

SENATE BILL NO. 17

INTRODUCED BY C. CHRISTIAENS, SHOCKLEY, BOHLINGER, E. CLARK, JERGESON
BY REQUEST OF THE DEPARTMENT OF JUSTICE

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING SEX OFFENDER LAWS TO CONFORM TO FEDERAL LAW; REVISING THE DEFINITIONS OF "SEXUAL OFFENSE" AND "VIOLENT OFFENSE"; REVISING THE CONDITIONS FOR REGISTRATION BASED UPON DURATION OF TIME IN A COUNTY; PROVIDING THAT AN OFFENDER CONVICTED OF SEXUAL INTERCOURSE WITHOUT CONSENT AGAINST A VICTIM UNDER 12 YEARS OF AGE IS SUBJECT TO MANDATORY LIFETIME REGISTRATION; REMOVING SEXUALLY VIOLENT PREDATORS FROM THE CATEGORY OF OFFENDERS WHO MAY RECEIVE A RISK LEVEL CLASSIFICATION REDUCTION; AMENDING SECTIONS 46-12-204, 46-18-202, 46-18-256, 46-23-502, 46-23-504, 46-23-506, AND 46-23-509, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

SECTION 1. SECTION 46-12-204, MCA, IS AMENDED TO READ:

"46-12-204. Plea alternatives. (1) A defendant may plead guilty, not guilty, or, with the consent of the court and the prosecutor, nolo contendere. If a defendant refuses to plead or if a defendant corporation fails to appear, the court shall enter a plea of not guilty.

(2) The court may not accept a plea of guilty or nolo contendere without first determining that the plea is voluntary and not the result of force or threats or of promises apart from the plea agreement. The court shall also inquire as to whether the defendant's willingness to plead guilty or nolo contendere results from prior discussions between the prosecutor and the defendant or the defendant's attorney.

(3) With the approval of the court and the consent of the prosecutor, a defendant may enter a plea of guilty or nolo contendere, reserving the right, on appeal from the judgment, to review the adverse determination of any specified pretrial motion. If the defendant prevails on appeal, the defendant must be allowed to withdraw the plea.

(4) The court may not accept a plea of nolo contendere in a case involving a sexual offense, as defined in 46-23-502, except an offense under 45-5-301 through 45-5-303."

1

2 **SECTION 2. SECTION 46-18-202, MCA, IS AMENDED TO READ:**3 **"46-18-202. Additional restrictions on sentence.** (1) The sentencing judge may also impose any of
4 the following restrictions or conditions on the sentence provided for in 46-18-201 that the judge considers
5 necessary to obtain the objectives of rehabilitation and the protection of the victim and society:

6 (a) prohibition of the offender's holding public office;

7 (b) prohibition of the offender's owning or carrying a dangerous weapon;

8 (c) restrictions on the offender's freedom of association;

9 (d) restrictions on the offender's freedom of movement;

10 (e) a requirement that the defendant provide a biological sample for DNA testing for purposes of Title
11 44, chapter 6, part 1, if an agreement to do so is part of the plea bargain;12 (f) any other limitation reasonably related to the objectives of rehabilitation and the protection of the
13 victim and society.14 (2) Whenever the sentencing judge imposes a sentence of imprisonment in a state prison for a term
15 exceeding 1 year, the sentencing judge may also impose the restriction that the offender is ineligible for parole
16 and participation in the supervised release program while serving that term. If the restriction is to be imposed,
17 the sentencing judge shall state the reasons for it in writing. If the sentencing judge finds that the restriction is
18 necessary for the protection of society, the judge shall impose the restriction as part of the sentence and the
19 judgment must contain a statement of the reasons for the restriction.20 (3) An offender convicted of a sexual offense, as defined in 46-23-502, except an offense under
21 45-5-301 through 45-5-303, and sentenced to imprisonment in a state prison shall enroll in and complete the
22 educational phase of the prison's sexual offender program."
2324 **SECTION 3. SECTION 46-18-256, MCA, IS AMENDED TO READ:**25 **"46-18-256. Sexually transmitted disease testing -- test procedure.** (1) Following entry of judgment,
26 a person convicted of a sexual offense, as defined in 46-23-502, except an offense under 45-5-301 through
27 45-5-303, must, at the request of the victim of the sexual offense or the parent or guardian of the victim, if the
28 victim is a minor, be administered standard testing according to currently accepted protocol, using guidelines
29 established by the centers for disease control, U.S. department of health and human services, to detect in the
30 person the presence of antibodies indicative of the presence of human immunodeficiency virus (HIV) or other

1 sexually transmitted diseases, as defined in 50-18-101.

2 (2) Arrangements for the test required by subsection (1) must be made by the county attorney of the
3 county in which the person was convicted. The test must be conducted by a health care provider, as defined in
4 50-16-504.

5 (3) The county attorney of the county in which the person was convicted shall release the information
6 concerning the test results to:

- 7 (a) the convicted person; and
- 8 (b) the victim of the offense committed by the convicted person or to the parent or guardian of the victim
9 if the victim is a minor.

10 (4) At the request of the victim of a sexual offense or the parent or guardian of the victim if the victim
11 is a minor, the victim must be provided counseling regarding HIV disease, HIV testing (in accordance with
12 applicable law), and referral for appropriate health care and support services.

13 (5) For purposes of this section, "convicted" includes an adjudication, under the provisions of 41-5-1502,
14 finding a youth to be a delinquent youth or a youth in need of intervention.

15 (6) The provisions of the AIDS Prevention Act, Title 50, chapter 16, part 10, do not apply to this section."
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17 **Section 4.** Section 46-23-502, MCA, is amended to read:

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

- 19 (1) "Department" means the department of corrections provided for in 2-15-2301.
- 20 (2) "Mental abnormality" means a congenital or acquired condition that affects the mental, emotional,
21 or volitional capacity of a person in a manner that predisposes the person to the commission of one or more
22 sexual offenses to a degree that makes the person a menace to the health and safety of other persons.
- 23 (3) "Personality disorder" means a personality disorder as defined in the fourth edition of the Diagnostic
24 and Statistical Manual of Mental Disorders adopted by the American psychiatric association.
- 25 (4) "Predatory sexual offense" means a sexual offense committed against a stranger or against a
26 person with whom a relationship has been established or furthered for the primary purpose of victimization.
- 27 (5) "Sexual offender evaluator" means a person qualified under rules established by the department
28 to conduct sexual offender and sexually violent predator evaluations.
- 29 (6) "Sexual offense" means:
30 (a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-301 (if the victim

1 is less than 18 years of age and the offender is not a parent of the victim), 45-5-302, 45-5-303, 45-5-502(3),
 2 45-5-503, 45-5-504(1) (if the victim is under 18 years of age and the offender is 18 years of age or older),
 3 45-5-504(2)(c), 45-5-507 (if the victim is under 18 years of age and the offender is 3 or more years older than
 4 the victim), 45-5-603(1)(b), or 45-5-625; or

5 (b) any violation of a law of another state or the federal government reasonably equivalent to a violation
 6 listed in subsection (6)(a).

7 (7) "Sexual or violent offender" means a person who has been convicted of a sexual or violent offense.

8 (8) "Sexually violent predator" means a person who has been convicted of a sexual offense and who
 9 suffers from a mental abnormality or a personality disorder that makes the person likely to engage in predatory
 10 sexual offenses.

11 (9) "Violent offense" means:

12 (a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-102, 45-5-103,
 13 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, ~~45-5-304~~
 14 ~~(if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-302, 45-5-303,~~
 15 45-5-401, ~~45-5-603(1)(b),~~ or 45-6-103; or

16 (b) any violation of a law of another state or the federal government reasonably equivalent to a violation
 17 listed in subsection (9)(a)."

18

19 **Section 5.** Section 46-23-504, MCA, is amended to read:

20 **"46-23-504. Persons required to register -- procedure.** (1) A sexual or violent offender:

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

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

25 (c) shall register within 10 days of entering a county of this state for the purpose of residing or setting
 26 up a temporary domicile for 10 days or more ~~if the offender was sentenced in another state~~ or for an aggregate
 27 period exceeding 30 days in a calendar year.

28 (2) Registration under subsection (1)(a) must be with the probation office having supervision over the
 29 offender. Registration under subsection (1)(c) must be with the chief of police of the municipality or the sheriff
 30 of the county if the offender resides in an area other than a municipality. Whichever person an offender registers

1 with under subsection (1)(c) shall notify the other person of the registration.

2 (3) At the time of registering, the offender shall sign a statement in writing giving the information
3 required by the department of justice. The chief of police or sheriff shall fingerprint the offender, unless the
4 offender's fingerprints are on file with the department of justice, and shall photograph the offender. Within 3 days,
5 the chief of police or sheriff shall send copies of the statement, fingerprints, and photographs to the department
6 of justice.

7 (4) The department of justice shall mail a registration verification form each 90 days to an offender
8 designated as a level 3 offender under 46-23-509 and each year to a violent offender or an offender designated
9 as a level 1 or level 2 offender under 46-23-509. The form must require the offender's current address and
10 notarized signature. Within 10 days after receipt of the form, the offender shall complete the form and return it
11 to the department.

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

16 (6) The clerk of the district court in the county in which a person is convicted of a sexual or violent
17 offense shall notify the sheriff in that county of the conviction within 10 days after entry of the judgment."
18

19 **Section 6.** Section 46-23-506, MCA, is amended to read:

20 **"46-23-506. Duration of registration.** (1) A sexual offender required to register under this part shall
21 register for the remainder of the offender's life, except as provided in subsection (3) or during a period of time
22 during which the offender is in prison.

23 (2) A violent offender required to register under this part shall register:

24 (a) for the 10 years following release from confinement or, if not confined following sentencing, for the
25 10 years following the conclusion of the sentencing hearing; or

26 (b) if convicted during the 10-year period provided in subsection (2)(a) of failing to register or keep
27 registration current or of a felony, for the remainder of the offender's life unless relieved of the duty to register
28 as provided in subsection (3).

29 (3) Except as provided in subsection (5), at any time after 10 years of registration, the offender may
30 petition the sentencing court or the district court for the judicial district in which the offender resides for an order

1 relieving the offender of the duty to register. The petition must be served on the county attorney in the county
2 where the petition is filed. Prior to a hearing on the petition, the county attorney shall mail a copy of the petition
3 to the victim of the last offense for which the offender was convicted if the victim's address is reasonably
4 available. The court shall consider any written or oral statements of the victim. The court may grant the petition
5 upon finding that:

6 (a) the offender has remained a law-abiding citizen; and

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

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

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

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

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

19 or

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

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

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

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

26 **Section 7.** Section 46-23-509, MCA, is amended to read:

27 **"46-23-509. Sexual offender evaluations and designations -- rulemaking authority.** (1) The
28 department shall adopt rules for the qualification of sexual offender evaluators who conduct sexual offender and
29 sexually violent predator evaluations and for determinations by sexual offender evaluators of the risk of a repeat
30 offense and the threat that an offender poses to the public safety.

1 (2) Prior to sentencing of a person convicted of a sexual offense, the department or a sexual offender
2 evaluator shall provide the court with a sexual offender evaluation report recommending one of the following
3 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 sexual
7 offender evaluator believes that the offender is a sexually violent predator.

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

9 (a) review the sexual offender evaluation report, any statement by a victim, and any statement by the
10 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 (4) An offender designated as a level 2 ~~or level 3~~ offender may petition the sentencing court to change
14 the offender's designation if the offender has enrolled in and successfully completed the treatment phase of
15 either the prison's sexual offender program or of an equivalent program approved by the department. After
16 considering the petition, the court may change the offender's risk level designation if the court finds by clear and
17 convincing evidence that the offender's risk of committing a repeat sexual offense has changed since the time
18 sentence was imposed. The court shall impose one of the three risk levels specified in this section.

19 (5) If, at the time of sentencing, the sentencing judge did not apply a level designation to a sexual
20 offender who is required to register under this part, the department shall designate the offender as level 1, 2,
21 or 3 when the offender is released from confinement."

22

23 NEW SECTION. Section 8. Effective date. [This act] is effective on passage and approval.

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25 NEW SECTION. Section 9. Applicability. [This act] applies to convictions on or after [the effective
26 date of this act].

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