

SENATE BILL NO. 345

INTRODUCED BY M. NOLAND

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

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

Section 1. Section 40-4-219, MCA, is amended to read:

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

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

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

(b) If one parent has changed or intends to change the child's residence in a manner that

1 significantly affects the child's contact with the other parent, the court shall consider, in addition to all the criteria  
2 in 40-4-212 and subsection (1)(a):

- 3 (i) the feasibility of preserving the relationship between the nonrelocating parent and the child  
4 through suitable visitation arrangements, considering the logistics and financial circumstances of the parties;
- 5 (ii) the reasons of each parent for seeking or opposing the change of residence;
- 6 (iii) whether the parent seeking to change the child's residence has demonstrated a willingness to  
7 promote the relationship between the child and the nonrelocating parent; and
- 8 (iv) whether reasonable alternatives to the proposed change of residence are available to the  
9 parent seeking to relocate.

10 (2) A court may modify a de facto parenting arrangement in accordance with the factors set forth in  
11 40-4-212.

12 (3) The court shall presume a parent is not acting in the child's best interest if the parent does any  
13 of the acts specified in subsection (1)(a)(iv) or (8).

14 (4) The court may amend the prior parenting plan based on subsection (1)(b) to provide a new  
15 residential schedule for parental contact with the child and to apportion transportation costs between the  
16 parents.

17 (5) Attorney fees and costs must be assessed against a party seeking frivolous or repeated  
18 amendment if the court finds that the amendment action is vexatious and constitutes harassment.

19 (6) A parenting plan may be amended pursuant to 40-4-221 upon the death of one parent.

20 (7) As used in this section, "prior parenting plan" means a parenting determination contained in a  
21 judicial decree or order made in a parenting proceeding. In proceedings for amendment under this section, a  
22 proposed amended parenting plan must be filed and served with the motion for amendment and with the  
23 response to the motion for amendment. Preference must be given to carrying out the parenting plan.

24 (8) (a) If a parent or other person residing in that parent's household has been convicted of any of  
25 the crimes listed in subsection (8)(b), the other parent or any other person who has been granted rights to the  
26 child pursuant to court order may file an objection to the current parenting order with the court. The parent or  
27 other person having rights to the child pursuant to court order shall give notice to the other parent of the  
28 objection as provided by the Montana Rules of Civil Procedure, and the other parent has 21 days from the

1 notice to respond. If the parent who receives notice of objection fails to respond within 21 days, the parenting  
2 rights of that parent are suspended until further order of the court. If that parent responds and objects, a hearing  
3 must be held within 30 days of the response.

4 (b) This subsection (8) applies to the following crimes:

5 (i) deliberate homicide, as described in 45-5-102;

6 (ii) mitigated deliberate homicide, as described in 45-5-103;

7 (iii) sexual assault, as described in 45-5-502;

8 (iv) sexual intercourse without consent, as described in 45-5-503;

9 (v) deviate sexual conduct with an animal or dead human body, as described in 45-2-101 and  
10 prohibited under 45-8-218;

11 (vi) incest, as described in 45-5-507;

12 (vii) aggravated promotion of prostitution of a child, as described in 45-5-603(1)(b);

13 (viii) endangering the welfare of children, as described in 45-5-622;

14 (ix) partner or family member assault of the type described in 45-5-206(1)(a);

15 (x) sexual abuse of children, as described in 45-5-625; and

16 (xi) strangulation of a partner or family member, as described in 45-5-215.

17 (9) Except in cases of physical, sexual, or emotional abuse or threat of physical, sexual, or  
18 emotional abuse by one parent against the other parent or the child or when a parent has been convicted of a  
19 crime enumerated in subsection (8)(b), the court may, in its discretion, order the parties to participate in a  
20 dispute resolution process to assist in resolving any conflicts between the parties regarding amendment of the  
21 parenting plan. The dispute resolution process may include counseling or mediation by a specified person or  
22 agency, and court action.

23 (10) (a) Except as provided in subsection (10)(b), a court-ordered or de facto modification of a  
24 parenting plan based in whole or in part on military service orders of a parent is temporary and reverts to the  
25 previous parenting plan at the end of the military service. If a motion for an amendment of a parenting plan is  
26 filed after a parent returns from military service, the court may not consider a parent's absence due to that  
27 military service in its determination of the best interest of the child.

28 (b) A parent who has performed or is performing military service, as defined in 10-1-1003, may

1 consent to a temporary or permanent modification of a parenting plan:

2 (i) for the duration of the military service; or

3 (ii) that continues past the end of the military service."

4

5 **Section 2.** Section 45-2-101, MCA, is amended to read:

6 **"45-2-101. General definitions.** Unless otherwise specified in the statute, all words must be taken in  
7 the objective standard rather than in the subjective, and unless a different meaning plainly is required, the  
8 following definitions apply in this title:

9 (1) "Acts" has its usual and ordinary meaning and includes any bodily movement, any form of  
10 communication, and when relevant, a failure or omission to take action.

11 (2) "Administrative proceeding" means a proceeding the outcome of which is required to be based  
12 on a record or documentation prescribed by law or in which a law or a regulation is particularized in its  
13 application to an individual.

14 (3) "Another" means a person or persons other than the offender.

15 (4) (a) "Benefit" means gain or advantage or anything regarded by the beneficiary as gain or  
16 advantage, including benefit to another person or entity in whose welfare the beneficiary is interested.

17 (b) Benefit does not include an advantage promised generally to a group or class of voters as a  
18 consequence of public measures that a candidate engages to support or oppose.

19 (5) "Bodily injury" means physical pain, illness, or an impairment of physical condition and includes  
20 mental illness or impairment.

21 (6) "Child" or "children" means any individual or individuals under 18 years of age, unless a  
22 different age is specified.

23 (7) "Cohabit" means to live together under the representation of being married.

24 (8) "Common scheme" means a series of acts or omissions resulting in a pecuniary loss to the  
25 victim of at least \$1,500, or \$1,500 in value, motivated by a purpose to accomplish a single criminal objective or  
26 by a common purpose or plan that results in the repeated commission of the same offense or that affects the  
27 same person or the same persons or the property of the same person or persons.

28 (9) "Computer" means an electronic device that performs logical, arithmetic, and memory functions

1 by the manipulation of electronic or magnetic impulses and includes all input, output, processing, storage,  
2 software, or communication facilities that are connected or related to that device in a system or network.

3 (10) "Computer network" means the interconnection of communication systems between computers  
4 or computers and remote terminals.

5 (11) "Computer program" means an instruction or statement or a series of instructions or  
6 statements, in a form acceptable to a computer, that in actual or modified form permits the functioning of a  
7 computer or computer system and causes it to perform specified functions.

8 (12) "Computer services" include but are not limited to computer time, data processing, and storage  
9 functions.

10 (13) "Computer software" means a set of computer programs, procedures, and associated  
11 documentation concerned with the operation of a computer system.

12 (14) "Computer system" means a set of related, connected, or unconnected devices, computer  
13 software, or other related computer equipment.

14 (15) "Conduct" means an act or series of acts and the accompanying mental state.

15 (16) "Conviction" means a judgment of conviction and sentence entered upon a plea of guilty or  
16 nolo contendere or upon a verdict or finding of guilty of an offense rendered by a legally constituted jury or by a  
17 court of competent jurisdiction authorized to try the case without a jury.

18 (17) "Correctional institution" means a state prison, detention center, multijurisdictional detention  
19 center, private detention center, regional correctional facility, private correctional facility, or other institution for  
20 the incarceration of inmates under sentence for offenses or the custody of individuals awaiting trial or sentence  
21 for offenses.

22 (18) "Deception" means knowingly to:

23 (a) create or confirm in another an impression that is false and that the offender does not believe  
24 to be true;

25 (b) fail to correct a false impression that the offender previously has created or confirmed;

26 (c) prevent another from acquiring information pertinent to the disposition of the property involved;

27 (d) sell or otherwise transfer or encumber property without disclosing a lien, adverse claim, or  
28 other legal impediment to the enjoyment of the property, whether the impediment is or is not of value or is or is

1 not a matter of official record; or

2 (e) promise performance that the offender does not intend to perform or knows will not be  
3 performed. Failure to perform, standing alone, is not evidence that the offender did not intend to perform.

4 (19) "Defamatory matter" means anything that exposes a person or a group, class, or association to  
5 hatred, contempt, ridicule, degradation, or disgrace in society or to injury to the person's or its business or  
6 occupation.

7 (20) "Deprive" means:

8 (a) to withhold property of another:

9 (i) permanently;

10 (ii) for such a period as to appropriate a portion of its value; or

11 (iii) with the purpose to restore it only upon payment of reward or other compensation; or

12 (b) to dispose of the property of another and use or deal with the property so as to make it unlikely  
13 that the owner will recover it.

14 (21) "Deviate sexual relations" means any form of sexual intercourse with an animal or dead human  
15 body.

16 (22) "Document" means, with respect to offenses involving the medicaid program, any application,  
17 claim, form, report, record, writing, or correspondence, whether in written, electronic, magnetic, microfilm, or  
18 other form.

19 (23) "Felony" means an offense in which the sentence imposed upon conviction is death or  
20 imprisonment in a state prison for a term exceeding 1 year.

21 (24) "Forcible felony" means a felony that involves the use or threat of physical force or violence  
22 against any individual.

23 (25) A "frisk" is a search by an external patting of a person's clothing.

24 (26) "Government" includes a branch, subdivision, or agency of the government of the state or a  
25 locality within it.

26 (27) "Harm" means loss, disadvantage, or injury or anything so regarded by the person affected,  
27 including loss, disadvantage, or injury to a person or entity in whose welfare the affected person is interested.

28 (28) A "house of prostitution" means a place where prostitution or promotion of prostitution is

1 regularly carried on by one or more persons under the control, management, or supervision of another.

2 (29) "Human being" means a person who has been born and is alive.

3 (30) An "illegal article" is an article or thing that is prohibited by statute, rule, or order from being in  
4 the possession of a person subject to official detention.

5 (31) "Inmate" means a person who is confined in a correctional institution.

6 (32) (a) "Intoxicating substance" means a controlled substance, as defined in Title 50, chapter 32,  
7 and an alcoholic beverage, including but not limited to a beverage containing 1/2 of 1% or more of alcohol by  
8 volume.

9 (b) Intoxicating substance does not include dealcoholized wine or a beverage or liquid produced  
10 by the process by which beer, ale, port, or wine is produced if it contains less than 1/2 of 1% of alcohol by  
11 volume.

12 (33) An "involuntary act" means an act that is:

13 (a) a reflex or convulsion;

14 (b) a bodily movement during unconsciousness or sleep;

15 (c) conduct during hypnosis or resulting from hypnotic suggestion; or

16 (d) a bodily movement that otherwise is not a product of the effort or determination of the actor,  
17 either conscious or habitual.

18 (34) "Juror" means a person who is a member of a jury, including a grand jury, impaneled by a court  
19 in this state in an action or proceeding or by an officer authorized by law to impanel a jury in an action or  
20 proceeding. The term "juror" also includes a person who has been drawn or summoned to attend as a  
21 prospective juror.

22 (35) "Knowingly"--a person acts knowingly with respect to conduct or to a circumstance described  
23 by a statute defining an offense when the person is aware of the person's own conduct or that the circumstance  
24 exists. A person acts knowingly with respect to the result of conduct described by a statute defining an offense  
25 when the person is aware that it is highly probable that the result will be caused by the person's conduct. When  
26 knowledge of the existence of a particular fact is an element of an offense, knowledge is established if a person  
27 is aware of a high probability of its existence. Equivalent terms, such as "knowing" or "with knowledge", have  
28 the same meaning.

1 (36) "Medicaid" means the Montana medical assistance program provided for in Title 53, chapter 6.

2 (37) "Medicaid agency" has the meaning in 53-6-155.

3 (38) "Medicaid benefit" means the provision of anything of pecuniary value to or on behalf of a  
4 recipient under the medicaid program.

5 (39) (a) "Medicaid claim" means a communication, whether in oral, written, electronic, magnetic, or  
6 other form:

7 (i) that is used to claim specific services or items as payable or reimbursable under the medicaid  
8 program; or

9 (ii) that states income, expense, or other information that is or may be used to determine  
10 entitlement to or the rate of payment under the medicaid program.

11 (b) The term includes related documents submitted as a part of or in support of the claim.

12 (40) "Mentally disordered" means that a person suffers from a mental disease or disorder that  
13 renders the person incapable of appreciating the nature of the person's own conduct.

14 (41) "Mentally incapacitated" means that a person is rendered temporarily incapable of appreciating  
15 or controlling the person's own conduct as a result of the influence of an intoxicating substance.

16 (42) "Misdemeanor" means an offense for which the sentence imposed upon conviction is  
17 imprisonment in the county jail for a term or a fine, or both, or for which the sentence imposed is imprisonment  
18 in a state prison for a term of 1 year or less.

19 (43) "Negligently"--a person acts negligently with respect to a result or to a circumstance described  
20 by a statute defining an offense when the person consciously disregards a risk that the result will occur or that  
21 the circumstance exists or when the person disregards a risk of which the person should be aware that the  
22 result will occur or that the circumstance exists. The risk must be of a nature and degree that to disregard it  
23 involves a gross deviation from the standard of conduct that a reasonable person would observe in the actor's  
24 situation. "Gross deviation" means a deviation that is considerably greater than lack of ordinary care. Relevant  
25 terms, such as "negligent" and "with negligence", have the same meaning.

26 (44) "Nolo contendere" means a plea in which the defendant does not contest the charge or  
27 charges against the defendant and neither admits nor denies the charge or charges.

28 (45) "Obtain" means:



1 (a) in relation to property, to bring about a transfer of interest or possession, whether to the  
2 offender or to another; and

3 (b) in relation to labor or services, to secure the performance of the labor or service.

4 (46) "Obtains or exerts control" includes but is not limited to the taking, the carrying away, or the  
5 sale, conveyance, or transfer of title to, interest in, or possession of property.

6 (47) "Occupied structure" means any building, vehicle, or other place suitable for human occupancy  
7 or night lodging of persons or for carrying on business, whether or not a person is actually present, including  
8 any outbuilding that is immediately adjacent to or in close proximity to an occupied structure and that is  
9 habitually used for personal use or employment. Each unit of a building consisting of two or more units  
10 separately secured or occupied is a separate occupied structure.

11 (48) "Offender" means a person who has been or is liable to be arrested, charged, convicted, or  
12 punished for a public offense.

13 (49) "Offense" means a crime for which a sentence of death or of imprisonment or a fine is  
14 authorized. Offenses are classified as felonies or misdemeanors.

15 (50) (a) "Official detention" means imprisonment resulting from a conviction for an offense,  
16 confinement for an offense, confinement of a person charged with an offense, detention by a peace officer  
17 pursuant to arrest, detention for extradition or deportation, or lawful detention for the purpose of the protection  
18 of the welfare of the person detained or for the protection of society.

19 (b) Official detention does not include supervision of probation or parole, constraint incidental to  
20 release on bail, or an unlawful arrest unless the person arrested employed physical force, a threat of physical  
21 force, or a weapon to escape.

22 (51) "Official proceeding" means a proceeding heard or that may be heard before a legislative, a  
23 judicial, an administrative, or another governmental agency or official authorized to take evidence under oath,  
24 including any referee, hearings examiner, commissioner, notary, or other person taking testimony or deposition  
25 in connection with the proceeding.

26 (52) "Other state" means a state or territory of the United States, the District of Columbia, and the  
27 Commonwealth of Puerto Rico.

28 (53) "Owner" means a person other than the offender who has possession of or other interest in the

1 property involved, even though the interest or possession is unlawful, and without whose consent the offender  
2 has no authority to exert control over the property.

3 (54) "Party official" means a person who holds an elective or appointive post in a political party in  
4 the United States by virtue of which the person directs or conducts or participates in directing or conducting  
5 party affairs at any level of responsibility.

6 (55) "Peace officer" means a person who by virtue of the person's office or public employment is  
7 vested by law with a duty to maintain public order or to make arrests for offenses while acting within the scope  
8 of the person's authority.

9 (56) "Pecuniary benefit" is benefit in the form of money, property, commercial interests, or anything  
10 else the primary significance of which is economic gain.

11 (57) "Person" includes an individual, business association, partnership, corporation, government, or  
12 other legal entity and an individual acting or purporting to act for or on behalf of a government or subdivision of  
13 government.

14 (58) "Physically helpless" means that a person is unconscious or is otherwise physically unable to  
15 communicate unwillingness to act.

16 (59) "Possession" is the knowing control of anything for a sufficient time to be able to terminate  
17 control.

18 (60) "Premises" includes any type of structure or building and real property.

19 (61) "Property" means a tangible or intangible thing of value. Property includes but is not limited to:

20 (a) real estate;

21 (b) money;

22 (c) commercial instruments;

23 (d) admission or transportation tickets;

24 (e) written instruments that represent or embody rights concerning anything of value, including  
25 labor or services, or that are otherwise of value to the owner;

26 (f) things growing on, affixed to, or found on land and things that are part of or affixed to a  
27 building;

28 (g) electricity, gas, and water;

1 (h) birds, animals, and fish that ordinarily are kept in a state of confinement;

2 (i) food and drink, samples, cultures, microorganisms, specimens, records, recordings,  
3 documents, blueprints, drawings, maps, and whole or partial copies, descriptions, photographs, prototypes, or  
4 models thereof;

5 (j) other articles, materials, devices, substances, and whole or partial copies, descriptions,  
6 photographs, prototypes, or models thereof that constitute, represent, evidence, reflect, or record secret  
7 scientific, technical, merchandising, production, or management information or a secret designed process,  
8 procedure, formula, invention, or improvement; and

9 (k) electronic impulses, electronically processed or produced data or information, commercial  
10 instruments, computer software or computer programs, in either machine- or human-readable form, computer  
11 services, any other tangible or intangible item of value relating to a computer, computer system, or computer  
12 network, and copies thereof.

13 (62) "Property of another" means real or personal property in which a person other than the offender  
14 has an interest that the offender has no authority to defeat or impair, even though the offender may have an  
15 interest in the property.

16 (63) "Public place" means a place to which the public or a substantial group has access.

17 (64) (a) "Public servant" means an officer or employee of government, including but not limited to  
18 legislators, judges, and firefighters, and a person participating as a juror, adviser, consultant, administrator,  
19 executor, guardian, or court-appointed fiduciary. The term "public servant" includes one who has been elected  
20 or designated to become a public servant.

21 (b) The term does not include witnesses.

22 (65) "Purposely"--a person acts purposely with respect to a result or to conduct described by a  
23 statute defining an offense if it is the person's conscious object to engage in that conduct or to cause that result.  
24 When a particular purpose is an element of an offense, the element is established although the purpose is  
25 conditional, unless the condition negatives the harm or evil sought to be prevented by the law defining the  
26 offense. Equivalent terms, such as "purpose" and "with the purpose", have the same meaning.

27 (66) (a) "Serious bodily injury" means bodily injury that:

28 (i) creates a substantial risk of death;

1 (ii) causes serious permanent disfigurement or protracted loss or impairment of the function or  
2 process of a bodily member or organ; or

3 (iii) at the time of injury, can reasonably be expected to result in serious permanent disfigurement  
4 or protracted loss or impairment of the function or process of a bodily member or organ.

5 (b) The term includes serious mental illness or impairment.

6 (67) "Sexual contact" means touching of the sexual or other intimate parts of the person of another,  
7 directly or through clothing, in order to knowingly or purposely:

8 (a) cause bodily injury to or humiliate, harass, or degrade another; or

9 (b) arouse or gratify the sexual response or desire of either party.

10 (68) (a) "Sexual intercourse" means penetration of the vulva, anus, or mouth of one person by the  
11 penis of another person, penetration of the vulva or anus of one person by a body member of another person,  
12 or penetration of the vulva or anus of one person by a foreign instrument or object manipulated by another  
13 person to knowingly or purposely:

14 (i) cause bodily injury or humiliate, harass, or degrade; or

15 (ii) arouse or gratify the sexual response or desire of either party.

16 (b) For purposes of subsection (68)(a), any penetration, however slight, is sufficient.

17 (69) "Solicit" or "solicitation" means to command, authorize, urge, incite, request, or advise another  
18 to commit an offense.

19 (70) "State" or "this state" means the state of Montana, all the land and water in respect to which the  
20 state of Montana has either exclusive or concurrent jurisdiction, and the air space above the land and water.

21 (71) "Statute" means an act of the legislature of this state.

22 (72) "Stolen property" means property over which control has been obtained by theft.

23 (73) A "stop" is the temporary detention of a person that results when a peace officer orders the  
24 person to remain in the peace officer's presence.

25 (74) "Tamper" means to interfere with something improperly, meddle with it, make unwarranted  
26 alterations in its existing condition, or deposit refuse upon it.

27 (75) "Telephone" means any type of telephone, including but not limited to a corded, uncorded,  
28 cellular, or satellite telephone.

- 1           (76) "Threat" means a menace, however communicated, to:
- 2           (a) inflict physical harm on the person threatened or any other person or on property;
- 3           (b) subject any person to physical confinement or restraint;
- 4           (c) commit a criminal offense;
- 5           (d) accuse a person of a criminal offense;
- 6           (e) expose a person to hatred, contempt, or ridicule;
- 7           (f) harm the credit or business repute of a person;
- 8           (g) reveal information sought to be concealed by the person threatened;
- 9           (h) take action as an official against anyone or anything, withhold official action, or cause the
- 10 action or withholding;
- 11           (i) bring about or continue a strike, boycott, or other similar collective action if the person making
- 12 the threat demands or receives property that is not for the benefit of groups that the person purports to
- 13 represent; or
- 14           (j) testify or provide information or withhold testimony or information with respect to another's legal
- 15 claim or defense.
- 16           (77) (a) "Value" means the market value of the property at the time and place of the crime or, if the
- 17 market value cannot be satisfactorily ascertained, the cost of the replacement of the property within a
- 18 reasonable time after the crime. If the offender appropriates a portion of the value of the property, the value
- 19 must be determined as follows:
- 20           (i) The value of an instrument constituting an evidence of debt, such as a check, draft, or
- 21 promissory note, is considered the amount due or collectible. The figure is ordinarily the face amount of the
- 22 indebtedness less any portion of the indebtedness that has been satisfied.
- 23           (ii) The value of any other instrument that creates, releases, discharges, or otherwise affects any
- 24 valuable legal right, privilege, or obligation is considered the amount of economic loss that the owner of the
- 25 instrument might reasonably suffer by virtue of the loss of the instrument.
- 26           (iii) The value of electronic impulses, electronically produced data or information, computer
- 27 software or programs, or any other tangible or intangible item relating to a computer, computer system, or
- 28 computer network is considered to be the amount of economic loss that the owner of the item might reasonably

1 suffer by virtue of the loss of the item. The determination of the amount of economic loss includes but is not  
2 limited to consideration of the value of the owner's right to exclusive use or disposition of the item.

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

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

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

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

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

13

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

15 **"46-23-502. Definitions.** As used in 46-18-255 and this part, the following definitions apply:

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

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

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

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

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

25 (6) "Registration agency" means:

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

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

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

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

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

7           (9)     "Sexual offense" means:

8           (a)     any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-301 (if the  
9 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  
10 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  
11 of age and the offender is not a parent of the victim), 45-5-502 (if the offender is a professional licensed under  
12 Title 37 and commits the offense during any treatment, consultation, interview, or evaluation of a person's  
13 physical or mental condition, ailment, disease, or injury), 45-5-502(3) (if the victim is less than 16 years of age  
14 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)  
15 (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  
16 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  
17 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,  
18 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  
19 deviate sexual conduct involves a dead human body; or

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

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

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

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

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

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

4 (13) "Violent offense" means:

5 (a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-102, 45-5-  
6 103, 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-  
7 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-  
8 132; or

9 (b) any violation of a law of another state, a tribal government, or the federal government  
10 reasonably equivalent to a violation listed in subsection (13)(a)."  
11

12 **Section 4.** Section 46-23-508, MCA, is amended to read:

13 **"46-23-508. Dissemination of information.** (1) Information maintained under this part is confidential  
14 criminal justice information, as defined in 44-5-103, except that:

15 (a) the name and address of a sexual offender must be available to the victim in the conviction that  
16 caused the offender to be required to register. In the case of multiple victims or multiple convictions requiring  
17 registration regarding the same offender, all victims of the offender are entitled to the offender's name and  
18 address.

19 ~~(a)~~(b) (i) the name and address of a registered ~~sexual or violent offender~~ are is public criminal justice  
20 information, as defined in 44-5-103; and

21 (ii) the name and address of a certain registered level 1 sexual offender as provided in subsection  
22 (1)(c)(ii) and a registered level 2 or 3 sexual offender are public criminal justice information as defined in 44-5-  
23 103; and

24 ~~(b)~~(c) the department of justice or the registration agency shall release any offender registration  
25 information that it possesses relevant to the public if the department of justice or the registration agency  
26 determines that a registered offender is a risk to the safety of the community and that disclosure of the  
27 registration information that it possesses may protect the public and, at a minimum:

28 (i) if the offender is also a violent offender, the department of justice shall and the registration



1 agency may disseminate to the victim and the public:

2 (A) the offender's name; and

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

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

6 ~~(A) the offender's address;~~

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

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

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

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

13 (A) the offender's address;

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

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

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

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

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

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

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

26 ~~(e)~~(d) prior to release of information under subsection ~~(4)(b)~~ (1)(c), a registration agency may, in its  
27 sole discretion, request an in camera review by a district court of the determination by the registration agency  
28 under subsection ~~(4)(b)~~ (1)(c). The court shall review a request under this subsection ~~(4)(e)-(1)(d)~~ and shall, as

1 soon as possible, render its opinion so that release of the information is not delayed beyond release of the  
2 offender from confinement.

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

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

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

11 - END -