

## 1 HOUSE BILL NO. 109

2 INTRODUCED BY M. MACDONALD

3 BY REQUEST OF THE DEPARTMENT OF JUSTICE

4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING SEXUAL OFFENDER REGISTRATION STATUTES;  
6 REVISING THOSE STATUTES AS THEY APPLY TO LEVEL DESIGNATIONS, DEFINITIONS, THE MINIMUM  
7 REGISTRATION PERIOD FOR LEVEL 1 OFFENDERS, AND FOREIGN CONVICTIONS REQUIRING  
8 REGISTRATION; AMENDING SECTIONS 46-18-222, 46-23-502, AND 46-23-509, MCA; AND PROVIDING A  
9 RETROACTIVE APPLICABILITY DATE."

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

12  
13 **Section 1.** Section 46-18-222, MCA, is amended to read:  
14 **"46-18-222. Exceptions to mandatory minimum sentences, restrictions on deferred imposition**  
15 **and suspended execution of sentence, and restrictions on parole eligibility.** Mandatory minimum sentences  
16 prescribed by the laws of this state, mandatory life sentences prescribed by 46-18-219, the restrictions on  
17 deferred imposition and suspended execution of sentence prescribed by 46-18-201(1)(b), 46-18-205,  
18 46-18-221(3), 46-18-224, and 46-18-502(3), and restrictions on parole eligibility do not apply if:

19 (1) the offender was less than 18 years of age at the time of the commission of the offense for which the  
20 offender is to be sentenced;

21 (2) the offender's mental capacity, at the time of the commission of the offense for which the offender  
22 is to be sentenced, was significantly impaired, although not so impaired as to constitute a defense to the  
23 prosecution. However, a voluntarily induced intoxicated or drugged condition may not be considered an  
24 impairment for the purposes of this subsection.

25 (3) the offender, at the time of the commission of the offense for which the offender is to be sentenced,  
26 was acting under unusual and substantial duress, although not such duress as would constitute a defense to the  
27 prosecution;

28 (4) the offender was an accomplice, the conduct constituting the offense was principally the conduct of  
29 another, and the offender's participation was relatively minor;

30 (5) in a case in which the threat of bodily injury or actual infliction of bodily injury is an actual element

1 of the crime, no serious bodily injury was inflicted on the victim unless a weapon was used in the commission of  
2 the offense; or

3 (6) the offense was committed under 45-5-502(3), 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3),  
4 45-5-603(2)(c), or 45-5-625(4) and the judge determines, ~~based on the findings contained in a sexual offender~~  
5 ~~evaluation report prepared by a qualified sexual offender evaluator pursuant to the provisions of 46-23-509;~~ that  
6 treatment of the offender while incarcerated, while in a residential treatment facility, or while in a local community  
7 affords a better opportunity for rehabilitation of the offender and for the ultimate protection of the victim and  
8 society, in which case the judge shall include in its judgment a statement of the reasons for its determination."  
9

10 **Section 2.** Section 46-23-502, MCA, is amended to read:

11 **"46-23-502. Definitions.** As used in 46-18-255 and this part, the following definitions apply:

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

13 (2) "Level 1" means that a sex offender has been convicted of or, in youth court, found to have committed  
14 or been adjudicated of:

15 (a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-301 (if the offender  
16 committed the offense for the offender's sexual gratification and the victim is less than 18 years of age and the  
17 offender is not a parent of the victim), 45-5-504(1) (if the victim is less than 18 years of age and the offender is  
18 18 years of age or older), 45-5-504(2)(c), 45-5-625(1)(e); or

19 (b) a violation of a law of any of the following entities that is reasonably equivalent to a violation listed  
20 in subsection (2)(a) or for which the offender was assigned a level 1 designation:

21 (i) a state;

22 (ii) a tribal government;

23 (iii) the federal government; or

24 (iv) a foreign country if the United States department of state has concluded that an independent judiciary  
25 enforced the right to a fair trial in that country during the years in which the conviction was obtained.

26 (3) "Level 2" means that a sex offender has been convicted of or, in youth court, found to have committed  
27 or been adjudicated of:

28 (a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-502(3) (if the victim  
29 is less than 16 years of age and the offender is 3 or more years older than the victim), 45-5-507(1), 45-5-601 (if  
30 the victim is less than 18 years of age and the offender is 18 years of age or older), 45-5-602 (if the victim is less

1 than 18 years of age and the offender is 18 years of age or older), 45-5-603(1)(b), 45-5-625(1)(a) through (1)(d)  
 2 and (1)(f) through (1)(i); or

3 (b) a violation of a law of any of the following entities that is reasonably equivalent to a violation listed  
 4 in subsection (3)(a) or for which the offender was assigned a level 2 designation:

5 (i) a state;

6 (ii) a tribal government;

7 (iii) the federal government; or

8 (iv) a foreign country if the United States department of state has concluded that an independent judiciary  
 9 enforced the right to a fair trial in that country during the years in which the conviction was obtained.

10 (4) "Level 3" means that a sex offender has been convicted of or, in youth court, found to have committed  
 11 or been adjudicated of:

12 (a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-302 (if the offender  
 13 committed the offense for the offender's sexual gratification and the victim is less than 18 years of age and the  
 14 offender is not a parent of the victim), 45-5-303 (if the offender committed the crime for the offender's sexual  
 15 gratification and the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-503,  
 16 45-5-507(4) or (5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(c), and 45-5-627(1)(a); or

17 (b) a violation of a law of any of the following entities that is reasonably equivalent to a violation listed  
 18 in subsection (4)(a) or for which the offender was assigned a level 3 designation:

19 (i) a state;

20 (ii) a tribal government;

21 (iii) the federal government; or

22 (iv) a foreign country if the United States department of state has concluded that an independent judiciary  
 23 enforced the right to a fair trial in that country during the years in which the conviction was obtained.

24 ~~(2)~~(5) "Mental abnormality" means a congenital or acquired condition that affects the mental, emotional,  
 25 or volitional capacity of a person in a manner that predisposes the person to the commission of one or more  
 26 sexual offenses to a degree that makes the person a menace to the health and safety of other persons.

27 ~~(3)~~(6) "Municipality" means an entity that has incorporated as a city or town.

28 ~~(4)~~(7) "Personality disorder" means a personality disorder as defined in the fourth edition of the  
 29 Diagnostic and Statistical Manual of Mental Disorders adopted by the American psychiatric association.

30 ~~(5)~~(8) "Predatory sexual offense" means a sexual offense committed against a stranger or against a

1 person with whom a relationship has been established or furthered for the primary purpose of victimization.

2 ~~(6)(9)~~ "Registration agency" means:

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

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

6 ~~(7)(10)~~ (a) "Residence" means the location at which a person regularly resides, regardless of the number  
7 of days or nights spent at that location, that can be located by a street address, including a house, apartment  
8 building, motel, hotel, or recreational or other vehicle.

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

10 ~~(8)(11)~~ "Sexual offender evaluator" means a person qualified under rules established by the department  
11 to conduct sexual offender and sexually violent predator evaluations.

12 ~~(9)(12)~~ "Sexual offense" means:

13 (a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-301 (if the offender  
14 committed the offense for the offender's sexual gratification and the victim is less than 18 years of age and the  
15 offender is not a parent of the victim), 45-5-302 (if the offender committed the offense for the offender's sexual  
16 gratification and the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-303  
17 (if the offender committed the offense for the offender's sexual gratification and the victim is less than 18 years  
18 of age and the offender is not a parent of the victim), 45-5-502(3) (if the victim is less than 16 years of age and  
19 the offender is 3 or more years older than the victim), 45-5-503, 45-5-504(1) (if the victim is under less than 18  
20 years of age and the offender is 18 years of age or older), 45-5-504(2)(c), 45-5-507 (if the victim is under less  
21 than 18 years of age and the offender is 3 or more years older than the victim or if the victim is 12 years of age  
22 or younger and the offender is 18 years of age or older at the time of the offense), 45-5-601(3), 45-5-602(3),  
23 45-5-603(1)(b) or (2)(c), ~~or~~ 45-5-625, or 45-5-627(1)(a); or

24 (b) any violation of a law of ~~another state, a tribal government, or the federal government~~ any of the  
25 following entities that is reasonably equivalent to a violation listed in subsection ~~(9)(a)~~ (12)(a) or for which the  
26 offender was required to register as a sexual offender after an adjudication or conviction;

27 (i) a state;

28 (ii) a tribal government;

29 (iii) the federal government; or

30 (iv) a foreign country if the United States department of state has concluded that an independent judiciary

1 enforced the right to a fair trial in that country during the years in which the conviction was obtained.

2 ~~(10)(13)~~ "Sexual or violent offender" means a person who has been convicted of or, in youth court, found  
3 to have committed or been adjudicated for a sexual or violent offense.

4 ~~(11)(14)~~ "Sexually violent predator" means a person who:

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

8 (b) has been convicted of a sexual offense against a victim 12 years of age or younger and the offender  
9 is 18 years of age or older.

10 ~~(12)(15)~~ "Transient" means an offender who has no residence.

11 ~~(13)(16)~~ "Violent offense" means:

12 (a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-102, 45-5-103,  
13 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  
14 (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

15 (b) any violation of a law of another state, a tribal government, or the federal government reasonably  
16 equivalent to a violation listed in subsection ~~(13)(a)~~ (16)(a)."

17

18 **Section 3.** Section 46-23-509, MCA, is amended to read:

19 **"46-23-509. Sexual offender evaluations and designations -- rulemaking authority.** ~~(1) The~~  
20 ~~department shall adopt rules for the qualification of sexual offender evaluators who conduct sexual offender and~~  
21 ~~sexually violent predator evaluations and for determinations by sexual offender evaluators of the risk of a repeat~~  
22 ~~offense and the threat that an offender poses to the public safety.~~

23 ~~----- (2) Prior to sentencing of a person convicted of a sexual offense, the department or a sexual offender~~  
24 ~~evaluator shall provide the court with a sexual offender evaluation report recommending one of the following~~  
25 ~~levels of designation for the offender (1) As used in 46-18-255 and this part, level designations indicate the~~  
26 ~~following about the offender's risk for a repeat offense:~~

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

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

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

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

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

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

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

6           ~~(4)(2)~~ An offender designated as a level 2 offender or given a level designation by another state, the  
7 federal government, or the department under subsection ~~(6)~~ (3) that is determined by the court to be similar to  
8 level 2 may petition the sentencing court or the district court for the judicial district in which the offender resides  
9 to change the offender's designation if the offender has enrolled in and successfully completed the treatment  
10 phase of either the prison's sexual offender treatment program or of an equivalent program approved by the  
11 department. After considering the petition, the court may change the offender's risk level designation if the court  
12 finds by clear and convincing evidence that the offender's risk of committing a repeat sexual offense has changed  
13 since the time sentence was imposed. The court shall impose one of the three risk levels specified in this section.

14           ~~—— (5) If, at the time of sentencing, the sentencing judge did not apply a level designation to a sexual~~  
15 ~~offender who is required to register under this part and who was sentenced prior to October 1, 1997, the~~  
16 ~~department shall designate the offender as level 1, 2, or 3 when the offender is released from confinement.~~

17           ~~(6)(3)~~ If an offense is covered by 46-23-502(9)(b), the offender registers under 46-23-504(1)(c), and the  
18 offender was given a risk level designation after conviction by another state or the federal government, the  
19 department of justice may give the offender the risk level designation assigned by the other state or the federal  
20 government.

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

23  
24           NEW SECTION. **Section 4. Retroactive applicability.** [This act] applies retroactively, within the  
25 meaning of 1-2-109, to:

26           (1) a sexual offender in Montana who was sentenced by a state, tribal, or federal court in any state on  
27 or after July 1, 1989; or

28           (2) a sexual offender who as a result of a conviction is:

29           (a) in the custody or under the supervision of the department of corrections; or

30           (b) in Montana under the supervision of any county, state, or federal agency; or

