

**Amendment - 1st Reading-white - Requested by: Mark Noland - (S) Public Health, Welfare and Safety**

- 2023

68th Legislature 2023

Drafter: Casey Pallister, (406) 444-3067

SB0345.001.001

1 SENATE BILL NO. 345

2 INTRODUCED BY M. NOLAND

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO SEXUAL OFFENDERS;  
5 REDEFINING DEVIATE SEXUAL RELATIONS TO INCLUDE SEXUAL INTERCOURSE WITH DEAD HUMAN  
6 BODIES; PROHIBITING DEVIATE SEXUAL CONDUCT WITH DEAD HUMAN BODIES; ~~PROVIDING THAT~~  
7 ~~THE NAME AND ADDRESS OF CERTAIN LEVEL 1 SEXUAL OFFENDERS ARE AVAILABLE TO VICTIMS~~  
8 ~~BUT ARE NO LONGER PUBLISHED AND AVAILABLE TO THE PUBLIC; PROVIDING THAT LEVEL 1~~  
9 ~~SEXUAL OFFENDERS ARE STILL REQUIRED TO REGISTER ON THE SEXUAL AND VIOLENT OFFENDER~~  
10 ~~REGISTRY;~~ REVISING DEFINITIONS; AND AMENDING SECTIONS 40-4-219, 45-2-101, AND 46-23-502,  
11 ~~AND 46-23-508~~, MCA."

12  
13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

14  
15 **Section 1.** Section 40-4-219, MCA, is amended to read:  
16 **"40-4-219. Amendment of parenting plan -- mediation.** (1) The court may in its discretion amend a  
17 prior parenting plan if it finds, upon the basis of facts that have arisen since the prior plan or that were unknown  
18 to the court at the time of entry of the prior plan, that a change has occurred in the circumstances of the child  
19 and that the amendment is necessary to serve the best interest of the child.

20 (a) In determining how a proposed change will affect the child, the court shall consider the  
21 potential impact of the change on the criteria in 40-4-212 and whether:

- 22 (i) the parents agree to the amendment;
- 23 (ii) the child has been integrated into the family of the petitioner with consent of the parents;
- 24 (iii) the child is 14 years of age or older and desires the amendment; or
- 25 (iv) one parent has willfully and consistently:
- 26 (A) refused to allow the child to have any contact with the other parent; or
- 27 (B) attempted to frustrate or deny contact with the child by the other parent.

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1           (77)   (a) "Value" means the market value of the property at the time and place of the crime or, if the  
2 market value cannot be satisfactorily ascertained, the cost of the replacement of the property within a  
3 reasonable time after the crime. If the offender appropriates a portion of the value of the property, the value  
4 must be determined as follows:

5           (i)     The value of an instrument constituting an evidence of debt, such as a check, draft, or  
6 promissory note, is considered the amount due or collectible. The figure is ordinarily the face amount of the  
7 indebtedness less any portion of the indebtedness that has been satisfied.

8           (ii)    The value of any other instrument that creates, releases, discharges, or otherwise affects any  
9 valuable legal right, privilege, or obligation is considered the amount of economic loss that the owner of the  
10 instrument might reasonably suffer by virtue of the loss of the instrument.

11          (iii)   The value of electronic impulses, electronically produced data or information, computer  
12 software or programs, or any other tangible or intangible item relating to a computer, computer system, or  
13 computer network is considered to be the amount of economic loss that the owner of the item might reasonably  
14 suffer by virtue of the loss of the item. The determination of the amount of economic loss includes but is not  
15 limited to consideration of the value of the owner's right to exclusive use or disposition of the item.

16          (b)     When it cannot be determined if the value of the property is more or less than \$1,500 by the  
17 standards set forth in subsection (77)(a), its value is considered to be an amount less than \$1,500.

18          (c)     Amounts involved in thefts committed pursuant to a common scheme or the same transaction,  
19 whether from the same person or several persons, may be aggregated in determining the value of the property.

20          (78)    "Vehicle" means a device for transportation by land, water, or air or by mobile equipment, with  
21 provision for transport of an operator.

22          (79)    "Weapon" means an instrument, article, or substance that, regardless of its primary function, is  
23 readily capable of being used to produce death or serious bodily injury.

24          (80)    "Witness" means a person whose testimony is desired in an official proceeding, in any  
25 investigation by a grand jury, or in a criminal action, prosecution, or proceeding."

26

27           **Section 3.** Section 46-23-502, MCA, is amended to read:

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1           **"46-23-502. Definitions.** As used in 46-18-255 and this part, the following definitions apply:

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

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

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

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

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

11          (6)       "Registration agency" means:

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

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

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

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

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

21          (9)       "Sexual offense" means:

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

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1 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)  
2 (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  
3 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  
4 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,  
5 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 45-8-218-if the  
6 deviate sexual conduct involves a dead human body; or

7 (b) any violation of a law of another state, a tribal government, or the federal government that is  
8 reasonably equivalent to a violation listed in subsection (9)(a) or for which the offender was required to register  
9 as a sexual offender after an adjudication or conviction.

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

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

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

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

18 (12) "Transient" means an offender who has no residence.

19 (13) "Violent offense" means:

20 (a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-102, 45-5-  
21 103, 45-5-202, 45-5-206 (third or subsequent offense), 45-5-210(1)(b), (1)(c), or (1)(d), 45-5-212, 45-5-213, 45-  
22 5-215, 45-5-302 (if the victim is not a minor), 45-5-303 (if the victim is not a minor), 45-5-401, 45-6-103, or 45-9-  
23 132; or

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

26

27 **Section 4. 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 sexual offender must be available to the victim in the conviction that~~  
4 ~~caused the offender to be required to register. In the case of multiple victims or multiple convictions requiring~~  
5 ~~registration regarding the same offender, all victims of the offender are entitled to the offender's name and~~  
6 ~~address.~~  
7           ~~(a)(b) (i) the name and address of a registered sexual or violent offender are is public criminal justice~~  
8 ~~information, as defined in 44-5-103; and~~  
9           ~~(ii) the name and address of a certain registered level 1 sexual offender as provided in subsection~~  
10 ~~(1)(c)(ii) and a registered level 2 or 3 sexual offender are public criminal justice information as defined in 44-5-~~  
11 ~~103; and~~  
12           ~~(b)(c) the department of justice or the registration agency shall release any offender registration~~  
13 ~~information that it possesses relevant to the public if the department of justice or the registration agency~~  
14 ~~determines that a registered offender is a risk to the safety of the community and that disclosure of the~~  
15 ~~registration information that it possesses may protect the public and, at a minimum:~~  
16           ~~(i) if the offender is also a violent offender, the department of justice shall and the registration~~  
17 ~~agency may disseminate to the victim and the public:~~  
18           ~~(A) the offender's name; and~~  
19           ~~(B) the offenses for which the offender is required to register under this part;~~  
20           ~~(ii) if an offender was given a level 1 designation under 46-23-509, the department of justice shall and~~  
21 ~~the registration agency may disseminate to the victim and the public:~~  
22           ~~(A) the offender's address;~~  
23           ~~(B) the name, photograph, and physical description of the offender;~~  
24           ~~(C) the offender's date of birth; and~~  
25           ~~(D) the offenses for which the offender is required to register under this part;~~  
26           ~~(iii)(ii) if an offender was given a level 1 designation and committed an offense against a minor or was~~  
27 ~~given a level 2 designation under 46-23-509, the department of justice shall and the registration agency may~~

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1 ~~disseminate to the victim and the public:~~

2 ~~(A) — the offender's address;~~

3 ~~(B) — the type of victim targeted by the offense;~~

4 ~~(C) — the name, photograph, and physical description of the offender;~~

5 ~~(D) — the offender's date of birth;~~

6 ~~(E) — the license plate number and a description of any motor vehicle owned or operated by the~~

7 ~~offender;~~

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

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

10 ~~(iv)(iii) — if an offender was given a level 3 designation under 46-23-509, the department of justice and~~

11 ~~the registration agency shall give the victim and the public notification that includes the information contained in~~

12 ~~subsection (1)(b)(iii) (1)(c)(ii). The notification must also include the date of the offender's release from~~

13 ~~confinement or, if not confined, the date the offender was sentenced, with a notation that the offender was not~~

14 ~~confined, and must include the community in which the offense occurred.~~

15 ~~(c)(d) — prior to release of information under subsection (1)(b) (1)(c), a registration agency may, in its~~

16 ~~sole discretion, request an in camera review by a district court of the determination by the registration agency~~

17 ~~under subsection (1)(b) (1)(c). The court shall review a request under this subsection (1)(c) (1)(d) and shall, as~~

18 ~~soon as possible, render its opinion so that release of the information is not delayed beyond release of the~~

19 ~~offender from confinement.~~

20 ~~(2) — The identity of a victim of an offense for which registration is required under this part may not~~

21 ~~be released by a registration agency without the permission of the victim.~~

22 ~~(3) — Dissemination to the public of information allowed or required by this section may be done by~~

23 ~~newspaper, paper flyers, the internet, or any other media determined by the disseminating entity. In determining~~

24 ~~the method of dissemination, the disseminating entity should consider the level of risk posed by the offender to~~

25 ~~the public.~~

26 ~~(4) — The department of justice shall develop a model community notification policy to assist~~

27 ~~registration agencies in implementing the dissemination provisions of this section."~~