

HOUSE BILL NO. 612

INTRODUCED BY K. MCCARTHY

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3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE SEXUAL OR VIOLENT OFFENDER
5 REGISTRATION ACT TO INCLUDE THE REGISTRATION OF PERSONS CONVICTED UNDER THE
6 MONTANA ELDER AND PERSONS WITH DEVELOPMENTAL DISABILITIES ABUSE PREVENTION ACT;
7 PROVIDING AN APPROPRIATION; AMENDING SECTIONS 37-51-105, 46-18-201, 46-18-255, 46-23-501,
8 46-23-502, 46-23-503, 46-23-504, 46-23-506, 46-23-507, 46-23-508, 46-23-509, 46-23-510, 46-23-520, AND
9 46-23-1020, MCA; AND PROVIDING AN EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

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

12
13 **Section 1.** Section 37-51-105, MCA, is amended to read:

14 **"37-51-105. ~~Sexual~~ Exploitative, sexual, or violent offender registration information --**
15 **responsibility of broker or salesperson.** The responsibility of a broker or salesperson with respect to
16 exploitative, sexual, or violent offender registration information maintained by a governmental entity under Title
17 46, chapter 23, part 5, is limited to disclosure of:

- 18 (1) the fact that the information may be maintained and by whom; and
- 19 (2) the actual knowledge, if any, that the broker or salesperson has of sexual or violent offender
- 20 registration information that pertains to the property in question."

21
22 **Section 2.** Section 46-18-201, MCA, is amended to read:

23 **"46-18-201. Sentences that may be imposed.** (1) (a) Whenever a person has been found guilty of an
24 offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may defer imposition
25 of sentence, except as otherwise specifically provided by statute, for a period:

- 26 (i) not exceeding 1 year for a misdemeanor or for a period not exceeding 3 years for a felony; or
- 27 (ii) not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for a felony if a
- 28 financial obligation is imposed as a condition of sentence for either the misdemeanor or the felony, regardless
- 29 of whether any other conditions are imposed.

30 (b) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the

1 case of an offender who has been convicted of a felony on a prior occasion, whether or not the sentence was
2 imposed, imposition of the sentence was deferred, or execution of the sentence was suspended.

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

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

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

10 (ii) payment of costs, as provided in 46-18-232, or payment of costs of assigned counsel as provided in
11 46-8-113;

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

14 (iv) commitment of:

15 (A) an offender not referred to in subsection (3)(a)(iv)(B) to the department of corrections, with a
16 recommendation for placement in an appropriate correctional facility or program; however, all but the first 5 years
17 of the commitment to the department of corrections must be suspended, except as provided in 45-5-503(4),
18 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(c), and 45-5-625(4); or

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

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

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

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

30 (viii) any combination of subsections (2) and (3)(a)(i) through (3)(a)(vii).

- 1 (b) A court may permit a part or all of a fine to be satisfied by a donation of food to a food bank program.
- 2 (4) When deferring imposition of sentence or suspending all or a portion of execution of sentence, the
- 3 sentencing judge may impose upon the offender any reasonable restrictions or conditions during the period of
- 4 the deferred imposition or suspension of sentence. Reasonable restrictions or conditions imposed under
- 5 subsection (1)(a) or (2) may include but are not limited to:
- 6 (a) limited release during employment hours as provided in 46-18-701;
- 7 (b) incarceration in a detention center not exceeding 180 days;
- 8 (c) conditions for probation;
- 9 (d) payment of the costs of confinement;
- 10 (e) payment of a fine as provided in 46-18-231;
- 11 (f) payment of costs as provided in 46-18-232 and 46-18-233;
- 12 (g) payment of costs of assigned counsel as provided in 46-8-113;
- 13 (h) with the approval of the facility or program, an order that the offender be placed in a community
- 14 corrections facility or program as provided in 53-30-321;
- 15 (i) with the approval of the prerelease center or prerelease program and confirmation by the department
- 16 of corrections that space is available, an order that the offender be placed in a prerelease center or prerelease
- 17 program for a period not to exceed 1 year;
- 18 (j) community service;
- 19 (k) home arrest as provided in Title 46, chapter 18, part 10;
- 20 (l) payment of expenses for use of a judge pro tempore or special master as provided in 3-5-116;
- 21 (m) with the approval of the department of corrections and with a signed statement from an offender that
- 22 the offender's participation in the boot camp incarceration program is voluntary, an order that the offender
- 23 complete the boot camp incarceration program established pursuant to 53-30-403;
- 24 (n) participation in a day reporting program provided for in 53-1-203;
- 25 (o) participation in the sobriety program provided for in Title 44, chapter 4, part 12, for a second or
- 26 subsequent violation of 61-8-401 or 61-8-406;
- 27 (p) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the
- 28 protection of the victim or society; or
- 29 (q) any combination of the restrictions or conditions listed in subsections (4)(a) through (4)(p).
- 30 (5) In addition to any other penalties imposed, if a person has been found guilty of an offense upon a

1 verdict of guilty or a plea of guilty or nolo contendere and the sentencing judge finds that a victim, as defined in
2 46-18-243, has sustained a pecuniary loss, the sentencing judge shall, as part of the sentence, require payment
3 of full restitution to the victim, as provided in 46-18-241 through 46-18-249, whether or not any part of the
4 sentence is deferred or suspended.

5 (6) In addition to any of the penalties, restrictions, or conditions imposed pursuant to subsections (1)
6 through (5), the sentencing judge may include the suspension of the license or driving privilege of the person to
7 be imposed upon the failure to comply with any penalty, restriction, or condition of the sentence. A suspension
8 of the license or driving privilege of the person must be accomplished as provided in 61-5-214 through 61-5-217.

9 (7) In imposing a sentence on an offender convicted of a an exploitative, sexual, or violent offense, as
10 defined in 46-23-502, the sentencing judge may not waive the registration requirement provided in Title 46,
11 chapter 23, part 5.

12 (8) If a felony sentence includes probation, the department of corrections shall supervise the offender
13 unless the court specifies otherwise."
14

15 **Section 3.** Section 46-18-255, MCA, is amended to read:

16 **"46-18-255. Sentence upon conviction -- restriction on employment and residency.** (1) A judge
17 sentencing a person upon conviction of a an exploitative, sexual, or violent offense shall, as a condition to
18 probation, parole, or deferment or suspension of sentence, impose upon the defendant reasonable employment
19 or occupational prohibitions and restrictions designed to protect the class or classes of persons containing the
20 likely victims of further offenses by the defendant.

21 (2) In addition to any restriction on employment imposed under subsection (1), a judge sentencing a
22 person convicted of a sexual offense involving a minor and designated as a level 3 offender under 46-23-509
23 shall, as a condition to probation, parole, or deferment or suspension of sentence, impose upon the defendant
24 restrictions on the defendant's residency in the proximity of a private or public elementary or high school,
25 preschool as defined in 20-5-402, licensed day-care center, church, or park maintained by a city, town, or county."
26

27 **Section 4.** Section 46-23-501, MCA, is amended to read:

28 **"46-23-501. Short title.** Section 46-18-255 and this part may be cited as the "Exploitative, Sexual, or
29 Violent Offender Registration Act".
30

1 **Section 5.** Section 46-23-502, MCA, is amended to read:

2 **"46-23-502. Definitions.** As used in 46-18-255 and this part, the following definitions apply:

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

4 (2) "Exploitative offense" means:

5 (a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 52-3-825(2)(a), (2)(b)(ii),
6 or (3) if the value of the money, assets, or property exceeds \$1,000; or

7 (b) any violation of a law of another state, a tribal government, or the federal government reasonably
8 equivalent to a violation listed in subsection (2)(a).

9 (3) "Exploitative, sexual, or violent offender" means a person who has been convicted of an exploitative,
10 sexual, or violent offense or, in youth court, found to have committed or been adjudicated for a sexual or violent
11 offense.

12 ~~(2)~~(4) "Mental abnormality" means a congenital or acquired condition that affects the mental, emotional,
13 or volitional capacity of a person in a manner that predisposes the person to the commission of one or more
14 sexual offenses to a degree that makes the person a menace to the health and safety of other persons.

15 ~~(3)~~(5) "Municipality" means an entity that has incorporated as a city or town.

16 ~~(4)~~(6) "Personality disorder" means a personality disorder as defined in the fourth edition of the
17 Diagnostic and Statistical Manual of Mental Disorders adopted by the American psychiatric association.

18 ~~(5)~~(7) "Predatory sexual offense" means a sexual offense committed against a stranger or against a
19 person with whom a relationship has been established or furthered for the primary purpose of victimization.

20 ~~(6)~~(8) "Registration agency" means:

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

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

24 ~~(7)~~(9) (a) "Residence" means the location at which a person regularly resides, regardless of the number
25 of days or nights spent at that location, that can be located by a street address, including a house, apartment
26 building, motel, hotel, or recreational or other vehicle.

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

28 ~~(8)~~(10) "Sexual offender evaluator" means a person qualified under rules established by the department
29 to conduct sexual offender and sexually violent predator evaluations.

30 ~~(9)~~(11) "Sexual offense" means:

1 (a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-301 (if the victim
 2 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
 3 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
 4 the offender is not a parent of the victim), 45-5-502(3) (if the victim is less than 16 years of age and the offender
 5 is 3 or more years older than the victim), 45-5-503, 45-5-504(1) (if the victim is under 18 years of age and the
 6 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 and the
 7 offender is 3 or more years older than the victim or if the victim is 12 years of age or younger and the offender
 8 is 18 years of age or older at the time of the offense), 45-5-601(3), 45-5-602(3), 45-5-603(1)(b) or (2)(c), or
 9 45-5-625; or

10 (b) any violation of a law of another state, a tribal government, or the federal government that is
 11 reasonably equivalent to a violation listed in subsection ~~(9)(a)~~ (11)(a) or for which the offender was required to
 12 register as a sexual offender after an adjudication or conviction.

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

15 ~~(11)~~(12) "Sexually violent predator" means a person who:

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

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

21 ~~(12)~~(13) "Transient" means an offender who has no residence.

22 ~~(13)~~(14) "Violent offense" means:

23 (a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-102, 45-5-103,
 24 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
 25 (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

26 (b) any violation of a law of another state, a tribal government, or the federal government reasonably
 27 equivalent to a violation listed in subsection ~~(13)(a)~~ (14)(a)."

28

29 **Section 6.** Section 46-23-503, MCA, is amended to read:

30 **"46-23-503. Release of exploitative, sexual, or violent offender from place of confinement -- duties**

1 **of official in charge.** (1) A An exploitative, sexual, or violent offender who is released from the custody of the
 2 department of corrections must be informed in writing not less than 10 days prior to release of the duty to register
 3 under this part by the official in charge of the place of confinement.

4 (2) Prior to the offender's release from custody, the official shall obtain and give to the department of
 5 justice and to the sheriff of the county in which the offender intends to reside or, if the offender intends to reside
 6 in a municipality, to the chief of police of the municipality:

7 (a) the address at which the offender intends to reside upon release from the department's custody;

8 (b) the offender's fingerprints and photo, unless they are already in the possession of the department
 9 of justice, sheriff, or chief of police; and

10 (c) a form signed by and read to or by the offender stating that the offender's duty to register under this
 11 part has been explained to the offender."

12

13 **Section 7.** Section 46-23-504, MCA, is amended to read:

14 **"46-23-504. Persons required to register -- procedure.** (1) Except as provided in 41-5-1513, a an
 15 exploitative, sexual, or violent offender:

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

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

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

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

24 (2) Registration under subsection (1)(a), (1)(c), or (1)(d) must be with the appropriate registration agency.

25 If an offender registers with a police department, the department shall notify the sheriff's office of the county in
 26 which the municipality is located of the registration. The probation officer having supervision over an offender
 27 required to register under subsection (1)(a) shall verify the offender's registration status with the appropriate
 28 registration agency.

29 (3) At the time of registering, the offender shall sign a statement in writing giving the information required
 30 by subsections (3)(a) through (3)(g) and any other information required by the department of justice. The

1 registration agency shall fingerprint the offender, unless the offender's fingerprints are on file with the department
2 of justice, and shall photograph the offender. Within 3 days, the registration agency shall send copies of the
3 statement, fingerprints, and photographs to the department of justice. The registration agency shall require an
4 offender given a level 2 or level 3 designation to appear before the registration agency for a new photograph
5 every year. The information collected from the offender at the time of registration must include the:

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

7 (b) offender's social security number;

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

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

10 (e) name and address of any school where the offender will be a student;

11 (f) offender's driver's license number; and

12 (g) description and license number of any motor vehicle owned or operated by the offender.

13 (4) (a) If, at the time of registration, the offender regularly resides in more than one county or
14 municipality, the offender shall register with the registration agency of each county or municipality in which the
15 offender resides. If an offender resides in more than one location within the same county or municipality, the
16 registration agency may require the offender to provide all of the locations where the offender regularly resides
17 and to designate one of them as the offender's primary residence.

18 (b) Registration of more than one residence pursuant to this section is an exception from the single
19 residence rule provided in 1-1-215.

20 (5) A transient shall report monthly, in person, to the registration agency with which the transient
21 registered pursuant to subsection (1)(d). The transient shall report on a day specified by the registration agency
22 and during the normal business hours of that agency. On that day, the transient shall provide the registration
23 agency with the information listed in subsections (3)(a) through (3)(g). The registration agency to which the
24 transient reports may also require the transient to provide the locations where the transient stayed during the
25 previous 30 days and may stay during the next 30 days.

26 (6) (a) The department of justice shall mail a registration verification form:

27 (i) each 90 days to an offender designated as a level 3 offender under 46-23-509;

28 (ii) each 180 days to an offender designated as a level 2 offender under 46-23-509; and

29 (iii) each year to a violent offender or an offender designated as a level 1 offender under 46-23-509.

30 (b) If the offender is a transient, the department of justice shall mail the offender's registration verification

1 form to the registration agency with which the offender last registered.

2 (c) The form must require the offender's notarized signature. Within 10 days after receipt of the form,
3 the offender shall complete the form and return it to the registration agency where the offender last registered
4 or, if the offender was initially registered pursuant to subsection (1)(b), to the registration agency in the county
5 or municipality in which the offender is located. A sexual offender shall return the form to the appropriate
6 registration agency in person, and at the time that the sexual offender returns the registration verification form,
7 the registration agency shall take a photograph of the offender.

8 (7) Within 3 days after receipt of a registration verification form, the registration agency shall provide a
9 copy of the form and most recent photograph to the department of justice.

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

14 (9) The clerk of the district court in the county in which a person is convicted of a an exploitative, sexual,
15 or violent offense shall notify the sheriff in that county of the conviction within 10 days after entry of the judgment."
16

17 **Section 8.** Section 46-23-506, MCA, is amended to read:

18 **"46-23-506. Duration of registration.** (1) A sexual offender required to register under this part shall
19 register for the remainder of the offender's life, except as provided in subsection (3) or during a period of time
20 during which the offender is in prison.

21 (2) ~~A~~ An exploitative or violent offender required to register under this part shall register:

22 (a) for the 10 years following release from confinement or, if not confined following sentencing, for the
23 10 years following the conclusion of the sentencing hearing, but the offender is not relieved of the duty to register
24 until a petition is granted under subsection (3)(a); or

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

28 (3) (a) An offender required to register for 10 years under subsection (2)(a) may, after the 10 years have
29 passed, petition the sentencing court or the district court for the judicial district in which the offender resides for
30 an order relieving the offender of the duty to register. The petition must be served on the county attorney in the

1 county where the petition is filed. The petition must be granted if the defendant has not been convicted under
2 subsection (2)(b).

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

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

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

13 (4) The offender may move that all or part of the proceedings in a hearing under subsection (3) be closed
14 to the public, or the judge may close them on the judge's own motion. If a proceeding under subsection (3)(b) is
15 closed to the public, the judge shall permit a victim of the offense to be present unless the judge determines that
16 exclusion of the victim is necessary to protect the offender's right of privacy or the safety of the victim. If the victim
17 is present, the judge, at the victim's request, shall permit the presence of an individual to provide support to the
18 victim unless the judge determines that exclusion of the individual is necessary to protect the offender's right to
19 privacy.

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

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

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

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

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

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

27 (d) a sexual offense and was designated as a sexually violent predator under 46-23-509."
28

29 **Section 9.** Section 46-23-507, MCA, is amended to read:

30 "**46-23-507. Penalty.** ~~A~~ An exploitative, sexual, or violent offender who knowingly fails to register, verify

1 registration, or keep registration current under this part may be sentenced to a term of imprisonment of not more
2 than 5 years or may be fined not more than \$10,000, or both."

3

4 **Section 10.** Section 46-23-508, MCA, is amended to read:

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

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

9 (b) the department of justice or the registration agency shall release any offender registration information
10 that it possesses relevant to the public if the department of justice or the registration agency determines that a
11 registered offender is a risk to the safety of the community and that disclosure of the registration information that
12 it possesses may protect the public and, at a minimum:

13 (i) if the offender is also a an exploitative or violent offender, the department of justice shall and the
14 registration agency may disseminate to the victim and the public:

15 (A) the offender's name; and

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

17 (ii) if an offender was given a level 1 designation under 46-23-509, the department of justice shall and
18 the registration agency may disseminate to the victim and the public:

19 (A) the offender's address;

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

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

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

23 (iii) if an offender was given a level 1 designation and committed an offense against a minor or was given
24 a level 2 designation under 46-23-509, the department of justice shall and the registration agency may
25 disseminate to the victim and the public:

26 (A) the offender's address;

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

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

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

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

1 (F) the offenses for which the offender is required to register under this part; and
2 (G) any conditions imposed by the court upon the offender for the safety of the public; and
3 (iv) if an offender was given a level 3 designation under 46-23-509, the department of justice and the
4 registration agency shall give the victim and the public notification that includes the information contained in
5 subsection (1)(b)(iii). The notification must also include the date of the offender's release from confinement or,
6 if not confined, the date the offender was sentenced, with a notation that the offender was not confined, and must
7 include the community in which the offense occurred.

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

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

15 (3) Dissemination to the public of information allowed or required by this section may be done by
16 newspaper, paper flyers, the internet, or any other media determined by the disseminating entity. In determining
17 the method of dissemination, the disseminating entity should consider the level of risk posed by the offender to
18 the public.

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

21

22 **Section 11.** Section 46-23-509, MCA, is amended to read:

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

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

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

- 1 (b) level 2, the risk of a repeat sexual offense is moderate;
- 2 (c) level 3, the risk of a repeat sexual offense is high, there is a threat to public safety, and the sexual
3 offender evaluator believes that the offender is a sexually violent predator.
- 4 (3) Upon sentencing the offender, the court shall:
- 5 (a) review the sexual offender evaluation report, any statement by a victim, and any statement by the
6 offender;
- 7 (b) designate the offender as level 1, 2, or 3; and
- 8 (c) designate a level 3 offender as a sexually violent predator.
- 9 (4) An offender designated as a level 2 offender or given a level designation by another state, the federal
10 government, or the department under subsection (6) that is determined by the court to be similar to level 2 may
11 petition the sentencing court or the district court for the judicial district in which the offender resides to change
12 the offender's designation if the offender has enrolled in and successfully completed the treatment phase of either
13 the prison's sexual offender treatment program or of an equivalent program approved by the department. After
14 considering the petition, the court may change the offender's risk level designation if the court finds by clear and
15 convincing evidence that the offender's risk of committing a repeat sexual offense has changed since the time
16 sentence was imposed. The court shall impose one of the three risk levels specified in this section.
- 17 (5) If, at the time of sentencing, the sentencing judge did not apply a level designation to a sexual
18 offender who is required to register under this part and who was sentenced prior to October 1, 1997, the
19 department shall designate the offender as level 1, 2, or 3 when the offender is released from confinement.
- 20 (6) If an offense is covered by ~~46-23-502(9)(b)~~ 46-23-509(11)(b), the offender registers under
21 46-23-504(1)(c), and the offender was given a risk level designation after conviction by another state or the
22 federal government, the department of justice may give the offender the risk level designation assigned by the
23 other state or the federal government.
- 24 (7) The lack of a fixed residence is a factor that may be considered by the sentencing court or by the
25 department in determining the risk level to be assigned to an offender pursuant to this section."

26

27 **Section 12.** Section 46-23-510, MCA, is amended to read:

28 **"46-23-510. Expungement of records on reversal of conviction.** Upon final reversal of a conviction
29 of a an exploitative, sexual, or violent offense, the sentencing court shall order the expungement of any records
30 kept by a court, law enforcement agency, or other state or local government agency under this part."

1

2 **Section 13.** Section 46-23-520, MCA, is amended to read:

3 **"46-23-520. ~~Sexual~~ Exploitative, sexual, or violent offender community education curriculum.** (1)

4 The department of justice shall develop a statewide community education curriculum regarding release of
5 exploitative, sexual, or violent offenders into a community.

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

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

11 (b) for families, ~~and~~ children, and vulnerable persons regarding personal safety, including potential
12 warning signs that may help to avoid victimization.

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

18

19 **Section 14.** Section 46-23-1020, MCA, is amended to read:

20 **"46-23-1020. Conditional discharge -- definition -- revocation.** (1) (a) A conditional discharge granted
21 under 46-23-1011 or 46-23-1021 is:

22 (i) a discharge from supervision by the department for the time remaining on the sentence imposed if
23 the probationer or parolee complies with all the conditions imposed by the district court or the board; and

24 (ii) a release from the obligation to pay supervision fees imposed as part of a sentence or as terms of
25 parole or probation.

26 (b) If an individual who has been granted a conditional discharge under 46-23-1011 or 46-23-1021
27 becomes a resident of another state, the conditional discharge must be construed as a discharge of the imposed
28 sentence subject to revocation as provided in subsection (2).

29 (2) A conditional discharge may be revoked if, within the time remaining on the sentence that was
30 conditionally discharged, the individual:

- 1 (a) is charged with a felony offense;
- 2 (b) is charged with a misdemeanor offense for which the individual could be sentenced to incarceration
- 3 for a period of more than 6 months; or
- 4 (c) violates any condition imposed by the district court or the board.
- 5 (3) ~~A~~ An exploitative, sexual, or violent offender who is subject to lifetime supervision by the department
- 6 is not eligible for a conditional discharge from supervision."

7

8 **NEW SECTION. Section 15. Appropriation.** (1) There is appropriated from the state general fund to

9 the department of justice \$10,000 for the biennium beginning July 1, 2013.

10 (2) The appropriation must be used to pay for the costs associated with implementing and enforcing the

11 registration of exploitative offenders as provided in Title 46, chapter 23, part 5.

12

13 **NEW SECTION. Section 16. Effective date.** [This act] is effective July 1, 2013.

14

15 **NEW SECTION. Section 17. Retroactive applicability.** [This act] applies retroactively, within the

16 meaning of 1-2-109, to individuals convicted on or after October 1, 2005.

17

- END -