

1 HOUSE BILL NO. 335

2 INTRODUCED BY J. ECK

3 BY REQUEST OF THE ATTORNEY GENERAL

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6 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING AUTHORITY TO DISTRICT COURTS TO DESIGNATE
7 SEX OFFENDERS AS LEVEL 1, 2, OR 3 WHEN THOSE SEX OFFENDERS DO NOT HAVE A DESIGNATION;
8 AMENDING SECTION 46-23-509, MCA; AND PROVIDING AN APPLICABILITY DATE."

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

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12 **Section 1.** Section 46-23-509, MCA, is amended to read:

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

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

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

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

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

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

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

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

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

29 (4) An offender designated as a level 2 offender or given a level designation by another state, the federal
30 government, or the department under subsection (6) that is determined by the court to be similar to level 2 may

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

7 ~~(5) If, at the time of sentencing, the sentencing judge did not apply a level designation to a sexual~~
8 ~~offender who is required to register under this part and who was sentenced prior to October 1, 1997, the~~
9 ~~department shall designate the offender as level 1, 2, or 3 when the offender is released from confinement. Upon~~
10 obtaining information indicating that a sexual offender who is required to register under this part does not have
11 a level 1, 2, or 3 designation, the attorney general, the county attorney that prosecuted the offender and obtained
12 a conviction for a sexual offense, or the county attorney for the county in which the offender resides may, at any
13 time, petition the district court that sentenced the offender or the district court for the judicial district in which the
14 offender resides to designate the offender as a level 1, 2, or 3. Upon the filing of the petition the court may order
15 a sexual offender evaluation report. The court shall provide the offender with notice of the petition and an
16 opportunity for a hearing prior to designating the offender.

17 (6) 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."
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24 NEW SECTION. Section 2. Applicability. [This act] applies to proceedings begun on or after [the
25 effective date of this act].
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