

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.

**Amendment - 2nd Reading/2nd House-tan - Requested by: Jennifer Carlson - (H) Committee of the Whole**

- 2023

68th Legislature 2023

Drafter: Rachel Weiss, 406-444-5367

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1           ~~(4)~~(5) "Personality disorder" means a personality disorder as defined in the fourth edition of the  
2 Diagnostic and Statistical Manual of Mental Disorders adopted by the American psychiatric association.

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

5           ~~(6)~~(7) "Registration agency" means:

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

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

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

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

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

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

17           ~~(a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-301 (if the~~  
18 ~~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~~  
19 ~~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~~  
20 ~~of age and the offender is not a parent of the victim), 45-5-502 (if the offender is a professional licensed under~~  
21 ~~Title 37 and commits the offense during any treatment, consultation, interview, or evaluation of a person's~~  
22 ~~physical or mental condition, ailment, disease, or injury), 45-5-502 (3) (if the victim is less than 16 years of age~~  
23 ~~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)~~  
24 ~~(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~~  
25 ~~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~~  
26 ~~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,~~  
27 ~~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~~

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- 1            (i) 45-5-301, Unlawful restraint, if the victim is less than 18 years of age and the offender is not a  
2 parent of the victim;
- 3            (ii) 45-5-302, Kidnapping, if the victim is less than 18 years of age and the offender is not a parent  
4 of the victim;
- 5            (iii) 45-5-303, Aggravated kidnapping, if the victim is less than 18 years of age and the offender is  
6 not a parent of the victim;
- 7            (iv) 45-5-502~~(1)~~, (2)(c), AND (3), (4), and ~~(5)~~, Sexual assault;
- 8            (v) 45-5-503, Sexual intercourse without consent;
- 9            (vi) 45-5-504(2)(c) and (3), Indecent exposure;
- 10           (vii) 45-5-507, Incest, if the victim is less than 18 years of age and the offender is 3 or more years  
11 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  
12 at the time of the offense;
- 13           (viii) 45-5-508, Aggravated sexual intercourse without consent;
- 14           (ix) 45-5-601(2)(b), (3), and (4) Prostitution;
- 15           (x) 45-5-602(3) and (4), Promoting prostitution;
- 16           (xi) 45-5-603, Aggravated promotion of prostitution;
- 17           (xii) 45-5-622(2)(b)(ii), Endangering welfare of children;
- 18           (xiii) 45-5-625, Sexual abuse of children;
- 19           (xiv) 45-5-627(1)(a), Ritual abuse of minor;
- 20           (xv) 45-5-704, Sexual servitude;
- 21           (xvi) 45-5-705, Patronizing victim of sexual servitude; or  
22 (b)(xvii) any violation of a law of another state, a tribal government, or the federal government, or the  
23 military or a foreign entity that is reasonably equivalent to a violation listed in subsection (9)(a) (10)(a)(i) through  
24 (10)(a)(xvi) or for which the offender was required to register as a sexual offender after an adjudication or  
25 conviction.
- 26           (b) This term does not include the exceptions provided for in 45-5-501, 45-5-502, and 45-5-503.  
27 (40)(11) "Sexual or violent offender" means a person who has been convicted of or, in youth court,

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1 found to have committed or been adjudicated for a sexual or violent offense.

2 ~~(11)~~(12) "Sexually violent predator" means a person who:

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

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

8 ~~(12)~~(13) "Transient" means an offender who has no residence.

9 ~~(13)~~(14) "Violent offense" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26

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

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1 state or the federal government. All offenders convicted in another state or by the federal government who are  
2 not currently under the supervision of the department or the youth court and were not given a risk level  
3 designation after conviction shall provide to the department of justice all prior risk assessments and  
4 psychosexual evaluations done to evaluate the offender's risk to reoffend. Any offender without a risk  
5 assessment or psychosexual evaluation shall, at the offender's expense, undergo a psychosexual evaluation  
6 with a sexual offender evaluator who has a license endorsement as provided for in 37-1-139. The results of the  
7 psychosexual evaluation may be requested by the attorney general or a county attorney for purposes of  
8 petitioning a district court to assign a risk level designation.

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

11 (7) Upon obtaining information that indicates that a sexual offender who is required to register  
12 under this part does not have a level 1, 2, or 3 designation, the offender, the attorney general, the county  
13 attorney that prosecuted the offender and obtained a conviction for a sexual offense, or the county attorney for  
14 the county in which the offender resides may, at any time, petition the district court that sentenced the offender  
15 for a sexual offense or the district court for the judicial district in which the offender resides to designate the  
16 offender as level 1, 2, or 3. Upon the filing of the petition, the court may order a psychosexual evaluation report  
17 at the petitioner's expense, or order that the results of all prior psychosexual evaluations be provided to all  
18 parties. The court shall provide the offender with an opportunity for a hearing prior to designating the offender.  
19 The petitioner shall provide the offender, the attorney general, and the county attorney that prosecuted the  
20 offender with notice of the petition and notice of the hearing. As provided in 46-23-506(2)(d), petitions for relief  
21 from registration under this part must be filed in the appropriate Montana district court. Orders or other  
22 documents granting relief from registration requirements that originated in other jurisdictions are not valid in  
23 Montana."

24  
25 COORDINATION SECTION. SECTION 7. COORDINATION INSTRUCTION. IF BOTH HOUSE BILL NO. 112 AND  
26 [THIS ACT] ARE PASSED AND APPROVED AND BOTH CONTAIN A SECTION THAT AMENDS 46-23-502, THEN THE SECTIONS  
27 THAT AMEND 46-23-502 ARE VOID AND 46-23-502 MUST BE AMENDED AS FOLLOWS:

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1           **"46-23-502. Definitions.** As used in Title 45, chapter 5, part 3 and parts 5 through 7, 46-18-255, and  
2 this part, the following definitions apply:

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

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

9           (2)(3) "Mental abnormality" means a congenital or acquired condition that affects the mental,  
10 emotional, or volitional capacity of a person in a manner that predisposes the person to the commission of one  
11 or more sexual offenses to a degree that makes the person a menace to the health and safety of other persons.

12           (3)(4) "Municipality" means an entity that has incorporated as a city or town.

13           (4)(5) "Personality disorder" means a personality disorder as defined in the fourth edition of the  
14 Diagnostic and Statistical Manual of Mental Disorders adopted by the American psychiatric association.

15           (5)(6) "Predatory sexual offense" means a sexual offense committed against a stranger or against a  
16 person with whom a relationship has been established or furthered for the primary purpose of victimization.

17           (6)(7) "Registration agency" means:

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

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

21           (7)(8) (a) "Residence" means the location at which a person regularly resides, regardless of the  
22 number of days or nights spent at that location, that can be located by a street address, including a house,  
23 apartment building, motel, hotel, or recreational or other vehicle.

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

25           (8)(9) "Sexual offender evaluator" means a person qualified under rules established by the  
26 department to conduct psychosexual evaluations of sexual offenders and sexually violent predators.

27           (9)(10) (a) "Sexual offense" means: any violation, attempt, solicitation, or conspiracy to commit a

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1 violation, or flight after the attempt or commission of the following:

2           (a) ~~any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-301 (if the~~  
3 ~~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~~  
4 ~~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~~  
5 ~~of age and the offender is not a parent of the victim), 45-5-502 (if the offender is a professional licensed under~~  
6 ~~Title 37 and commits the offense during any treatment, consultation, interview, or evaluation of a person's~~  
7 ~~physical or mental condition, ailment, disease, or injury), 45-5-502 (3) (if the victim is less than 16 years of age~~  
8 ~~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)~~  
9 ~~(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~~  
10 ~~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~~  
11 ~~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,~~  
12 ~~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~~

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

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

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

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

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

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

22           (vii) 45-5-507, Incest, if the victim is less than 18 years of age and the offender is 3 or more years  
23 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  
24 at the time of the offense;

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

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

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

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- 1            (xi) 45-5-625, Sexual abuse of children;
- 2            (xii) 45-5-627(1)(a), Ritual abuse of a minor;
- 3            (xiii) 45-5-705, Patronizing a victim of sex trafficking;
- 4            (xiv) 45-5-706, Aggravated sex trafficking;
- 5            (xv) [section 19 of House Bill No. 112], Child sex trafficking; or
- 6            (b)(xvi) any violation of a law of another state, a tribal government, or the federal government, or the
- 7 military or a foreign entity that is reasonably equivalent to a violation listed in subsection (9)(a) (10)(a)(i) through
- 8 (10)(a)(xv) or for which the offender was required to register as a sexual offender after an adjudication or
- 9 conviction.
- 10           (b) The term does not include the exceptions provided for in 45-5-501, 45-5-502, and 45-5-503.
- 11           ~~(10)(11)~~ "Sexual or violent offender" means a person who has been convicted of or, in youth court,
- 12 found to have committed or been adjudicated for a sexual or violent offense.
- 13           ~~(11)(12)~~ "Sexually violent predator" means a person who:
- 14           (a) has been convicted of or, in youth court, found to have committed or been adjudicated for a
- 15 sexual offense and who suffers from a mental abnormality or a personality disorder that makes the person likely
- 16 to engage in predatory sexual offenses; or
- 17           (b) has been convicted of a sexual offense against a victim 12 years of age or younger and the
- 18 offender is 18 years of age or older.
- 19           ~~(12)(13)~~ "Transient" means an offender who has no residence.
- 20           ~~(13)(14)~~ "Violent offense" means:
- 21           (a) any violation of or attempt, solicitation, or conspiracy to commit a violation of;
- 22           (i) 45-5-102, Deliberate homicide;
- 23           (ii) 45-5-103, Mitigated deliberate homicide;
- 24           (iii) 45-5-202, Aggravated assault;
- 25           (iv) 45-5-206 (third or subsequent offense), Partner or family member assault;
- 26           (v) 45-5-210(1)(b), (1)(c), or (1)(d), Assault on a peace officer or judicial officer;
- 27           (vi) 45-5-212, Assault on a minor;



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- 1           (vii) 45-5-213, Assault with a weapon;
- 2           (viii) 45-5-215, Strangulation of a partner or family member;
- 3           (ix) 45-5-302 (if the victim is not a minor), Kidnapping;
- 4           (x) 45-5-303 (if the victim is not a minor), Aggravated kidnapping;
- 5           (xi) 45-5-401, Robbery;
- 6           (xii) 45-6-103, Arson; or
- 7           (xiii) 45-9-132; Operation of unlawful clandestine laboratory; or
- 8           (b) any violation of a law of another state, a tribal government, ~~or the federal government~~, or the
- 9 military or a foreign entity reasonably equivalent to a violation listed in subsection ~~(13)(a)~~ (14)(a)."

11           COORDINATION SECTION. SECTION 8. COORDINATION INSTRUCTION. (1) IF HOUSE BILL NO. 112,

12 HOUSE BILL NO. 525, AND [THIS ACT] ARE PASSED AND APPROVED AND ALL THREE CONTAIN A SECTION THAT AMENDS

13 46-23-502, THEN THE SECTION IN HOUSE BILL NO. 525 THAT AMENDS 46-23-502 IS VOID AND [SECTION 7 OF THIS ACT],

14 AMENDING 46-23-502, MUST BE FURTHER AMENDED SO THAT 46-23-502(10)(A)(IV) READS:

15           "(IV) 45-5-502~~(1)~~, (2)(C), (3), AND (4), SEXUAL ASSAULT;"

16           (2) IF HOUSE BILL NO. 112 IS NOT PASSED AND APPROVED AND HOUSE BILL NO. 525 AND [THIS ACT] ARE

17 PASSED AND APPROVED, THEN THE SECTION IN HOUSE BILL NO. 525 THAT AMENDS 46-23-502 IS VOID AND [SECTION 1

18 OF THIS ACT], AMENDING 46-23-502, MUST BE FURTHER AMENDED SO THAT 46-23-502(10)(A)(IV) READS:

19           "(IV) 45-5-502(1), (2)(C), (3), AND (4), SEXUAL ASSAULT;"

21           COORDINATION SECTION. SECTION 9. COORDINATION INSTRUCTION. (1) IF HOUSE BILL NO. 112,

22 SENATE BILL NO. 345, AND [THIS ACT] ARE PASSED AND APPROVED AND ALL THREE CONTAIN A SECTION THAT AMENDS

23 46-23-502, THEN THE SECTION IN SENATE BILL NO. 345 THAT AMENDS 46-23-502 IS VOID AND [SECTION 7 OF THIS

24 ACT], AMENDING 46-23-502, MUST BE FURTHER AMENDED SO THAT THE DEFINITION OF "SEXUAL OFFENSE" IN 46-23-

25 502(10)(A) INCLUDES THE FOLLOWING OFFENSE:

26           45-8-218, DEVIATE SEXUAL CONDUCT.

27           (2) IF HOUSE BILL NO. 112 IS NOT PASSED AND APPROVED AND SENATE BILL NO. 345 AND [THIS ACT] ARE