

1 HOUSE BILL NO. 91

2 INTRODUCED BY R. FARRIS-OLSEN

3 BY REQUEST OF THE LAW AND JUSTICE INTERIM COMMITTEE

4
 5 BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR AUTOMATIC REMOVAL FROM THE VIOLENT
 6 OFFENDER REGISTRY AFTER 10 YEARS FOR CERTAIN VIOLENT OFFENDERS AND FOR VACATING
 7 CONVICTIONS FOR FAILURE TO REGISTER AFTER 10 YEARS; REVISING WHEN AN OFFENDER MAY
 8 NOT PETITION TO BE REMOVED FROM THE SEXUAL OR VIOLENT OFFENDER REGISTRIES; AND
 9 AMENDING SECTIONS 46-23-506 AND 46-23-507, MCA."

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11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:12 **Section 1.** Section 46-23-506, MCA, is amended to read:

13 **"46-23-506. Duration of registration.** (1) A sexual offender required to register under this part shall
 14 register for the remainder of the offender's life, except as provided in subsection (3) or during a period of time
 15 during which the offender is in prison.

16 (2) (a) ~~A violent offender required to register under this part shall register:~~

17 ~~(a)(i) shall register~~ for the 10 years following release from confinement or, if not confined following
 18 sentencing, for the 10 years following the conclusion of the sentencing hearing, ~~but;~~ and

19 ~~(ii) the offender after REGISTERING FOR 10 years, is not automatically~~ relieved of the duty to register
 20 ~~UNLESS CONVICTED AS PROVIDED IN SUBSECTION (2)(B) until a petition is granted under subsection (3)(a); or,~~

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

24 (B) IF CONVICTED DURING THE 10-YEAR PERIOD PROVIDED IN SUBSECTION (2)(A) OF FAILING TO REGISTER OR
 25 KEEP REGISTRATION CURRENT OR OF A FELONY, THE OFFENDER SHALL REGISTER FOR THE REMAINDER OF THE
 26 OFFENDER'S LIFE UNLESS RELIEVED OF THE DUTY TO REGISTER AS PROVIDED IN SUBSECTION (3).

27 (b)(C) When an offender is relieved of the duty to register under subsection (2)(a)(ii), the department
 28 of justice shall remove the offender from the registry.

1 (3) ~~(a) An offender required to register for 10 years under subsection (2)(a) may, after the 10 years~~
 2 ~~have passed, petition the sentencing court or the district court for the judicial district in which the offender~~
 3 ~~resides for an order relieving the offender of the duty to register. The petition must be served on the county~~
 4 ~~attorney in the county where the petition is filed. The petition must be granted if the defendant has not been~~
 5 ~~convicted under subsection (2)(b).~~

6 ~~(b)~~—Except as provided in subsection (5), at any time after 10 years of registration for a VIOLENT
 7 OFFENDER REGISTERED AS PROVIDED IN SUBSECTION (2)(B) OR A level 1 sexual offender and at any time after 25
 8 years of registration for a level 2 sexual offender, an offender may petition the sentencing court or the district
 9 court for the judicial district in which the offender resides for an order relieving the offender of the duty to
 10 register. The petition must be served on the county attorney in the county where the petition is filed. Prior to a
 11 hearing on the petition, the county attorney shall mail a copy of the petition to the victim of the last offense for
 12 which the offender was convicted if the victim's address is reasonably available. The court shall consider any
 13 written or oral statements of the victim. The court may grant the petition upon finding that:

14 ~~(i)(a)~~ the offender has remained a law-abiding citizen; and

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

17 (4) The offender may move that all or part of the proceedings in a hearing under subsection (3) be
 18 closed to the public, or the judge may close them on the judge's own motion. If a proceeding under subsection
 19 ~~(3)(b)~~ (3) is closed to the public, the judge shall permit a victim of the offense to be present unless the judge
 20 determines that exclusion of the victim is necessary to protect the offender's right of privacy or the safety of the
 21 victim. If the victim is present, the judge, at the victim's request, shall permit the presence of an individual to
 22 provide support to the victim unless the judge determines that exclusion of the individual is necessary to protect
 23 the offender's right to privacy.

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

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

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

27 or

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

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

3 (c) a second or subsequent sexual OR VIOLENT offense that requires registration; or

4 (d) a sexual offense and was designated as a sexually violent predator under 46-23-509."
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6 **Section 2.** Section 46-23-507, MCA, is amended to read:

7 **"46-23-507. Penalty.** (1) A sexual or violent offender who knowingly fails to register, verify
8 registration, or keep registration current under this part may be sentenced to a term of imprisonment of not
9 more than 5 years or may be fined not more than \$10,000, or both.

10 (2) (a) Violent offenders who were convicted of failing to register, verify registration, or keep
11 registration current under this part after having successfully registered for 10 years and whose conviction
12 occurred before [the effective date of this act] must have their conviction vacated.

13 (b) Within 1 year from [the effective date of this act], the department of justice shall provide notice to
14 the appropriate district court for each conviction described in subsection (2)(a).

15 (c) Upon receiving notification from the department of justice, the district court shall, on its own
16 motion, vacate the offender's conviction for failing to register, verify registration, or keep registration current.

17 (3) When the court vacates a conviction under this section, the court shall:

18 (a) send a copy of the order vacating the conviction to the prosecutor and the department of justice;
19 and

20 (b) order the expungement of all records of arrest, investigation, and detention, and any court
21 proceedings that may have been held by the court, the investigating law enforcement agency, or the
22 department of justice related to the conviction.

23 (4) The prosecutor and the department of justice shall inform the person whose conviction has been
24 vacated under this section that the conviction is vacated."

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