

SENATE BILL NO. 87

INTRODUCED BY J. ESSMANN

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A BILL FOR AN ACT ENTITLED: "AN ACT MAKING IT A FELONY OFFENSE FOR CERTAIN SEXUAL OFFENDERS TO RESIDE, WORK, LOITER, OR TRAVEL WITHIN CERTAIN GEOGRAPHICALLY RESTRICTED AREAS; PROVIDING EXCEPTIONS; REQUIRING THE DEPARTMENT OF CORRECTIONS TO ADOPT ADMINISTRATIVE RULES; PROVIDING A PENALTY; AND AMENDING SECTIONS 46-18-255, 46-23-520, AND 53-1-203, MCA."

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

NEW SECTION. Section 1. Geographic restrictions applicable to certain sexual offenders. (1)

A sexual offender may not establish a residence or any other living accommodation where a minor resides. However, a sexual offender may reside with a minor if the sexual offender is the parent, grandparent, or stepparent of the minor unless:

- (a) the offender's parental rights were terminated or are in the process of being terminated as provided by law;
- (b) the offender was convicted of a sexual offense in which any of the offender's minor children, grandchildren, or stepchildren were the victim;
- (c) the offender was convicted of a sexual offense in which a minor was the victim and the minor resided with the offender at the time of the offense; or
- (d) the sexual offender was convicted of a sexual offense involving a child, regardless of whether the offender was related to or shared a residence with the child.

(2) A sexual offender may not knowingly come within 500 feet of a former victim of the offender or make any visual or audible sexually suggestive or obscene gesture, sound, or communication at or to a former victim or a member of the victim's immediate family.

(3) (a) A sexual offender, after having been convicted of a sexual offense involving a child, may not loiter on or within 500 feet of any property on which there is a school, day-care facility, playground, developed or improved park, bike or walking path, athletic field, athletic facility, or business or facility having a principal purpose of caring for, educating, or entertaining minors.

1 (b) A sexual offender does not violate subsection (3)(a) unless the offender has first been asked to leave
2 a prohibited location by a person authorized to exclude the offender from the premises. An authorized person
3 includes a law enforcement officer, an owner or manager of the premises, a principal or teacher if the premises
4 is a school or day-care facility, or a coach if the premises is an athletic field or facility.

5 (4) A sexual offender, after having been convicted of a sexual offense involving a child, may not accept,
6 maintain, or carry on regular employment at or within 500 feet of a school, day-care facility, playground,
7 developed or improved park, bike or walking path, athletic field or facility, or business or facility having a principal
8 purpose of caring for, educating, or entertaining minors.

9 (5) A sexual offender who knowingly violates a provision of this section is guilty of a felony and upon
10 conviction shall be punished as provided in 46-18-213.

11 (6) As used in this section, the following definitions apply:

12 (a) "Day-care facility" has the meaning provided in 52-2-703.

13 (b) "Loiter" means to enter or remain on property while having no legitimate purpose therefor or, if a
14 legitimate purpose exists, remaining on that property beyond the time necessary to fulfill that purpose.

15 (c) "Regular employment" means employment for which a sexual offender has a reasonable expectation,
16 as determined by the department of corrections, of employment for longer than 90 days.

17 (d) "Sexual offender" means an individual who has committed a sexual offense and is designated as a
18 level 2 or 3 sexual offender pursuant to 46-23-509.

19 (e) "Sexual offense" has the meaning provided in 46-23-502.

20

21 **Section 2.** Section 46-18-255, MCA, is amended to read:

22 **"46-18-255. Sentence upon conviction -- restriction on employment and residency.** (1) A judge
23 sentencing a person upon conviction of a sexual or violent offense shall, as a condition to probation, parole, or
24 deferment or suspension of sentence, impose upon the defendant reasonable employment or occupational
25 prohibitions and restrictions designed to protect the class or classes of persons containing the likely victims of
26 further offenses by the defendant.

27 (2) In addition to any restriction on employment imposed under subsection (1), a judge sentencing a
28 person convicted of a sexual offense involving a minor and designated as a level 3 offender under 46-23-509
29 shall, as a condition to probation, parole, or deferment or suspension of sentence, impose upon the defendant
30 restrictions on the defendant's residency in the proximity of a private or public elementary or high school,

1 preschool as defined in 20-5-402, licensed day-care center, church, or park maintained by a city, town, or county.

2 (3) Restrictions imposed pursuant to this section must be compatible with the restrictions and help to
3 prevent the offenses provided for in [section 1].

4

5 **Section 3.** Section 46-23-520, MCA, is amended to read:

6 **"46-23-520. Sexual or violent offender community education curriculum.** (1) The department of
7 justice shall develop a statewide community education curriculum regarding release of sexual or violent offenders
8 into a community.

9 (2) The curriculum developed under subsection (1) must contain information:

10 (a) for communities and neighborhoods regarding the provisions of this part as it relates to sexual or
11 violent offenders, including the rights of residents of a community into which a sexual or violent offender is
12 released and the duties and roles under this part of the department, law enforcement agencies, and the offender;
13 **and**

14 (b) for families and children regarding personal safety, including potential warning signs that may help
15 to avoid victimization; and

16 (c) for communities, neighborhoods, families, and children regarding the restrictions imposed by [section
17 1].

18 (3) The curriculum developed under this section must be made available to law enforcement agencies,
19 school districts, local governments, and other entities determined by the department of justice to be in a position
20 to educate the public on the subject of the release of a sexual or violent offender into a community. The
21 curriculum may be disseminated by any appropriate means, written or electronic, including by the internet."

22

23 **Section 4.** Section 53-1-203, MCA, is amended to read:

24 **"53-1-203. Powers and duties of department of corrections.** (1) The department of corrections shall:

25 (a) adopt rules necessary to carry out the purposes of 41-5-125, rules necessary for the siting,
26 establishment, and expansion of prerelease centers, rules for the establishment and maintenance of residential
27 methamphetamine treatment programs, and rules for the admission, custody, transfer, and release of persons
28 in department programs except as otherwise provided by law. However, rules adopted by the department may
29 not amend or alter the statutory powers and duties of the state board of pardons and parole. The rules for the
30 siting, establishment, and expansion of prerelease centers must state that the siting is subject to any existing

1 conditions, covenants, restrictions of record, and zoning regulations. The rules must provide that a prerelease
2 center may not be sited at any location without community support. The prerelease siting, establishment, and
3 expansion must be subject to, and the rules must include, a reasonable mechanism for a determination of
4 community support or objection to the siting of a prerelease center in the area determined to be impacted. The
5 prerelease siting, establishment, and expansion rules must provide for a public hearing conducted pursuant to
6 Title 2, chapter 3.

7 (b) subject to the functions of the department of administration, lease or purchase lands for use by
8 correctional facilities and classify those lands to determine those that may be most profitably used for agricultural
9 purposes, taking into consideration the needs of all correctional facilities for the food products that can be grown
10 or produced on the lands and the relative value of agricultural programs in the treatment or rehabilitation of the
11 persons confined in correctional facilities;

12 (c) contract with private, nonprofit Montana corporations to establish and maintain:

13 (i) prerelease centers for purposes of preparing inmates of a Montana prison who are approaching parole
14 eligibility or discharge for release into the community, providing an alternative placement for offenders who have
15 violated parole or probation, and providing a sentencing option for felony offenders pursuant to 46-18-201. The
16 centers shall provide a less restrictive environment than the prison while maintaining adequate security. The
17 centers must be operated in coordination with other department correctional programs. This subsection does not
18 affect the department's authority to operate and maintain prerelease centers.

19 (ii) residential methamphetamine treatment programs for the purpose of alternative sentencing as
20 provided for in 45-9-102, 46-18-201, 46-18-202, and any other sections relating to alternative sentences for
21 persons convicted of possession of methamphetamine. The department shall issue a request for proposals using
22 a competitive process and shall follow the applicable contract and procurement procedures in Title 18.

23 (d) use the staff and services of other state agencies and units of the Montana university system, within
24 their respective statutory functions, to carry out its functions under this title;

25 (e) propose programs to the legislature to meet the projected long-range needs of corrections, including
26 programs and facilities for the custody, supervision, treatment, parole, and skill development of persons placed
27 in correctional facilities or programs;

28 (f) encourage the establishment of programs at the local and state level for the rehabilitation and
29 education of felony offenders;

30 (g) administer all state and federal funds allocated to the department for youth in need of intervention

1 and delinquent youth, as defined in 41-5-103, except as provided in 41-5-2012;

2 (h) collect and disseminate information relating to youth who are committed to the department for
3 placement in a state youth correctional facility;

4 (i) maintain adequate data on placements that it funds in order to keep the legislature properly informed
5 of the specific information, by category, related to youth in need of intervention and delinquent youth in
6 out-of-home care facilities;

7 (j) provide funding for youth who are committed to the department for placement in a state youth
8 correctional facility;

9 (k) administer youth correctional facilities;

10 (l) provide supervision, care, and control of youth released from a state youth correctional facility; and

11 (m) use to maximum efficiency the resources of state government in a coordinated effort to:

12 (i) provide for delinquent youth committed to the department; and

13 (ii) coordinate and apply the principles of modern correctional administration to the facilities and programs
14 administered by the department.

15 (2) The department may contract with private, nonprofit or for-profit Montana corporations to establish
16 and maintain a residential sexual offender treatment program. If the department intends to contract for that
17 purpose, the department shall adopt rules for the establishment and maintenance of that program.

18 (3) The department and a private, nonprofit or for-profit Montana corporation may not enter into a
19 contract under subsection (1)(c) or (2) for a period that exceeds 20 years. The provisions of 18-4-313 that limit
20 the term of a contract do not apply to a contract authorized by subsection (1)(c) or (2). Prior to entering into a
21 contract for a period of 20 years, the department shall submit the proposed contract to the legislative audit
22 committee. The legislative audit division shall review the contract and make recommendations or comments to
23 the legislative audit committee. The committee may make recommendations or comments to the department. The
24 department shall respond to the committee, accepting or rejecting the committee recommendations or comments
25 prior to entering into the contract.

26 (4) The department of ~~corrections~~ may enter into contracts with nonprofit corporations or associations
27 or private organizations to provide substitute care for delinquent youth in state youth correctional facilities or on
28 juvenile parole supervision.

29 (5) The department may contract with Montana corporations to operate a day reporting program as an
30 alternate sentencing option as provided in 46-18-201 and 46-18-225 and as a sanction option under 46-23-1015.

1 The department shall adopt by rule the requirements for a day reporting program, including but not limited to
2 requirements for daily check-in, participation in programs to develop life skills, and the monitoring of compliance
3 with any conditions of probation, such as drug testing.

4 (6) [Section 1] does not apply to a facility operated on October 1, 2009, by the department or a contractor
5 with the department as a prerelease facility. The department shall adopt rules specifying a facility to which
6 [section 1] applies.

7 (7) The department may also exempt from the requirements of [section 1] a prerelease facility to be
8 operated by the department or a contractor with the department beginning after October 1, 2009. The department
9 shall adopt rules specifying facilities to which this subsection applies. As part of the process of granting an
10 exemption to a prerelease facility constructed or designated after October 1, 2009, the department shall hold at
11 least one public hearing in the community in which the facility is to be located."

12
13 NEW SECTION. Section 5. Codification instruction. [Section 1] is intended to be codified as an
14 integral part of Title 45, chapter 5, part 5, and the provisions of Title 45, chapter 5, part 5, apply to [section 1].

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