

1 SENATE BILL NO. 38
2 INTRODUCED BY B. BROWN
3 BY REQUEST OF THE DEPARTMENT OF JUSTICE
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING STATUTES RELATED TO LEVEL
6 DESIGNATIONS FOR SEXUAL OFFENDERS; PROVIDING DEFINITIONS; REQUIRING ADDITIONAL
7 INFORMATION FROM OFFENDERS REGARDING ELECTRONIC AND COMMUNICATIONS DATA AND
8 PROFESSIONAL LICENSES; REQUIRING NOTICE WHEN AN OFFENDER IS LEAVING THE STATE;
9 PROVIDING OPPORTUNITIES FOR CERTAIN OFFENDERS TO BE REMOVED FROM THE REGISTRY;
10 PROVIDING NOTICE REQUIREMENTS FOR PSYCHOSEXUAL EVALUATIONS; AND AMENDING
11 SECTIONS 46-23-502, 46-23-504, 46-23-505, 46-23-506, 46-23-508, AND 46-23-509, MCA."
12

13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
14

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

16 **"46-23-502. Definitions.** As used in Title 45, chapter 5, part 3 and parts 5 through 7, 46-18-255, and
17 this part, the following definitions apply:

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

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

24 (2)(3) "Mental abnormality" means a congenital or acquired condition that affects the mental,
25 emotional, or volitional capacity of a person in a manner that predisposes the person to the commission of one
26 or more sexual offenses to a degree that makes the person a menace to the health and safety of other persons.

27 (3)(4) "Municipality" means an entity that has incorporated as a city or town.

28 (4)(5) "Personality disorder" means a personality disorder as defined in the fourth edition of the

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- 2023

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Drafter: Rachel Weiss, 406-444-5367

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

2 (5)(6) "Predatory sexual offense" means a sexual offense committed against a stranger or against a
3 person with whom a relationship has been established or furthered for the primary purpose of victimization.

4 (6)(7) "Registration agency" means:

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

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

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

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

12 (8)(9) "Sexual offender evaluator" means a person qualified under rules established by the
13 department to conduct psychosexual evaluations of sexual offenders and sexually violent predators.

14 (9)(10) (a) "Sexual offense" means: any violation, attempt, solicitation, or conspiracy to commit a
15 violation, or flight after the attempt or commission of the following:

16 (a) ~~any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-301 (if the~~
17 ~~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~~
18 ~~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~~
19 ~~of age and the offender is not a parent of the victim), 45-5-502 (if the offender is a professional licensed under~~
20 ~~Title 37 and commits the offense during any treatment, consultation, interview, or evaluation of a person's~~
21 ~~physical or mental condition, ailment, disease, or injury), 45-5-502 (3) (if the victim is less than 16 years of age~~
22 ~~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)~~
23 ~~(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~~
24 ~~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~~
25 ~~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,~~
26 ~~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~~

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

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- 1 (ii) 45-5-302, Kidnapping, if the victim is less than 18 years of age and the offender is not a parent
2 of the victim;
- 3 (iii) 45-5-303, Aggravated kidnapping, if the victim is less than 18 years of age and the offender is
4 not a parent of the victim;
- 5 (iv) 45-5-502(1), (2)(c), and (3), ~~(4), and (5)~~, Sexual assault;
6 (v) 45-5-503, Sexual intercourse without consent;
- 7 (vi) 45-5-504(2)(c) and (3), Indecent exposure;
- 8 (vii) 45-5-507, Incest, if the victim is less than 18 years of age and the offender is 3 or more years
9 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
10 at the time of the offense;
- 11 (viii) 45-5-508, Aggravated sexual intercourse without consent;
- 12 (ix) 45-5-601(2)(b), (3), and (4) Prostitution;
- 13 (x) 45-5-602(3) and (4), Promoting prostitution;
- 14 (xi) 45-5-603, Aggravated promotion of prostitution;
- 15 (xii) 45-5-622(2)(b)(ii), Endangering welfare of children;
- 16 (xiii) 45-5-625, Sexual abuse of children;
- 17 (xiv) 45-5-627(1)(a), Ritual abuse of minor;
- 18 (xv) 45-5-704, Sexual servitude;
- 19 (xvi) 45-5-705, Patronizing victim of sexual servitude; or
20 (b)(xvii) any violation of a law of another state, a tribal government, or the federal government, or the
21 military or a foreign entity that is reasonably equivalent to a violation listed in subsection (9)(a) (10)(a)(i) through
22 (10)(a)(xvi) or for which the offender was required to register as a sexual offender after an adjudication or
23 conviction.
- 24 (b) This term does not include the exceptions provided for in 45-5-501, 45-5-502, and 45-5-503.
- 25 ~~(40)~~(11) "Sexual or violent offender" means a person who has been convicted of or, in youth court,
26 found to have committed or been adjudicated for a sexual or violent offense.
- 27 ~~(44)~~(12) "Sexually violent predator" means a person who:
28 (a) has been convicted of or, in youth court, found to have committed or been adjudicated for a

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

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

5 ~~(12)~~(13) "Transient" means an offender who has no residence.

6 ~~(13)~~(14) "Violent offense" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23

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

25 **"46-23-504. Persons required to register -- procedure.** (1) Except as provided in 41-5-1513 and
26 45-5-503(5), a sexual or violent offender:

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

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

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

14 "46-23-502. Definitions. As used in Title 45, chapter 5, part 3 and parts 5 through 7, 46-18-255, and
 15 this part, the following definitions apply:

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

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

22 (2)(3) "Mental abnormality" means a congenital or acquired condition that affects the mental,
 23 emotional, or volitional capacity of a person in a manner that predisposes the person to the commission of one
 24 or more sexual offenses to a degree that makes the person a menace to the health and safety of other persons.

25 (3)(4) "Municipality" means an entity that has incorporated as a city or town.

26 (4)(5) "Personality disorder" means a personality disorder as defined in the fourth edition of the
 27 Diagnostic and Statistical Manual of Mental Disorders adopted by the American psychiatric association.

28 (5)(6) "Predatory sexual offense" means a sexual offense committed against a stranger or against a

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

2 ~~(6)~~(7) "Registration agency" means:

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

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

6 ~~(7)~~(8) (a) "Residence" means the location at which a person regularly resides, regardless of the
7 number of days or nights spent at that location, that can be located by a street address, including a house,
8 apartment building, motel, hotel, or recreational or other vehicle.

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

10 ~~(8)~~(9) "Sexual offender evaluator" means a person qualified under rules established by the
11 department to conduct psychosexual evaluations of sexual offenders and sexually violent predators.

12 ~~(9)~~(10) (a) "Sexual offense" means: any violation, attempt, solicitation, or conspiracy to commit a
13 violation, or flight after the attempt or commission of the following:

14 ~~(a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-301 (if the~~
15 ~~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~~
16 ~~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~~
17 ~~of age and the offender is not a parent of the victim), 45-5-502 (if the offender is a professional licensed under~~
18 ~~Title 37 and commits the offense during any treatment, consultation, interview, or evaluation of a person's~~
19 ~~physical or mental condition, ailment, disease, or injury), 45-5-502(3) (if the victim is less than 16 years of age~~
20 ~~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)~~
21 ~~(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~~
22 ~~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~~
23 ~~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,~~
24 ~~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~~

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

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

1 (iii) 45-5-303, Aggravated kidnapping, if the victim is less than 18 years of age and the offender is
2 not a parent of the victim;
3 (iv) 45-5-502(1), (2)(c), and (3), Sexual assault;
4 (v) 45-5-503, Sexual intercourse without consent;
5 (vi) 45-5-504(2)(c) and (3), Indecent exposure;
6 (vii) 45-5-507, Incest, if the victim is less than 18 years of age and the offender is 3 or more years
7 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
8 at the time of the offense;
9 (viii) 45-5-508, Aggravated sexual intercourse without consent;
10 (ix) 45-5-601(2)(b) and (3), Prostitution;
11 (x) 45-5-622(2)(b)(ii), Endangering the welfare of children;
12 (xi) 45-5-625, Sexual abuse of children;
13 (xii) 45-5-627(1)(a), Ritual abuse of a minor;
14 (xiii) 45-5-705, Patronizing a victim of sex trafficking;
15 (xiv) 45-5-706, Aggravated sex trafficking;
16 (xv) [section 19 of House Bill No. 112], Child sex trafficking; or
17 ~~(b)(xvi)~~ any violation of a law of another state, a tribal government, ~~of~~ the federal government, or the
18 military or a foreign entity that is reasonably equivalent to a violation listed in subsection ~~(9)(a)~~(10)(a)(i) through
19 ~~(10)(a)(xv)~~ or for which the offender was required to register as a sexual offender after an adjudication or
20 conviction.

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

22 ~~(40)(11)~~ "Sexual or violent offender" means a person who has been convicted of or, in youth court,
23 found to have committed or been adjudicated for a sexual or violent offense.

24 ~~(11)(12)~~ "Sexually violent predator" means a person who:

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

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

1 offender is 18 years of age or older.

2 ~~(12)~~(13) "Transient" means an offender who has no residence.

3 ~~(13)~~(14) "Violent offense" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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22 COORDINATION SECTION. Section 8. Coordination instruction. (1) If House Bill No. 112, House
23 Bill No. 525, and [this act] are passed and approved and all three contain a section that amends 46-23-502,
24 then the section in House Bill No. 525 that amends 46-23-502 is void and [section 7 of this act], amending 46-
25 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),
26 Sexual assault;"

27 (2) If House Bill No. 112 is not passed and approved and House Bill No. 525 and [this act] are
28 passed and approved, then the section in House Bill No. 525 that amends 46-23-502 is void and [section 1 of

1 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 (2)(c), (3), and (4), Sexual assault;".

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4
5 COORDINATION SECTION. **Section 9. Coordination instruction.** (1) If House Bill No. 112, Senate
6 Bill No. 345, and [this act] are passed and approved and all three contain a section that amends 46-23-502,
7 then the section in Senate Bill No. 345 that amends 46-23-502 is void and [section 7 of this act], amending 46-
8 23-502, must be further amended so that the definition of "sexual offense" in 46-23-502(10)(a) includes the
9 following offense: 45-8-218, Deviate sexual conduct.

10 (2) If House Bill No. 112 is not passed and approved and Senate Bill No. 345 and [this act] are
11 passed and approved, then the section in Senate Bill No. 345 that amends 46-23-502 is void and [section 1 of
12 this act], amending 46-23-502, must be further amended so that the definition of "sexual offense" in 46-23-
13 502(10)(a) includes the following offense: 45-8-218, Deviate sexual conduct.

14
15 - END -