

ORPA

Office of Research and
Policy Analysis

MONTANA LEGISLATIVE
SERVICES DIVISION

SJ 19 STUDY: OVERVIEW OF THE MONTANA SEXUAL OR VIOLENT OFFENDER REGISTRATION ACT

GENERAL INFORMATION

As requested by the 2019 Legislature in [Senate Joint Resolution 19](#), the Law and Justice Interim Committee (LJIC) is studying Montana's sexual and violent offender registries. This paper provides a summary of each registry to provide initial context for the LJIC's work on this study. The final section of the paper contains a list of topics the committee can or will cover at future meetings.

The Montana Sexual or Violent Offender Registration Act (SVORA or Act) is contained in Title 46, chapter 23, part 5, MCA. First created in 1989 as the Montana Sexual Offender Registration Act, the statutes were later amended in 1995 to include violent offenders. Since that time, the Act has included both types of offenders and has been amended frequently to adjust the crimes subject to registration, types of information available to the public, how the act of registration is performed, who is responsible for ensuring registration occurs, how to classify sexual offenders in the registry, and how and when an offender may be removed from the registry.

Although the registries are operated similarly and are maintained by the same state and local agencies, and the two types of offenders display together on most websites, the histories and statutory requirements for each are different. Importantly, while the federal government has assumed substantial involvement in establishing minimum standards for state registration and community notifications about sexual offenders, registration of violent offenders remains a state-driven policy.

As of early September 2019, the registry contained 2,691 sexual offenders, 3,893 violent offenders, and 116 offenders with both sexual and violent offenses. The searchable database is maintained by the Department of Justice (DOJ) using information submitted to it by municipal police and county sheriffs. It is available at: <https://app.doj.mt.gov/apps/svow/default.aspx>.

SEXUAL OFFENDERS

HISTORY

Many people know of sex offender registries in the context of well-known federal laws such as the Jacob Wetterling Act (1994), Megan's Law (1996), and the Adam Walsh Act (2006). The Montana sexual offender registry predates those federal acts, however, as do many state sexual offender registries [McPherson, Sacco].

Montana established its registry in 1989 by enacting Senate Bill No. 84 sponsored by Sen. Eleanor Vaughn (D-Libby). The registry initially was limited to mandatory registration for five sexual offenses (or their federal or other state equivalents).

The five offenses that required registration under the initial Sexual Offender Registration Act were:

- **Sexual assault**, if the victim was less than 16 years old and the offender 3 or more years older than the victim or if the offender inflicted bodily injury on anyone in the course of committing the offense [45-5-502(3), MCA (1989)];
- **Sexual intercourse without consent** [45-5-503, MCA];
- **Deviate sexual conduct** [section 45-5-505, MCA (1989), since renumbered to 45-8-218, MCA];
- **Incest**, unless the act occurred between two consenting persons 16 years of age or older [45-5-507, MCA];
- **Sexual abuse of children** [45-5-625, MCA].

The Montana sexual offender registry was enacted in 1989 and mandated registration for five sexual offenses.

In her closing statement to the Senate Judiciary Committee, Sen. Vaughn said "she felt that the innocent needed to be protected and thought the bill would be a way of doing that." Similarly, during proponent testimony on the bill, another representative, Dorothy Cody of Wolf Point, who had joined Sen. Vaughn in the effort to draft legislation, stated that its purpose "was to send a strong message that child abuse would not be tolerated" in the state.

SB 84 also required an inmate convicted of one or more of those five offenses to enroll in the educational phase of the state prison's sex offender treatment program. An offender was required to register the offender's expected address prior to release from custody and to update the local law enforcement when the offender's address changed. Information gathered from the offender prior to release would be forwarded to local law enforcement.

An offender was required to register for 10 years after conviction, if the person was not imprisoned during those 10 years. If the offender was imprisoned during those 10 years, the duration of registration was 10 years after release from prison. The initial penalty for an offender who knowingly failed to register was at least 90 days imprisonment

or a fine of up to \$250 or both. The initial Sexual Offender Registration Act did not allow information on the offender or the offender's address to be made public.

PRESENT-DAY SEXUAL OFFENDER REGISTRATION

The structure of the current sexual offender registry was largely created by two bills, one enacted in 1997 and one in 2007, both of which were responding in part to federal legislation that established minimum standards to ensure conformity between registries maintained by the states. Though other bills have amended the registry, none has done so with the same scope of the 1997 and 2007 bills.

The 1997 bill contained a preamble, which provided the legislature's findings and policy statement related to the revisions it made to SVORA. The 2007 bill, drafted at the request of the Senate Judiciary Committee, didn't contain a similar preamble.

The text of the preamble for House Bill No. 111 in 1997 is as follows:

"WHEREAS, the Legislature finds that the danger of recidivism posed by sexual and violent offenders and the protection of the public from these offenders is of paramount concern to government and the people; and

WHEREAS, the Legislature further finds that law enforcement agencies' efforts to protect their communities, conduct investigations, and apprehend sexual and violent offenders is impaired by the lack of information about offenders who live within their jurisdictions; and

WHEREAS, the system of registering sexual and violent offenders provides law enforcement with information critical to preventing victimization and to resolving incidents of sexual or violent offenses promptly, including notification of the public when necessary to the continued protection of the community; and

WHEREAS, persons who have committed a sexual or violent offense have a reduced expectation of privacy because of the public's interest in safety; and

WHEREAS, the Legislature finds that releasing information about sexual or violent offenders to law enforcement agencies and, under certain circumstances, providing access to limited information about certain sexual offenders to the general public will further the primary governmental interest of protecting specific vulnerable groups and the public in general from potential harm.

THEREFORE, it is the policy of the State of Montana to assist local law enforcement agencies' efforts in protecting their communities by requiring that sexual or violent offenders register and to authorize the release of necessary and relevant information about sex offenders to the public."

Offenses That Require Registration

The current 14 sexual offenses that require registration in the sex offender registry are contained in the definition of "sexual offense" in section 46-23-502, MCA:¹

- **Unlawful restraint**, if the victim was less than 18 and the offender is not a parent of the victim, [45-5-301, MCA];
- **Kidnapping**, if the victim is less than 18 and the offender is not a parent of the victim [45-5-302, MCA];
- **Aggravated kidnapping**, if the victim is less than 18 and the offender is not a parent of the victim [45-5-303, MCA];
- **Sexual assault**, if the offender is a professional licensed under Title 37 and commits the offense during any treatment, consultation, interview, or evaluation of a person's physical or mental condition, ailment, disease, or injury [45-5-502, MCA];
- **Sexual assault**, if the victim is less than 16 and the offender is 3 or more years older than the victim [45-5-502(3), MCA];
- **Sexual intercourse without consent** [45-5-503(1), (3), or (4), MCA];
- **Indecent exposure**, third or subsequent conviction [45-5-504(2)(c), MCA];
- **Indecent exposure**, if the victim is less than 16 and the offender is 4 or more years older than the victim [45-5-504(3), MCA]
- **Incest**, if the victim is less than 18 and the offender is 3 or more years older than the victim or if the victim is 12 years or younger at the offender is 18 or older at the time of the offense [45-5-507, MCA];
- **Aggravated sexual intercourse without consent** [45-5-508, MCA];
- **Prostitution**, if the person patronized was a child and the patron was 18 years or older at the time of the offense, whether or not the patron was aware of the child's age [45-5-601(3), MCA];
- **Promoting prostitution**, if the person engaging in prostitution was a child and the patron was 18 or older at the time of the offense, whether or not the patron was aware of the child's age [45-5-602(3), MCA];
- **Aggravated promotion of prostitution**, if the victim was a child [45-5-603(1)(b), (2)(b), or (2)(c), MCA];
- **Sexual abuse of children** [45-5-625, MCA];
- **Sexual servitude** [45-5-704, MCA]; or
- **Patronizing a victim of sexual servitude** [45-5-705, MCA].

The definitions include any actual violation of the listed statute, as well as an attempt, solicitation, or conspiracy to commit a violation of the listed statute. Offenses that require registration include offenses for which a person was

¹ The number 14 only includes each statutory crime section once, though at least three crimes (sexual assault, incest, and aggravated promotion of prostitution) include different subsections or victim/offender scenarios that could require registration.

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found in youth court to have committed or for which the person was adjudicated in youth court. Registration is also required for a person who violated a reasonably similar law of another state, a tribal government, or the federal government.

Risk Levels Assigned to Sexual Offenders

SVORA also creates three risk levels (often called tiers) for sexual offenders. The risk levels are:

- Level 1: the risk of a repeat sexual offense is low;
- Level 2: the risk of a repeat sexual offense is moderate;
- Level 3: the risk of a repeat sexual offense is high, there is a threat to public safety, and the sexual offender evaluator believes that the offender is a sexually violent predator.

Typically for an offender convicted in a Montana court of a sexual offense, the district court judge that sentences the offender designates the offender's risk level after considering information from the offender's psychosexual evaluation report, statements by the victim, and statements by the offender.

However, the law creates other methods to assign an offender a risk level. For offenders who were sentenced prior to the creation of the risk levels, the Department of Corrections assigns a level when the offender is released from confinement. For offenders who were given a risk level by another state or the federal government for a conviction, the DOJ may assign the offender a risk level. For offenders sentenced in other states or by the federal courts who do not have a risk level designation, the attorney general, the county attorney for the county in which the offender resides, or the county attorney that prosecuted the offender for the sexual offense may petition the district court in either the district in which the offender was sentenced or the district in which the offender currently resides to ask the judge to designate a risk level for the offender.

An offender is considered a "sexually violent predator" if the person has been convicted of a sexual offense and "suffers from a mental abnormality or a personality disorder that makes the person likely to engage in predatory sexual offenses" or who has been convicted of a sexual offense when the victim was 12 years of age or younger and the offender was 18 years of age or older [46-23-502(11)]. A district court is required to assign the designation to an offender during sentencing when reviewing evaluations provided to the court and assigning a risk level.

Duration of Registration

A sexual offender is required to register for life, regardless of risk level. However, the assignment of a risk level determines when an offender may petition a court for relief from the registration requirement. An offender designated as a level 1 offender may petition the sentencing court or the district court in the district in which the offender resides after 10 years of registration. A level 2 sexual offender may petition one of these courts after 25 years.

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The petition is given to the county attorney in the county where the petition is filed. The county attorney is then responsible for mailing the petition to the victim, if the victim's address is "reasonably available". The court must consider the victim's statements. A petition for relief from registration may be granted if the court finds that the offender has remained "a law-abiding citizen," that continued registration is not required to public safety, and that it is in the best interests of society to grant the offender relief from registration.

Certain offenders are not allowed to petition for relief from registration. They include an offender:

- Convicted of sexual intercourse without consent (45-5-503) if the victim was compelled by force to submit or if the victim was 12 years of age or younger;
- Convicted of incest if the victim was 12 years of age or younger and the offender was 3 or more years older than the victim at the time of the offense;
- Convicted of a second or subsequent sexual offense that requires registration; or
- Designated as a sexually violent predator.

Penalty

The penalty for an offender who knowingly fails to register, verify registration, or keep the offender's registration current is now subject to a felony penalty of up to 5 years of prison, a fine of not more than \$10,000, or both.

Public Information

The name and address of a sexual offender are public information, as well as information the DOJ or a local registering agency (municipal police or county sheriff) feels relevant to the public if the DOJ or registering agency "determines the offender is a risk to the safety of the community and that disclosure of the registration information ... may protect the public" [section 46-23-508].

In addition, section 46-23-508, MCA, sets out the minimum information on a sexual offender that must be released by DOJ and may be released by the local agency based on the type of offense (sexual or violent), the risk level assigned to the offender by a district court or the Department of Corrections (DOC), and the type of victim (adult or minor). The registering agency may disseminate information in a variety of ways, including by publishing information in a newspaper, distributing flyers, or the Internet. As required by law, the DOJ has developed a model policy for community notification procedures, though the guidelines contained in the policy are not mandatory.

VIOLENT OFFENDERS

Unlike the sexual offender registry, which is influenced by federal standards for registration and community notification, Montana's violent offender registration requirements are solely a product of state law.

HISTORY

In 1995, the Legislature enacted House Bill No. 214 (HB 214), which added certain violent offenses to the existing Sexual Offender Registration Act. Rep. Deb Kottel (D-Great Falls) sponsored HB 214, which included seven violent offenses that would require registration: deliberate homicide, mitigated deliberate homicide, aggravated assault, kidnapping, aggravated kidnapping, robbery, and arson. The bill also amended SVORA's provisions related to sexual offenders, which occurred often in the joint legislative history of the violent and sexual offender registries.

The Montana sexual offender registry was enacted in 1995 and mandated registration for seven violent offenses.

In addition to registering a violent offender's address, local law enforcement were required to collect fingerprints and photographs of the registering offender. The offender was subject to registration for the rest of the offender's life. (This lifetime registration requirement was also applied to sexual offenders in the 1995 legislation.) A violent offender could petition a district court to be relieved from the duty to register after 10 years had passed since the offender's last conviction for a sexual or violent offense.

A person failing to comply with the registration requirements of the SVORA was subject to a penalty of no more than 5 years imprisonment, a fine of not more than \$10,000, or both. (The existing penalty for sexual offenders who failed to comply was raised to the same time and amount.) The information for violent offenders in the registry was considered confidential criminal justice information, while that of sex offenders was public criminal justice information.

PRESENT-DAY VIOLENT OFFENDER REGISTRY

Section 46-23-502, MCA, lists the 13 offenses that currently require a person convicted of one or more of them to register as a violent offender. The offenses are:

- **Deliberate homicide** [45-5-102, MCA];
- **Mitigated deliberate homicide** [45-5-103, MCA];
- **Aggravated assault** [45-5-202, MCA];
- **Partner or family member assault**, third or subsequent offense [45-5-206, MCA];

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- **Assault on a peace officer**, if the person purposely or knowingly causes reasonable apprehension of seriously bodily injury in a peace officer or judicial officer by use of a weapon, causes bodily injury to a peace officer or judicial officer with a weapon, or causes serious bodily injury to a peace officer or judicial officer [45-5-210 (1)(b), (1)(c), or (1)(d), MCA];
- **Assault on a minor** [45-5-212, MCA];
- **Assault with a weapon** [45-5-213, MCA];
- **Strangulation of a partner or family member** [45-5-215];
- **Kidnapping**, if the victim is not a minor [45-5-302, MCA];
- **Aggravated kidnapping**, if the victim is not a minor [45-5-303, MCA];
- **Robbery** [45-5-401, MCA];
- **Arson** [45-6-103, MCA]; and
- **Operation of unlawful clandestine laboratory** [45-9-132, MCA].

The definitions include any actual violation of the listed statute, as well as an attempt, solicitation, or conspiracy to commit a violation of the listed statute. Offenses that require registration include offenses for which a person was found in youth court to have committed or for which the person was adjudicated in youth court. Registration is also required for a person who violated a reasonably similar law of another state, a tribal government, or the federal government.

A violent offender must register for 10 years after release from confinement or, if the offender wasn't sentenced to confinement, for the 10 years following the sentencing hearing. However, relief from registration isn't automatic. A violent offender still must petition either the sentencing court or the district court in the district in which the offender currently resides to issue an order relieving the offender of the duty to register and maintain registration. The court must grant the petition if the offender hasn't been convicted during the 10-year registration period of failing to register or keep the registration current or another felony.

If the offender was convicted during the applicable 10-year period of failing to register or keep the registration current or of another felony, the violent offender must register for life unless a judge grants the offender's petition to be relieved of the registration requirement.

Dissemination of information includes name, address, offenses for which registration is required. Generally, though, a photograph of a violent offender is not publicly available on the DOJ website unless the violent offender is transient or out-of-compliance with registration and verification requirements ["Available Offender Information," SVOR website].

TOPICS FOR FUTURE MEETINGS

This overview only touches the surface of many of the topics covered in it. The committee can expect to receive more detailed information on many of them.

The following list of topics could be covered by panel presentations, staff papers, or both:

- Legal review of case law governing sentencing, registration, and monitoring of sexual offenders *(planned staff paper)*
- Comparison table of registry elements for sexual and violent offenders *(planned staff paper)*
- Evaluation of sexual offenders prior to sentencing and assignment of risk tiers
- Additional statistics on numbers, and types of registrants
- Additional legislative history on reasons for major enactments or amendments to SVORA
- Responsibilities of federal, state, and local authorities related to the collection, maintenance, and dissemination of data *(planned staff paper)*
- Federal SORNA standards and Montana's status on implementation *(planned study element)*
- Public vs private registry information
- Methods of removal from registries and frequency of use
- Violent offender registries in other states and recent enactments *(planned staff paper, possible speaker)*
- Existing treatment of sex offenders
- Supervision of sexual offenders on probation or parole
- Effectiveness of registries and different methods of assigning tiers
- Other topics suggested by committee members?

The work session for the September 2019 meeting includes time for LJIC members to request additional information or highlight areas of interest for future meetings.

SOURCES AND RESOURCES

SOURCES

- Lori McPherson, "The Sex Offender Registration and Notification Act (SORNA) at 10 Years: History, Implementation, and the Future," *Drake Law Review*, Vol. 64, 2016, pages 741-796, available at: <https://lawreviewdrake.files.wordpress.com/2015/01/mcpherson-final.pdf>
- Lisa N. Sacco, "Federal Involvement in Sex Offender Registration and Notification: Overview and Issues for Congress, In Brief," *Congressional Research Service*, March 25, 2015, available at: <https://fas.org/sgp/crs/misc/R43954.pdf>
- Title 46, chapter 23, part 5, MCA: Registration of Sexual and Violent Offenders, 2017, available at: https://leg.mt.gov/bills/mca/title_0460/chapter_0230/part_0050/sections_index.html
- The Sexual or Violent Offender Registry Website, maintained by the Montana Department of Justice, available at: <https://app.doj.mt.gov/apps/svow/default.aspx>, including the following specific pages, all last accessed Sept. 2, 2019:
 - "Law Enforcement Guidelines: For community notification," available at: <https://app.doj.mt.gov/apps/svow/lawenforcementguidelines.aspx>
 - "History of the Registry: A brief timeline of Montana's SVOR registry," available at: <https://app.doj.mt.gov/apps/svow/history.aspx>
 - "Offender Types and Tier Levels: Offenses, Designations, Tiers," available at: <https://app.doj.mt.gov/apps/svow/offendertypes.aspx>
 - "Statistics and Reports: Number of Registered Offenders by County/City Report," available at: <https://app.doj.mt.gov/apps/svow/report-locations.aspx>
- Procedure PPD 1.5.1000, Sexual and Violent Offender Registration and Level Designation, *Montana Department of Corrections, Probation and Parole Division*, effective Feb. 11, 2016, last revision Nov. 13, 2017, available at: <https://cor.mt.gov/Portals/104/ProbationParole/PPDOperationalProcedures/PPD%201.5.1000%20S-V%20Offender%20Registration%20and%20Level%20Desig.pdf>, last accessed Sept. 2, 2019
- Testimony on SB 84 (1989), Senate Committee on Judiciary, January 30, 1989, available at <https://leg.mt.gov/content/Committees/Interim/2019-2020/Law-and-Justice/Committee-Topics/SJ-19-Study/1989-SB-84-legislative-history.pdf>

RESOURCES FOR ADDITIONAL INFORMATION

- Dru Sjodin National Public Sex Offender Website: <https://www.nsopw.gov/>
- Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART), U.S. Department of Justice, Office of Justice Programs: <https://www.smart.gov/>

