

1 HOUSE BILL NO. 88

2 INTRODUCED BY S. LASZLOFFY

3 BY REQUEST OF THE DEPARTMENT OF JUSTICE

4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS REGARDING SEX OFFENDER
 6 REGISTRATION; REQUIRING THE DISTRICT COURT TO DESIGNATE A SEXUAL OFFENDER EVALUATOR
 7 TO CONDUCT A PSYCHOSEXUAL EVALUATION; REQUIRING THE OFFENDER TO PROVIDE E-MAIL
 8 ADDRESSES AND SOCIAL MEDIA SCREEN NAMES WHEN REGISTERING; REQUIRING OFFENDERS
 9 CONVICTED IN OTHER JURISDICTIONS THAT DO NOT DO A RISK LEVEL ASSESSMENT TO UNDERGO
 10 A PSYCHOSEXUAL EVALUATION; AND AMENDING SECTIONS 46-18-111, 46-18-222, 46-23-502, 46-23-504,
 11 46-23-506, AND 46-23-509, MCA."

12
 13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

14
 15 **Section 1.** Section 46-18-111, MCA, is amended to read:
 16 **"46-18-111. Presentence investigation -- when required.** (1) (a) Upon the acceptance of a plea or
 17 upon a verdict or finding of guilty to one or more felony offenses, the district court shall direct the probation officer
 18 to make a presentence investigation and report. The district court shall consider the presentence investigation
 19 report prior to sentencing.
 20 (b) If the defendant was convicted of an offense under 45-5-310, 45-5-311, 45-5-502, 45-5-503,
 21 45-5-504, 45-5-507, 45-5-601(3), 45-5-602(3), 45-5-603(2)(b), 45-5-625, 45-5-627, or 45-8-218 or if the defendant
 22 was convicted under 46-23-507 and the offender was convicted of failure to register as a sexual offender pursuant
 23 to Title 46, chapter 23, part 5, ~~the investigation must include~~ the district court shall designate a sexual offender
 24 evaluator to conduct a psychosexual evaluation of the defendant and to make a recommendation as to treatment
 25 of the defendant in the least restrictive environment, considering the risk the defendant presents to the community
 26 and the defendant's needs, unless the defendant was sentenced under 46-18-219. ~~The evaluation must be~~
 27 ~~completed by~~ The district court shall select a sex offender therapist sexual offender evaluator who is a member
 28 of the Montana sex offender treatment association or has comparable credentials acceptable to the department
 29 of labor and industry. The psychosexual evaluation must be made available to the county attorney's office, the
 30 defense attorney, the probation and parole officer, and the sentencing judge. All costs related to the evaluation

1 must be paid by the defendant. If the defendant is determined by the district court to be indigent, all costs related
2 to the evaluation are the responsibility of the district court and must be paid by the county or the state, or both,
3 under Title 3, chapter 5, part 9. The district court may order subsequent psychosexual evaluations at the request
4 of the county attorney or the defendant. The requestor of any subsequent psychosexual evaluations is
5 responsible for the cost of the evaluation.

6 (c) If the defendant was convicted of an offense under 45-5-212(2)(b) or (2)(c), the investigation may
7 include a mental health evaluation of the defendant and a recommendation as to treatment of the defendant in
8 the least restrictive environment, considering the risk the defendant presents to the community and the
9 defendant's needs. The evaluation must be completed by a qualified psychiatrist, licensed clinical psychologist,
10 advanced practice registered nurse, or other professional with comparable credentials acceptable to the
11 department of labor and industry. The mental health evaluation must be made available to the county attorney's
12 office, the defense attorney, the probation and parole officer, and the sentencing judge. All costs related to the
13 evaluation must be paid by the defendant. If the defendant is determined by the district court to be indigent, all
14 costs related to the evaluation are the responsibility of the district court and must be paid by the county or the
15 state, or both, under Title 3, chapter 5, part 9.

16 (d) When, pursuant to 46-14-311, the court has ordered a presentence investigation and a report
17 pursuant to this section, the mental evaluation required by 46-14-311 must be attached to the presentence
18 investigation report and becomes part of the report. The report must be made available to persons and entities
19 as provided in 46-18-113.

20 (2) The court shall order a presentence investigation report unless the court makes a finding that a report
21 is unnecessary. Unless the court makes that finding, a defendant convicted of any offense not enumerated in
22 subsection (1) that may result in incarceration for 1 year or more may not be sentenced before a written
23 presentence investigation report by a probation and parole officer is presented to and considered by the district
24 court. The district court may order a presentence investigation for a defendant convicted of a misdemeanor only
25 if the defendant was convicted of a misdemeanor that the state originally charged as a sexual or violent offense
26 as defined in 46-23-502.

27 (3) The defendant shall pay to the department of corrections a \$50 fee at the time that the report is
28 completed, unless the court determines that the defendant is not able to pay the fee within a reasonable time.
29 The fee may be retained by the department and used to finance contracts entered into under 53-1-203(5)."
30

1 **Section 2.** Section 46-18-222, MCA, is amended to read:

2 **"46-18-222. Exceptions to mandatory minimum sentences, restrictions on deferred imposition**
3 **and suspended execution of sentence, and restrictions on parole eligibility.** Mandatory minimum sentences
4 prescribed by the laws of this state, mandatory life sentences prescribed by 46-18-219, the restrictions on
5 deferred imposition and suspended execution of sentence prescribed by 46-18-201(1)(b), 46-18-205,
6 46-18-221(3), 46-18-224, and 46-18-502(3), and restrictions on parole eligibility prescribed by 45-5-503(4),
7 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(b), and 45-5-625(4) do not apply if:

8 (1) the offender was less than 18 years of age at the time of the commission of the offense for which the
9 offender is to be sentenced;

10 (2) the offender's mental capacity, at the time of the commission of the offense for which the offender
11 is to be sentenced, was significantly impaired, although not so impaired as to constitute a defense to the
12 prosecution. However, a voluntarily induced intoxicated or drugged condition may not be considered an
13 impairment for the purposes of this subsection.

14 (3) the offender, at the time of the commission of the offense for which the offender is to be sentenced,
15 was acting under unusual and substantial duress, although not such duress as would constitute a defense to the
16 prosecution;

17 (4) the offender was an accomplice, the conduct constituting the offense was principally the conduct of
18 another, and the offender's participation was relatively minor;

19 (5) in a case in which the threat of bodily injury or actual infliction of bodily injury is an actual element
20 of the crime, no serious bodily injury was inflicted on the victim unless a weapon was used in the commission of
21 the offense; or

22 (6) the offense was committed under 45-5-310, 45-5-311, 45-5-502(3), 45-5-503(4), 45-5-507(5),
23 45-5-601(3), 45-5-602(3), 45-5-603(2)(b), or 45-5-625(4) and the judge determines, based on the findings
24 contained in a ~~sexual offender~~ psychosexual evaluation report prepared by a qualified sexual offender evaluator
25 pursuant to the provisions of 46-23-509, that treatment of the offender while incarcerated, while in a residential
26 treatment facility, or while in a local community affords a better opportunity for rehabilitation of the offender and
27 for the ultimate protection of the victim and society, in which case the judge shall include in its judgment a
28 statement of the reasons for its determination."
29

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

1 **"46-23-502. Definitions.** As used in 46-18-255 and this part, the following definitions apply:

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

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

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

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

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

11 (6) "Registration agency" means:

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

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

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

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

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

22 (9) "Sexual offense" means:

23 (a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-301 (if the victim
24 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 than 18
25 years of age and the offender is not a parent of the victim), 45-5-303 (if the victim is less than 18 years of age and
26 the offender is not a parent of the victim), 45-5-310, 45-5-311, 45-5-502(3) (if the victim is less than 16 years of
27 age and the offender is 3 or more years older than the victim), 45-5-503, 45-5-504(1) (if the victim is ~~under less~~
28 than 18 years of age and the offender is 18 years of age or older), 45-5-504(2)(c), 45-5-507 (if the victim is ~~under~~
29 less than 18 years of age and the offender is 3 or more years older than the victim or if the victim is 12 years of
30 age or younger and the offender is 18 years of age or older at the time of the offense), 45-5-601(3), 45-5-602(3),

1 45-5-603(1)(b) or (2)(b), or 45-5-625; or

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

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

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

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

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

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

14 (13) "Violent offense" means:

15 (a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-102, 45-5-103,
16 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, 45-5-302
17 (if the victim is not a minor), 45-5-303 (if the victim is not a minor), 45-5-401, 45-6-103, or 45-9-132; or

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

20

21 **Section 4.** Section 46-23-504, MCA, is amended to read:

22 **"46-23-504. Persons required to register -- procedure.** (1) Except as provided in 41-5-1513, a sexual
23 or violent offender:

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

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

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

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

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

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

16 (a) the name of the offender and any aliases used by the offender;

17 (b) the offender's social security number;

18 (c) the residence information required by subsection (4);

19 (d) the name and address of any business or other place where the offender is or will be an employee;

20 (e) the name and address of any school where the offender will be a student;

21 (f) the offender's driver's license number; ~~and~~

22 (g) the description and license number of any motor vehicle owned or operated by the offender; and

23 (h) all of the offender's e-mail addresses and social media screen names.

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

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

1 (5) A transient shall report monthly, in person, to the registration agency with which the transient
2 registered pursuant to subsection (1)(d). The transient shall report on a day specified by the registration agency
3 and during the normal business hours of that agency. On that day, the transient shall provide the registration
4 agency with the information listed in subsections (3)(a) through ~~(3)(g)~~ (3)(h). The registration agency to which the
5 transient reports may also require the transient to provide the locations where the transient stayed during the
6 previous 30 days and may stay during the next 30 days.

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

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

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

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

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

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

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

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

27 (9) The clerk of the district court in the county in which a person is convicted of a sexual or violent
28 offense shall notify the sheriff in that county of the conviction within 10 days after entry of the judgment."
29

30 **Section 5.** Section 46-23-506, MCA, is amended to read:

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

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

5 (a) for the 10 years following release from confinement or, if not confined following sentencing, for the
6 10 years following the conclusion of the sentencing hearing, but the offender is not relieved of the duty to register
7 until a petition is granted under subsection (3)(a); or

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

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

16 (b) Except as provided in subsection (5), at any time after ~~10~~ 15 years of registration for a level 1 sexual
17 offender and at any time after 25 years of registration for a level 2 sexual offender, an offender may petition the
18 sentencing court or the district court for the judicial district in which the offender resides for an order relieving the
19 offender of the duty to register. The petition must be served on the county attorney in the county where the
20 petition is filed. Prior to a hearing on the petition, the county attorney shall mail a copy of the petition to the victim
21 of the last offense for which the offender was convicted if the victim's address is reasonably available. The court
22 shall consider any written or oral statements of the victim. The court may grant the petition upon finding that:

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

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

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

1 victim unless the judge determines that exclusion of the individual is necessary to protect the offender's right to
2 privacy.

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

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

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

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

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

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

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

11

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

13 **"46-23-509. Sexual offender evaluations and designations -- rulemaking authority.** (1) The
14 department shall adopt rules for the qualification of sexual offender evaluators who conduct ~~sexual offender and~~
15 ~~sexually violent predator~~ psychosexual evaluations of sexual offenders and sexually violent predators and for
16 determinations by sexual offender evaluators of the risk of a repeat offense and the threat that an offender poses
17 to the public safety.

18 (2) Prior to sentencing of a person convicted of a sexual offense, the department or a sexual offender
19 evaluator shall provide the court with a ~~sexual offender~~ psychosexual evaluation report recommending one of the
20 following levels of designation for the offender:

21 (a) level 1, the risk of a repeat sexual offense is low;

22 (b) level 2, the risk of a repeat sexual offense is moderate;

23 (c) level 3, the risk of a repeat sexual offense is high, there is a threat to public safety, and the sexual
24 offender evaluator believes that the offender is a sexually violent predator.

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

26 (a) review the ~~sexual offender~~ psychosexual evaluation report, any statement by a victim, and any
27 statement by the offender;

28 (b) designate the offender as level 1, 2, or 3; and

29 (c) designate a level 3 offender as a sexually violent predator.

30 (4) An offender designated as a level 2 offender or given a level designation by another state, the federal

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

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

11 (6) If an offense is covered by 46-23-502(9)(b), the offender registers under 46-23-504(1)(c), and the
12 offender was given a risk level designation after conviction by another state or the federal government, the
13 department of justice may give the offender the risk level designation assigned by the other state or the federal
14 government. All offenders convicted in another state or by the federal government that were not given a risk level
15 designation after conviction shall provide to the department of justice all prior risk assessments done to evaluate
16 the offender's risk to reoffend. Any offender without a risk assessment must, at the offender's expense, undergo
17 a psychosexual evaluation with a sexual offender evaluator who is a member of the Montana sex offender
18 treatment association. The results of the sex offender evaluation may be requested by the attorney general or
19 a county attorney for purposes of petitioning a district court to assign a risk level designation.

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

22 (8) Upon obtaining information that indicates that a sexual offender who is required to register under this
23 part does not have a level 1, 2, or 3 designation, the attorney general, the county attorney that prosecuted the
24 offender and obtained a conviction for a sexual offense, or the county attorney for the county in which the offender
25 resides may, at any time, petition the district court that sentenced the offender for a sexual offense or the district
26 court for the judicial district in which the offender resides to designate the offender as level 1, 2, or 3. Upon the
27 filing of the petition, the court may order a ~~sexual offender~~ psychosexual evaluation report at the petitioner's
28 expense. The court shall provide the offender with an opportunity for a hearing prior to designating the offender.
29 The petitioner shall provide the offender with notice of the petition and notice of the hearing."

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