

HOUSE BILL NO. 219

INTRODUCED BY J. ESSMANN, J. HINKLE

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A BILL FOR AN ACT ENTITLED: "AN ACT MAKING IT A FELONY OFFENSE FOR CERTAIN HIGH-RISK SEXUAL OFFENDERS TO RESIDE; OR WORK; ~~OR TRAVEL~~ WITHIN CERTAIN GEOGRAPHICALLY RESTRICTED AREAS; PROVIDING EXCEPTIONS; PROVIDING A PENALTY; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 46-18-255 AND 46-23-520, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

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

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12 **NEW SECTION. Section 1. Geographic restrictions applicable to high-risk sexual offenders. (1)**

13 A high-risk sexual offender as provided in this section may not:

14 (a) establish a residence within 300 feet of a school, day-care ~~facility~~ CENTER, playground, developed
15 or improved park, athletic field or facility that primarily serves minors, or business or facility having a principal
16 purpose of caring for, educating, or entertaining minors. This subsection (1)(a) does not apply if the residence
17 was established on or before [the effective date of this act].18 (b) establish a residence or any other living accommodation in a place where a minor resides, except
19 that the offender may reside with a minor if the offender is the parent, grandparent, or stepparent of the minor
20 unless:21 (i) the offender's parental rights were terminated or are in the process of being terminated as provided
22 by law;23 (ii) the offender was convicted of a sexual offense in which any of the offender's minor children,
24 grandchildren, or stepchildren were the victim; or25 (iii) the offender was convicted of a sexual offense in which a minor was the victim and the minor resided
26 with the offender at the time of the offense;27 (c) knowingly make any visual or audible sexually suggestive or obscene gesture, sound, or
28 communication at or to a former victim or a member of the victim's immediate family;29 (d) knowingly come within 300 feet of a former victim of the offender without the prior written permission
30 of the victim or the victim's legal guardian;

1 (e) accept, maintain, or carry on regular employment at or within 300 feet of a school, day-care facility
 2 CENTER, playground, developed or improved park, athletic field or facility that primarily serves minors, or business
 3 or facility having a principal purpose of caring for, educating, or entertaining minors.

4 (2) A high-risk sexual offender who knowingly violates a provision of this section is guilty of a felony and
 5 upon conviction shall be punished as provided in 46-18-213.

6 (3) FOR HIGH-RISK SEXUAL OFFENDERS WHO ARE NO LONGER UNDER THE SUPERVISION OF THE DEPARTMENT
 7 OF CORRECTIONS, THE RESIDENTIAL AND GEOGRAPHIC RESTRICTIONS PROVIDED IN SUBSECTIONS (1)(A) AND (1)(E) DO
 8 NOT APPLY IF THE HIGH-RISK SEXUAL OFFENDER POSSESSES AN APPROVED SAFETY PLAN FROM A SEXUAL OFFENDER
 9 EVALUATOR TO MITIGATE THE RISK OF REOFFENDING AND PROTECT PUBLIC SAFETY. THE SAFETY PLAN MUST BE
 10 REEVALUATED ANNUALLY BY A SEXUAL OFFENDER EVALUATOR TO ENSURE ANY CONDITIONS OR REQUIREMENTS ARE
 11 ADEQUATE AND PROTECT PUBLIC SAFETY.

12 (4) THIS SECTION DOES NOT APPLY TO OFFENDERS WHO ARE PLACED IN A FACILITY IN OPERATION BY THE
 13 DEPARTMENT OF CORRECTIONS, THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES, OR A CONTRACTOR WITH
 14 EITHER DEPARTMENT BEFORE OCTOBER 1, 2015. THE DEPARTMENT OF CORRECTIONS AND THE DEPARTMENT OF PUBLIC
 15 HEALTH AND HUMAN SERVICES SHALL ADOPT RULES SPECIFYING THE TYPE OF FACILITY TO WHICH THIS SECTION APPLIES.

16 (5) THE DEPARTMENT OF CORRECTIONS AND THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES MAY
 17 ALSO EXEMPT FROM THE REQUIREMENTS OF THIS SECTION OFFENDERS WHO ARE PLACED IN A FACILITY TO BE OPERATED
 18 BY EITHER DEPARTMENT OR A CONTRACTOR WITH EITHER DEPARTMENT BEGINNING ON OR AFTER OCTOBER 1, 2015. THE
 19 DEPARTMENT OF CORRECTIONS AND THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES SHALL ADOPT RULES
 20 SPECIFYING FACILITIES TO WHICH THIS SUBSECTION APPLIES. AS PART OF THE PROCESS OF GRANTING AN EXEMPTION TO
 21 A FACILITY CONSTRUCTED OR DESIGNATED AFTER OCTOBER 1, 2015, THE DEPARTMENT OF CORRECTIONS AND THE
 22 DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES SHALL HOLD AT LEAST ONE PUBLIC HEARING IN THE COMMUNITY
 23 WHERE THE FACILITY IS TO BE LOCATED.

24 ~~(3)(4)(6)~~ As used in this section, the following definitions apply:

25 (a) "Day-care facility CENTER" has the meaning provided in 52-2-703.

26 (b) "High-risk sexual offender" means a person 18 YEARS OF AGE OR OLDER who is designated as a
 27 sexually violent predator under 46-23-509 and has committed a sexual offense against a victim 12 years of age
 28 or younger.

29 (c) "Minor" means a person under 18 years of age.

30 (d) "Regular employment" means employment for which a sexual offender has a reasonable expectation;

1 ~~as determined by the department of corrections~~, of employment for longer than 90 days.

2 (e) "Sexual offense" has the meaning provided in 46-23-502.

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4 **Section 2.** Section 46-18-255, MCA, is amended to read:

5 **"46-18-255. Sentence upon conviction -- restriction on employment and residency.** (1) A judge
6 sentencing a person upon conviction of a sexual or violent offense shall, as a condition to probation, parole, or
7 deferment or suspension of sentence, impose upon the defendant reasonable employment or occupational
8 prohibitions and restrictions designed to protect the class or classes of persons containing the likely victims of
9 further offenses by the defendant.

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

15 (3) Restrictions imposed pursuant to this section must be compatible with the restrictions provided for
16 in [section 1]."

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18 **Section 3.** Section 46-23-520, MCA, is amended to read:

19 **"46-23-520. Sexual or violent offender community education curriculum.** (1) The department of
20 justice shall develop a statewide community education curriculum regarding release of sexual or violent offenders
21 into a community.

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

23 (a) for communities and neighborhoods regarding the provisions of this part as it relates to sexual or
24 violent offenders, including the rights of residents of a community into which a sexual or violent offender is
25 released and the duties and roles under this part of the department, law enforcement agencies, and the offender;
26 ~~and~~

27 (b) for families and children regarding personal safety, including potential warning signs that may help
28 to avoid victimization; and

29 (c) for communities, neighborhoods, families, and children regarding the restrictions imposed by [section
30 1].

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

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6 NEW SECTION. Section 4. Codification instruction. [Section 1] is intended to be codified as an
7 integral part of Title 45, chapter 5, part 5, and the provisions of Title 45, chapter 5, part 5, apply to [section 1].

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9 NEW SECTION. Section 5. Effective date. [This act] is effective on passage and approval.

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11 NEW SECTION. Section 6. Retroactive applicability. Except as provided in [section 1(1)(a)], [this act]
12 applies retroactively, within the meaning of 1-2-109, to sexually violent predators who have been convicted of a
13 sexual offense against a victim 12 years of age or younger on or before [the effective date of this act].

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