

SENATE BILL NO. 185

INTRODUCED BY D. KARY

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A BILL FOR AN ACT ENTITLED: "AN ACT CREATING A REGISTRY OF OFFENDERS WHO HAVE BEEN CONVICTED OF EMBEZZLEMENT; PROVIDING RULEMAKING AUTHORITY; REQUIRING OFFENDERS TO PROVIDE AND MAINTAIN ACCURATE NAME AND ADDRESS INFORMATION; PROVIDING PENALTIES FOR FAILURE TO COMPLY; PROVIDING FOR THE EXPUNGEMENT OF RECORDS IF A CASE IS REVERSED AND IMMUNITY FROM SUIT FOR THE GOOD FAITH RELEASE OF RECORDS; AND PROVIDING AN APPLICABILITY DATE."

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

NEW SECTION. Section 1. Embezzlement registry -- website -- rulemaking. (1) The department of justice shall establish and maintain a registry of offenders convicted of embezzlement in violation of 45-6-301(7). The registry must be accessible through a website maintained by the department.

(2) The department of justice may adopt rules to implement the creation and maintenance of the registry.

NEW SECTION. Section 2. Persons required to register -- procedure. (1) A person convicted of embezzlement under 45-6-301(7):

(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 of corrections and placed in confinement by the department;

(b) must be registered at least 10 days prior to release from confinement as provided in subsection (2) if sentenced to confinement or sentenced to the department of corrections 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) must be with the appropriate registration agency as defined in 46-23-502. If an offender registers with a police department, the department shall notify the sheriff's



1 office of the county in which the municipality is located of the registration. The probation officer having supervision
2 over an offender required to register under subsection (1)(a) shall verify the offender's registration status with the
3 appropriate registration agency. The registration agency shall notify the department of justice of the registration
4 and provide copies of the information required by subsection (3) to the department of justice.

5 (3) At the time of registering, the offender shall sign a statement in writing giving the information required
6 by subsections (3)(a) through (3)(g) and any other information required by the department of justice. The
7 registration agency shall fingerprint the offender, unless the offender's fingerprints are on file with the department
8 of justice, and photograph the offender. The information collected from the offender at the time of registration
9 must include the:

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

11 (b) offender's social security number;

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

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

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

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

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

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

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

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

30 (6) (a) The department of justice shall mail a registration verification form each year to registered

1 offenders.

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

4 (c) The form must require the offender's notarized signature. Within 10 days after receipt of the form,
5 the offender shall complete the form and return it to the registration agency where the offender last registered
6 or, if the offender was initially registered pursuant to subsection (1)(b), to the registration agency in the county
7 or municipality in which the offender is located.

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 and in maintaining the website. 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 violation of 45-6-301(7)
15 shall notify the department of justice of the conviction within 10 days after entry of the judgment.

16

17 **NEW SECTION. Section 3. Notice of change of name or residence or student, employment, or**
18 **transient status -- duty to inform -- forwarding of information.** (1) If an offender required to register under
19 [sections 1 through 8] has a change of name or residence or a change in student, employment, or transient
20 status, the offender shall within 3 business days of the change appear in person and give notification of the
21 change to the registration agency with whom the offender last registered or, if the offender was initially registered
22 under [section 2(1)(b)], to the registration agency for the county or municipality from which the offender is moving.
23 The registration agency shall require the offender to appear before the registration agency for a new photograph
24 every year.

25 (2) If an offender required to register under [sections 1 through 8] is a transient, the offender shall provide
26 written notification to the registration agency with which the offender last registered or, if the offender initially
27 registered pursuant to [section 2(1)(b)], shall provide notice within 3 business days to the registration agency in
28 the county or municipality in which the offender resides.

29 (3) Within 3 business days after receipt of the information concerning the new name or residence or a
30 change in the student, employment, or transient status, the registration agency shall forward the information to

1 the department of justice, which shall forward a copy of the information and photograph to:

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

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

7 (4) If an offender who is required to register under [sections 1 through 8] is physically absent from the
8 offender's county of residence for more than 10 consecutive days, the offender shall register in the county where
9 the offender is physically located on the 11th day even if the offender claims to maintain a residence, as defined
10 in 46-23-502, in that county. The offender shall register again in the offender's county of residence when the
11 offender returns to that county.

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

15
16 **NEW SECTION. Section 4. Duration of registration.** (1) An offender required to register under
17 [sections 1 through 8] shall register:

18 (a) for the 10 years following release from confinement or, if not confined following sentencing, for the
19 10 years following the conclusion of the sentencing hearing, but the offender is not relieved of the duty to register
20 until a petition is granted under subsection (2)(a); or

21 (b) if convicted during the 10-year period provided in subsection (1)(a) of failing to register or keep
22 registration current or of a felony, for the remainder of the offender's life unless relieved of the duty to register as
23 provided in subsection (2)(b).

24 (2) (a) An offender required to register for 10 years under subsection (1)(a) may, after the 10 years have
25 passed, petition the sentencing court or the district court for the judicial district in which the offender resides for
26 an order relieving the offender of the duty to register. The petition must be served on the county attorney in the
27 county where the petition is filed. The petition must be granted if the defendant has not been convicted under
28 subsection (1)(b).

29 (b) Prior to a hearing on the petition, the county attorney shall mail a copy of the petition to the victim of
30 the last offense for which the offender was convicted if the victim's address is reasonably available. The court

1 shall consider any written or oral statements of the victim. The court may grant the petition upon finding that:

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

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

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6 **NEW SECTION. Section 5. Penalty.** An offender convicted under 45-6-301(7) who knowingly fails to
7 register, verify registration, or keep registration current under [sections 1 through 8] may be sentenced to a term
8 of imprisonment of not more than 5 years or may be fined not more than \$10,000, or both.

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10 **NEW SECTION. Section 6. Dissemination of information.** Information maintained under this part is
11 confidential criminal justice information, as defined in 44-5-103, except that the name and address of a registered
12 offender convicted of embezzlement under 45-6-301(7) are public criminal justice information, as defined in
13 44-5-103.

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15 **NEW SECTION. Section 7. Expungement of records on reversal of conviction.** Upon final reversal
16 of a conviction of a violation of 45-6-301(7), the sentencing court shall order the expungement of any records kept
17 by a court, law enforcement agency, or other state or local government agency under [sections 1 through 8].

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19 **NEW SECTION. Section 8. Plea agreement agreeing to compliance with registration**
20 **requirements.** A defendant convicted of an offense that would otherwise not be subject to registration under
21 [sections 1 through 8] may agree to comply with the registration requirements of [sections 1 through 8] as part
22 of a plea agreement, and a court accepting the plea agreement may order the defendant to comply with [sections
23 1 through 8].

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25 **NEW SECTION. Section 9. Codification instruction.** [Sections 1 through 8] are intended to be codified
26 as an integral part of Title 46, chapter 23, and the provisions of Title 46, chapter 23, apply to [sections 1 through
27 8].

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29 **NEW SECTION. Section 10. Applicability.** [This act] applies to offenders convicted on or after [the
30 effective date of this act].

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