



AN ACT GENERALLY REVISING STATUTES RELATED TO LEVEL DESIGNATIONS FOR SEXUAL OFFENDERS; PROVIDING DEFINITIONS; REQUIRING ADDITIONAL INFORMATION FROM OFFENDERS REGARDING ELECTRONIC AND COMMUNICATIONS DATA AND PROFESSIONAL LICENSES; REQUIRING NOTICE WHEN AN OFFENDER IS LEAVING THE STATE; PROVIDING OPPORTUNITIES FOR CERTAIN OFFENDERS TO BE REMOVED FROM THE REGISTRY; PROVIDING NOTICE REQUIREMENTS FOR PSYCHOSEXUAL EVALUATIONS; AND AMENDING SECTIONS 46-23-502, 46-23-504, 46-23-505, 46-23-506, 46-23-508, AND 46-23-509, MCA.

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

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

"**46-23-502. Definitions.** As used in Title 45, chapter 5, part 3 and parts 5 through 7, 46-18-255, and this part, the following definitions apply:

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

(2) "Foreign offenses" means a conviction for a sexual offense involving any of the conduct listed in this section that was obtained under the laws of Canada, the United Kingdom, Australia, or New Zealand, or under the laws of any foreign country when the United States department of state, in its country reports on human rights practices, has concluded that an independent judiciary generally or vigorously enforced the right to a fair trial in that country during the year in which the conviction occurred.

~~(2)~~(3) "Mental abnormality" means a congenital or acquired condition that affects the mental, emotional, or volitional capacity of a person in a manner that predisposes the person to the commission of one or more sexual offenses to a degree that makes the person a menace to the health and safety of other persons.

~~(3)~~(4) "Municipality" means an entity that has incorporated as a city or town.

~~(4)~~(5) "Personality disorder" means a personality disorder as defined in the fourth edition of the

Diagnostic and Statistical Manual of Mental Disorders adopted by the American psychiatric association.

~~(5)(6)~~ "Predatory sexual offense" means a sexual offense committed against a stranger or against a person with whom a relationship has been established or furthered for the primary purpose of victimization.

~~(6)(7)~~ "Registration agency" means:

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

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

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

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

~~(8)(9)~~ "Sexual offender evaluator" means a person qualified under rules established by the department to conduct psychosexual evaluations of sexual offenders and sexually violent predators.

~~(9)(10)~~ (a) "Sexual offense" means: any violation, attempt, solicitation, or conspiracy to commit a violation, or flight after the attempt or commission of the following:

~~(a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-304 (if the victim 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 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 the offender is not a parent of the victim), 45-5-502 (if the offender is a professional licensed under Title 37 and commits the offense during any treatment, consultation, interview, or evaluation of a person's physical or mental condition, ailment, disease, or injury), 45-5-502 (3) (if the victim is less than 16 years of age and the offender is 3 or more years older than the victim), 45-5-503 (1), (3), or (4), 45-5-504 (2)(c), 45-5-504 (3) (if the victim is less than 16 years of age and the offender is 4 or more years older than the victim), 45-5-507 (if the victim is less 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 or younger and the offender is 18 years of age or older at the time of the offense), 45-5-508, 45-5-604 (3), 45-5-602 (3), 45-5-603 (1)(b), (2)(b), or (2)(c), 45-5-625, 45-5-704, or 45-5-705 ; or~~

(i) 45-5-301, Unlawful restraint, if the victim is less than 18 years of age and the offender is not a parent of the victim;

(ii) 45-5-302, Kidnapping, if the victim is less than 18 years of age and the offender is not a parent of the victim;

(iii) 45-5-303, Aggravated kidnapping, if the victim is less than 18 years of age and the offender is not a parent of the victim;

(iv) 45-5-502(2)(c) and (3), Sexual assault;

(v) 45-5-503, Sexual intercourse without consent;

(vi) 45-5-504(2)(c) and (3), Indecent exposure;

(vii) 45-5-507, Incest, if the victim is less 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 or younger and the offender is 18 years of age or older at the time of the offense;

(viii) 45-5-508, Aggravated sexual intercourse without consent;

(ix) 45-5-601(2)(b), (3), and (4) Prostitution;

(x) 45-5-602(3) and (4), Promoting prostitution;

(xi) 45-5-603, Aggravated promotion of prostitution;

(xii) 45-5-622(2)(b)(ii), Endangering welfare of children;

(xiii) 45-5-625, Sexual abuse of children;

(xiv) 45-5-627(1)(a), Ritual abuse of minor;

(xv) 45-5-704, Sexual servitude;

(xvi) 45-5-705, Patronizing victim of sexual servitude; or

(b)(xvii) any violation of a law of another state, a tribal government, or the federal government, or the military or a foreign entity that is reasonably equivalent to a violation listed in subsection (9)(a) (10)(a)(i) through (10)(a)(xvi) or for which the offender was required to register as a sexual offender after an adjudication or conviction.

(b) This term does not include the exceptions provided for in 45-5-501, 45-5-502, and 45-5-503.

~~(40)~~(11) "Sexual or violent offender" means a person who has been convicted of or, in youth court, found to have committed or been adjudicated for a sexual or violent offense.

~~(44)~~(12) "Sexually violent predator" means a person who:

(a) has been convicted of or, in youth court, found to have committed or been adjudicated for a

sexual offense and who suffers from a mental abnormality or a personality disorder that makes the person likely to engage in predatory sexual offenses; or

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

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

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

(a) any violation of or attempt, solicitation, or conspiracy to commit a violation of:

(i) 45-5-102, Deliberate homicide;

(ii) 45-5-103, Mitigated deliberate homicide;

(iii) 45-5-202, Aggravated assault;

(iv) 45-5-206 (third or subsequent offense), Partner or family member assault;

(v) 45-5-210(1)(b), (1)(c), or (1)(d), Assault on a peace officer or judicial officer;

(vi) 45-5-212, Assault on a minor;

(vii) 45-5-213, Assault with weapon;

(viii) 45-5-215, Strangulation of partner or family member;

(ix) 45-5-302 (if the victim is not a minor), Kidnapping;

(x) 45-5-303 (if the victim is not a minor), Aggravated kidnapping;

(xi) 45-5-401, Robbery;

(xii) 45-6-103, Arson; or

(xiii) 45-9-132, Operation of unlawful clandestine laboratory; or

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

Section 2. Section 46-23-504, MCA, is amended to read:

"46-23-504. Persons required to register -- procedure. (1) Except as provided in 41-5-1513 and 45-5-503(5), a sexual or violent offender:

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

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

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

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

(2) Registration under subsection ~~(1)(a), (1)(c), or (1)(d)~~ (1) must be with the appropriate registration agency. If an offender registers with a police department, the department shall notify the sheriff's office of the county in which the municipality is located of the registration. The probation officer having supervision over an offender required to register under subsection (1)(a) shall verify the offender's registration status with the appropriate registration agency.

(3) At the time of registering, the offender shall sign a statement in writing giving the information required by subsections (3)(a) through ~~(3)(h), (3)(k)~~ and any other information required by the department of justice. The registration agency shall fingerprint the offender, unless the offender's fingerprints are on file with the department of justice, photograph the offender, and obtain a DNA sample from the offender. Within 3 days, the registration agency shall send copies of the statement, fingerprints, and photographs to the department of justice. The registration agency shall send the DNA sample to the department of justice for analysis and entry of the DNA record into the DNA identification index. The registration agency shall require an offender given a level 2 or level 3 designation to appear before the registration agency for a new photograph every year. The information collected from the offender at the time of registration must include:

- (a) the name of the offender and any aliases used by the offender;
- (b) the offender's social security number;
- (c) the residence information required by subsection (4);
- (d) the name and address of any business or other place where the offender is or will be an employee;
- (e) the name and address of any school where the offender will be a student;
- (f) the offender's driver's license number;
- (g) the description, registration number or identifier, and license number of ~~any all~~ motor ~~vehicle~~

vehicles owned or operated by the offender; and

(h) ~~all of the offender's e-mail addresses and social media screen names.~~ The following information related to the offender's internet activity:

(i) all e-mail addresses used by the offender;

(ii) all instant message addresses and identifiers;

(iii) all other designations or monikers used for self-identification in internet communications or postings; and

(iv) all designations used by the offender for the purpose of routing or self-identification in internet communications, postings, or social media accounts;

(i) any passports held or used by the offender. The department or its designee shall make a photocopy of the passports.

(j) all telephone numbers and any other designations used by the offender for the purposes of routing or self-identification in telephonic communications, including but not limited to:

(i) all cellular telephone numbers;

(ii) all landline telephone numbers; and

(iii) all voice over internet protocol telephone numbers; and

(k) all professional licenses, including the licensing number, licensing agency, and any other identifying information about a professional license issued to the offender that authorizes the offender to engage in an occupation or carry out a trade or business.

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

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

(5) A transient shall report monthly, in person, to the registration agency with which the transient registered pursuant to subsection (1)(d). The transient shall report on a day specified by the registration agency

and during the normal business hours of that agency. On that day, the transient shall provide the registration agency with the information listed in subsections (3)(a) through ~~(3)(h)~~ (3)(k). The registration agency to which the transient reports may also require the transient to provide the locations where the transient stayed during the previous 30 days and may stay during the next 30 days.

- (6) (a) The department of justice shall mail a registration verification form:
 - (i) each 90 days to an offender designated as a level 3 offender under 46-23-509;
 - (ii) each 180 days to an offender designated as a level 2 offender under 46-23-509; and
 - (iii) each year to a violent offender or an offender designated as a level 1 offender under 46-23-

509.

(b) If the offender is a transient, the department of justice shall mail the offender's registration verification form to the registration agency with which the offender last registered.

(c) The form must require the offender's notarized signature. Within 10 days after receipt of the form, the offender shall complete the form and return it to the registration agency where the offender last registered or, if the offender was initially registered pursuant to subsection (1)(b), to the registration agency in the county or municipality in which the offender is located. A sexual offender shall return the form to the appropriate registration agency in person, and at the time that the sexual offender returns the registration verification form, the registration agency shall take a photograph of the offender and collect a DNA sample if one has not already been collected. The registration agency shall send the DNA sample to the department of justice for analysis and entry into the DNA identification index.

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

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

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

Section 3. Section 46-23-505, MCA, is amended to read:

"46-23-505. Notice of change of name or residence or student, employment, or transient status -- duty to inform -- forwarding of information. (1) If an offender required to register under this part has a change of name or residence or a change in student, employment, or transient status, the offender shall within 3 business days of the change appear in person and give notification of the change to the registration agency with whom the offender last registered or, if the offender was initially registered under 46-23-504(1)(b), to the registration agency for the county or municipality from which the offender is moving. The registration agency shall require the offender to appear before the registration agency for a new photograph every year.

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

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

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

(b) in the event of a change of name or of student, employment, or transient status, the registration agency of the appropriate county or municipality.

(4) If an offender who is required to register under this part is physically absent from the offender's county of residence for more than 10 consecutive days, the offender shall register in the county where the offender is physically located on the 11th day even if the offender claims to maintain a residence, as defined in 46-23-502, in that county. The offender shall register again in the offender's county of residence when the offender returns to that county.

(5) If an offender is required to register under subsection (4), the offender shall register in any subsequent county where the offender is present for more than 24 hours until the offender registers again in the offender's county of residence.

(6) In the event an offender will be absent from this state for more than 7 days, the offender shall provide notice with the information required under this section in person to the registering agency no later than 3 days before their scheduled travel. The registering agency shall forward the information to the department of justice, which shall then notify the provided jurisdiction."

Section 4. Section 46-23-506, MCA, is amended to read:

"46-23-506. ~~Duration-Duty of registration -- duration, frequency, reduction, and relief.~~ (1) A sexual offender required to register under this part shall register for the remainder of the sexual offender's life, except as provided in subsection (3) or during a period of time during which the sexual offender is in prison.

(2) (a) A violent offender required to register under this part shall register for the 10 years following release from confinement or, if not confined following sentencing, for the 10 years following the conclusion of the sentencing hearing and after registering for 10 years, is automatically relieved of the duty to register unless convicted as provided in subsection (2)(b).

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

(c) When ~~an~~ a violent offender is relieved of the duty to register under subsection (2)(a), the department of justice shall remove the violent offender from the registry.

(d) Petitions for relief from registration under this part must be filed in the appropriate Montana district court. Orders or other documents granting relief from registration requirements that originated in other jurisdictions are not valid in Montana.

(e) Except as provided in subsection (5), at any time after 10 years of registration for a violent offender registered as provided in subsection (2)(b), a violent offender may petition the sentencing court or the district court for the judicial district in which the violent offender resides for an order relieving the violent offender of the duty to register. The petition must be served on the county attorney in the county where the petition is filed. Prior to a hearing on the petition, the county attorney shall mail a copy of the petition to the victim of the last offense for which the violent offender was convicted if the victim's address is reasonably available. The court shall consider any written or oral statements of the victim. The court may grant the petition

on finding that:

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

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

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

(a) the offender has ~~remained a law-abiding citizen~~ maintained a clean record during their period of registration; and

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

(4) A level 3 sexual offender may have their period of registration reduced to 25 years if the sexual offender was adjudicated delinquent of an offense as a juvenile that required level 3 sexual offender registration and the sexual offender has maintained a clean record for 25 consecutive years.

(5) For the purposes of this section, the sexual offender has a clean record if, during the period of time in which the sexual offender was required to register as a sexual offender:

(a) the sexual offender was not convicted of any felony offense;

(b) the sexual offender was not convicted of any sexual offense;

(c) the sexual offender successfully completed, without revocation, any period of supervised release, probation, or parole; and

(d) the sexual offender has successfully completed an appropriate sexual offender treatment program.

~~(4)(6)~~ The offender may move that all or part of the proceedings in a hearing under ~~subsection~~

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

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

- (a) a violation of 45-5-503 if:
 - (i) the victim was compelled to submit by force, as defined in 45-5-501, against the victim or another; or
 - (ii) at the time the offense occurred, the victim was under 12 years of age;
- (b) a violation of 45-5-507 if at the time the offense occurred the victim was under 12 years of age and the offender was 3 or more years older than the victim;
- (c) a second or subsequent sexual or violent offense that requires registration; or
- (d) a sexual offense and was designated as a sexually violent predator under 46-23-509."

Section 5. Section 46-23-508, MCA, is amended to read:

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

- (a) the name and address of a registered sexual or violent offender are public criminal justice information, as defined in 44-5-103; and
- (b) the department of justice or the registration agency shall release any offender registration information that it possesses relevant to the public if the department of justice or the registration agency determines that a registered offender is a risk to the safety of the community and that disclosure of the registration information that it possesses may protect the public and, at a minimum:
 - (i) if the offender is also a violent offender, the department of justice shall and the registration agency may disseminate to the victim and the public:
 - (A) the offender's name; and

- (B) the offenses for which the offender is required to register under this part;
- (ii) if ~~an a~~ sexual offender was given a level 1 designation under 46-23-509, the department of justice shall and the registration agency may disseminate to the victim and the public:
 - (A) the offender's address;
 - (B) the name, photograph, and physical description of the offender;
 - (C) the offender's date of birth; ~~and~~
 - (D) the offenses for which the offender is required to register under this part;
 - (E) the offender's employer address; and
 - (F) the offender's postsecondary school address.
- (iii) if ~~an a~~ sexual offender was given a level 1 designation and committed an offense against a minor or was given a level 2 designation under 46-23-509, the department of justice shall and the registration agency may disseminate to the victim and the public:
 - (A) the offender's address;
 - (B) the type of victim targeted by the offense;
 - (C) the name, photograph, and physical description of the offender;
 - (D) the offender's date of birth;
 - (E) the license plate number and a description of any motor vehicle owned or operated by the offender;
 - (F) the offenses for which the offender is required to register under this part; ~~and~~
 - (G) the offender's employer address;
 - (H) the offender's postsecondary school address; and
 - ~~(G)~~(I) any conditions imposed by the court upon the offender for the safety of the public; and
- (iv) if ~~an a~~ sexual offender was given a level 3 designation under 46-23-509, the department of justice and the registration agency shall give the victim and the public notification that includes the information contained in subsection (1)(b)(iii). The notification must also include the date of the offender's release from confinement or, if not confined, the date the offender was sentenced, with a notation that the offender was not confined, and must include the community in which the offense occurred.
- (c) prior to release of information under subsection (1)(b), a registration agency may, in its sole

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

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

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

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

Section 6. Section 46-23-509, MCA, is amended to read:

"46-23-509. Psychosexual evaluations and sexual offender designations. (1) Prior to sentencing of a person convicted of a sexual offense, a sexual offender evaluator who has a license endorsement as provided for in 37-1-139 shall provide the court with a psychosexual evaluation report recommending one of the following levels of designation for the offender:

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

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

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

(2) Upon sentencing the offender, the court shall:

(a) review the psychosexual evaluation report, any statement by a victim, and any statement by the offender;

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

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

(3) An offender designated as a level 2 offender or given a level designation by another state, the

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

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

(5) If an offense is covered by ~~46-23-502(9)(b)~~ 46-23-502(10)(g), the offender registers under 46-23-504(1)(c), and the offender was given a risk level designation after conviction by another state or the federal government, the department of justice may give the offender the risk level designation assigned by the other state or the federal government. All offenders convicted in another state or by the federal government who are not currently under the supervision of the department or the youth court and were not given a risk level designation after conviction shall provide to the department of justice all prior risk assessments and psychosexual evaluations done to evaluate the offender's risk to reoffend. Any offender without a risk assessment or psychosexual evaluation shall, at the offender's expense, undergo a psychosexual evaluation with a sexual offender evaluator who has a license endorsement as provided for in 37-1-139. The results of the psychosexual evaluation may be requested by the attorney general or a county attorney for purposes of petitioning a district court to assign a risk level designation.

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

(7) Upon obtaining information that indicates that a sexual offender who is required to register under this part does not have a level 1, 2, or 3 designation, the offender, the attorney general, the county attorney that prosecuted the offender and obtained a conviction for a sexual offense, or the county attorney for the county in which the offender resides may, at any time, petition the district court that sentenced the offender

for a sexual offense or the district court for the judicial district in which the offender resides to designate the offender as level 1, 2, or 3. Upon the filing of the petition, the court may order a psychosexual evaluation report at the petitioner's expense, or order that the results of all prior psychosexual evaluations be provided to all parties. The court shall provide the offender with an opportunity for a hearing prior to designating the offender. The petitioner shall provide the offender, the attorney general, and the county attorney that prosecuted the offender with notice of the petition and notice of the hearing. As provided in 46-23-506(2)(d), petitions for relief from registration under this part must be filed in the appropriate Montana district court. Orders or other documents granting relief from registration requirements that originated in other jurisdictions are not valid in Montana."

Section 7. Coordination instruction. If both House Bill No. 112 and [this act] are passed and approved and both contain a section that amends 46-23-502, then the sections that amend 46-23-502 are void and 46-23-502 must be amended as follows:

"**46-23-502. Definitions.** As used in Title 45, chapter 5, part 3 and parts 5 through 7, 46-18-255, and this part, the following definitions apply:

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

(2) "Foreign offenses" means a conviction for a sexual offense involving any of the conduct listed in this section that was obtained under the laws of Canada, the United Kingdom, Australia, or New Zealand, or under the laws of any foreign country when the United States department of state, in its country reports on human rights practices, has concluded that an independent judiciary generally or vigorously enforced the right to a fair trial in that country during the year in which the conviction was obtained.

~~(2)~~(3) "Mental abnormality" means a congenital or acquired condition that affects the mental, emotional, or volitional capacity of a person in a manner that predisposes the person to the commission of one or more sexual offenses to a degree that makes the person a menace to the health and safety of other persons.

~~(3)~~(4) "Municipality" means an entity that has incorporated as a city or town.

~~(4)~~(5) "Personality disorder" means a personality disorder as defined in the fourth edition of the Diagnostic and Statistical Manual of Mental Disorders adopted by the American psychiatric association.

~~(5)~~(6) "Predatory sexual offense" means a sexual offense committed against a stranger or against a

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

~~(6)~~(7) "Registration agency" means:

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

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

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

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

~~(8)~~(9) "Sexual offender evaluator" means a person qualified under rules established by the department to conduct psychosexual evaluations of sexual offenders and sexually violent predators.

~~(9)~~(10) (a) "Sexual offense" means: any violation, attempt, solicitation, or conspiracy to commit a violation, or flight after the attempt or commission of the following:

~~(a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-301 (if the victim 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 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 the offender is not a parent of the victim), 45-5-502 (if the offender is a professional licensed under Title 37 and commits the offense during any treatment, consultation, interview, or evaluation of a person's physical or mental condition, ailment, disease, or injury), 45-5-502 (3) (if the victim is less than 16 years of age and the offender is 3 or more years older than the victim), 45-5-503 (1), (3), or (4), 45-5-504 (2)(c), 45-5-504 (3) (if the victim is less than 16 years of age and the offender is 4 or more years older than the victim), 45-5-507 (if the victim is less 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 or younger and the offender is 18 years of age or older at the time of the offense), 45-5-508, 45-5-601 (3), 45-5-602 (3), 45-5-603 (1)(b), (2)(b), or (2)(c), 45-5-625, 45-5-704, or 45-5-705 ; or~~

~~(i) 45-5-301, Unlawful restraint, if the victim is less than 18 years of age and the offender is not a parent of the victim;~~

~~(ii) 45-5-302, Kidnapping, if the victim is less than 18 years of age and the offender is not a parent of the victim;~~

(iii) 45-5-303, Aggravated kidnapping, if the victim is less than 18 years of age and the offender is not a parent of the victim;

(iv) 45-5-502(2)(c) and (3), Sexual assault;

(v) 45-5-503, Sexual intercourse without consent;

(vi) 45-5-504(2)(c) and (3), Indecent exposure;

(vii) 45-5-507, Incest, if the victim is less 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 or younger and the offender is 18 years of age or older at the time of the offense;

(viii) 45-5-508, Aggravated sexual intercourse without consent;

(ix) 45-5-601(2)(b) and (3), Prostitution;

(x) 45-5-622(2)(b)(ii), Endangering the welfare of children;

(xi) 45-5-625, Sexual abuse of children;

(xii) 45-5-627(1)(a), Ritual abuse of a minor;

(xiii) 45-5-705, Patronizing a victim of sex trafficking;

(xiv) 45-5-706, Aggravated sex trafficking;

(xv) [section 19 of House Bill No. 112], Child sex trafficking; or

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

(b) The term does not include the exceptions provided for in 45-5-501, 45-5-502, and 45-5-503.

~~(40)(11)~~ "Sexual or violent offender" means a person who has been convicted of or, in youth court, found to have committed or been adjudicated for a sexual or violent offense.

~~(44)(12)~~ "Sexually violent predator" means a person who:

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

(b) has been convicted of a sexual offense against a victim 12 years of age or younger and the

offender is 18 years of age or older.

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

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

(a) any violation of or attempt, solicitation, or conspiracy to commit a violation of:

(i) _____ 45-5-102, Deliberate homicide;

(ii) _____ 45-5-103, Mitigated deliberate homicide;

(iii) _____ 45-5-202, Aggravated assault;

(iv) _____ 45-5-206 (third or subsequent offense), Partner or family member assault;

(v) _____ 45-5-210(1)(b), (1)(c), or (1)(d), Assault on a peace officer or judicial officer;

(vi) _____ 45-5-212, Assault on a minor;

(vii) _____ 45-5-213, Assault with a weapon;

(viii) _____ 45-5-215, Strangulation of a partner or family member;

(ix) _____ 45-5-302 (if the victim is not a minor), Kidnapping;

(x) _____ 45-5-303 (if the victim is not a minor), Aggravated kidnapping;

(xi) _____ 45-5-401, Robbery;

(xii) _____ 45-6-103, Arson; or

(xiii) _____ 45-9-132; Operation of unlawful clandestine laboratory; or

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

Section 8. Coordination instruction. (1) If House Bill No. 112, House Bill No. 525, and [this act] are passed and approved and all three contain a section that amends 46-23-502, then the section in House Bill No. 525 that amends 46-23-502 is void and [section 7 of this act], amending 46-23-502, must be further amended so that 46-23-502(10)(a)(iv) reads:

"(iv) 45-5-502(2)(c), (3), and (4), Sexual assault;"

(2) If House Bill No. 112 is not passed and approved and House Bill No. 525 and [this act] are passed and approved, then the section in House Bill No. 525 that amends 46-23-502 is void and [section 1 of this act], amending 46-23-502, must be further amended so that 46-23-502(10)(a)(iv) reads:

"(iv) 45-5-502(1), (2)(c), (3), and (4), Sexual assault;"

Section 9. Coordination instruction. (1) If House Bill No. 112, Senate Bill No. 345, and [this act] are passed and approved and all three contain a section that amends 46-23-502, then the section in Senate Bill No. 345 that amends 46-23-502 is void and [section 7 of this act], amending 46-23-502, must be further amended so that the definition of "sexual offense" in 46-23-502(10)(a) includes the following offense:

45-8-218, Deviate sexual conduct.

(2) If House Bill No. 112 is not passed and approved and Senate Bill No. 345 and [this act] are passed and approved, then the section in Senate Bill No. 345 that amends 46-23-502 is void and [section 1 of this act], amending 46-23-502, must be further amended so that the definition of "sexual offense" in 46-23-502(10)(a) includes the following offense:

45-8-218, Deviate sexual conduct.

- END -

I hereby certify that the within bill,
SB 38, originated in the Senate.

Secretary of the Senate

President of the Senate

Signed this _____ day
of _____, 2023.

Speaker of the House

Signed this _____ day
of _____, 2023.

SENATE BILL NO. 38

INTRODUCED BY B. BROWN

BY REQUEST OF THE DEPARTMENT OF JUSTICE

AN ACT GENERALLY REVISING STATUTES RELATED TO LEVEL DESIGNATIONS FOR SEXUAL OFFENDERS; PROVIDING DEFINITIONS; REQUIRING ADDITIONAL INFORMATION FROM OFFENDERS REGARDING ELECTRONIC AND COMMUNICATIONS DATA AND PROFESSIONAL LICENSES; REQUIRING NOTICE WHEN AN OFFENDER IS LEAVING THE STATE; PROVIDING OPPORTUNITIES FOR CERTAIN OFFENDERS TO BE REMOVED FROM THE REGISTRY; PROVIDING NOTICE REQUIREMENTS FOR PSYCHOSEXUAL EVALUATIONS; AND AMENDING SECTIONS 46-23-502, 46-23-504, 46-23-505, 46-23-506, 46-23-508, AND 46-23-509, MCA.