offender's designation if the offender has enrolled in and successfully completed the treatment phase of either  
30 the prison's sexual offender program or of an equivalent program approved by the department. After considering

1 the petition, the court may change the offender's risk level designation if the court finds by clear and convincing  
2 evidence that the offender's risk of committing a repeat sexual offense has changed since the time sentence was  
3 imposed. The court shall impose one of the three risk levels specified in this section.

4 (5) If, at the time of sentencing, the sentencing judge did not apply a level designation to a sexual  
5 offender who is required to register under this part, the department shall designate the offender as level 1, 2, or  
6 3 when the offender is released from confinement.

7 (6) If an offense is covered by 46-23-502(6)(b), the offender registers under 46-23-504(1)(c), and the  
8 offender was given a risk level designation after conviction by another state or the federal government, the  
9 department of justice may give the offender the risk level designation assigned by the other state or the federal  
10 government.

11 (7) The lack of a fixed residence is a factor that may be considered by the sentencing court or by the  
12 department in determining the risk level to be assigned to an offender pursuant to this section."

13

14 **Section 16.** Section 46-23-1011, MCA, is amended to read:

15 **"46-23-1011. Supervision on probation.** (1) The department shall supervise probationers during their  
16 probation period, including probation imposed pursuant to 45-5-503 or 45-5-625, in accord with the conditions  
17 set by a sentencing judge. If the sentencing judge did not set conditions of probation at the time of sentencing,  
18 the court shall, at the request of the department, hold a hearing and set conditions of probation. The probationer  
19 must be present at the hearing. The probationer has the right to counsel as provided in chapter 8 of this title.

20 (2) A copy of the conditions of probation must be signed by the probationer. The department may require  
21 a probationer to waive extradition for the probationer's return to Montana.

22 (3) The probation and parole officer shall regularly advise and consult with the probationer to encourage  
23 the probationer to improve the probationer's condition and conduct and shall inform the probationer of the  
24 restoration of rights on successful completion of the sentence.

25 (4) (a) The probation and parole officer may recommend and a judge may modify or add any condition  
26 of probation or suspension of sentence at any time.

27 (b) The probation and parole officer shall provide the county attorney in the sentencing jurisdiction with  
28 a report that identifies the conditions of probation and the reason why the officer believes that the judge should  
29 modify or add the conditions.

30 (c) The county attorney may file a petition requesting that the court modify or add conditions as

1 requested by the probation and parole officer.

2 (d) The court may grant the petition if the probationer does not object. If the probationer objects to the  
3 petition, the court ~~must~~ shall hold a hearing pursuant to the provisions of 46-18-203.

4 (e) ~~The~~ Except as they apply to probation pursuant to 45-5-503 or 45-5-625, the provisions of  
5 46-18-203(7)(a)(ii) do not apply to this section.

6 (f) The probationer shall sign a copy of new or modified conditions of probation. The court may waive  
7 or modify a condition of restitution only as provided in 46-18-246.

8 (5) (a) Upon recommendation of the probation and parole officer, a judge may conditionally discharge  
9 a probationer from supervision before expiration of the probationer's sentence if:

10 (i) the judge determines that a conditional discharge from supervision:

11 (A) is in the best interests of the probationer and society; and

12 (B) will not present unreasonable risk of danger to the victim of the offense; and

13 (ii) the offender has paid all restitution and court-ordered financial obligations in full.

14 (b) Subsection (5)(a) does not prohibit a judge from revoking the order suspending execution or deferring  
15 imposition of sentence, as provided in 46-18-203, for a probationer who has been conditionally discharged from  
16 supervision.

17 (c) If the department certifies to the sentencing judge that the workload of a district probation and parole  
18 office has exceeded the optimum workload for the district over the preceding 60 days, the judge may not place  
19 an offender on probation under supervision by that district office unless the judge grants a conditional discharge  
20 to a probationer being supervised by that district office. The department may recommend probationers to the  
21 judge for conditional discharge. The judge may accept or reject the recommendations of the department. The  
22 department shall determine the optimum workload for each district probation and parole office."

23

24 NEW SECTION. Section 17. Severability. If a part of [this act] is invalid, all valid parts that are  
25 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,  
26 the part remains in effect in all valid applications that are severable from the invalid applications.

27

28 NEW SECTION. Section 18. Effective date. [This act] is effective on passage and approval.

29

30 NEW SECTION. Section 19. Retroactive applicability. [Sections 2, 3, and 10 through 15] apply

1 retroactively, within the meaning of 1-2-109, to:

2 (1) sexual offenders who are sentenced or who are in the custody or under the supervision of the  
3 department of corrections on or after July 1, 1989; and

4 (2) violent offenders who are sentenced or who are in the custody or under the supervision of the  
5 department of corrections on or after October 1, 1995.

6 - END -