

HOUSE BILL NO. 379  
INTRODUCED BY G. MACLAREN

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING AN EVALUATION BY THE DEPARTMENT OF CORRECTIONS FOR THE PURPOSES OF ASSIGNMENT OF A RECIDIVISM RISK LEVEL FOR CERTAIN PREVIOUSLY CONVICTED SEXUAL OFFENDERS WHO ARE REGISTERED IN THE STATE SEXUAL OFFENDER REGISTRY BUT HAVE NOT BEEN ASSIGNED A RECIDIVISM RISK LEVEL; PROVIDING A PENALTY FOR THOSE SEXUAL OFFENDERS WHO FAIL TO REPORT FOR EVALUATION AND ASSIGNMENT OF A RECIDIVISM RISK LEVEL; PROVIDING AN APPROPRIATION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, A RETROACTIVE APPLICABILITY DATE, AND A TERMINATION DATE."

WHEREAS, the Montana Legislature enacted the sexual offender registration program in 1989 and substantially revised the registration requirements in 1997; and

WHEREAS, the 1997 amendments required the Department of Corrections to evaluate sexual offenders then being convicted as to their risk of reoffending and assign risk levels to those offenders, level 1 indicating a low risk of reoffending, level 2 indicating moderate risk of reoffending, and level 3 indicating a high risk of reoffending; and

WHEREAS, for various reasons, such as conviction of an offender before 1997, 1098 of the 1563 currently registered sexual or sexual and violent offenders were registered but never assigned a risk level, the risk level being used to determine such things as the frequency of auditing an offender's location by the Department of Corrections and the extent of community dissemination of the offender's location by the Department; and

WHEREAS, the ratio of level 3 offenders to all offenders currently being convicted, based upon evaluations by the Department of Corrections, is approximately 25%; and

WHEREAS, if this same percentage of level 3 offenders for current convictions is applied to currently registered but unevaluated sexual offenders, it means that there are well over 200 level 3 offenders, also called sexually violent predators, living in Montana communities whose identities and locations as level 3 offenders are unknown to Montana law enforcement agencies, Montana communities in which they live, and to Montana families; and

WHEREAS, the Legislature believes it would materially assist Montana law enforcement agencies in managing sexual offenders to require that currently registered but unevaluated sexual offenders be evaluated

by the Department of Corrections in order to determine whether additional administrative steps, such as more frequent location determinations and community dissemination of those locations, need to be taken for those currently undesignated and therefore unknown level 3 offenders.

THEREFORE, the Legislature intends that registered but unevaluated offenders be evaluated by the Department of Corrections but that, once evaluated, only civil administrative tools for the management of the offenders and not criminal punishments be applied retroactively to unevaluated offenders, pursuant to the power of the Legislature to protect the safety and welfare of Montana residents, in order that those offenders not be subject to ex post facto or double jeopardy laws, but that a criminal offense of failure to report for evaluation to the Department of Corrections may be constitutionally created and applied because it involves the creation of a separate, current offense.

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

**NEW SECTION. Section 1. Department to evaluate and designate certain registered sex offenders -- procedure -- report.** (1) The department shall determine which offenders registered pursuant to 46-23-504 have not been assigned a risk level designation pursuant to 46-23-509 and shall notify those offenders of their obligation to be evaluated pursuant to [section 2] and this section.

(2) The department shall create a procedure, subject to the contested case procedures of the Montana Administrative Procedure Act, for evaluation of offenders who are registered but for whom a risk level has not been designated that the department considers to be efficient and constitutionally sound. An offender must be granted a hearing as part of that procedure for the limited purposes of proving that the offender is not currently dangerous. The determinations of the department pursuant to this section are reviewable by a district court pursuant to 2-4-702.

(3) Once assessed by the department pursuant to this section, an offender is subject to the requirements of 46-23-504(4), 46-23-506, 46-23-508, and 46-23-1010.

(4) The department shall adopt rules for the implementation of this section.

(5) The department shall provide a report to the legislature pursuant to 5-11-210 on the department's implementation of this section.

**NEW SECTION. Section 2. Failure to report for designation -- penalty.** A sexual offender registered pursuant to this part who has not been assigned a risk level designation pursuant to 46-23-509 shall report to the

department, on a schedule determined by the department, for evaluation and assignment of a risk level designation. An offender failing to report to the department in accordance with the schedule established by the department is guilty of a misdemeanor and upon conviction shall be punished as provided by law.

NEW SECTION. **Section 3. Appropriation.** There is appropriated to the department of corrections \$2 million for the biennium ending June 30, 2009, to be used for the purposes of implementing [sections 1 and 2].

NEW SECTION. **Section 4. Codification instruction.** [Sections 1 and 2] are intended to be codified as an integral part of Title 46, chapter 23, part 5, and the provisions of Title 46, chapter 23, part 5, apply to [sections 1 and 2].

NEW SECTION. **Section 5. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 6. Effective date.** [This act] is effective on passage and approval.

NEW SECTION. **Section 7. Retroactive applicability.** [Sections 1 and 2] apply retroactively, within the meaning of 1-2-109, to individuals who were registered as sexual offenders, pursuant to the requirements of 46-23-504, before [the effective date of this act].

NEW SECTION. **Section 8. Termination.** [This act] terminates September 30, 2010.

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