

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.

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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 **"46-23-504. Persons required to register -- procedure.** (1) Except as provided in 41-5-1513 and
2 45-5-503(5), a sexual or violent offender:

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

5 (b) must be registered as provided in 46-23-503 at least 10 days prior to release from confinement
6 if sentenced to confinement or sentenced to the department and placed in confinement by the department;

7 (c) shall register within 3 business days of entering a county of this state for the purpose of
8 residing or setting up a temporary residence for 10 days or more or for an aggregate period exceeding 30 days
9 in a calendar year; and

10 (d) who is a transient shall register within 3 business days of entering a county of this state.

11 (2) Registration under subsection ~~(1)(a), (1)(c), or (1)(d)~~ (1) must be with the appropriate
12 registration agency. If an offender registers with a police department, the department shall notify the sheriff's
13 office of the county in which the municipality is located of the registration. The probation officer having
14 supervision over an offender required to register under subsection (1)(a) shall verify the offender's registration
15 status with the appropriate registration agency.

16 (3) At the time of registering, the offender shall sign a statement in writing giving the information
17 required by subsections (3)(a) through ~~(3)(h)-(3)(k)~~ and any other information required by the department of
18 justice. The registration agency shall fingerprint the offender, unless the offender's fingerprints are on file with
19 the department of justice, photograph the offender, and obtain a DNA sample from the offender. Within 3 days,
20 the registration agency shall send copies of the statement, fingerprints, and photographs to the department of
21 justice. The registration agency shall send the DNA sample to the department of justice for analysis and entry
22 of the DNA record into the DNA identification index. The registration agency shall require an offender given a
23 level 2 or level 3 designation to appear before the registration agency for a new photograph every year. The
24 information collected from the offender at the time of registration must include:

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

26 (b) the offender's social security number;

27 (c) the residence information required by subsection (4);

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- 1 (d) the name and address of any business or other place where the offender is or will be an
2 employee;
- 3 (e) the name and address of any school where the offender will be a student;
- 4 (f) the offender's driver's license number;
- 5 (g) the description, registration number or identifier, and license number of ~~any all~~ motor vehicle
6 vehicles owned or operated by the offender; and
- 7 (h) ~~all of the offender's e-mail addresses and social media screen names.~~ The following information
8 related to the offender's internet activity:
- 9 (i) all e-mail addresses used by the offender;
- 10 (ii) all instant message addresses and identifiers;
- 11 (iii) all other designations or monikers used for self-identification in internet communications or
12 postings; and
- 13 (iv) all designations used by the offender for the purpose of routing or self-identification in internet
14 communications, postings, or social media accounts;
- 15 (i) any passports held or used by the offender. The department or its designee shall make a
16 photocopy of the passports.
- 17 (j) all telephone numbers and any other designations used by the offender for the purposes of
18 routing or self-identification in telephonic communications, including but not limited to:
- 19 (i) all cellular telephone numbers;
- 20 (ii) all landline telephone numbers; and
- 21 (iii) all voice over internet protocol telephone numbers; and
- 22 (k) all professional licenses, including the licensing number, licensing agency, and any other
23 identifying information about a professional license issued to the offender that authorizes the offender to
24 engage in an occupation or carry out a trade or business.
- 25 (4) (a) If, at the time of registration, the offender regularly resides in more than one county or
26 municipality, the offender shall register with the registration agency of each county or municipality in which the
27 offender resides. If an offender resides in more than one location within the same county or municipality, the

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1 registration agency shall require the offender to provide all of the locations where the offender regularly resides
2 and to designate one of them as the offender's primary residence.

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

5 (5) A transient shall report monthly, in person, to the registration agency with which the transient
6 registered pursuant to subsection (1)(d). The transient shall report on a day specified by the registration agency
7 and during the normal business hours of that agency. On that day, the transient shall provide the registration
8 agency with the information listed in subsections (3)(a) through ~~(3)(h)~~ (3)(k). The registration agency to which
9 the transient reports may also require the transient to provide the locations where the transient stayed during
10 the previous 30 days and may stay during the next 30 days.

11 (6) (a) The department of justice shall mail a registration verification form:

12 (i) each 90 days to an offender designated as a level 3 offender under 46-23-509;

13 (ii) each 180 days to an offender designated as a level 2 offender under 46-23-509; and

14 (iii) each year to a violent offender or an offender designated as a level 1 offender under 46-23-
15 509.

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

18 (c) The form must require the offender's notarized signature. Within 10 days after receipt of the
19 form, the offender shall complete the form and return it to the registration agency where the offender last
20 registered or, if the offender was initially registered pursuant to subsection (1)(b), to the registration agency in
21 the county or municipality in which the offender is located. A sexual offender shall return the form to the
22 appropriate registration agency in person, and at the time that the sexual offender returns the registration
23 verification form, the registration agency shall take a photograph of the offender and collect a DNA sample if
24 one has not already been collected. The registration agency shall send the DNA sample to the department of
25 justice for analysis and entry into the DNA identification index.

26 (7) Within 3 days after receipt of a registration verification form, the registration agency shall
27 provide a copy of the form and most recent photograph to the department of justice.

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1 (8) The offender is responsible, if able to pay, for costs associated with registration. The fees
2 charged for registration may not exceed the actual costs of registration. The department of justice may adopt a
3 rule establishing fees to cover registration costs incurred by the department of justice in maintaining registration
4 and address verification records. The fees must be deposited in the general fund.

5 (9) The clerk of the district court in the county in which a person is convicted of a sexual or violent
6 offense shall notify the sheriff in that county of the conviction within 10 days after entry of the judgment."
7

8 **Section 3.** Section 46-23-505, MCA, is amended to read:

9 **"46-23-505. Notice of change of name or residence or student, employment, or transient status**
10 **-- duty to inform -- forwarding of information.** (1) If an offender required to register under this part has a
11 change of name or residence or a change in student, employment, or transient status, the offender shall within
12 3 business days of the change appear in person and give notification of the change to the registration agency
13 with whom the offender last registered or, if the offender was initially registered under 46-23-504(1)(b), to the
14 registration agency for the county or municipality from which the offender is moving. The registration agency
15 shall require the offender to appear before the registration agency for a new photograph every year.

16 (2) If an offender required to register under this part is a transient, the offender shall provide written
17 notification to the registration agency with which the offender last registered or, if the offender initially registered
18 pursuant to 46-23-504(1)(b), shall provide notice within 3 business days to the registration agency in the county
19 or municipality in which the offender resides.

20 (3) Within 3 business days after receipt of the information concerning the new name or residence
21 or a change in the student, employment, or transient status, the registration agency shall forward the
22 information to the department of justice, which shall forward a copy of the information and photograph to:

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

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

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

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

9 (6) In the event an offender will be absent from this state for more than 7 days, the offender shall
10 provide notice with the information required under this section in person to the registering agency no later than
11 3 days before their scheduled travel. The registering agency shall forward the information to the department of
12 justice, which shall then notify the provided jurisdiction."

13

14 **Section 4.** Section 46-23-506, MCA, is amended to read:

15 **"46-23-506. Duration-Duty of registration -- duration, frequency, reduction, and relief.** (1) A
16 sexual offender required to register under this part shall register for the remainder of the sexual offender's life,
17 except as provided in subsection (3) or during a period of time during which the sexual offender is in prison.

18 (2) (a) A violent offender required to register under this part shall register for the 10 years following
19 release from confinement or, if not confined following sentencing, for the 10 years following the conclusion of
20 the sentencing hearing and after registering for 10 years, is automatically relieved of the duty to register unless
21 convicted as provided in subsection (2)(b).

22 (b) If convicted during the 10-year period provided in subsection (2)(a) of failing to register or keep
23 registration current or of a felony, the violent offender shall register for the remainder of the violent offender's
24 life unless relieved of the duty to register as provided in subsection ~~(3)~~ (2)(e).

25 (c) When an a violent offender is relieved of the duty to register under subsection (2)(a), the
26 department of justice shall remove the violent offender from the registry.

27 (d) Petitions for relief from registration under this part must be filed in the appropriate Montana

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1 district court. Orders or other documents granting relief from registration requirements that originated in other
2 jurisdictions are not valid in Montana.

3 (e) Except as provided in subsection (5), at any time after 10 years of registration for a violent
4 offender registered as provided in subsection (2)(b), a violent offender may petition the sentencing court or the
5 district court for the judicial district in which the violent offender resides for an order relieving the violent
6 offender of the duty to register. The petition must be served on the county attorney in the county where the
7 petition is filed. Prior to a hearing on the petition, the county attorney shall mail a copy of the petition to the
8 victim of the last offense for which the violent offender was convicted if the victim's address is reasonably
9 available. The court shall consider any written or oral statements of the victim. The court may grant the petition
10 on finding that:

11 (i) the violent offender has remained a law-abiding citizen; and
12 (ii) continued registration is not necessary for public protection and that relief from registration is in
13 the best interests of society.

14 (3) ~~Except as provided in subsection (5) (7), at any time after 10 years of registration for a violent~~
15 ~~offender registered as provided in subsection (2)(b) or a level 1 sexual offender and at any time after 25 years~~
16 ~~of registration for a level 2 sexual offender, an offender may petition the sentencing court or the district court for~~
17 ~~the judicial district in which the offender resides for an order relieving the offender of the duty to register. The~~
18 ~~petition must be served on the county attorney in the county where the petition is filed. Prior to a hearing on the~~
19 ~~petition, the county attorney shall mail a copy of the petition to the victim of the last offense for which the~~
20 ~~offender was convicted if the victim's address is reasonably available. The court shall consider any written or~~
21 ~~oral statements of the victim. The court may grant the petition upon on finding that:~~

22 (a) ~~the offender has remained a law-abiding citizen~~ maintained a clean record during their period
23 of registration; and

24 (b) ~~continued registration is not necessary for public protection and that relief from registration is in~~
25 ~~the best interests of society.~~

26 (4) A level 3 sexual offender may have their period of registration reduced to 25 years if the sexual
27 offender was adjudicated delinquent of an offense as a juvenile that required level 3 sexual offender registration

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1 and the sexual offender has maintained a clean record for 25 consecutive years.

2 (5) For the purposes of this section, the sexual offender has a clean record if, during the period of
3 time in which the sexual offender was required to register as a sexual offender:

4 (a) the sexual offender was not convicted of any felony offense;

5 (b) the sexual offender was not convicted of any sexual offense;

6 (c) the sexual offender successfully completed, without revocation, any period of supervised
7 release, probation, or parole; and

8 (d) the sexual offender has successfully completed an appropriate sexual offender treatment
9 program.

10 ~~(4)(6)~~ The offender may move that all or part of the proceedings in a hearing under ~~subsection~~
11 subsections (2)(e) and (3) be closed to the public, or the judge may close them on the judge's own motion. If a
12 proceeding under ~~subsection~~ subsections (2)(e) and (3) is closed to the public, the judge shall permit a victim of
13 the offense to be present unless the judge determines that exclusion of the victim is necessary to protect the
14 offender's right of privacy or the safety of the victim. If the victim is present, the judge, at the victim's request,
15 shall permit the presence of an individual to provide support to the victim unless the judge determines that
16 exclusion of the individual is necessary to protect the offender's right to privacy.

17 ~~(5)(7)~~ Subsection (3) does not apply to an offender who was convicted of:

18 (a) a violation of 45-5-503 if:

19 (i) the victim was compelled to submit by force, as defined in 45-5-501, against the victim or
20 another; or

21 (ii) at the time the offense occurred, the victim was under 12 years of age;

22 (b) a violation of 45-5-507 if at the time the offense occurred the victim was under 12 years of age
23 and the offender was 3 or more years older than the victim;

24 (c) a second or subsequent sexual or violent offense that requires registration; or

25 (d) a sexual offense and was designated as a sexually violent predator under 46-23-509."

26

27 **Section 5.** Section 46-23-508, MCA, is amended to read:

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1 **"46-23-508. Dissemination of information.** (1) Information maintained under this part is confidential
2 criminal justice information, as defined in 44-5-103, except that:

3 (a) the name and address of a registered sexual or violent offender are public criminal justice
4 information, as defined in 44-5-103; and

5 (b) the department of justice or the registration agency shall release any offender registration
6 information that it possesses relevant to the public if the department of justice or the registration agency
7 determines that a registered offender is a risk to the safety of the community and that disclosure of the
8 registration information that it possesses may protect the public and, at a minimum:

9 (i) if the offender is also a violent offender, the department of justice shall and the registration
10 agency may disseminate to the victim and the public:

11 (A) the offender's name; and

12 (B) the offenses for which the offender is required to register under this part;

13 (ii) if an ~~an~~-a sexual offender was given a level 1 designation under 46-23-509, the department of
14 justice shall and the registration agency may disseminate to the victim and the public:

15 (A) the offender's address;

16 (B) the name, photograph, and physical description of the offender;

17 (C) the offender's date of birth; ~~and~~

18 (D) the offenses for which the offender is required to register under this part;

19 (E) the offender's employer address; and

20 (F) the offender's post-secondary school address.

21 (iii) if an ~~an~~-a sexual offender was given a level 1 designation and committed an offense against a
22 minor or was given a level 2 designation under 46-23-509, the department of justice shall and the registration
23 agency may disseminate to the victim and the public:

24 (A) the offender's address;

25 (B) the type of victim targeted by the offense;

26 (C) the name, photograph, and physical description of the offender;

27 (D) the offender's date of birth;

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1 (E) the license plate number and a description of any motor vehicle owned or operated by the
2 offender;

3 (F) the offenses for which the offender is required to register under this part; ~~and~~

4 (G) the offender's employer address;

5 (H) the offender's post-secondary school address; and

6 ~~(G)~~(I) any conditions imposed by the court upon the offender for the safety of the public; and

7 (iv) if ~~an~~ a sexual offender was given a level 3 designation under 46-23-509, the department of
8 justice and the registration agency shall give the victim and the public notification that includes the information
9 contained in subsection (1)(b)(iii). The notification must also include the date of the offender's release from
10 confinement or, if not confined, the date the offender was sentenced, with a notation that the offender was not
11 confined, and must include the community in which the offense occurred.

12 (c) prior to release of information under subsection (1)(b), a registration agency may, in its sole
13 discretion, request an in camera review by a district court of the determination by the registration agency under
14 subsection (1)(b). The court shall review a request under this subsection (1)(c) and shall, as soon as possible,
15 render its opinion so that release of the information is not delayed beyond release of the offender from
16 confinement.

17 (2) The identity of a victim of an offense for which registration is required under this part may not
18 be released by a registration agency without the permission of the victim.

19 (3) Dissemination to the public of information allowed or required by this section may be done by
20 newspaper, paper flyers, the internet, or any other media determined by the disseminating entity. In determining
21 the method of dissemination, the disseminating entity should consider the level of risk posed by the offender to
22 the public.

23 (4) The department of justice shall develop a model community notification policy to assist
24 registration agencies in implementing the dissemination provisions of this section."

25

26 **Section 6.** Section 46-23-509, MCA, is amended to read:

27 **"46-23-509. Psychosexual evaluations and sexual offender designations.** (1) Prior to sentencing

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1 of a person convicted of a sexual offense, a sexual offender evaluator who has a license endorsement as
2 provided for in 37-1-139 shall provide the court with a psychosexual evaluation report recommending one of the
3 following levels of designation for the offender:

4 (a) level 1, the risk of a repeat sexual offense is low;

5 (b) level 2, the risk of a repeat sexual offense is moderate;

6 (c) level 3, the risk of a repeat sexual offense is high, there is a threat to public safety, and the

7 sexual offender evaluator believes that the offender is a sexually violent predator.

8 (2) Upon sentencing the offender, the court shall:

9 (a) review the psychosexual evaluation report, any statement by a victim, and any statement by
10 the offender;

11 (b) designate the offender as level 1, 2, or 3; and

12 (c) designate a level 3 offender as a sexually violent predator.

13 (3) An offender designated as a level 2 offender or given a level designation by another state, the
14 federal government, or the department under subsection (5) that is determined by the court to be similar to level
15 2 may petition the sentencing court or the district court for the judicial district in which the offender resides to
16 change the offender's designation if the offender has enrolled in and successfully completed the treatment
17 phase of either the prison's sexual offender treatment program or of an equivalent program approved by the
18 department. After considering the petition, the court may change the offender's risk level designation if the court
19 finds by clear and convincing evidence that the offender's risk of committing a repeat sexual offense has
20 changed since the time sentence was imposed. The court shall impose one of the three risk levels specified in
21 this section.

22 (4) If, at the time of sentencing, the sentencing judge did not apply a level designation to a sexual
23 offender who is required to register under this part and who was sentenced prior to October 1, 1997, the
24 department shall designate the offender as level 1, 2, or 3 when the offender is released from confinement.

25 (5) If an offense is covered by ~~46-23-502(9)(b)~~ 46-23-502(10)(q), the offender registers under 46-
26 23-504(1)(c), and the offender was given a risk level designation after conviction by another state or the federal
27 government, the department of justice may give the offender the risk level designation assigned by the other

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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

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1 PASSED AND APPROVED, THEN THE SECTION IN SENATE BILL NO. 345 THAT AMENDS 46-23-502 IS VOID AND [SECTION 1

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

3 46-23-502(10)(A) INCLUDES THE FOLLOWING OFFENSE:

4 45-8-218, DEVIATE SEXUAL CONDUCT.

5 - END -

AMENDED