

SENATE BILL NO. 38

INTRODUCED BY B. BROWN

BY REQUEST OF THE DEPARTMENT OF JUSTICE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING STATUTES RELATED TO LEVEL DESIGNATIONS FOR SEXUAL OFFENDERS; PROVIDING DEFINITIONS; REQUIRING ADDITIONAL INFORMATION FROM OFFENDERS REGARDING ELECTRONIC AND COMMUNICATIONS DATA AND PROFESSIONAL LICENSES; REQUIRING NOTICE WHEN AN OFFENDER IS LEAVING THE STATE; PROVIDING OPPORTUNITIES FOR CERTAIN OFFENDERS TO BE REMOVED FROM THE REGISTRY; PROVIDING NOTICE REQUIREMENTS FOR PSYCHOSEXUAL EVALUATIONS; AND AMENDING SECTIONS 46-23-502, 46-23-504, 46-23-505, 46-23-506, 46-23-508, AND 46-23-509, MCA."

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

Section 1. Section 46-23-502, MCA, is amended to read:

"46-23-502. Definitions. As used in Title 45, chapter 5, part 3 and parts 5 through 7, 46-18-255, and this part, the following definitions apply:

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

(2) "Foreign offenses" means a conviction for a sexual offense involving any of the conduct listed in this section that was obtained under the laws of Canada, the United Kingdom, Australia, or New Zealand, or under the laws of any foreign country when the United States department of state, in its country reports on human rights practices, has concluded that an independent judiciary generally or vigorously enforced the right to a fair trial in that country during the year in which the conviction occurred.

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

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

(5) "Personality disorder" means a personality disorder as defined in the fourth edition of the

1 Diagnostic and Statistical Manual of Mental Disorders adopted by the American psychiatric association.

2 ~~(5)(6)~~ "Predatory sexual offense" means a sexual offense committed against a stranger or against a  
3 person with whom a relationship has been established or furthered for the primary purpose of victimization.

4 ~~(6)(7)~~ "Registration agency" means:

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

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

8 ~~(7)(8)~~ (a) "Residence" means the location at which a person regularly resides, regardless of the  
9 number of days or nights spent at that location, that can be located by a street address, including a house,  
10 apartment building, motel, hotel, or recreational or other vehicle.

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

12 ~~(8)(9)~~ "Sexual offender evaluator" means a person qualified under rules established by the  
13 department to conduct psychosexual evaluations of sexual offenders and sexually violent predators.

14 ~~(9)(10)~~ (a) "Sexual offense" means: any violation, attempt, solicitation, or conspiracy to commit a  
15 violation, or flight after the attempt or commission of the following:

16 ~~(a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-301 (if the~~  
17 ~~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~~  
18 ~~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~~  
19 ~~of age and the offender is not a parent of the victim), 45-5-502 (if the offender is a professional licensed under~~  
20 ~~Title 37 and commits the offense during any treatment, consultation, interview, or evaluation of a person's~~  
21 ~~physical or mental condition, ailment, disease, or injury), 45-5-502 (3) (if the victim is less than 16 years of age~~  
22 ~~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)~~  
23 ~~(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~~  
24 ~~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~~  
25 ~~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,~~  
26 ~~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~~

27 (i) 45-5-301, Unlawful restraint, if the victim is less than 18 years of age and the offender is not a  
28 parent of the victim;

- 1           (ii) 45-5-302, Kidnapping, if the victim is less than 18 years of age and the offender is not a parent  
 2 of the victim;
- 3           (iii) 45-5-303, Aggravated kidnapping, if the victim is less than 18 years of age and the offender is  
 4 not a parent of the victim;
- 5           (iv) 45-5-502(1), (2)(c), (3), (4), and (5), Sexual assault;
- 6           (v) 45-5-503, Sexual intercourse without consent;
- 7           (vi) 45-5-504(2)(c) and (3), Indecent exposure;
- 8           (vii) 45-5-507, Incest, if the victim is less than 18 years of age and the offender is 3 or more years  
 9 older than the victim, or if the victim is 12 years of age or younger and the offender is 18 years of age or older  
 10 at the time of the offense;
- 11          (viii) 45-5-508, Aggravated sexual intercourse without consent;
- 12          (ix) 45-5-601(2)(b), (3), and (4) Prostitution;
- 13          (x) 45-5-602(3) and (4), Promoting prostitution;
- 14          (xi) 45-5-603, Aggravated promotion of prostitution;
- 15          (xii) 45-5-622(2)(b)(ii), Endangering welfare of children;
- 16          (xiii) 45-5-625, Sexual abuse of children;
- 17          (xiv) 45-5-627(1)(a), Ritual abuse of minor;
- 18          (xv) 45-5-704, Sexual servitude;
- 19          (xvi) 45-5-705, Patronizing victim of sexual servitude; or
- 20          ~~(b)(xvii)~~ any violation of a law of another state, a tribal government, ~~or~~ the federal government, or the  
 21 military or a foreign entity that is reasonably equivalent to a violation listed in subsection ~~(9)(a)~~ (10)(a)(i) through  
 22 (10)(a)(xvi) or for which the offender was required to register as a sexual offender after an adjudication or  
 23 conviction.
- 24          (b) This term does not include the exceptions provided for in 45-5-501, 45-5-502, and 45-5-503.
- 25          ~~(40)(11)~~ "Sexual or violent offender" means a person who has been convicted of or, in youth court,  
 26 found to have committed or been adjudicated for a sexual or violent offense.
- 27          ~~(44)(12)~~ "Sexually violent predator" means a person who:
- 28          (a) has been convicted of or, in youth court, found to have committed or been adjudicated for a

1 sexual offense and who suffers from a mental abnormality or a personality disorder that makes the person likely  
2 to engage in predatory sexual offenses; or

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

5 ~~(12)~~(13) "Transient" means an offender who has no residence.

6 ~~(13)~~(14) "Violent offense" means:

7 (a) any violation of or attempt, solicitation, or conspiracy to commit a violation of:

8 (i) 45-5-102, Deliberate homicide;

9 (ii) 45-5-103, Mitigated deliberate homicide;

10 (iii) 45-5-202, Aggravated assault;

11 (iv) 45-5-206 (third or subsequent offense), Partner or family member assault;

12 (v) 45-5-210(1)(b), (1)(c), or (1)(d), Assault on a peace officer or judicial officer;

13 (vi) 45-5-212, Assault on a minor;

14 (vii) 45-5-213, Assault with weapon;

15 (viii) 45-5-215, Strangulation of partner or family member;

16 (ix) 45-5-302 (if the victim is not a minor), Kidnapping ;

17 (x) 45-5-303 (if the victim is not a minor), Aggravated kidnapping;

18 (xi) 45-5-401, Robbery;

19 (xii) 45-6-103, Arson; or

20 (xiii) 45-9-132, Operation of unlawful clandestine laboratory; or

21 (b) any violation of a law of another state, a tribal government, ~~or the federal government,~~ or the  
22 military or a foreign entity reasonably equivalent to a violation listed in subsection ~~(13)(a)~~ (14)(a)."

23

24 **Section 2.** Section 46-23-504, MCA, is amended to read:

25 "**46-23-504. Persons required to register -- procedure.** (1) Except as provided in 41-5-1513 and  
26 45-5-503(5), a sexual or violent offender:

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

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

3 (c) shall register within 3 business days of entering a county of this state for the purpose of  
4 residing or setting up a temporary residence for 10 days or more or for an aggregate period exceeding 30 days  
5 in a calendar year; and

6 (d) who is a transient shall register within 3 business days of entering a county of this state.

7 (2) Registration under subsection ~~(1)(a), (1)(c), or (1)(d)~~ (1) must be with the appropriate  
8 registration agency. If an offender registers with a police department, the department shall notify the sheriff's  
9 office of the county in which the municipality is located of the registration. The probation officer having  
10 supervision over an offender required to register under subsection (1)(a) shall verify the offender's registration  
11 status with the appropriate registration agency.

12 (3) At the time of registering, the offender shall sign a statement in writing giving the information  
13 required by subsections (3)(a) through ~~(3)(h)-(3)(k)~~ and any other information required by the department of  
14 justice. The registration agency shall fingerprint the offender, unless the offender's fingerprints are on file with  
15 the department of justice, photograph the offender, and obtain a DNA sample from the offender. Within 3 days,  
16 the registration agency shall send copies of the statement, fingerprints, and photographs to the department of  
17 justice. The registration agency shall send the DNA sample to the department of justice for analysis and entry  
18 of the DNA record into the DNA identification index. The registration agency shall require an offender given a  
19 level 2 or level 3 designation to appear before the registration agency for a new photograph every year. The  
20 information collected from the offender at the time of registration must include:

- 21 (a) the name of the offender and any aliases used by the offender;
- 22 (b) the offender's social security number;
- 23 (c) the residence information required by subsection (4);
- 24 (d) the name and address of any business or other place where the offender is or will be an  
25 employee;
- 26 (e) the name and address of any school where the offender will be a student;
- 27 (f) the offender's driver's license number;
- 28 (g) the description, registration number or identifier, and license number of ~~any all~~ motor vehicle

1 vehicles owned or operated by the offender; and

2 (h) ~~all of the offender's e-mail addresses and social media screen names.~~ The following information  
3 related to the offender's internet activity:

4 (i) all e-mail addresses used by the offender;

5 (ii) all instant message addresses and identifiers;

6 (iii) all other designations or monikers used for self-identification in internet communications or  
7 postings; and

8 (iv) all designations used by the offender for the purpose of routing or self-identification in internet  
9 communications, postings, or social media accounts;

10 (i) any passports held or used by the offender. The department or its designee shall make a  
11 photocopy of the passports.

12 (j) all telephone numbers and any other designations used by the offender for the purposes of  
13 routing or self-identification in telephonic communications, including but not limited to:

14 (i) all cellular telephone numbers;

15 (ii) all landline telephone numbers; and

16 (iii) all voice over internet protocol telephone numbers; and

17 (k) all professional licenses, including the licensing number, licensing agency, and any other  
18 identifying information about a professional license issued to the offender that authorizes the offender to  
19 engage in an occupation or carry out a trade or business.

20 (4) (a) If, at the time of registration, the offender regularly resides in more than one county or  
21 municipality, the offender shall register with the registration agency of each county or municipality in which the  
22 offender resides. If an offender resides in more than one location within the same county or municipality, the  
23 registration agency shall require the offender to provide all of the locations where the offender regularly resides  
24 and to designate one of them as the offender's primary residence.

25 (b) Registration of more than one residence pursuant to this section is an exception from the single  
26 residence rule provided in 1-1-215.

27 (5) A transient shall report monthly, in person, to the registration agency with which the transient  
28 registered pursuant to subsection (1)(d). The transient shall report on a day specified by the registration agency

1 and during the normal business hours of that agency. On that day, the transient shall provide the registration  
2 agency with the information listed in subsections (3)(a) through ~~(3)(h)~~ (3)(k). The registration agency to which  
3 the transient reports may also require the transient to provide the locations where the transient stayed during  
4 the previous 30 days and may stay during the next 30 days.

5 (6) (a) The department of justice shall mail a registration verification form:

6 (i) each 90 days to an offender designated as a level 3 offender under 46-23-509;

7 (ii) each 180 days to an offender designated as a level 2 offender under 46-23-509; and

8 (iii) each year to a violent offender or an offender designated as a level 1 offender under 46-23-  
9 509.

10 (b) If the offender is a transient, the department of justice shall mail the offender's registration  
11 verification form to the registration agency with which the offender last registered.

12 (c) The form must require the offender's notarized signature. Within 10 days after receipt of the  
13 form, the offender shall complete the form and return it to the registration agency where the offender last  
14 registered or, if the offender was initially registered pursuant to subsection (1)(b), to the registration agency in  
15 the county or municipality in which the offender is located. A sexual offender shall return the form to the  
16 appropriate registration agency in person, and at the time that the sexual offender returns the registration  
17 verification form, the registration agency shall take a photograph of the offender and collect a DNA sample if  
18 one has not already been collected. The registration agency shall send the DNA sample to the department of  
19 justice for analysis and entry into the DNA identification index.

20 (7) Within 3 days after receipt of a registration verification form, the registration agency shall  
21 provide a copy of the form and most recent photograph to the department of justice.

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

26 (9) The clerk of the district court in the county in which a person is convicted of a sexual or violent  
27 offense shall notify the sheriff in that county of the conviction within 10 days after entry of the judgment."  
28

1           **Section 3.** Section 46-23-505, MCA, is amended to read:

2           **"46-23-505. Notice of change of name or residence or student, employment, or transient status**

3 **-- duty to inform -- forwarding of information.** (1) If an offender required to register under this part has a  
4 change of name or residence or a change in student, employment, or transient status, the offender shall within  
5 3 business days of the change appear in person and give notification of the change to the registration agency  
6 with whom the offender last registered or, if the offender was initially registered under 46-23-504(1)(b), to the  
7 registration agency for the county or municipality from which the offender is moving. The registration agency  
8 shall require the offender to appear before the registration agency for a new photograph every year.

9           (2) If an offender required to register under this part is a transient, the offender shall provide written  
10 notification to the registration agency with which the offender last registered or, if the offender initially registered  
11 pursuant to 46-23-504(1)(b), shall provide notice within 3 business days to the registration agency in the county  
12 or municipality in which the offender resides.

13           (3) Within 3 business days after receipt of the information concerning the new name or residence  
14 or a change in the student, employment, or transient status, the registration agency shall forward the  
15 information to the department of justice, which shall forward a copy of the information and photograph to:

16           (a) in the event of a change in residence, the registration agency for the county to which the  
17 offender moves and, if the offender lives in a municipality, the registration agency for that municipality to which  
18 the offender moves;

19           (b) in the event of a change of name or of student, employment, or transient status, the registration  
20 agency of the appropriate county or municipality.

21           (4) If an offender who is required to register under this part is physically absent from the offender's  
22 county of residence for more than 10 consecutive days, the offender shall register in the county where the  
23 offender is physically located on the 11th day even if the offender claims to maintain a residence, as defined in  
24 46-23-502, in that county. The offender shall register again in the offender's county of residence when the  
25 offender returns to that county.

26           (5) If an offender is required to register under subsection (4), the offender shall register in any  
27 subsequent county where the offender is present for more than 24 hours until the offender registers again in the  
28 offender's county of residence.



1           (6) In the event an offender will be absent from this state for more than 7 days, the offender shall  
 2 provide notice with the information required under this section in person to the registering agency no later than  
 3 3 days before their scheduled travel. The registering agency shall forward the information to the department of  
 4 justice, which shall then notify the provided jurisdiction."

5

6           **Section 4.** Section 46-23-506, MCA, is amended to read:

7           **"46-23-506. Duration-Duty of registration -- duration, frequency, reduction, and relief.** (1) A  
 8 sexual offender required to register under this part shall register for the remainder of the sexual offender's life,  
 9 except as provided in subsection (3) or during a period of time during which the sexual offender is in prison.

10           (2) (a) A violent offender required to register under this part shall register for the 10 years following  
 11 release from confinement or, if not confined following sentencing, for the 10 years following the conclusion of  
 12 the sentencing hearing and after registering for 10 years, is automatically relieved of the duty to register unless  
 13 convicted as provided in subsection (2)(b).

14           (b) If convicted during the 10-year period provided in subsection (2)(a) of failing to register or keep  
 15 registration current or of a felony, the violent offender shall register for the remainder of the violent offender's  
 16 life unless relieved of the duty to register as provided in subsection ~~(3)~~ (2)(e).

17           (c) When ~~an~~ a violent offender is relieved of the duty to register under subsection (2)(a), the  
 18 department of justice shall remove the violent offender from the registry.

19           (d) Petitions for relief from registration under this part must be filed in the appropriate Montana  
 20 district court. Orders or other documents granting relief from registration requirements that originated in other  
 21 jurisdictions are not valid in Montana.

22           (e) Except as provided in subsection (5), at any time after 10 years of registration for a violent  
 23 offender registered as provided in subsection (2)(b), a violent offender may petition the sentencing court or the  
 24 district court for the judicial district in which the violent offender resides for an order relieving the violent  
 25 offender of the duty to register. The petition must be served on the county attorney in the county where the  
 26 petition is filed. Prior to a hearing on the petition, the county attorney shall mail a copy of the petition to the  
 27 victim of the last offense for which the violent offender was convicted if the victim's address is reasonably  
 28 available. The court shall consider any written or oral statements of the victim. The court may grant the petition

1 on finding that:

2 (i) the violent offender has remained a law-abiding citizen; and

3 (ii) continued registration is not necessary for public protection and that relief from registration is in  
4 the best interests of society.

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

13 (a) the offender has ~~remained a law-abiding citizen~~ maintained a clean record during their period  
14 of registration; and

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

17 (4) A level 3 sexual offender may have their period of registration reduced to 25 years if the sexual  
18 offender was adjudicated delinquent of an offense as a juvenile that required level 3 sexual offender registration  
19 and the sexual offender has maintained a clean record for 25 consecutive years.

20 (5) For the purposes of this section, the sexual offender has a clean record if, during the period of  
21 time in which the sexual offender was required to register as a sexual offender:

22 (a) the sexual offender was not convicted of any felony offense;

23 (b) the sexual offender was not convicted of any sexual offense;

24 (c) the sexual offender successfully completed, without revocation, any period of supervised  
25 release, probation, or parole; and

26 (d) the sexual offender has successfully completed an appropriate sexual offender treatment  
27 program.

28 (4)(6) The offender may move that all or part of the proceedings in a hearing under ~~subsection~~

1 subsections (2)(e) and (3) be closed to the public, or the judge may close them on the judge's own motion. If a  
 2 proceeding under ~~subsection~~ subsections (2)(e) and (3) is closed to the public, the judge shall permit a victim of  
 3 the offense to be present unless the judge determines that exclusion of the victim is necessary to protect the  
 4 offender's right of privacy or the safety of the victim. If the victim is present, the judge, at the victim's request,  
 5 shall permit the presence of an individual to provide support to the victim unless the judge determines that  
 6 exclusion of the individual is necessary to protect the offender's right to privacy.

7 ~~(5)(7)~~ Subsection (3) does not apply to an offender who was convicted of:

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

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

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

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

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

15 (d) a sexual offense and was designated as a sexually violent predator under 46-23-509."  
 16

17 **Section 5.** Section 46-23-508, MCA, is amended to read:

18 **"46-23-508. Dissemination of information.** (1) Information maintained under this part is confidential  
 19 criminal justice information, as defined in 44-5-103, except that:

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

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

26 (i) if the offender is also a violent offender, the department of justice shall and the registration  
 27 agency may disseminate to the victim and the public:

28 (A) the offender's name; and

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

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

4 (A) the offender's address;

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

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

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

8 (E) the offender's employer address; and

9 (F) the offender's post-secondary school address.

10 (iii) if ~~an~~ a sexual offender was given a level 1 designation and committed an offense against a  
11 minor or was given a level 2 designation under 46-23-509, the department of justice shall and the registration  
12 agency may 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) the offender's employer address;

21 (H) the offender's post-secondary school address; and

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

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

28 (c) prior to release of information under subsection (1)(b), a registration agency may, in its sole

1 discretion, request an in camera review by a district court of the determination by the registration agency under  
2 subsection (1)(b). The court shall review a request under this subsection (1)(c) and shall, as soon as possible,  
3 render its opinion so that release of the information is not delayed beyond release of the offender from  
4 confinement.

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

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

11 (4) The department of justice shall develop a model community notification policy to assist  
12 registration agencies in implementing the dissemination provisions of this section."  
13

14 **Section 6.** Section 46-23-509, MCA, is amended to read:

15 **"46-23-509. Psychosexual evaluations and sexual offender designations.** (1) Prior to sentencing  
16 of a person convicted of a sexual offense, a sexual offender evaluator who has a license endorsement as  
17 provided for in 37-1-139 shall provide the court with a psychosexual evaluation report recommending one of the  
18 following levels of designation for the offender:

- 19 (a) level 1, the risk of a repeat sexual offense is low;
- 20 (b) level 2, the risk of a repeat sexual offense is moderate;
- 21 (c) level 3, the risk of a repeat sexual offense is high, there is a threat to public safety, and the  
22 sexual offender evaluator believes that the offender is a sexually violent predator.

23 (2) Upon sentencing the offender, the court shall:

- 24 (a) review the psychosexual evaluation report, any statement by a victim, and any statement by  
25 the offender;
- 26 (b) designate the offender as level 1, 2, or 3; and
- 27 (c) designate a level 3 offender as a sexually violent predator.

28 (3) An offender designated as a level 2 offender or given a level designation by another state, the

1 federal government, or the department under subsection (5) that is determined by the court to be similar to level  
2 2 may petition the sentencing court or the district court for the judicial district in which the offender resides to  
3 change the offender's designation if the offender has enrolled in and successfully completed the treatment  
4 phase of either the prison's sexual offender treatment program or of an equivalent program approved by the  
5 department. After considering the petition, the court may change the offender's risk level designation if the court  
6 finds by clear and convincing evidence that the offender's risk of committing a repeat sexual offense has  
7 changed since the time sentence was imposed. The court shall impose one of the three risk levels specified in  
8 this section.

9 (4) If, at the time of sentencing, the sentencing judge did not apply a level designation to a sexual  
10 offender who is required to register under this part and who was sentenced prior to October 1, 1997, the  
11 department shall designate the offender as level 1, 2, or 3 when the offender is released from confinement.

12 (5) If an offense is covered by ~~46-23-502(9)(b)~~ 46-23-502(10)(q), the offender registers under 46-  
13 23-504(1)(c), and the offender was given a risk level designation after conviction by another state or the federal  
14 government, the department of justice may give the offender the risk level designation assigned by the other  
15 state or the federal government. All offenders convicted in another state or by the federal government who are  
16 not currently under the supervision of the department or the youth court and were not given a risk level  
17 designation after conviction shall provide to the department of justice all prior risk assessments and  
18 psychosexual evaluations done to evaluate the offender's risk to reoffend. Any offender without a risk  
19 assessment or psychosexual evaluation shall, at the offender's expense, undergo a psychosexual evaluation  
20 with a sexual offender evaluator who has a license endorsement as provided for in 37-1-139. The results of the  
21 psychosexual evaluation may be requested by the attorney general or a county attorney for purposes of  
22 petitioning a district court to assign a risk level designation.

23 (6) The lack of a fixed residence is a factor that may be considered by the sentencing court or by  
24 the department in determining the risk level to be assigned to an offender pursuant to this section.

25 (7) Upon obtaining information that indicates that a sexual offender who is required to register  
26 under this part does not have a level 1, 2, or 3 designation, the offender, the attorney general, the county  
27 attorney that prosecuted the offender and obtained a conviction for a sexual offense, or the county attorney for  
28 the county in which the offender resides may, at any time, petition the district court that sentenced the offender

1 for a sexual offense or the district court for the judicial district in which the offender resides to designate the  
2 offender as level 1, 2, or 3. Upon the filing of the petition, the court may order a psychosexual evaluation report  
3 at the petitioner's expense, or order that the results of all prior psychosexual evaluations be provided to all  
4 parties. The court shall provide the offender with an opportunity for a hearing prior to designating the offender.  
5 The petitioner shall provide the offender, the attorney general, and the county attorney that prosecuted the  
6 offender with notice of the petition and notice of the hearing. As provided in 46-23-506(2)(d), petitions for relief  
7 from registration under this part must be filed in the appropriate Montana district court. Orders or other  
8 documents granting relief from registration requirements that originated in other jurisdictions are not valid in  
9 Montana."

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