

HOUSE BILL NO. 111

INTRODUCED BY AHNER

BY REQUEST OF THE DEPARTMENT OF CORRECTIONS AND THE DEPARTMENT OF JUSTICE

4

5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO THE
6 IDENTIFICATION AND REGISTRATION OF SEXUAL AND VIOLENT OFFENDERS; PROVIDING FOR A
7 SEXUALLY VIOLENT PREDATOR DESIGNATION; PROVIDING IMMUNITY FOR NEGLIGENCE; AMENDING
8 SECTIONS 41-5-523, 44-6-101, 46-18-201, 46-23-501, 46-23-502, 46-23-503, 46-23-504, 46-23-505,
9 46-23-506, 46-23-507, AND 46-23-508, MCA; REPEALING SECTION 46-18-254, MCA; AND PROVIDING
10 APPLICABILITY DATES."

11

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

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

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

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

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

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

1

STATEMENT OF INTENT

2 A statement of intent is required for this bill in order to provide guidance for rules adopted under
3 [section 12] concerning the qualifications of sexual offender evaluators and concerning evaluations of
4 sexual offenders. The legislature intends that sexual offender evaluators possess education and experience
5 similar to the education and experience requirements of therapists certified by the Montana sex offender
6 treatment association. The legislature further intends that rules for evaluating the risk of repeat offenses
7 by sexual offenders include the following factors:

8 (1) whether the sexual offender has a mental abnormality;
9 (2) whether the sexual offender's conduct is repetitive and compulsive;
10 (3) whether drugs or alcohol played a part in the offense or offenses;
11 (4) whether the sexual offender served the maximum term for the offense or offenses;
12 (5) whether the offense or offenses involved a child;
13 (6) the age of the sexual offender at the commission of the offense or offenses;
14 (7) the relationship between the sexual offender and the victim or victims;
15 (8) whether the offense or offenses involved use of a weapon;
16 (9) the number, date, and nature of prior offenses;
17 (10) conditions of release that minimize risk of another offense, including whether the sexual
18 offender is under supervision or receiving counseling and treatment;
19 (11) physical conditions that minimize the risk of another offense, such as advanced age or
20 debilitating illness of the sexual offender;
21 (12) whether psychological or psychiatric profiles of the sexual offender indicate a risk of recidivism;
22 (13) the sexual offender's response to and participation in treatment;
23 (14) recent behavior of the sexual offender;
24 (15) recent threats or gestures by the sexual offender against persons; and
25 (16) a review of any victim impact statements.

26

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

28

29 **Section 1.** Section 41-5-523, MCA, is amended to read:

30 **"41-5-523. Disposition -- sentence to correctional facility -- commitment to department --**

1 **placement and evaluation of youth -- restrictions.** (1) If a youth is found to be a delinquent youth or a youth
2 in need of supervision, the youth court may enter its judgment making one or more of the following
3 dispositions:

4 (a) retain jurisdiction in a disposition provided under subsection (1)(b) or (1)(d);

5 (b) place the youth on probation;

6 (c) subject to subsections (1)(n)(i), (2)(a), (2)(b), and (6), sentence a youth to one of the state
7 youth correctional facilities established under 52-5-101 and, as part of the sentence, deny the youth
8 eligibility for release without the express approval of the sentencing judge until the youth reaches 18 years
9 of age. A youth may not be sentenced to a state youth correctional facility unless the department informs
10 the judge that space is available for the youth at that facility. The sentencing judge may not place
11 limitations on the release unless recommended by the youth placement committee.

12 (d) require a youth found to be delinquent to register as a ~~sex~~ sexual or violent offender pursuant
13 to ~~46-18-254 and 46-23-506~~ under 46-23-504;

14 (e) place the youth in an in-state residence that ensures that the youth is accountable, provides
15 for rehabilitation, and protects the public. Before placement, the sentencing judge shall seek and consider
16 placement recommendations from the youth placement committee. The judge may not place the youth in
17 an in-state residence unless the department informs the judge that resources are available for placement
18 of the youth at that residence.

19 (f) commit the youth to the department. In an order committing a youth to the department:

20 (i) the court shall determine whether continuation in the youth's own home would be contrary to
21 the welfare of the youth and whether reasonable efforts have been made to prevent or eliminate the need
22 for removal of the youth from the youth's home;

23 (ii) in the case of a delinquent youth who is determined by the court to be a serious juvenile
24 offender, the judge may specify that the youth be placed in a state youth correctional facility if the judge
25 finds that the placement is necessary for the protection of the public. The court may order the department
26 to notify the court within 5 working days before the proposed release of a youth from a youth correctional
27 facility. Once a youth is committed to the department for placement in a state youth correctional facility,
28 the department is responsible for determining an appropriate date of release into an appropriate placement.

29 (g) order restitution by the youth or the youth's parents;

30 (h) impose a fine as authorized by law if the violation alleged would constitute a criminal offense

1 if committed by an adult;

2 (i) require the performance of community service;

3 (j) require the youth, the youth's parents or guardians, or the persons having legal custody of the

4 youth to receive counseling services;

5 (k) require the medical and psychological evaluation of the youth, the youth's parents or guardians,

6 or the persons having legal custody of the youth;

7 (l) require the parents, guardians, or other persons having legal custody of the youth to furnish

8 services the court may designate;

9 (m) order further care, treatment, evaluation, or relief that the court considers beneficial to the

10 youth and the community and that does not obligate funding from the department for services outside the

11 state of Montana without the department's approval, except that a youth may not be placed by a youth

12 court in a residential treatment facility as defined in 50-5-101. Only the department may, pursuant to

13 subsection (1)(f), place a youth in a residential treatment facility.

14 (n) commit the youth to a mental health facility if, based upon the testimony of a professional

15 person as defined in 53-21-102, the court finds that the youth is seriously mentally ill as defined in

16 53-21-102. The youth is entitled to all rights provided by 53-21-114 through 53-21-119.

17 (i) A youth adjudicated mentally ill or seriously mentally ill as defined in 53-21-102 may not be

18 committed or sentenced to a state youth correctional facility.

19 (ii) A youth adjudicated to be mentally ill or seriously mentally ill after placement in or sentencing

20 to a state youth correctional facility must be moved to a more appropriate placement in response to the

21 youth's mental health needs and consistent with the disposition alternatives available in 53-21-127.

22 (o) place the youth under home arrest as provided in Title 46, chapter 18, part 10.

23 (2) When a youth is committed to the department, the department shall determine the appropriate

24 placement and rehabilitation program for the youth after considering the recommendations made under

25 41-5-527 by the youth placement committee. Placement is subject to the following limitations:

26 (a) A youth in need of supervision or adjudicated delinquent for commission of an act that would

27 not be a criminal offense if committed by an adult may not be placed in a state youth correctional facility.

28 (b) A youth may not be held in a state youth correctional facility for a period of time in excess of

29 the maximum period of imprisonment that could be imposed on an adult convicted of the offense or

30 offenses that brought the youth under the jurisdiction of the youth court. This section does not limit the

1 power of the department to enter into an aftercare agreement with the youth pursuant to 52-5-126.

2 (c) A youth may not be placed in or transferred to a penal institution or other facility used for the
3 execution of sentence of adults convicted of crimes.

4 (3) A youth placed in a state youth correctional facility or other facility or program operated by the
5 department or who signs an aftercare agreement under 52-5-126 must be supervised by the department.

6 A youth who is placed in any other placement by the department, the youth court, or the youth court's
7 juvenile probation officer must be supervised by the probation officer of the youth court having jurisdiction
8 over the youth under 41-5-205 whether or not the youth is committed to the department. Supervision by
9 the youth probation officer includes but is not limited to:

10 (a) submitting information and documentation necessary for the person, committee, or team that
11 is making the placement recommendation to determine an appropriate placement for the youth;

12 (b) securing approval for payment of special education costs from the youth's school district of
13 residence or the office of public instruction, as required in Title 20, chapter 7, part 4;

14 (c) submitting an application to a facility in which the youth may be placed; and

15 (d) case management of the youth.

16 (4) The youth court may order a youth to receive a medical or psychological evaluation at any time
17 prior to final disposition if the youth waives the youth's constitutional rights in the manner provided for in
18 41-5-303. The county determined by the court as the residence of the youth is responsible for the cost of
19 the evaluation, except as provided in subsection (5). A county may contract with the department or other
20 public or private agencies to obtain evaluation services ordered by the court.

21 (5) The youth court shall determine the financial ability of the youth's parents to pay the cost of
22 an evaluation ordered by the court under subsection (4). If they are financially able, the court shall order
23 the youth's parents to pay all or part of the cost of the evaluation.

24 (6) The youth court may not order placement or evaluation of a youth at a state youth correctional
25 facility unless the youth is found to be a delinquent youth or is alleged to have committed an offense that
26 is transferable to criminal court under 41-5-206.

27 (7) An evaluation of a youth may not be performed at the Montana state hospital unless the youth
28 is transferred to the district court under 41-5-206, 41-5-208, or 41-5-1105.

29 (8) An order of the court may be modified at any time. In the case of a youth committed to the
30 department, an order pertaining to the youth may be modified only upon notice to the department and

1 subsequent hearing.

2 (9) Whenever the court commits a youth to the department, it shall transmit with the dispositional
3 judgment copies of medical reports, social history material, education records, and any other clinical,
4 predisposition, or other reports and information pertinent to the care and treatment of the youth.

5 (10) If a youth is committed to the department, the court shall examine the financial ability of the
6 youth's parents or guardians to pay a contribution covering all or part of the costs for the care,
7 commitment, and treatment of the youth, including the costs of necessary medical, dental, and other health
8 care.

9 (11) If the court determines that the youth's parents or guardians are financially able to pay a
10 contribution as provided in subsection (10), the court shall order the youth's parents or guardians to pay
11 an amount based on the uniform child support guidelines adopted by the department of public health and
12 human services pursuant to 40-5-209.

13 (12) (a) Except as provided in subsection (12)(b), contributions ordered under this section and each
14 modification of an existing order are enforceable by immediate or delinquency income withholding, or both,
15 under Title 40, chapter 5, part 4. An order for contribution that is inconsistent with this section is
16 nevertheless subject to withholding for the payment of the contribution without need for an amendment
17 of the support order or for any further action by the court.

18 (b) A court-ordered exception from contributions under this section must be in writing and be
19 included in the order. An exception from the immediate income withholding requirement may be granted
20 if the court finds there is:

21 (i) good cause not to require immediate income withholding; or

22 (ii) an alternative arrangement between the department and the person who is ordered to pay
23 contributions.

24 (c) A finding of good cause not to require immediate income withholding must, at a minimum, be
25 based upon:

26 (i) a written determination and explanation by the court of the reasons why the implementation of
27 immediate income withholding is not in the best interests of the youth; and

28 (ii) proof of timely payment of previously ordered support in cases involving modification of
29 contributions ordered under this section.

30 (d) An alternative arrangement must:

- (i) provide sufficient security to ensure compliance with the arrangement;
- (ii) be in writing and be signed by a representative of the department and the person required to contribute; and
- (iii) if approved by the court, be entered into the record of the proceeding.

(13) Upon a showing of a change in the financial ability of the youth's parents or guardians to pay, the court may modify its order for the payment of contributions required under subsection (11).

(14) (a) If the court orders the payment of contributions under this section, the department shall apply to the department of public health and human services for support enforcement services pursuant to Title IV-D of the Social Security Act.

10 (b) The department of public health and human services may collect and enforce a contribution
11 order under this section by any means available under law, including the remedies provided for in Title 40,
12 chapter 5, parts 2 and 4."

Section 2. Section 44-6-101, MCA, is amended to read:

"44-6-101. Definitions. As used in this part, the following definitions apply:

(1) "Department" means the department of justice provided for in 2-15-2001.

(2) "DNA" means deoxyribonucleic acid.

(3) "DNA identification index" means the DNA identification record system established under 02.

20 (4) "DNA record" means DNA identification information stored in the DNA identification index for
21 purposes of establishing identification in connection with law enforcement investigations or supporting
22 statistical interpretation of the results of DNA analysis. The DNA record is considered the objective form
23 of the results of a DNA analysis, such as the numerical representation of DNA fragment lengths,
24 autoradiographs and the digital image of autoradiographs, and discrete allele assignment numbers.

25 (5) "DNA testing" means DNA analysis of materials derived from the human body for the purposes
26 of identification consistent with this part.

(6) "Forensic DNA laboratory" means any laboratory operated by state government that performs DNA analysis on materials derived from the human body for use as evidence in a criminal proceeding or for purposes of identification.

30 (7) "Marker" means a method of describing individuals by genetic profile, such as blood or DNA

1 type, and has the specific meaning given to the word by department rule, which must take into account
2 the meaning generally given to the word for forensic typing by DNA technologists.

3 (8) "Sexual offense" means the offenses contained in the definition of that term in 46-23-502.

4 (9) "Violent offense" means an offense has the meaning contained in ~~46-5-102, 46-5-103,~~
5 ~~46-5-202, 46-5-302, 46-5-303, 46-5-401, or 46-6-103 or an equivalent offense under federal law or the~~
6 ~~law of another state 46-23-502.~~"

7

8 **Section 3.** Section 46-18-201, MCA, is amended to read:

9 **"46-18-201. (Temporary) Sentences that may be imposed.** (1) Whenever a person has been found
10 guilty of an offense upon a verdict or a plea of guilty, the court may:

11 (a) defer imposition of sentence, except as provided in 61-8-714 and 61-8-722 for sentences for
12 driving under the influence of alcohol or drugs or as provided in 61-6-304, for a period, except as otherwise
13 provided, not exceeding 1 year for any misdemeanor or for a period not exceeding 3 years for any felony.
14 The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the
15 period of the deferred imposition. Reasonable restrictions or conditions may include:

16 (i) jail base release;

17 (ii) jail time not exceeding 180 days;

18 (iii) conditions for probation;

19 (iv) payment of the costs of confinement;

20 (v) payment of a fine as provided in 46-18-231;

21 (vi) payment of costs as provided in 46-18-232 and 46-18-233;

22 (vii) payment of costs of court-appointed counsel as provided in 46-8-113;

23 (viii) with the approval of the facility or program, an order that the offender be placed in a
24 community corrections facility or program as provided in 53-30-321;

25 (ix) community service;

26 (x) home arrest as provided in Title 46, chapter 18, part 10;

27 (xi) any other reasonable conditions considered necessary for rehabilitation or for the protection of
28 society;

29 (xii) payment of expenses for use of a judge pro tempore or special master as provided in 3-5-116;

30 or

(xiii) any combination of the restrictions or conditions in subsections (1)(a)(i) through (1)(a)(xii).

(b) suspend execution of sentence for a period up to the maximum sentence allowed or for a period of 6 months, whichever is greater, for each particular offense. The sentencing judge may impose on the defendant any reasonable restrictions or conditions during the period of suspended sentence. Reasonable restrictions or conditions may include any of those listed in subsection (1)(a).

(c) impose a fine as provided by law for the offense;

(d) require payment of costs as provided in 46-18-232 or payment of costs of court-appointed counsel as provided in 46-8-113;

(e) impose a county jail or state prison sentence, as provided in Title 45, for the offense or commit the defendant to the department of corrections for placement in an appropriate correctional institution or program;

(f) with the approval of the facility or program, order the offender to be placed in a community corrections facility or program as provided in 53-30-321; or

(g) impose any combination of subsections (1)(b) through (1)(f).

(2) In addition to any penalties imposed pursuant to subsection (1), if the court finds that the victim of the offense has sustained a pecuniary loss, the court shall require payment of restitution to the victim as provided in 46-18-241 through 46-18-249. If the court determines that the defendant is unable to pay restitution, then it may impose, in addition to any other sentence, community service under 46-18-241.

(3) If a financial obligation is imposed as a condition under subsection (1)(a), sentence may be deferred for a period not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for a felony, regardless of whether any other conditions are imposed.

(4) If any restrictions or conditions imposed under subsection (1)(a) or (1)(b) are violated, the court shall consider any elapsed time and either expressly allow part or all of it as a credit against the sentence or reject all or part as a credit. The court shall state its reasons in the order. Credit, however, must be allowed for jail or home arrest time already served.

(5) Except as provided in 45-9-202 and 46-18-222, the imposition or execution of the first 2 years of a sentence of imprisonment imposed under the following sections may not be deferred or suspended: 45-5-103, 45-5-202(3) relating to aggravated assault, 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-502(3), 45-5-503(2) and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(4), and 45-9-103(2).

(6) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a sentence

1 of imprisonment imposed under 45-5-102 may not be deferred or suspended.

2 (7) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred
3 in the case of a defendant who has been convicted of a felony on a prior occasion, whether or not the
4 sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was
5 suspended.

6 (8) If the victim was less than 16 years old, the imposition or execution of the first 30 days of a
7 sentence of imprisonment imposed under 45-5-503, 45-5-504, 45-5-505, or 45-5-507 may not be deferred
8 or suspended. Section 46-18-222 does not apply to the first 30 days of the imprisonment.

9 (9) In imposing a sentence on a defendant convicted of a sexual or violent offense as defined in
10 46-23-502, the court may not waive the registration requirement provided in 46-18-254, 46-18-255, and
11 Title 46, chapter 23, part 5.

12 (10) A person convicted of a sexual offense, as defined in 46-23-502, and sentenced to
13 imprisonment in the state prison shall enroll in the educational phase of the prison's sexual offender
14 program.

15 (11) In sentencing a nonviolent felony offender, the court shall first consider alternatives to
16 imprisonment of the offender in the state prison, including placement of the offender in a community
17 corrections facility or program. In considering alternatives to imprisonment, the court shall examine the
18 sentencing criteria contained in 46-18-225. If the offender is subsequently sentenced to the state prison
19 or the women's correctional system, the court shall state its reasons why alternatives to imprisonment were
20 not selected, based on the criteria contained in 46-18-225.

21 **46-18-201. (Effective July 1, 1997) Sentences that may be imposed.** (1) Whenever a person has
22 been found guilty of an offense upon a verdict or a plea of guilty, the court may:

23 (a) defer imposition of sentence, except as provided in 61-8-714 and 61-8-722 for sentences for
24 driving under the influence of alcohol or drugs or as provided in 61-6-304, for a period, except as otherwise
25 provided, not exceeding 1 year for any misdemeanor or for a period not exceeding 3 years for any felony.
26 The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the
27 period of the deferred imposition. Reasonable restrictions or conditions may include:

28 (i) jail base release;

29 (ii) jail time not exceeding 180 days;

30 (iii) conditions for probation;

- (iv) payment of the costs of confinement;
- (v) payment of a fine as provided in 46-18-231;
- (vi) payment of costs as provided in 46-18-232 and 46-18-233;
- (vii) payment of costs of court-appointed counsel as provided in 46-8-113;
- (viii) with the approval of the facility or program, an order that the offender be placed in a community corrections facility or program as provided in 53-30-321;
- (ix) community service;
- (x) home arrest as provided in Title 46, chapter 18, part 10;
- (xi) any other reasonable conditions considered necessary for rehabilitation or for the protection of;

(xii) payment of expenses for use of a judge pro tempore or special master as provided in 3-5-116;

or

(xiii) any combination of the restrictions or conditions in subsections (1)(a)(i) through (1)(a)(xii).

(b) suspend execution of sentence for a period up to the maximum sentence allowed or for a period of months, whichever is greater, for each particular offense. The sentencing judge may impose on the defendant any reasonable restrictions or conditions during the period of suspended sentence. Reasonable restrictions or conditions may include any of those listed in subsection (1)(a).

(c) impose a fine as provided by law for the offense;

(d) require payment of costs as provided in 46-18-232 or payment of costs of court-appointed
el as provided in 46-8-113;

(e) impose a county jail or state prison sentence, as provided in Title 45, for the offense or commitment of the defendant to the department of corrections for placement in an appropriate correctional institution or m;

(f) with the approval of the facility or program, order the offender to be placed in a community corrections facility or program as provided in 53-30-321; or

(g) impose any combination of subsections (1)(b) through (1)(f).

(2) In addition to any penalties imposed pursuant to subsection (1), if the court finds that the victim offense has sustained a pecuniary loss, the court shall require payment of restitution to the victim provided in 46-18-241 through 46-18-249. If the court determines that the defendant is unable to pay, then it may impose, in addition to any other sentence, community service under 46-18-241.

(3) If a financial obligation is imposed as a condition under subsection (1)(a), sentence may be deferred for a period not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for a felony, regardless of whether any other conditions are imposed.

4 (4) If any restrictions or conditions imposed under subsection (1)(a) or (1)(b) are violated, the court
5 shall consider any elapsed time and either expressly allow part or all of it as a credit against the sentence
6 or reject all or part as a credit. The court shall state its reasons in the order. Credit, however, must be
7 allowed for jail or home arrest time already served.

12 (6) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a sentence
13 of imprisonment imposed under 45-5-102 may not be deferred or suspended.

18 (8) If the victim was less than 16 years old, the imposition or execution of the first 30 days of a
19 sentence of imprisonment imposed under 45-5-503, 45-5-504, 45-5-505, or 45-5-507 may not be deferred
20 or suspended. Section 46-18-222 does not apply to the first 30 days of the imprisonment.

(9) In imposing a sentence on a defendant convicted of a sexual or violent offense as defined in 46-23-502, the court may not waive the registration requirement provided in 46-18-254, 46-18-255, and Title 46, chapter 23, part 5.

(10) A person convicted of a sexual offense, as defined in 46-23-502, and sentenced to imprisonment in the state prison shall enroll in and complete the educational phase of the prison's sexual offender program.

(11) In sentencing a nonviolent felony offender, the court shall first consider alternatives to imprisonment of the offender in the state prison, including placement of the offender in a community corrections facility or program. In considering alternatives to imprisonment, the court shall examine the sentencing criteria contained in 46-18-225. If the offender is subsequently sentenced to the state prison

1 or the women's correctional system, the court shall state its reasons why alternatives to imprisonment were
2 not selected, based on the criteria contained in 46-18-225.

3 (12) Except as provided in 46-18-222, a provision of this section that conflicts with 46-18-219 does
4 not apply to a person sentenced under 46-18-219."

5

6 **Section 4.** Section 46-23-501, MCA, is amended to read:

7 **"46-23-501. Short title. Sections 46-18-254, Section 46-18-255,"** and this part may be cited as
8 the "Sexual or Violent Offender Registration Act".

9

10 **Section 5.** Section 46-23-502, MCA, is amended to read:

11 **"46-23-502. Definitions.** As used in ~~46-18-254, 46-18-255,~~ and this part, the following definitions
12 apply:

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

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

18 (3) "Predatory sexual offense" means a sexual offense against a person with whom a relationship
19 has been established or furthered for the primary purpose of victimization or against a stranger.

20 (4) "Sexual offender evaluator" means a person qualified under rules established by the department
21 to conduct sexual offender and sexually violent predator evaluations.

22 (2)(5) "Sexual offense" means:

23 (a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-502(3),
24 45-5-503, 45-5-504(2)(c), 45-5-507 (unless the act occurred between two consenting persons 16 years
25 of age or older), or 45-5-625; or

26 (b) any violation of a law of another state or the federal government reasonably equivalent to a
27 violation listed in subsection (2)(a) (5)(a).

28 (3)(6) "Sexual or violent offender" means a person who has been convicted of a sexual or violent
29 offense.

30 (7) "Sexually violent predator" means a person who has been convicted of a sexual offense and

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

3 {4}(8) "Violent offense" means:

4 (a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-102,
5 45-5-103, 45-5-202, 45-5-206 (third or subsequent offense), 45-5-301 (when the victim is less than 18
6 years of age and the offender is not a parent of the victim), 45-5-302, 45-5-303, 45-5-401, 45-5-603(1)(b),
7 or 45-6-103; or
8 (b) any violation of a law of another state or the federal government reasonably equivalent to a
9 violation listed in subsection {4}(a) (8)(a)."

10

11 **Section 6.** Section 46-23-503, MCA, is amended to read:

12 **"46-23-503. Release of sexual or violent offender from place of confinement -- duties of official**
13 **in charge.** (1) A sexual or violent offender who is released from the custody of the department of corrections must be informed in writing not less than 10 days prior to release of the duty to register under 46-18-254, 46-18-255, and this part by the official in charge of the place of confinement.

16 (2) The Prior to the offender's release from custody, the official shall obtain the address at which the person expects to reside upon the person's release and report and give to the department of justice and to the sheriff of the county in which the offender intends to reside or, if the offender intends to reside in a municipality, to the chief of police of the municipality:

20 (a) the address to the department of corrections. The department shall inform the appropriate law enforcement agency having local jurisdiction where the person expects to reside, at which the offender intends to reside upon release from the department's custody;

23 (b) the offender's fingerprints and photo, unless they are already in the possession of the department of justice, sheriff, or chief of police; and

25 (c) a form signed by and read to or by the offender stating that the offender's duty to register under this part has been explained to the offender."

27

28 **Section 7.** Section 46-23-504, MCA, is amended to read:

29 **"46-23-504. Persons required to register -- procedure.** (1) A sexual or violent offender shall, within 14 days of conviction or release from prison or:

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

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

6 (c) shall register within 14 10 days of entering a county of this state for the purpose of residing
7 or setting up a temporary domicile for 14 10 days or more; if the offender was sentenced in another state.

8 (2) register, as required under 46-18-254, 46-18-255, and this part, Registration under subsection
9 (1)(a) or (1)(c) must be with the chief of police of the municipality or the sheriff of the county if the
10 offender resides in an area other than a municipality. Whichever person the offender registers with shall
11 notify the other person of the registration.

12 ~~(2)~~(3) At the time of registering, the person offender shall sign a statement in writing giving the
13 information required by the department of justice. The chief of police or sheriff shall fingerprint the person
14 offender, unless the person's offender's fingerprints are on file with the department of justice, and shall
15 photograph the person offender. Within 3 days, the chief of police or sheriff shall send copies of the
16 statement, fingerprints, and photographs to the department and the department of justice and to the sheriff
17 ~~of the county where the person resides, if registration is with the chief of police.~~

18 (4) The department of justice shall mail a registration verification form each 90 days to an offender
19 designated as a level 3 offender under [section 12] and each year to a violent offender or an offender
20 designated as a level 1 or level 2 offender under [section 12]. The form must require the offender's current
21 address and notarized signature. Within 10 days after receipt of the form, the offender shall complete the
22 form and return it to the department.

23 ~~(3)~~(5) The person registered under this section offender is responsible, if able to pay, for costs
24 associated with registration. The fees charged for registration may not exceed the actual costs of
25 registration.

26 ~~(4)~~(6) The clerk of the district court in the county in which a person is convicted of a sexual or
27 violent offense shall notify the sheriff in that county of the conviction within 14 10 days after entry of the
28 judgment."

29

30 **Section 8.** Section 46-23-505, MCA, is amended to read:

1 **"46-23-505. Notice of change of address -- duty to inform -- forwarding of information.** If a person
2 an offender required to register under ~~46-18-254, 46-18-255, and this part~~ changes residence, the person
3 offender shall within 10 days of the change give written notification of the person's new address to the
4 law enforcement agency with whom the person offender last registered. The law enforcement agency shall,
5 within 3 days after receipt of the information new address, forward it and the offender's fingerprints and
6 photograph to the department, the department of justice, and the local law enforcement agency having
7 jurisdiction over the new place of residence and which shall forward a copy of the statement new address,
8 fingerprints, and photographs of the person photograph to the local law enforcement agency sheriff having
9 jurisdiction over the new place of residence and to the chief of police of the municipality of the new place
10 of residence if the new place of residence is in a municipality."

11

12 **Section 9.** Section 46-23-506, MCA, is amended to read:

13 **"46-23-506. Duration of registration.** (1) A person sexual offender required to register under
14 ~~46-18-254, 46-18-255, and this part~~ shall comply with ~~46-18-254, 46-18-255, and this part~~ register for
15 the remainder of the person's offender's life, except as provided in subsection ~~(2)~~ (3) of this section or
16 during a period of time during which the person offender is in prison.

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

18 (a) for the 10 years following release from confinement or, if not confined following sentencing,

19 for the 10 years following the conclusion of the sentencing hearing; or

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

23 ~~(2)(3)~~ At any time after 10 years ~~since the date of the offender's last conviction of a sexual or~~
24 ~~violent offense of registration~~, the offender may petition ~~a district~~ the sentencing court or the district court
25 for the judicial district in which the offender resides for an order relieving the offender of the duty to
26 register under ~~46-18-254, 46-18-255, and this part~~. The petition must be served on the county attorney
27 in the county where the petition is filed. Prior to a hearing on the petition, the county attorney shall mail
28 a copy of the petition to the victim of the last offense for which the offender was convicted if the victim's
29 address is reasonably available. The court shall consider any written or oral statements of the victim. The
30 court may grant the petition upon finding that:

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

(b) continued registration is not necessary for public protection and that relief from registration is in the best interests of society. If the offender was designated as a sexually violent predator under [section 265.75(1)(b)], the court is also required to find that the offender no longer suffers from a mental abnormality or a personality disorder that makes the offender likely to engage in a predatory sexual offense.

(3) (4) The offender may move that all or part of the proceedings in a hearing under subsection (2)

(3) be closed to the public, or the judge may take action close them on the judge's own motion.

Notwithstanding closure of the If a proceeding is closed to the public, the judge shall permit a victim of the

offense to be present unless the judge determines that exclusion of the victim is necessary to protect the

offender's right of privacy or the safety of the victim. If the victim is present, the judge, at the victim's

request, shall permit the presence of an individual to provide support to the victim unless the judge

determines that exclusion of the individual is necessary to protect the offender's right to privacy."

Section 10. Section 46-23-507, MCA, is amended to read:

"46-23-507. **Penalty.** A sexual or violent offender who knowingly fails to register, verify

registration, or keep registration current under 46-18-254, 46-18-255, and this part may be sentenced to

a term of imprisonment of not more than 5 years or may be fined not more than \$10,000, or both."

Section 11. Section 46-23-508, MCA, is amended to read:

"46-23-508. Dissemination of information in register. (1) Information in the register maintained

under 46-18-254 and this part is confidential criminal justice information, as defined in 44-5-103, except

that;

(1)(a) the name of a registered sexual or violent offender is public criminal justice information, as in 44-5-103; and

(2) before releasing from a state prison an inmate who is a sexual offender, if the department

believes that release of information concerning the inmate is necessary for public protection, the department

shall petition the district court for the judicial district in which the prison is located or for the judicial district

in which the inmate intends to reside for an order allowing the department to release relevant and necessary

register information regarding the inmate to the public. The court shall grant the order if the court finds that:

the information is necessary for public protection.

1 (b) a law enforcement agency shall release any offender registration information relevant to the
2 public if the agency determines that a registered offender is a risk to the safety of the community and that
3 disclosure of the registration information may protect the public and, at a minimum:

4 (i) if an offender was given a level 1 designation under [section 12], the agency with which the
5 offender is registered shall notify the agency in whose jurisdiction the offense occurred of the registration;

6 (ii) if an offender was given a level 2 designation under [section 12], the agency with which the
7 offender is registered may disseminate the offender's name to the public with the notation that the offender
8 is a sexual or violent offender and may notify a victim of the offense and any agency, organization, or
9 group serving persons who have characteristics similar to those of a previous victim of the offender of:

10 (A) the offender's approximate, but not exact, address, such as by stating the neighborhood, town,
11 or part of a county;

12 (B) the type of victim targeted by the offense;

13 (C) the name, photograph, and physical description of the offender;

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

15 (E) any conditions imposed by the court upon the offender for the safety of the public; and

16 (iii) if an offender was given a level 3 designation under [section 12], the agency shall give the
17 victim and the public notification that includes the information contained in subsection (1)(b)(ii), except that
18 the offender's exact address must be included. The agency shall also include the date of the offender's
19 release from confinement or if not confined, the date the offender was sentenced, with a notation that the
20 offender was not confined, and shall include the community in which the offense occurred.

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

23

24 **NEW SECTION. Section 12. Sexual offender evaluations and designations -- rulemaking authority.**

25 (1) The department shall adopt rules for the qualification of sexual offender evaluators who conduct sexual
26 offender and sexually violent predator evaluations and for determinations by sexual offender evaluators of
27 the risk of a repeat offense and the threat an offender poses to the public safety.

28 (2) Prior to sentencing of a person convicted of a sexual offense, the department or a sexual
29 offender evaluator shall provide the court with a sexual offender evaluation report recommending one of
30 the following levels of designation for the offender:

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

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

(a) review the sexual offender evaluation report, any statement by a victim, and any statement by

the offender;

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

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

10

NEW SECTION. **Section 13. Expungement of records on reversal of conviction.** Upon final reversal of a conviction of a sexual or violent offense, the sentencing court shall order the expungement of records kept by a court, law enforcement agency, or other state or local government agency under court.

15

NEW SECTION. **Section 14. Immunity from suit.** A state or local governmental entity, a private or an officer or employee of an entity is not liable in negligence for damages arising from a voluntary release or dissemination of or failure to release or disseminate information under this part.

19

NEW SECTION. **Section 15. Repealer.** Section 46-18-254, MCA, is repealed.

21

NEW SECTION. **Section 16. Codification instruction.** [Sections 12 through 14] are intended to be identified as an integral part of Title 46, chapter 23, part 5, and the provisions of Title 46, chapter 23, shall apply to [sections 12 through 14].

25

NEW SECTION. Section 17. Two-thirds vote required. Because [section 14] limits governmental
, Article II, section 18, of the Montana constitution requires a vote of two-thirds of the members of
house of the legislature for passage.

29

NEW SECTION. **Section 18. Applicability.** The provisions of [this act] relating to registration apply

1 to:

2 (1) sexual offenders who are sentenced or who are in the custody or under the supervision of the
3 department of corrections on or after July 1, 1989; and

4 (2) violent offenders who are sentenced or who are in the custody or under the supervision of the
5 department of corrections on or after October 1, 1995.

6 -END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0111, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

Generally revises laws pertaining to registration of sexual and violent offenders; creates three-tier classification of sex offenders and imposes new requirements for address verification and dissemination of information to the public; and transfers responsibility for maintaining registry from Department of Corrections to Department of Justice.

ASSUMPTIONS:

Department of Justice (DOJ):

1. HB111 implements the federal Jacob Wetterling Crimes Against Children Act and sexually violent offender registration program, as well as amendments to that act passed by Congress in "Megan's Law." Montana's allocation of Byrne grant funding under the Omnibus Crime Control and Safe Streets Act of 1968 could be penalized by up to 10 percent if the state does not adopt revisions to its sex offender registration laws to be consistent with these federal statutes.
2. HB111 transfers from the Department of Corrections (DOC) to the Department of Justice (DOJ) the responsibility for maintaining the registry for sexual and violent offenders. It also adds new responsibilities under the law, including primarily the duty under Section 7 of the bill to mail a registration verification form each 90 days to an offender designated as a sexually violent predator and each year to a violent offender or other sex offender. The DOJ will serve as the clearinghouse for federal, state, and local law enforcement agencies for information contained in the registry about sexual and violent offenders. Notice to members of the public will be the responsibility of local law enforcement agencies.
3. HB111 contains a retroactive applicability date and will therefore require a review of the current registry and comparison with criminal history records to ensure that all offenders subject to the bill's provisions are registered as required by law.
4. The DOJ will initially create a manual records management system to accommodate the documents associated with registration of offenders and will develop registration and verification forms, procedures and training programs for users and staff. The DOJ will develop a records management system to include audit trails and security of data to protect information that is required by the bill to be kept confidential. The DOJ also will establish procedures for billing the costs of registration as allowed by Section 7 of the bill, establish a process for receipt and processing of offenders registering after an out-of-state conviction; and establish notification procedures for offenders who fail to register, re-register or keep registrations current.
5. Currently there are over 2,000 offenders in the registry maintained by the Department of Corrections. This number is expected to grow steadily, particularly since registration for violent offenders was not added until 1995. It cannot be estimated at this time how many new sex offenders will be designated as sexually violent predators under the bill.
6. In developing the registration system to coordinate with the criminal history records system already maintained by the DOJ and comparing the data to make sure all offenders are registered, the department estimates that approximately two hours per offender will be required. Once the system is in place, annual data input and address verification will require approximately one hour per offender.
7. Although the bill does not take effect until October 1, 1997, the budget authority should be approved effective July 1, 1997, so that the department is able to design, necessary forms, review and compare the data received from the DOC to match with the existing criminal history records system, and perform other start-up duties necessary to be ready for full implementation of the bill by October.

(Continued)

Dave Lewis 1-18-97
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Chris Ahner
CHRIS AHNER, PRIMARY SPONSOR DATE

Fiscal Note for HB0111, as introduced

HB 111

8. For the DOJ to undertake the new responsibilities imposed by the bill, 1.00 FTE grade 11 at an annual cost of \$25,370 will be required. Annual operating expenses are estimated at \$8,119 (supplies, communications, travel, rent). In fiscal year 1998 only, operating expenses include programming at \$5,000 and a consultant at \$10,580 to analyze the project, contact courts and prosecutors, and work with the DOC to set up the notification process. (Estimated four months of a grade 15 salary minus the \$2700 insurance). Equipment purchased in fiscal year 1998 is \$17,950 (desk, chair, computer, file cabinet, fax, laser printer, and updated local area network server).

Department of Corrections (DOC):

9. The responsibility of maintaining a sex offender registry transfers to the DOJ. This would not cause any appreciable savings to the DOC as these responsibilities are not a significant portion of the work performed by a particular staff member and the legislation would still require cooperation and coordination with the DOJ.

10. The DOC assumes that offenders would properly register 14 days prior to release as the legislation requires because they would not wish to extend their incarceration. Therefore, there would be no anticipated fiscal impact of this change in responsibilities.

11. The DOC is required by this legislation to adopt rules for sex offender evaluators to determine the risk of offenders re-offending. This requirement would result in 80 hours of time for program personnel, 40 hours of administrative support time, 24 hours of attorney time, and \$5,000 for operating expenses. There would be no impact for the staff hours, since the work will be performed by existing staff.

12. At the time of sentencing, the courts would require the DOC to perform evaluations as to the risk of re-offense. The DOC would contract for these evaluations at an approximate cost of \$1,000. This would have no fiscal impact to the DOC as the courts are required to pay this cost.

FISCAL IMPACT:

Department of Justice:

<u>Expenditures:</u>	<u>FY98</u>	<u>FY99</u>
	<u>Difference</u>	<u>Difference</u>
FTE	1.00	1.00
Personal Services	25,370	25,370
Operating expenses	18,699	8,119
Equipment	17,950	0
Program Development	5,000	0
Total	67,019	33,489

Funding:

General Fund (01)	67,019	33,489
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Department of Corrections:

Expenditures:

Operating Expenses	5,000	0
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Funding:

General Fund (01)	5,000	0
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Net Impact on Fund Balance: (Revenue minus Expense)

General Fund (01)	(72,019)	(33,489)
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EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

There could be additional operating expenses for the courts associated with the risk of re-offense evaluations.

1 HOUSE BILL NO. 111

2 INTRODUCED BY AHNER

3 BY REQUEST OF THE DEPARTMENT OF CORRECTIONS AND THE DEPARTMENT OF JUSTICE

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO THE
6 IDENTIFICATION AND REGISTRATION OF SEXUAL AND VIOLENT OFFENDERS; PROVIDING FOR A
7 SEXUALLY VIOLENT PREDATOR DESIGNATION; PROVIDING IMMUNITY FOR NEGLIGENCE; AMENDING
8 SECTIONS 41-5-523, 44-6-101, 46-18-201, 46-23-501, 46-23-502, 46-23-503, 46-23-504, 46-23-505,
9 46-23-506, 46-23-507, AND 46-23-508, MCA; REPEALING SECTION 46-18-254, MCA; AND PROVIDING
10 APPLICABILITY DATES."

11

12 WHEREAS, the Legislature finds that the danger of recidivism posed by sexual and violent offenders
13 and the protection of the public from these offenders is of paramount concern to government and the
14 people; and15 WHEREAS, the Legislature further finds that law enforcement agencies' efforts to protect their
16 communities, conduct investigations, and apprehend sexual and violent offenders is impaired by the lack
17 of information about offenders who live within their jurisdictions; and18 WHEREAS, the system of registering sexual and violent offenders provides law enforcement with
19 information critical to preventing victimization and to resolving incidents of sexual or violent offenses
20 promptly, including notification of the public when necessary to the continued protection of the community;
21 and22 WHEREAS, persons who have committed a sexual or violent offense have a reduced expectation
23 of privacy because of the public's interest in safety; and24 WHEREAS, the Legislature finds that releasing information about sexual or violent offenders to law
25 enforcement agencies and, under certain circumstances, providing access to limited information about
26 certain sexual offenders to the general public will further the primary governmental interest of protecting
27 specific vulnerable groups and the public in general from potential harm.28 THEREFORE, it is the policy of the State of Montana to assist local law enforcement agencies'
29 efforts in protecting their communities by requiring that sexual or violent offenders register and to authorize
30 the release of necessary and relevant information about sex offenders to the public.

1

STATEMENT OF INTENT

2 A statement of intent is required for this bill in order to provide guidance for rules adopted under
3 [section 12] concerning the qualifications of sexual offender evaluators and concerning evaluations of
4 sexual offenders. The legislature intends that sexual offender evaluators possess education and experience
5 similar to the education and experience requirements of therapists certified by the Montana sex offender
6 treatment association. The legislature further intends that rules for evaluating the risk of repeat offenses
7 by sexual offenders include the following factors:

8 (1) whether the sexual offender has a mental abnormality;
9 (2) whether the sexual offender's conduct is repetitive and compulsive;
10 (3) whether drugs or alcohol played a part in the offense or offenses;
11 (4) whether the sexual offender served the maximum term for the offense or offenses;
12 (5) whether the offense or offenses involved a child;
13 (6) the age of the sexual offender at the commission of the offense or offenses;
14 (7) the relationship between the sexual offender and the victim or victims;
15 (8) whether the offense or offenses involved use of a weapon;
16 (9) the number, date, and nature of prior offenses;
17 (10) conditions of release that minimize risk of another offense, including whether the sexual
18 offender is under supervision or receiving counseling and treatment;
19 (11) physical conditions that minimize the risk of another offense, such as advanced age or
20 debilitating illness of the sexual offender;
21 (12) whether psychological or psychiatric profiles of the sexual offender indicate a risk of recidivism;
22 (13) the sexual offender's response to and participation in treatment;
23 (14) recent behavior of the sexual offender;
24 (15) recent threats or gestures by the sexual offender against persons; and
25 (16) a review of any victim impact statements.

26

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

28

29 Section 1. Section 41-5-523, MCA, is amended to read:

30 **"41-5-523. Disposition -- sentence to correctional facility -- commitment to department --**

1 **placement and evaluation of youth -- restrictions.** (1) If a youth is found to be a delinquent youth or a youth
2 in need of supervision, the youth court may enter its judgment making one or more of the following
3 dispositions:

4 (a) retain jurisdiction in a disposition provided under subsection (1)(b) or (1)(d);

5 (b) place the youth on probation;

6 (c) subject to subsections (1)(n)(i), (2)(a), (2)(b), and (6), sentence a youth to one of the state
7 youth correctional facilities established under 52-5-101 and, as part of the sentence, deny the youth
8 eligibility for release without the express approval of the sentencing judge until the youth reaches 18 years
9 of age. A youth may not be sentenced to a state youth correctional facility unless the department informs
10 the judge that space is available for the youth at that facility. The sentencing judge may not place
11 limitations on the release unless recommended by the youth placement committee.

12 (d) require a youth found to be delinquent to register as a ~~sex~~ sexual or violent offender pursuant
13 to ~~46-18-254 and 46-23-506~~ 46-23-504;

14 (e) place the youth in an in-state residence that ensures that the youth is accountable, provides
15 for rehabilitation, and protects the public. Before placement, the sentencing judge shall seek and consider
16 placement recommendations from the youth placement committee. The judge may not place the youth in
17 an in-state residence unless the department informs the judge that resources are available for placement
18 of the youth at that residence.

19 (f) commit the youth to the department. In an order committing a youth to the department:

20 (i) the court shall determine whether continuation in the youth's own home would be contrary to
21 the welfare of the youth and whether reasonable efforts have been made to prevent or eliminate the need
22 for removal of the youth from the youth's home;

23 (ii) in the case of a delinquent youth who is determined by the court to be a serious juvenile
24 offender, the judge may specify that the youth be placed in a state youth correctional facility if the judge
25 finds that the placement is necessary for the protection of the public. The court may order the department
26 to notify the court within 5 working days before the proposed release of a youth from a youth correctional
27 facility. Once a youth is committed to the department for placement in a state youth correctional facility,
28 the department is responsible for determining an appropriate date of release into an appropriate placement.

29 (g) order restitution by the youth or the youth's parents;

30 (h) impose a fine as authorized by law if the violation alleged would constitute a criminal offense

1 if committed by an adult;

2 (ii) require the performance of community service;

3 (j) require the youth, the youth's parents or guardians, or the persons having legal custody of the

4 youth to receive counseling services;

5 (k) require the medical and psychological evaluation of the youth, the youth's parents or guardians,

6 or the persons having legal custody of the youth;

7 (l) require the parents, guardians, or other persons having legal custody of the youth to furnish

8 services the court may designate;

9 (m) order further care, treatment, evaluation, or relief that the court considers beneficial to the

10 youth and the community and that does not obligate funding from the department for services outside the

11 state of Montana without the department's approval, except that a youth may not be placed by a youth

12 court in a residential treatment facility as defined in 50-5-101. Only the department may, pursuant to

13 subsection (1)(f), place a youth in a residential treatment facility.

14 (n) commit the youth to a mental health facility if, based upon the testimony of a professional

15 person as defined in 53-21-102, the court finds that the youth is seriously mentally ill as defined in

16 53-21-102. The youth is entitled to all rights provided by 53-21-114 through 53-21-119.

17 (i) A youth adjudicated mentally ill or seriously mentally ill as defined in 53-21-102 may not be

18 committed or sentenced to a state youth correctional facility.

19 (ii) A youth adjudicated to be mentally ill or seriously mentally ill after placement in or sentencing

20 to a state youth correctional facility must be moved to a more appropriate placement in response to the

21 youth's mental health needs and consistent with the disposition alternatives available in 53-21-127.

22 (o) place the youth under home arrest as provided in Title 46, chapter 18, part 10.

23 (2) When a youth is committed to the department, the department shall determine the appropriate

24 placement and rehabilitation program for the youth after considering the recommendations made under

25 41-5-527 by the youth placement committee. Placement is subject to the following limitations:

26 (a) A youth in need of supervision or adjudicated delinquent for commission of an act that would

27 not be a criminal offense if committed by an adult may not be placed in a state youth correctional facility.

28 (b) A youth may not be held in a state youth correctional facility for a period of time in excess of

29 the maximum period of imprisonment that could be imposed on an adult convicted of the offense or

30 offenses that brought the youth under the jurisdiction of the youth court. This section does not limit the

1 power of the department to enter into an aftercare agreement with the youth pursuant to 52-5-126.

2 (c) A youth may not be placed in or transferred to a penal institution or other facility used for the
3 execution of sentence of adults convicted of crimes.

4 (3) A youth placed in a state youth correctional facility or other facility or program operated by the
5 department or who signs an aftercare agreement under 52-5-126 must be supervised by the department.

6 A youth who is placed in any other placement by the department, the youth court, or the youth court's
7 juvenile probation officer must be supervised by the probation officer of the youth court having jurisdiction
8 over the youth under 41-5-205 whether or not the youth is committed to the department. Supervision by
9 the youth probation officer includes but is not limited to:

10 (a) submitting information and documentation necessary for the person, committee, or team that
11 is making the placement recommendation to determine an appropriate placement for the youth;

12 (b) securing approval for payment of special education costs from the youth's school district of
13 residence or the office of public instruction, as required in Title 20, chapter 7, part 4;

14 (c) submitting an application to a facility in which the youth may be placed; and

15 (d) case management of the youth.

16 (4) The youth court may order a youth to receive a medical or psychological evaluation at any time
17 prior to final disposition if the youth waives the youth's constitutional rights in the manner provided for in
18 41-5-303. The county determined by the court as the residence of the youth is responsible for the cost of
19 the evaluation, except as provided in subsection (5). A county may contract with the department or other
20 public or private agencies to obtain evaluation services ordered by the court.

21 (5) The youth court shall determine the financial ability of the youth's parents to pay the cost of
22 an evaluation ordered by the court under subsection (4). If they are financially able, the court shall order
23 the youth's parents to pay all or part of the cost of the evaluation.

24 (6) The youth court may not order placement or evaluation of a youth at a state youth correctional
25 facility unless the youth is found to be a delinquent youth or is alleged to have committed an offense that
26 is transferable to criminal court under 41-5-206.

27 (7) An evaluation of a youth may not be performed at the Montana state hospital unless the youth
28 is transferred to the district court under 41-5-206, 41-5-208, or 41-5-1105.

29 (8) An order of the court may be modified at any time. In the case of a youth committed to the
30 department, an order pertaining to the youth may be modified only upon notice to the department and

1 subsequent hearing.

2 (9) Whenever the court commits a youth to the department, it shall transmit with the dispositional
3 judgment copies of medical reports, social history material, education records, and any other clinical,
4 predisposition, or other reports and information pertinent to the care and treatment of the youth.

5 (10) If a youth is committed to the department, the court shall examine the financial ability of the
6 youth's parents or guardians to pay a contribution covering all or part of the costs for the care,
7 commitment, and treatment of the youth, including the costs of necessary medical, dental, and other health
8 care.

9 (11) If the court determines that the youth's parents or guardians are financially able to pay a
10 contribution as provided in subsection (10), the court shall order the youth's parents or guardians to pay
11 an amount based on the uniform child support guidelines adopted by the department of public health and
12 human services pursuant to 40-5-209.

13 (12) (a) Except as provided in subsection (12)(b), contributions ordered under this section and each
14 modification of an existing order are enforceable by immediate or delinquency income withholding, or both,
15 under Title 40, chapter 5, part 4. An order for contribution that is inconsistent with this section is
16 nevertheless subject to withholding for the payment of the contribution without need for an amendment
17 of the support order or for any further action by the court.

18 (b) A court-ordered exception from contributions under this section must be in writing and be
19 included in the order. An exception from the immediate income withholding requirement may be granted
20 if the court finds there is:

21 (i) good cause not to require immediate income withholding; or

22 (ii) an alternative arrangement between the department and the person who is ordered to pay
23 contributions.

24 (c) A finding of good cause not to require immediate income withholding must, at a minimum, be
25 based upon:

26 (i) a written determination and explanation by the court of the reasons why the implementation of
27 immediate income withholding is not in the best interests of the youth; and

28 (ii) proof of timely payment of previously ordered support in cases involving modification of
29 contributions ordered under this section.

30 (d) An alternative arrangement must:

- (i) provide sufficient security to ensure compliance with the arrangement;
- (ii) be in writing and be signed by a representative of the department and the person required to contribute; and
- (iii) if approved by the court, be entered into the record of the proceeding.

5 (13) Upon a showing of a change in the financial ability of the youth's parents or guardians to pay,
6 the court may modify its order for the payment of contributions required under subsection (11).

(14) (a) If the court orders the payment of contributions under this section, the department shall apply to the department of public health and human services for support enforcement services pursuant to Title IV-D of the Social Security Act.

10 (b) The department of public health and human services may collect and enforce a contribution
11 order under this section by any means available under law, including the remedies provided for in Title 40,
12 chapter 5, parts 2 and 4."

13

Section 2. Section 44-6-101, MCA, is amended to read:

"44-6-101. Definitions. As used in this part, the following definitions apply:

(1) "Department" means the department of justice provided for in 2-15-2001.

(2) "DNA" means deoxyribonucleic acid.

(3) "DNA identification index" means the DNA identification record system established under 02.

20 (4) "DNA record" means DNA identification information stored in the DNA identification index for
21 purposes of establishing identification in connection with law enforcement investigations or supporting
22 statistical interpretation of the results of DNA analysis. The DNA record is considered the objective form
23 of the results of a DNA analysis, such as the numerical representation of DNA fragment lengths,
24 autoradiographs and the digital image of autoradiographs, and discrete allele assignment numbers.

25 (5) "DNA testing" means DNA analysis of materials derived from the human body for the purposes
26 of identification consistent with this part.

(6) "Forensic DNA laboratory" means any laboratory operated by state government that performs DNA analysis on materials derived from the human body for use as evidence in a criminal proceeding or for purposes of identification.

30 (7) "Marker" means a method of describing individuals by genetic profile, such as blood or DNA.

1 type, and has the specific meaning given to the word by department rule, which must take into account
2 the meaning generally given to the word for forensic typing by DNA technologists.

3 (8) "Sexual offense" means the offenses contained in the definition of that term in 46-23-502.

4 (9) "Violent offense" means an offense has the meaning contained in ~~45-5-102, 45-5-103,~~
5 ~~45-5-202, 45-5-302, 45-5-303, 45-5-401, or 45-6-103 or an equivalent offense under federal law or the~~
6 ~~law of another state~~ 46-23-502."

7

8 **Section 3.** Section 46-18-201, MCA, is amended to read:

9 **"46-18-201. (Temporary) Sentences that may be imposed.** (1) Whenever a person has been found
10 guilty of an offense upon a verdict or a plea of guilty, the court may:

11 (a) defer imposition of sentence, except as provided in 61-8-714 and 61-8-722 for sentences for
12 driving under the influence of alcohol or drugs or as provided in 61-6-304, for a period, except as otherwise
13 provided, not exceeding 1 year for any misdemeanor or for a period not exceeding 3 years for any felony.
14 The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the
15 period of the deferred imposition. Reasonable restrictions or conditions may include:

16 (i) jail base release;

17 (ii) jail time not exceeding 180 days;

18 (iii) conditions for probation;

19 (iv) payment of the costs of confinement;

20 (v) payment of a fine as provided in 46-18-231;

21 (vi) payment of costs as provided in 46-18-232 and 46-18-233;

22 (vii) payment of costs of court-appointed counsel as provided in 46-8-113;

23 (viii) with the approval of the facility or program, an order that the offender be placed in a
24 community corrections facility or program as provided in 53-30-321;

25 (ix) community service;

26 (x) home arrest as provided in Title 46, chapter 18, part 10;

27 (xi) any other reasonable conditions considered necessary for rehabilitation or for the protection of
28 society;

29 (xii) payment of expenses for use of a judge pro tempore or special master as provided in 3-5-116;

30 or

(xiii) any combination of the restrictions or conditions in subsections (1)(a)(i) through (1)(a)(xii).

(b) suspend execution of sentence for a period up to the maximum sentence allowed or for a period of months, whichever is greater, for each particular offense. The sentencing judge may impose on the defendant any reasonable restrictions or conditions during the period of suspended sentence. Reasonable restrictions or conditions may include any of those listed in subsection (1)(a).

(c) impose a fine as provided by law for the offense;

(d) require payment of costs as provided in 46-18-232 or payment of costs of court-appointed
l as provided in 46-8-113;

(e) impose a county jail or state prison sentence, as provided in Title 45, for the offense or commitment to the department of corrections for placement in an appropriate correctional institution or n;

(f) with the approval of the facility or program, order the offender to be placed in a community corrections facility or program as provided in 53-30-321; or

(g) impose any combination of subsections (1)(b) through (1)(f).

(2) In addition to any penalties imposed pursuant to subsection (1), if the court finds that the victim of the offense has sustained a pecuniary loss, the court shall require payment of restitution to the victim in accordance with the provisions of section 46-18-241 through 46-18-249. If the court determines that the defendant is unable to pay the amount of the restitution, then it may impose, in addition to any other sentence, community service under 46-18-241.

(3) If a financial obligation is imposed as a condition under subsection (1)(a), sentence may be imposed for a period not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for a felony, regardless of whether any other conditions are imposed.

(4) If any restrictions or conditions imposed under subsection (1)(a) or (1)(b) are violated, the court consider any elapsed time and either expressly allow part or all of it as a credit against the sentence credit all or part as a credit. The court shall state its reasons in the order. Credit, however, must be given for jail or home arrest time already served.

(5) Except as provided in 45-9-202 and 46-18-222, the imposition or execution of the first 2 years of sentence of imprisonment imposed under the following sections may not be deferred or suspended: 45-5-203, 45-5-202(3) relating to aggravated assault, 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-502(3), 45-5-503(2) and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(4), and 45-9-103(2).

(6) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a sentence

1 of imprisonment imposed under 45-5-102 may not be deferred or suspended.

2 (7) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred
3 in the case of a defendant who has been convicted of a felony on a prior occasion, whether or not the
4 sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was
5 suspended.

6 (8) If the victim was less than 16 years old, the imposition or execution of the first 30 days of a
7 sentence of imprisonment imposed under 45-5-503, 45-5-504, 45-5-505, or 45-5-507 may not be deferred
8 or suspended. Section 46-18-222 does not apply to the first 30 days of the imprisonment.

9 (9) In imposing a sentence on a defendant convicted of a sexual or violent offense as defined in
10 46-23-502, the court may not waive the registration requirement provided in ~~46-18-254, 46-18-255, and~~
11 Title 46, chapter 23, part 5.

12 (10) A person convicted of a sexual offense, as defined in 46-23-502, and sentenced to
13 imprisonment in the state prison shall enroll in the educational phase of the prison's sexual offender
14 program.

15 (11) In sentencing a nonviolent felony offender, the court shall first consider alternatives to
16 imprisonment of the offender in the state prison, including placement of the offender in a community
17 corrections facility or program. In considering alternatives to imprisonment, the court shall examine the
18 sentencing criteria contained in 46-18-225. If the offender is subsequently sentenced to the state prison
19 or the women's correctional system, the court shall state its reasons why alternatives to imprisonment were
20 not selected, based on the criteria contained in 46-18-225.

21 **46-18-201. (Effective July 1, 1997) Sentences that may be imposed.** (1) Whenever a person has
22 been found guilty of an offense upon a verdict or a plea of guilty, the court may:

23 (a) defer imposition of sentence, except as provided in 61-8-714 and 61-8-722 for sentences for
24 driving under the influence of alcohol or drugs or as provided in 61-6-304, for a period, except as otherwise
25 provided, not exceeding 1 year for any misdemeanor or for a period not exceeding 3 years for any felony.
26 The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the
27 period of the deferred imposition. Reasonable restrictions or conditions may include:

28 (i) jail base release;

29 (ii) jail time not exceeding 180 days;

30 (iii) conditions for probation;

- (iv) payment of the costs of confinement;
- (v) payment of a fine as provided in 46-18-231;
- (vi) payment of costs as provided in 46-18-232 and 46-18-233;
- (vii) payment of costs of court-appointed counsel as provided in 46-8-113;
- (viii) with the approval of the facility or program, an order that the offender be placed in a community corrections facility or program as provided in 53-30-321;
- (ix) community service;
- (x) home arrest as provided in Title 46, chapter 18, part 10;
- (xi) any other reasonable conditions considered necessary for rehabilitation or for the protection of

(xii) payment of expenses for use of a judge pro tempore or special master as provided in 3-5-116:

or

(xiii) any combination of the restrictions or conditions in subsections (1)(a)(i) through (1)(a)(xii).

(b) suspend execution of sentence for a period up to the maximum sentence allowed or for a period of months, whichever is greater, for each particular offense. The sentencing judge may impose on the defendant any reasonable restrictions or conditions during the period of suspended sentence. Reasonable restrictions or conditions may include any of those listed in subsection (1)(a).

(c) impose a fine as provided by law for the offense;

(d) require payment of costs as provided in 46-18-232 or payment of costs of court-appointed
as provided in 46-8-113;

(e) impose a county jail or state prison sentence, as provided in Title 45, for the offense or commit the defendant to the department of corrections for placement in an appropriate correctional institution or program;

(f) with the approval of the facility or program, order the offender to be placed in a community corrections facility or program as provided in 53-30-321; or

(g) impose any combination of subsections (1)(b) through (1)(f).

(2) In addition to any penalties imposed pursuant to subsection (1), if the court finds that the victim of the offense has sustained a pecuniary loss, the court shall require payment of restitution to the victim as provided in 46-18-241 through 46-18-249. If the court determines that the defendant is unable to pay restitution, then it may impose, in addition to any other sentence, community service under 46-18-241.

(3) If a financial obligation is imposed as a condition under subsection (1)(a), sentence may be deferred for a period not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for a felony, regardless of whether any other conditions are imposed.

(4) If any restrictions or conditions imposed under subsection (1)(a) or (1)(b) are violated, the court shall consider any elapsed time and either expressly allow part or all of it as a credit against the sentence or reject all or part as a credit. The court shall state its reasons in the order. Credit, however, must be allowed for jail or home arrest time already served.

(5) Except as provided in 45-9-202 and 46-18-222, the imposition or execution of the first 2 years of a sentence of imprisonment imposed under the following sections may not be deferred or suspended: 45-5-103, 45-5-202(3) relating to aggravated assault, 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-502(3), 45-5-503(2) and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(4), and 45-9-103(2).

(6) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a sentence of imprisonment imposed under 45-5-102 may not be deferred or suspended.

(7) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the case of a defendant who has been convicted of a felony on a prior occasion, whether or not the sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was suspended.

(8) If the victim was less than 16 years old, the imposition or execution of the first 30 days of a sentence of imprisonment imposed under 45-5-503, 45-5-504, 45-5-505, or 45-5-507 may not be deferred or suspended. Section 46-18-222 does not apply to the first 30 days of the imprisonment.

(9) In imposing a sentence on a defendant convicted of a sexual or violent offense as defined in 46-23-502, the court may not waive the registration requirement provided in ~~46-18-254, 46-18-255, and~~ Title 46, chapter 23, part 5.

(10) A person convicted of a sexual offense, as defined in 46-23-502, and sentenced to imprisonment in the state prison shall enroll in and complete the educational phase of the prison's sexual offender program.

(11) In sentencing a nonviolent felony offender, the court shall first consider alternatives to imprisonment of the offender in the state prison, including placement of the offender in a community corrections facility or program. In considering alternatives to imprisonment, the court shall examine the sentencing criteria contained in 46-18-225. If the offender is subsequently sentenced to the state prison

1 or the women's correctional system, the court shall state its reasons why alternatives to imprisonment were
2 not selected, based on the criteria contained in 46-18-225.

3 (12) Except as provided in 46-18-222, a provision of this section that conflicts with 46-18-219 does
4 not apply to a person sentenced under 46-18-219."

5

6 **Section 4.** Section 46-23-501, MCA, is amended to read:

7 **"46-23-501. Short title.** ~~Sections 46-18-254, Section 46-18-255,~~ and this part may be cited as
8 the "Sexual or Violent Offender Registration Act".

9

10 **Section 5.** Section 46-23-502, MCA, is amended to read:

11 **"46-23-502. Definitions.** As used in ~~46-18-254, 46-18-255,~~ and this part, the following definitions
12 apply:

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

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

18 (3) "PERSONALITY DISORDER" MEANS A PERSONALITY DISORDER AS DEFINED IN THE FOURTH
19 EDITION OF THE DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS ADOPTED BY THE
20 AMERICAN PSYCHIATRIC ASSOCIATION.

21 (3)(4) "Predatory sexual offense" means a sexual offense COMMITTED AGAINST A STRANGER
22 OR against a person with whom a relationship has been established or furthered for the primary purpose
23 of victimization or against a stranger.

24 (4)(5) "Sexual offender evaluator" means a person qualified under rules established by the
25 department to conduct sexual offender and sexually violent predator evaluations.

26 (2)(5)(6) "Sexual offense" means:

27 (a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-502(3),
28 45-5-503, 45-5-504(2)(c), 45-5-507 (unless the act occurred between two consenting persons 16 years
29 of age or older), or 45-5-625; or

30 (b) any violation of a law of another state or the federal government reasonably equivalent to a

1 violation listed in subsection ~~(2)(a) (5)(a) (6)(A)~~.

2 ~~(3)(6)(7)~~ "Sexual or violent offender" means a person who has been convicted of a sexual or
3 violent offense.

4 ~~(7)(8)~~ "Sexually violent predator" means a person who has been convicted of a sexual offense and
5 who suffers from a mental abnormality or a personality disorder that makes the person likely to engage in
6 predatory sexual offenses.

7 ~~(4)(8)(9)~~ "Violent offense" means:

8 (a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-102,
9 45-5-103, 45-5-202, 45-5-206 (third or subsequent offense), 45-5-301 (when the victim is less than 18
10 years of age and the offender is not a parent of the victim), 45-5-302, 45-5-303, 45-5-401, 45-5-603(1)(b),
11 or 45-6-103; or

12 (b) any violation of a law of another state or the federal government reasonably equivalent to a
13 violation listed in subsection ~~(4)(a) (8)(a) (9)(A)~~."

14

15 **Section 6.** Section 46-23-503, MCA, is amended to read:

16 **"46-23-503. Release of sexual or violent offender from place of confinement -- duties of official**
17 **in charge.** (1) A sexual ~~or~~ violent offender who is released from the custody of the department of
18 corrections must be informed in writing not less than 10 days prior to release of the duty to register under
19 ~~46-18-254, 46-18-255, and~~ this part by the official in charge of the place of confinement.

20 (2) Prior to the offender's release from custody, the official shall obtain the address at which
21 the person expects to reside upon the person's release and report and give to the department of justice and
22 to the sheriff of the county in which the offender intends to reside or, if the offender intends to reside in
23 a municipality, to the chief of police of the municipality:

24 (a) the address to the department of corrections. The department shall inform the appropriate law
25 enforcement agency having local jurisdiction where the person expects to reside, at which the offender
26 intends to reside upon release from the department's custody;

27 (b) the offender's fingerprints and photo, unless they are already in the possession of the
28 department of justice, sheriff, or chief of police; and

29 (c) a form signed by and read to or by the offender stating that the offender's duty to register
30 under this part has been explained to the offender."

1 Section 7. Section 46-23-504, MCA, is amended to read:

2 **"46-23-504. Persons required to register -- procedure.** (1) A sexual or violent offender ~~shall, within~~

3 ~~14 days of conviction or release from prison or;~~

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

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

9 (c) shall register within 14 10 days of entering a county of this state for the purpose of residing
10 or setting up a temporary domicile for 14 10 days or more, if the offender was sentenced in another state.

11 (2) register, as required under 46-18-254, 46-18-256, and this part, Registration under subsection

12 (1)(a) or MUST BE WITH THE PROBATION OFFICE HAVING SUPERVISION OVER THE OFFENDER.

13 REGISTRATION UNDER SUBSECTION (1)(c) must be with the chief of police of the municipality or the
14 sheriff of the county if the offender resides in an area other than a municipality. Whichever person the AN
15 offender registers with UNDER SUBSECTION (1)(C) shall notify the other person of the registration.

16 (2)(3) At the time of registering, the person offender shall sign a statement in writing giving the
17 information required by the department of justice. The chief of police or sheriff shall fingerprint the person
18 offender, unless the person's offender's fingerprints are on file with the department of justice, and shall
19 photograph the person offender. Within 3 days, the chief of police or sheriff shall send copies of the
20 statement, fingerprints, and photographs to the department and the department of justice and to the sheriff
21 of the county where the person resides, if registration is with the chief of police.

22 (4) The department of justice shall mail a registration verification form each 90 days to an offender
23 designated as a level 3 offender under [section 12] and each year to a violent offender or an offender
24 designated as a level 1 or level 2 offender under [section 12]. The form must require the offender's current
25 address and notarized signature. Within 10 days after receipt of the form, the offender shall complete the
26 form and return it to the department.

27 (3)(5) The person registered under this section offender is responsible, if able to pay, for costs
28 associated with registration. The fees charged for registration may not exceed the actual costs of
29 registration. THE DEPARTMENT OF JUSTICE MAY ADOPT A RULE ESTABLISHING FEES TO COVER
30 REGISTRATION COSTS INCURRED BY THE DEPARTMENT OF JUSTICE IN MAINTAINING REGISTRATION

1 AND ADDRESS VERIFICATION RECORDS. THE FEES MUST BE DEPOSITED IN THE GENERAL FUND.

2 (4)(6) The clerk of the district court in the county in which a person is convicted of a sexual or
3 violent offense shall notify the sheriff in that county of the conviction within 14 10 days after entry of the
4 judgment."

5

6 **Section 8.** Section 46-23-505, MCA, is amended to read:

7 **"46-23-505. Notice of change of address -- duty to inform -- forwarding of information.** If a person
8 an offender required to register under ~~46-18-254, 46-18-255, and this part~~ changes residence, the person
9 offender shall within 10 days of the change give written notification of the person's new address to the
10 ~~law enforcement~~ agency with whom the person offender last registered. The ~~law enforcement~~ agency shall,
11 within 3 days after receipt of the information new address, forward it and the offender's fingerprints and
12 photograph to the ~~department, the department of justice, and the local law enforcement agency having~~
13 ~~jurisdiction over the new place of residence and which~~ shall forward a copy of the statement new address,
14 fingerprints, and photographs of the person photograph to the ~~local law enforcement agency sheriff~~ having
15 jurisdiction over the new place of residence and to the chief of police of the municipality of the new place
16 of residence if the new place of residence is in a municipality."

17

18 **Section 9.** Section 46-23-506, MCA, is amended to read:

19 **"46-23-506. Duration of registration.** (1) A person sexual offender required to register under
20 ~~46-18-254, 46-18-255, and this part shall comply with 46-18-254, 46-18-255, and this part register~~ for
21 the remainder of the person's offender's life, except as provided in subsection ~~(2)~~ (3) of this section or
22 during a period of time during which the person offender is in prison.

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

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

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

29 (2)(3) At any time after 10 years since the date of the offender's last conviction of a sexual or
30 violent offense of registration, the offender may petition a district the sentencing court or the district court

1 for the judicial district in which the offender resides for an order relieving the offender of the duty to
2 register ~~under 46-18-254, 46-18-255, and this part~~. The petition must be served on the county attorney
3 in the county where the petition is filed. Prior to a hearing on the petition, the county attorney shall mail
4 a copy of the petition to the victim of the last offense for which the offender was convicted if the victim's
5 address is reasonably available. The court shall consider any written or oral statements of the victim. The
6 court may grant the petition upon finding that:

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

8 (b) continued registration is not necessary for public protection and that relief from registration is
9 in the best interests of society. If the offender was designated as a sexually violent predator under [section
10 12], the court is also required to find that the offender no longer suffers from a mental abnormality or
11 personality disorder that makes the offender likely to engage in a predatory sexual offense.

12 ~~(3)(4)~~ The offender may move that all or part of the proceedings in a hearing under subsection ~~(2)~~
13 ~~(3)~~ be closed to the public, or the judge may ~~take action close them~~ on the judge's own motion.
14 Notwithstanding closure of the ~~If a proceeding is closed~~ to the public, the judge shall permit a victim of the
15 offense to be present unless the judge determines that exclusion of the victim is necessary to protect the
16 offender's right of privacy or the safety of the victim. If the victim is present, the judge, at the victim's
17 request, shall permit the presence of an individual to provide support to the victim unless the judge
18 determines that exclusion of the individual is necessary to protect the offender's right to privacy."

19

20 **Section 10.** Section 46-23-507, MCA, is amended to read:

21 **"46-23-507. Penalty.** A sexual or violent offender who knowingly fails to register, verify
22 registration, or keep registration current under ~~46-18-254, 46-18-255, and this part~~ may be sentenced to
23 a term of imprisonment of not more than 5 years or may be fined not more than \$10,000, or both."

24

25 **Section 11.** Section 46-23-508, MCA, is amended to read:

26 **"46-23-508. Dissemination of information in register.** (1) Information in the register maintained
27 under ~~46-18-254 and this part~~ is confidential criminal justice information, as defined in 44-5-103, except
28 that:

29 ~~(1)(a)~~ the name of a registered sexual or violent offender is public criminal justice information, as
30 defined in 44-5-103; and

(2) before releasing from a state prison an inmate who is a sexual offender, if the department believes that release of information concerning the inmate is necessary for public protection, the department shall petition the district court for the judicial district in which the prison is located or for the judicial district in which the inmate intends to reside for an order allowing the department to release relevant and necessary register information regarding the inmate to the public. The court shall grant the order if the court finds that the information is necessary for public protection.

(b) a law enforcement agency shall release any offender registration information relevant to the public if the agency determines that a registered offender is a risk to the safety of the community and that disclosure of the registration information may protect the public and, at a minimum:

(i) if an offender was given a level 1 designation under [section 12], the agency with which the offender is registered shall notify the agency in whose jurisdiction the offense occurred of the registration;

(ii) if an offender was given a level 2 designation under [section 12], the agency with which the offender is registered may disseminate the offender's name to the public with the notation that the offender is a sexual or violent offender and may notify a victim of the offense and any agency, organization, or group serving persons who have characteristics similar to those of a previous victim of the offender of:

(A) the offender's approximate, but not exact, address, such as by stating the neighborhood, town, or part of a county:

(B) the type of victim targeted by the offense;

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

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

(E) any conditions imposed by the court upon the offender for the safety of the public; and

(iii) if an offender was given a level 3 designation under [section 12], the agency shall give the victim and the public notification that includes the information contained in subsection (1)(b)(ii), except that the offender's exact address must be included. The agency shall also include the date of the offender's release from confinement or if not confined, the date the offender was sentenced, with a notation that the offender was not confined, and shall include the community in which the offense occurred.

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

NEW SECTION. Section 12. Sexual offender evaluations and designations -- rulemaking authority.

1 (1) The department shall adopt rules for the qualification of sexual offender evaluators who conduct sexual
2 offender and sexually violent predator evaluations and for determinations by sexual offender evaluators of
3 the risk of a repeat offense and the threat an offender poses to the public safety.

4 (2) Prior to sentencing of a person convicted of a sexual offense, the department or a sexual
5 offender evaluator shall provide the court with a sexual offender evaluation report recommending one of
6 the following levels of designation for the offender:

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

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

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

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

12 (a) review the sexual offender evaluation report, any statement by a victim, and any statement by
13 the offender;

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

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

16 (4) (A) AN OFFENDER DESIGNATED AS A LEVEL 2 OR LEVEL 3 OFFENDER MAY PETITION THE
17 SENTENCING COURT TO CHANGE THE OFFENDER'S DESIGNATION IF THE OFFENDER HAS ENROLLED
18 IN AND SUCCESSFULLY COMPLETED THE TREATMENT PHASE OF EITHER THE PRISON'S SEXUAL
19 OFFENDER PROGRAM OR OF AN EQUIVALENT PROGRAM APPROVED BY THE DEPARTMENT. AFTER
20 CONSIDERING THE PETITION, THE COURT MAY CHANGE THE OFFENDER'S RISK LEVEL DESIGNATION
21 IF THE COURT FINDS BY CLEAR AND CONVINCING EVIDENCE THAT THE OFFENDER'S RISK OF
22 COMMITTING A REPEAT SEXUAL OFFENSE HAS CHANGED SINCE THE TIME SENTENCE WAS IMPOSED.
23 THE COURT SHALL IMPOSE ONE OF THE THREE RISK LEVELS SPECIFIED IN THIS SECTION.

24
25 NEW SECTION. Section 13. Expungement of records on reversal of conviction. Upon final
26 reversal of a conviction of a sexual or violent offense, the sentencing court shall order the expungement
27 of any records kept by a court, law enforcement agency, or other state or local government agency under
28 this part.

29
30 NEW SECTION. Section 14. Immunity from suit. A state or local governmental entity, a private

1 entity, or an officer or employee of an entity is not liable in negligence, EXCEPT GROSS NEGLIGENCE OR
2 WILLFUL OR WANTON MISCONDUCT, for damages arising from a GOOD FAITH discretionary release or
3 dissemination of or GOOD FAITH failure to release or disseminate information under this part.

4

5 **NEW SECTION. Section 15. Repealer.** Section 46-18-254, MCA, is repealed.

6

7 **NEW SECTION. Section 16. Codification instruction.** [Sections 12 through 14] are intended to
8 be codified as an integral part of Title 46, chapter 23, part 5, and the provisions of Title 46, chapter 23,
9 part 5, apply to [sections 12 through 14].

10

11 **NEW SECTION. Section 17. Two-thirds vote required.** Because ~~[section 14]~~ [THIS ACT] limits
12 governmental liability, Article II, section 18, of the Montana constitution requires a vote of two-thirds of
13 the members of each house of the legislature for passage OF [THIS ACT].

14

15 **NEW SECTION. Section 18. Applicability.** The provisions of [this act] relating to registration apply
16 to:

17 (1) sexual offenders who are sentenced or who are in the custody or under the supervision of the
18 department of corrections on or after July 1, 1989; and

19 (2) violent offenders who are sentenced or who are in the custody or under the supervision of the
20 department of corrections on or after October 1, 1995.

21

-END-

**THERE ARE NO CHANGES IN THIS BILL AND IT WILL NOT BE
REPRINTED. PLEASE REFER TO SECOND READING COPY
(YELLOW) FOR COMPLETE TEXT.**

1

HOUSE BILL NO. 111

2

INTRODUCED BY AHNER

3 BY REQUEST OF THE DEPARTMENT OF CORRECTIONS AND THE DEPARTMENT OF JUSTICE

4

5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO THE
6 IDENTIFICATION AND REGISTRATION OF SEXUAL AND VIOLENT OFFENDERS; PROVIDING FOR A
7 SEXUALLY VIOLENT PREDATOR DESIGNATION; PROVIDING IMMUNITY FOR NEGLIGENCE; AMENDING
8 SECTIONS 41-5-523, 44-6-101, 46-18-201, 46-23-501, 46-23-502, 46-23-503, 46-23-504, 46-23-505,
9 46-23-506, 46-23-507, AND 46-23-508, MCA; REPEALING SECTION 46-18-254, MCA; AND PROVIDING
10 APPLICABILITY DATES."

11

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

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

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

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

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

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

STATEMENT OF INTENT

A statement of intent is required for this bill in order to provide guidance for rules adopted under [section 12] concerning the qualifications of sexual offender evaluators and concerning evaluations of sexual offenders. The legislature intends that sexual offender evaluators possess education and experience similar to the education and experience requirements of therapists certified by the Montana sex offender treatment association. The legislature further intends that rules for evaluating the risk of repeat offenses by sexual offenders include the following factors:

- (1) whether the sexual offender has a mental abnormality;
- (2) whether the sexual offender's conduct is repetitive and compulsive;
- (3) whether drugs or alcohol played a part in the offense or offenses;
- (4) whether the sexual offender served the maximum term for the offense or offenses;
- (5) whether the offense or offenses involved a child;
- (6) the age of the sexual offender at the commission of the offense or offenses;
- (7) the relationship between the sexual offender and the victim or victims;
- (8) whether the offense or offenses involved use of a weapon;
- (9) the number, date, and nature of prior offenses;
- (10) conditions of release that minimize risk of another offense, including whether the sexual offender is under supervision or receiving counseling and treatment;
- (11) physical conditions that minimize the risk of another offense, such as advanced age or debilitating illness of the sexual offender;
- (12) whether psychological or psychiatric profiles of the sexual offender indicate a risk of recidivism;
- (13) the sexual offender's response to and participation in treatment;
- (14) recent behavior of the sexual offender;
- (15) recent threats or gestures by the sexual offender against persons; and
- (16) a review of any victim impact statements.

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

Section 1. Section 41-5-523, MCA, is amended to read:

"41-5-523. Disposition -- sentence to correctional facility -- commitment to department --

1 **placement and evaluation of youth -- restrictions.** (1) If a youth is found to be a delinquent youth or a youth
2 in need of supervision, the youth court may enter its judgment making one or more of the following
3 dispositions:

4 (a) retain jurisdiction in a disposition provided under subsection (1)(b) or (1)(d);

5 (b) place the youth on probation;

6 (c) subject to subsections (1)(n)(i), (2)(a), (2)(b), and (6), sentence a youth to one of the state
7 youth correctional facilities established under 52-5-101 and, as part of the sentence, deny the youth
8 eligibility for release without the express approval of the sentencing judge until the youth reaches 18 years
9 of age. A youth may not be sentenced to a state youth correctional facility unless the department informs
10 the judge that space is available for the youth at that facility. The sentencing judge may not place
11 limitations on the release unless recommended by the youth placement committee.

12 (d) require a youth found to be delinquent to register as a ~~sex~~ sexual or violent offender pursuant
13 to ~~46-18-254 and 46-23-506~~ under 46-23-504;

14 (e) place the youth in an in-state residence that ensures that the youth is accountable, provides
15 for rehabilitation, and protects the public. Before placement, the sentencing judge shall seek and consider
16 placement recommendations from the youth placement committee. The judge may not place the youth in
17 an in-state residence unless the department informs the judge that resources are available for placement
18 of the youth at that residence.

19 (f) commit the youth to the department. In an order committing a youth to the department:

20 (i) the court shall determine whether continuation in the youth's own home would be contrary to
21 the welfare of the youth and whether reasonable efforts have been made to prevent or eliminate the need
22 for removal of the youth from the youth's home;

23 (ii) in the case of a delinquent youth who is determined by the court to be a serious juvenile
24 offender, the judge may specify that the youth be placed in a state youth correctional facility if the judge
25 finds that the placement is necessary for the protection of the public. The court may order the department
26 to notify the court within 5 working days before the proposed release of a youth from a youth correctional
27 facility. Once a youth is committed to the department for placement in a state youth correctional facility,
28 the department is responsible for determining an appropriate date of release into an appropriate placement.

29 (g) order restitution by the youth or the youth's parents;

30 (h) impose a fine as authorized by law if the violation alleged would constitute a criminal offense

1 if committed by an adult;

2 (i) require the performance of community service;

3 (ii) require the youth, the youth's parents or guardians, or the persons having legal custody of the

4 youth to receive counseling services;

5 (k) require the medical and psychological evaluation of the youth, the youth's parents or guardians,

6 or the persons having legal custody of the youth;

7 (l) require the parents, guardians, or other persons having legal custody of the youth to furnish

8 services the court may designate;

9 (m) order further care, treatment, evaluation, or relief that the court considers beneficial to the

10 youth and the community and that does not obligate funding from the department for services outside the

11 state of Montana without the department's approval, except that a youth may not be placed by a youth

12 court in a residential treatment facility as defined in 50-5-101. Only the department may, pursuant to

13 subsection (1)(f), place a youth in a residential treatment facility.

14 (n) commit the youth to a mental health facility if, based upon the testimony of a professional

15 person as defined in 53-21-102, the court finds that the youth is seriously mentally ill as defined in

16 53-21-102. The youth is entitled to all rights provided by 53-21-114 through 53-21-119.

17 (i) A youth adjudicated mentally ill or seriously mentally ill as defined in 53-21-102 may not be

18 committed or sentenced to a state youth correctional facility.

19 (ii) A youth adjudicated to be mentally ill or seriously mentally ill after placement in or sentencing

20 to a state youth correctional facility must be moved to a more appropriate placement in response to the

21 youth's mental health needs and consistent with the disposition alternatives available in 53-21-127.

22 (o) place the youth under home arrest as provided in Title 46, chapter 18, part 10.

23 (2) When a youth is committed to the department, the department shall determine the appropriate

24 placement and rehabilitation program for the youth after considering the recommendations made under

25 41-5-527 by the youth placement committee. Placement is subject to the following limitations:

26 (a) A youth in need of supervision or adjudicated delinquent for commission of an act that would

27 not be a criminal offense if committed by an adult may not be placed in a state youth correctional facility.

28 (b) A youth may not be held in a state youth correctional facility for a period of time in excess of

29 the maximum period of imprisonment that could be imposed on an adult convicted of the offense or

30 offenses that brought the youth under the jurisdiction of the youth court. This section does not limit the

1 power of the department to enter into an aftercare agreement with the youth pursuant to 52-5-126.

2 (c) A youth may not be placed in or transferred to a penal institution or other facility used for the
3 execution of sentence of adults convicted of crimes.

4 (3) A youth placed in a state youth correctional facility or other facility or program operated by the
5 department or who signs an aftercare agreement under 52-5-126 must be supervised by the department.

6 A youth who is placed in any other placement by the department, the youth court, or the youth court's
7 juvenile probation officer must be supervised by the probation officer of the youth court having jurisdiction
8 over the youth under 41-5-205 whether or not the youth is committed to the department. Supervision by
9 the youth probation officer includes but is not limited to:

10 (a) submitting information and documentation necessary for the person, committee, or team that
11 is making the placement recommendation to determine an appropriate placement for the youth;

12 (b) securing approval for payment of special education costs from the youth's school district of
13 residence or the office of public instruction, as required in Title 20, chapter 7, part 4;

14 (c) submitting an application to a facility in which the youth may be placed; and

15 (d) case management of the youth.

16 (4) The youth court may order a youth to receive a medical or psychological evaluation at any time
17 prior to final disposition if the youth waives the youth's constitutional rights in the manner provided for in
18 41-5-303. The county determined by the court as the residence of the youth is responsible for the cost of
19 the evaluation, except as provided in subsection (5). A county may contract with the department or other
20 public or private agencies to obtain evaluation services ordered by the court.

21 (5) The youth court shall determine the financial ability of the youth's parents to pay the cost of
22 an evaluation ordered by the court under subsection (4). If they are financially able, the court shall order
23 the youth's parents to pay all or part of the cost of the evaluation.

24 (6) The youth court may not order placement or evaluation of a youth at a state youth correctional
25 facility unless the youth is found to be a delinquent youth or is alleged to have committed an offense that
26 is transferable to criminal court under 41-5-206.

27 (7) An evaluation of a youth may not be performed at the Montana state hospital unless the youth
28 is transferred to the district court under 41-5-206, 41-5-208, or 41-5-1105.

29 (8) An order of the court may be modified at any time. In the case of a youth committed to the
30 department, an order pertaining to the youth may be modified only upon notice to the department and

1 subsequent hearing.

2 (9) Whenever the court commits a youth to the department, it shall transmit with the dispositional
3 judgment copies of medical reports, social history material, education records, and any other clinical,
4 predisposition, or other reports and information pertinent to the care and treatment of the youth.

5 (10) If a youth is committed to the department, the court shall examine the financial ability of the
6 youth's parents or guardians to pay a contribution covering all or part of the costs for the care,
7 commitment, and treatment of the youth, including the costs of necessary medical, dental, and other health
8 care.

9 (11) If the court determines that the youth's parents or guardians are financially able to pay a
10 contribution as provided in subsection (10), the court shall order the youth's parents or guardians to pay
11 an amount based on the uniform child support guidelines adopted by the department of public health and
12 human services pursuant to 40-5-209.

13 (12) (a) Except as provided in subsection (12)(b), contributions ordered under this section and each
14 modification of an existing order are enforceable by immediate or delinquency income withholding, or both,
15 under Title 40, chapter 5, part 4. An order for contribution that is inconsistent with this section is
16 nevertheless subject to withholding for the payment of the contribution without need for an amendment
17 of the support order or for any further action by the court.

18 (b) A court-ordered exception from contributions under this section must be in writing and be
19 included in the order. An exception from the immediate income withholding requirement may be granted
20 if the court finds there is:

21 (i) good cause not to require immediate income withholding; or

22 (ii) an alternative arrangement between the department and the person who is ordered to pay
23 contributions.

24 (c) A finding of good cause not to require immediate income withholding must, at a minimum, be
25 based upon:

26 (i) a written determination and explanation by the court of the reasons why the implementation of
27 immediate income withholding is not in the best interests of the youth; and

28 (ii) proof of timely payment of previously ordered support in cases involving modification of
29 contributions ordered under this section.

30 (d) An alternative arrangement must:

- (i) provide sufficient security to ensure compliance with the arrangement;
- (ii) be in writing and be signed by a representative of the department and the person required to contribute; and
- (iii) if approved by the court, be entered into the record of the proceeding.

(13) Upon a showing of a change in the financial ability of the youth's parents or guardians to pay, the court may modify its order for the payment of contributions required under subsection (11).

(14) (a) If the court orders the payment of contributions under this section, the department shall apply to the department of public health and human services for support enforcement services pursuant to Title IV-D of the Social Security Act.

(b) The department of public health and human services may collect and enforce a contribution order under this section by any means available under law, including the remedies provided for in Title 40, chapter 5, parts 2 and 4."

Section 2. Section 44-6-101, MCA, is amended to read:

"44-6-101. Definitions. As used in this part, the following definitions apply:

(1) "Department" means the department of justice provided for in 2-15-2001.

(2) "DNA" means deoxyribonucleic acid.

(3) "DNA identification index" means the DNA identification record system established under 44-6-102.

(4) "DNA record" means DNA identification information stored in the DNA identification index for purposes of establishing identification in connection with law enforcement investigations or supporting statistical interpretation of the results of DNA analysis. The DNA record is considered the objective form of the results of a DNA analysis, such as the numerical representation of DNA fragment lengths, autoradiographs and the digital image of autoradiographs, and discrete allele assignment numbers.

(5) "DNA testing" means DNA analysis of materials derived from the human body for the purposes of identification consistent with this part.

(6) "Forensic DNA laboratory" means any laboratory operated by state government that performs DNA analysis on materials derived from the human body for use as evidence in a criminal proceeding or for purposes of identification.

(7) "Marker" means a method of describing individuals by genetic profile, such as blood or DNA

1 type, and has the specific meaning given to the word by department rule, which must take into account
2 the meaning generally given to the word for forensic typing by DNA technologists.

3 (8) "Sexual offense" means the offenses contained in the definition of that term in 46-23-502.

4 (9) "Violent offense" means an offense has the meaning contained in 45-5-102, 45-5-103,
5 45-5-202, 45-5-302, 45-5-303, 45-5-401, or 45-6-103 or an equivalent offence under federal law or the
6 law of another state 46-23-502."

7

8 **Section 3.** Section 46-18-201, MCA, is amended to read:

9 **"46-18-201. (Temporary) Sentences that may be imposed.** (1) Whenever a person has been found
10 guilty of an offense upon a verdict or a plea of guilty, the court may:

11 (a) defer imposition of sentence, except as provided in 61-8-714 and 61-8-722 for sentences for
12 driving under the influence of alcohol or drugs or as provided in 61-6-304, for a period, except as otherwise
13 provided, not exceeding 1 year for any misdemeanor or for a period not exceeding 3 years for any felony.

14 The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the
15 period of the deferred imposition. Reasonable restrictions or conditions may include:

16 (i) jail base release;

17 (ii) jail time not exceeding 180 days;

18 (iii) conditions for probation;

19 (iv) payment of the costs of confinement;

20 (v) payment of a fine as provided in 46-18-231;

21 (vi) payment of costs as provided in 46-18-232 and 46-18-233;

22 (vii) payment of costs of court-appointed counsel as provided in 46-8-113;

23 (viii) with the approval of the facility or program, an order that the offender be placed in a
24 community corrections facility or program as provided in 53-30-321;

25 (ix) community service;

26 (x) home arrest as provided in Title 46, chapter 18, part 10;

27 (xi) any other reasonable conditions considered necessary for rehabilitation or for the protection of
28 society;

29 (xii) payment of expenses for use of a judge pro tempore or special master as provided in 3-5-116;

30 or

(xiii) any combination of the restrictions or conditions in subsections (1)(a)(i) through (1)(a)(xii).

(b) suspend execution of sentence for a period up to the maximum sentence allowed or for a period of months, whichever is greater, for each particular offense. The sentencing judge may impose on the defendant any reasonable restrictions or conditions during the period of suspended sentence. Reasonable restrictions or conditions may include any of those listed in subsection (1)(a).

(c) impose a fine as provided by law for the offense;

(d) require payment of costs as provided in 46-18-232 or payment of costs of court-appointed
as provided in 46-8-113;

(e) impose a county jail or state prison sentence, as provided in Title 45, for the offense or commitment to the department of corrections for placement in an appropriate correctional institution or prison;

(f) with the approval of the facility or program, order the offender to be placed in a community corrections facility or program as provided in 53-30-321; or

(g) impose any combination of subsections (1)(b) through (1)(f).

(2) In addition to any penalties imposed pursuant to subsection (1), if the court finds that the victim of the offense has sustained a pecuniary loss, the court shall require payment of restitution to the victim as provided in 46-18-241 through 46-18-249. If the court determines that the defendant is unable to pay the restitution, then it may impose, in addition to any other sentence, community service under 46-18-241.

(3) If a financial obligation is imposed as a condition under subsection (1)(a), sentence may be imposed for a period not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for a felony, regardless of whether any other conditions are imposed.

(4) If any restrictions or conditions imposed under subsection (1)(a) or (1)(b) are violated, the court consider any elapsed time and either expressly allow part or all of it as a credit against the sentence credit all or part as a credit. The court shall state its reasons in the order. Credit, however, must be credit for jail or home arrest time already served.

(5) Except as provided in 45-9-202 and 46-18-222, the imposition or execution of the first 2 years
sentence of imprisonment imposed under the following sections may not be deferred or suspended:
03, 45-5-202(3) relating to aggravated assault, 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-502(3),
03(2) and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(4), and 45-9-103(2).

(6) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a sentence

1 of imprisonment imposed under 45-5-102 may not be deferred or suspended.

2 (7) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred
3 in the case of a defendant who has been convicted of a felony on a prior occasion, whether or not the
4 sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was
5 suspended.

6 (8) If the victim was less than 16 years old, the imposition or execution of the first 30 days of a
7 sentence of imprisonment imposed under 45-5-503, 45-5-504, 45-5-505, or 45-5-507 may not be deferred
8 or suspended. Section 46-18-222 does not apply to the first 30 days of the imprisonment.

9 (9) In imposing a sentence on a defendant convicted of a sexual or violent offense as defined in
10 46-23-502, the court may not waive the registration requirement provided in ~~46-18-254, 46-18-255, and~~
11 Title 46, chapter 23, part 5.

12 (10) A person convicted of a sexual offense, as defined in 46-23-502, and sentenced to
13 imprisonment in the state prison shall enroll in the educational phase of the prison's sexual offender
14 program.

15 (11) In sentencing a nonviolent felony offender, the court shall first consider alternatives to
16 imprisonment of the offender in the state prison, including placement of the offender in a community
17 corrections facility or program. In considering alternatives to imprisonment, the court shall examine the
18 sentencing criteria contained in 46-18-225. If the offender is subsequently sentenced to the state prison
19 or the women's correctional system, the court shall state its reasons why alternatives to imprisonment were
20 not selected, based on the criteria contained in 46-18-225.

21 **46-18-201. (Effective July 1, 1997) Sentences that may be imposed.** (1) Whenever a person has
22 been found guilty of an offense upon a verdict or a plea of guilty, the court may:

23 (a) defer imposition of sentence, except as provided in 61-8-714 and 61-8-722 for sentences for
24 driving under the influence of alcohol or drugs or as provided in 61-6-304, for a period, except as otherwise
25 provided, not exceeding 1 year for any misdemeanor or for a period not exceeding 3 years for any felony.

26 The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the
27 period of the deferred imposition. Reasonable restrictions or conditions may include:

28 (i) jail base release;
29 (ii) jail time not exceeding 180 days;
30 (iii) conditions for probation;

- (iv) payment of the costs of confinement;
- (v) payment of a fine as provided in 46-18-231;
- (vi) payment of costs as provided in 46-18-232 and 46-18-233;
- (vii) payment of costs of court-appointed counsel as provided in 46-8-113;
- (viii) with the approval of the facility or program, an order that the offender be placed in a community corrections facility or program as provided in 53-30-321;
- (ix) community service;
- (x) home arrest as provided in Title 46, chapter 18, part 10;
- (xi) any other reasonable conditions considered necessary for rehabilitation or for the protection of

(xii) payment of expenses for use of a judge pro tempore or special master as provided in 3-5-116;

(xiii) any combination of the restrictions or conditions in subsections (1)(a)(i) through (1)(a)(xii).

(b) suspend execution of sentence for a period up to the maximum sentence allowed or for a period of months, whichever is greater, for each particular offense. The sentencing judge may impose on the defendant any reasonable restrictions or conditions during the period of suspended sentence. Reasonable restrictions or conditions may include any of those listed in subsection (1)(a).

(c) impose a fine as provided by law for the offense;

(d) require payment of costs as provided in 46-18-232 or payment of costs of court-appointed
l as provided in 46-8-113;

(e) impose a county jail or state prison sentence, as provided in Title 45, for the offense or commitment to the department of corrections for placement in an appropriate correctional institution or prison;

(f) with the approval of the facility or program, order the offender to be placed in a community corrections facility or program as provided in 53-30-321; or

(g) impose any combination of subsections (1)(b) through (1)(f).

(2) In addition to any penalties imposed pursuant to subsection (1), if the court finds that the victim of the offense has sustained a pecuniary loss, the court shall require payment of restitution to the victim provided in 46-18-241 through 46-18-249. If the court determines that the defendant is unable to pay the restitution, then it may impose, in addition to any other sentence, community service under 46-18-241.

(3) If a financial obligation is imposed as a condition under subsection (1)(a), sentence may be deferred for a period not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for a felony, regardless of whether any other conditions are imposed.

(4) If any restrictions or conditions imposed under subsection (1)(a) or (1)(b) are violated, the court shall consider any elapsed time and either expressly allow part or all of it as a credit against the sentence or reject all or part as a credit. The court shall state its reasons in the order. Credit, however, must be allowed for jail or home arrest time already served.

12 (6) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a sentence
13 of imprisonment imposed under 45-5-102 may not be deferred or suspended.

18 (8) If the victim was less than 16 years old, the imposition or execution of the first 30 days of a
19 sentence of imprisonment imposed under 45-5-503, 45-5-504, 45-5-505, or 45-5-507 may not be deferred
20 or suspended. Section 46-18-222 does not apply to the first 30 days of the imprisonment.

21 (9) In imposing a sentence on a defendant convicted of a sexual or violent offense as defined in
22 46-23-502, the court may not waive the registration requirement provided in ~~46-18-254, 46-18-255, and~~
23 Title 46, chapter 23, part 5.

24 (10) A person convicted of a sexual offense, as defined in 46-23-502, and sentenced to
25 imprisonment in the state prison shall enroll in and complete the educational phase of the prison's sexual
26 offender program.

27 (11) In sentencing a nonviolent felony offender, the court shall first consider alternatives to
28 imprisonment of the offender in the state prison, including placement of the offender in a community
29 corrections facility or program. In considering alternatives to imprisonment, the court shall examine the
30 sentencing criteria contained in 46-18-225. If the offender is subsequently sentenced to the state prison

1 or the women's correctional system, the court shall state its reasons why alternatives to imprisonment were
2 not selected, based on the criteria contained in 46-18-225.

3 (12) Except as provided in 46-18-222, a provision of this section that conflicts with 46-18-219 does
4 not apply to a person sentenced under 46-18-219."

5
6 **Section 4.** Section 46-23-501, MCA, is amended to read:

7 **"46-23-501. Short title.** ~~Sections 46-18-254, Section~~ 46-18-255, and this part may be cited as
8 the "Sexual or Violent Offender Registration Act"."

9
10 **Section 5.** Section 46-23-502, MCA, is amended to read:

11 **"46-23-502. Definitions.** As used in ~~46-18-254, 46-18-255,~~ and this part, the following definitions
12 apply:

13 (1) "Department" means the department of corrections provided for in 2-15-2301.
14 (2) "Mental abnormality" means a congenital or acquired condition that affects the mental,
15 emotional, or volitional capacity of a person in a manner that predisposes the person to the commission of
16 one or more sexual offenses to a degree that makes the person a menace to the health and safety of other
17 persons.

18 (3) "PERSONALITY DISORDER" MEANS A PERSONALITY DISORDER AS DEFINED IN THE FOURTH
19 EDITION OF THE DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS ADOPTED BY THE
20 AMERICAN PSYCHIATRIC ASSOCIATION.

21 (3)(4) "Predatory sexual offense" means a sexual offense COMMITTED AGAINST A STRANGER
22 OR against a person with whom a relationship has been established or furthered for the primary purpose
23 of victimization or against a stranger.

24 (4)(5) "Sexual offender evaluator" means a person qualified under rules established by the
25 department to conduct sexual offender and sexually violent predator evaluations.

26 (2)(5)(6) "Sexual offense" means:
27 (a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-502(3),
28 45-5-503, 45-5-504(2)(c), 45-5-507 (unless the act occurred between two consenting persons 16 years
29 of age or older), or 45-5-625; or

30 (b) any violation of a law of another state or the federal government reasonably equivalent to a

1 violation listed in subsection ~~(2)(a) (5)(a) (6)(A)~~.

2 ~~(3)(6)(7)~~ "Sexual or violent offender" means a person who has been convicted of a sexual or
3 violent offense.

4 ~~(7)(8)~~ "Sexually violent predator" means a person who has been convicted of a sexual offense and
5 who suffers from a mental abnormality or a personality disorder that makes the person likely to engage in
6 predatory sexual offenses.

7 ~~(4)(8)(9)~~ "Violent offense" means:

8 (a) any violation of ~~or attempt, solicitation, or conspiracy to commit a violation of~~ 45-5-102,
9 45-5-103, 45-5-202, ~~45-5-206 (third or subsequent offense)~~, 45-5-301 (when the victim is less than 18
10 years of age and the offender is not a parent of the victim), 45-5-302, 45-5-303, 45-5-401, ~~45-5-603(1)(b)~~,
11 or 45-6-103; or

12 (b) any violation of a law of another state or the federal government reasonably equivalent to a
13 violation listed in subsection ~~(4)(a) (8)(a) (9)(A)~~."

14

15 **Section 6.** Section 46-23-503, MCA, is amended to read:

16 **"46-23-503. Release of sexual or violent offender from place of confinement -- duties of official
in charge.** ~~(1)~~ A sexual ~~or~~ violent offender who is released from the custody of the department of
17 corrections must be informed in writing ~~not less than 10 days~~ prior to release of the duty to register under
18 ~~46-18-254, 46-18-255~~, and this part by the official in charge of the place of confinement.

19 ~~(2) Prior to the offender's release from custody, the official shall obtain the address at which
the person expects to reside upon the person's release and report and give to the department of justice and
to the sheriff of the county in which the offender intends to reside or, if the offender intends to reside in
a municipality, to the chief of police of the municipality:~~

20 ~~(a) the address to the department of corrections. The department shall inform the appropriate law
enforcement agency having local jurisdiction where the person expects to reside, at which the offender
intends to reside upon release from the department's custody;~~

21 ~~(b) the offender's fingerprints and photo, unless they are already in the possession of the
department of justice, sheriff, or chief of police; and~~

22 ~~(c) a form signed by and read to or by the offender stating that the offender's duty to register
under this part has been explained to the offender."~~

1 **Section 7.** Section 46-23-504, MCA, is amended to read:

2 **"46-23-504. Persons required to register -- procedure.** (1) A sexual or violent offender shall, within

3 14 days of conviction or release from prison or;

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

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

9 (c) shall register within 14 10 days of entering a county of this state for the purpose of residing
10 or setting up a temporary domicile for 14 10 days or more, if the offender was sentenced in another state.

11 (2) register, as required under 46-18-254, 46-18-255, and this part, Registration under subsection
12 (1)(a) or MUST BE WITH THE PROBATION OFFICE HAVING SUPERVISION OVER THE OFFENDER.

13 REGISTRATION UNDER SUBSECTION (1)(c) must be with the chief of police of the municipality or the
14 sheriff of the county if the offender resides in an area other than a municipality. Whichever person the AN
15 offender registers with UNDER SUBSECTION (1)(C) shall notify the other person of the registration.

16 (2)(3) At the time of registering, the person offender shall sign a statement in writing giving the
17 information required by the department of justice. The chief of police or sheriff shall fingerprint the person
18 offender, unless the person's offender's fingerprints are on file with the department of justice, and shall
19 photograph the person offender. Within 3 days, the chief of police or sheriff shall send copies of the
20 statement, fingerprints, and photographs to the department and the department of justice and to the sheriff
21 of the county where the person resides, if registration is with the chief of police.

22 (4) The department of justice shall mail a registration verification form each 90 days to an offender
23 designated as a level 3 offender under [section 12] and each year to a violent offender or an offender
24 designated as a level 1 or level 2 offender under [section 12]. The form must require the offender's current
25 address and notarized signature. Within 10 days after receipt of the form, the offender shall complete the
26 form and return it to the department.

27 (3)(5) The person registered under this section offender is responsible, if able to pay, for costs
28 associated with registration. The fees charged for registration may not exceed the actual costs of
29 registration. THE DEPARTMENT OF JUSTICE MAY ADOPT A RULE ESTABLISHING FEES TO COVER
30 REGISTRATION COSTS INCURRED BY THE DEPARTMENT OF JUSTICE IN MAINTAINING REGISTRATION

1 AND ADDRESS VERIFICATION RECORDS. THE FEES MUST BE DEPOSITED IN THE GENERAL FUND.

2 ~~(4)(6)~~ The clerk of the district court in the county in which a person is convicted of a sexual or
3 violent offense shall notify the sheriff in that county of the conviction within ~~14~~ 10 days after entry of the
4 judgment."

5

6 **Section 8.** Section 46-23-505, MCA, is amended to read:

7 **"46-23-505. Notice of change of address -- duty to inform -- forwarding of information.** If ~~a person~~
8 ~~an offender~~ required to register under ~~46-18-254, 46-18-255, and this part~~ changes residence, the ~~person~~
9 ~~offender~~ shall within 10 days of the change give written notification of the ~~person's~~ new address to the
10 ~~law enforcement~~ agency with whom the ~~person offender~~ last registered. The ~~law enforcement~~ agency shall,
11 within 3 days after receipt of the ~~information~~ new address, forward it ~~and the offender's fingerprints and~~
12 ~~photograph to the department, the department of justice, and the local law enforcement agency having~~
13 ~~jurisdiction over the new place of residence and~~ which shall forward a copy of the ~~statement~~ new address,
14 ~~fingerprints, and photographs of the person photograph to the local law enforcement agency sheriff~~ having
15 jurisdiction over the new place of residence ~~and to the chief of police of the municipality of the new place~~
16 ~~of residence if the new place of residence is in a municipality.~~"

17

18 **Section 9.** Section 46-23-506, MCA, is amended to read:

19 **"46-23-506. Duration of registration.** (1) A ~~person sexual offender~~ required to register under
20 ~~46-18-254, 46-18-255, and this part shall comply with 46-18-254, 46-18-255, and this part register~~ for
21 the remainder of the ~~person's~~ offender's life, except as provided in subsection ~~(2)~~ (3) ~~of this section~~ or
22 during a period of time during which the ~~person offender~~ is in prison.

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

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

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

29 ~~(2)(3) At any time after 10 years since the date of the offender's last conviction of a sexual or~~
30 ~~violent offence of registration, the offender may petition a district~~ the sentencing court or the district court

1 for the judicial district in which the offender resides for an order relieving the offender of the duty to
2 register ~~under 46-18-254, 46-18-255, and this part~~. The petition must be served on the county attorney
3 in the county where the petition is filed. Prior to a hearing on the petition, the county attorney shall mail
4 a copy of the petition to the victim of the last offense for which the offender was convicted if the victim's
5 address is reasonably available. The court shall consider any written or oral statements of the victim. The
6 court may grant the petition upon finding that:

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

8 (b) continued registration is not necessary for public protection and that relief from registration is
9 in the best interests of society. If the offender was designated as a sexually violent predator under [section
10 12], the court is also required to find that the offender no longer suffers from a mental abnormality or
11 personality disorder that makes the offender likely to engage in a predatory sexual offense.

12 (3)(4) The offender may move that all or part of the proceedings in a hearing under subsection ~~(2)~~
13 (3) be closed to the public, or the judge may ~~take action~~ close them on the judge's own motion.
14 ~~Notwithstanding closure of the~~ If a proceeding is closed to the public, the judge shall permit a victim of the
15 offense to be present unless the judge determines that exclusion of the victim is necessary to protect the
16 offender's right of privacy or the safety of the victim. If the victim is present, the judge, at the victim's
17 request, shall permit the presence of an individual to provide support to the victim unless the judge
18 determines that exclusion of the individual is necessary to protect the offender's right to privacy."

19
20 Section 10. Section 46-23-507, MCA, is amended to read:

21 **"46-23-507. Penalty.** A sexual or violent offender who knowingly fails to register, verify
22 registration, or keep registration current under ~~46-18-254, 46-18-255, and this part~~ may be sentenced to
23 a term of imprisonment of not more than 5 years or may be fined not more than \$10,000, or both."

24
25 Section 11. Section 46-23-508, MCA, is amended to read:

26 **"46-23-508. Dissemination of information in register.** (1) Information in the register maintained
27 under ~~46-18-254 and this part~~ is confidential criminal justice information, as defined in 44-5-103, except
28 that:

29 (1)(a) the name of a registered sexual or violent offender is public criminal justice information, as
30 defined in 44-5-103; and

(b) a law enforcement agency shall release any offender registration information relevant to the public if the agency determines that a registered offender is a risk to the safety of the community and that disclosure of the registration information may protect the public and, at a minimum:

10 (i) if an offender was given a level 1 designation under [section 12], the agency with which the
11 offender is registered shall notify the agency in whose jurisdiction the offense occurred of the registration;

12 (ii) if an offender was given a level 2 designation under [section 12], the agency with which the
13 offender is registered may disseminate the offender's name to the public with the notation that the offender
14 is a sexual or violent offender and may notify a victim of the offense and any agency, organization, or
15 group serving persons who have characteristics similar to those of a previous victim of the offender of;

16 (A) the offender's approximate, but not exact, address, such as by stating the neighborhood, town,
17 or part of a county;

18 (B) the type of victim targeted by the offense;

19 (C) the name, photograph, and physical description of the offender;

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

21 (E) any conditions imposed by the court upon the offender for the safety of the public; and

22 (iii) if an offender was given a level 3 designation under [section 12], the agency shall give the
23 victim and the public notification that includes the information contained in subsection (1)(b)(ii), except that
24 the offender's exact address must be included. The agency shall also include the date of the offender's
25 release from confinement or if not confined, the date the offender was sentenced, with a notation that the
26 offender was not confined, and shall include the community in which the offense occurred.

27 (C) PRIOR TO RELEASE OF INFORMATION UNDER SUBSECTION (1)(B), A LAW ENFORCEMENT
28 AGENCY MAY, IN ITS SOLE DISCRETION, REQUEST AN IN CAMERA REVIEW BY A DISTRICT COURT OF
29 THE DETERMINATION BY THE LAW ENFORCEMENT AGENCY UNDER SUBSECTION (1)(B). THE COURT
30 SHALL REVIEW A REQUEST UNDER THIS SUBSECTION (1)(C) AND SHALL, AS SOON AS POSSIBLE,

1 RENDER ITS OPINION SO THAT RELEASE OF THE INFORMATION IS NOT DELAYED BEYOND RELEASE
2 OF THE OFFENDER FROM CONFINEMENT.

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

5

6 **NEW SECTION. Section 12. Sexual offender evaluations and designations -- rulemaking authority.**

7 (1) The department shall adopt rules for the qualification of sexual offender evaluators who conduct sexual
8 offender and sexually violent predator evaluations and for determinations by sexual offender evaluators of
9 the risk of a repeat offense and the threat an offender poses to the public safety.

10 (2) Prior to sentencing of a person convicted of a sexual offense, the department or a sexual
11 offender evaluator shall provide the court with a sexual offender evaluation report recommending one of
12 the following levels of designation for the offender:

13 (a) level 1, the risk of a repeat sexual offense is low;
14 (b) level 2, the risk of a repeat sexual offense is moderate;
15 (c) level 3, the risk of a repeat sexual offense is high, there is a threat to public safety, and the
16 evaluator believes that the offender is a sexually violent predator.

17 (3) Upon sentencing the offender, the court shall:
18 (a) review the sexual offender evaluation report, any statement by a victim, and any statement by
19 the offender;
20 (b) designate the offender as level 1, 2, or 3; and
21 (c) designate a level 3 offender as a sexually violent predator.

22 (4) (A) AN OFFENDER DESIGNATED AS A LEVEL 2 OR LEVEL 3 OFFENDER MAY PETITION THE
23 SENTENCING COURT TO CHANGE THE OFFENDER'S DESIGNATION IF THE OFFENDER HAS ENROLLED
24 IN AND SUCCESSFULLY COMPLETED THE TREATMENT PHASE OF EITHER THE PRISON'S SEXUAL
25 OFFENDER PROGRAM OR OF AN EQUIVALENT PROGRAM APPROVED BY THE DEPARTMENT. AFTER
26 CONSIDERING THE PETITION, THE COURT MAY CHANGE THE OFFENDER'S RISK LEVEL DESIGNATION
27 IF THE COURT FINDS BY CLEAR AND CONVINCING EVIDENCE THAT THE OFFENDER'S RISK OF
28 COMMITTING A REPEAT SEXUAL OFFENSE HAS CHANGED SINCE THE TIME SENTENCE WAS IMPOSED.
29 THE COURT SHALL IMPOSE ONE OF THE THREE RISK LEVELS SPECIFIED IN THIS SECTION.

30

1 **NEW SECTION. Section 13. Expungement of records on reversal of conviction.** Upon final
2 reversal of a conviction of a sexual or violent offense, the sentencing court shall order the expungement
3 of any records kept by a court, law enforcement agency, or other state or local government agency under
4 this part.

5

6 **NEW SECTION. Section 14. Immunity from suit.** A state or local governmental entity, a private
7 entity, or an officer or employee of an entity is not liable in negligence, EXCEPT GROSS NEGLIGENCE OR
8 WILLFUL OR WANTON MISCONDUCT, for damages arising from a GOOD FAITH discretionary release or
9 dissemination of or GOOD FAITH failure to release or disseminate information under this part.

10

11 **NEW SECTION. Section 15. Repealer.** Section 46-18-254, MCA, is repealed.

12

13 **NEW SECTION. Section 16. Codification instruction.** [Sections 12 through 14] are intended to
14 be codified as an integral part of Title 46, chapter 23, part 5, and the provisions of Title 46, chapter 23,
15 part 5, apply to [sections 12 through 14].

16

17 **NEW SECTION. Section 17. Two-thirds vote required.** Because section 14 [THIS ACT] limits
18 governmental liability, Article II, section 18, of the Montana constitution requires a vote of two-thirds of
19 the members of each house of the legislature for passage OF [THIS ACT].

20

21 **NEW SECTION. Section 18. Applicability.** The provisions of [this act] relating to registration apply
22 to:

23 (1) sexual offenders who are sentenced or who are in the custody or under the supervision of the
24 department of corrections on or after July 1, 1989; and

25 (2) violent offenders who are sentenced or who are in the custody or under the supervision of the
26 department of corrections on or after October 1, 1995.

27

-END-

1 HOUSE BILL NO. 111

2 INTRODUCED BY AHNER

3 BY REQUEST OF THE DEPARTMENT OF CORRECTIONS AND THE DEPARTMENT OF JUSTICE

4

5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO THE
6 IDENTIFICATION AND REGISTRATION OF SEXUAL AND VIOLENT OFFENDERS; PROVIDING FOR A
7 SEXUALLY VIOLENT PREDATOR DESIGNATION; PROVIDING IMMUNITY FOR NEGLIGENCE; AMENDING
8 SECTIONS 41-5-523, 44-6-101, 46-18-201, 46-23-501, 46-23-502, 46-23-503, 46-23-504, 46-23-505,
9 46-23-506, 46-23-507, AND 46-23-508, MCA; REPEALING SECTION 46-18-254, MCA; AND PROVIDING
10 APPLICABILITY DATES."

11

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

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

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

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

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

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

STATEMENT OF INTENT

A statement of intent is required for this bill in order to provide guidance for rules adopted under [section 12] concerning the qualifications of sexual offender evaluators and concerning evaluations of sexual offenders. The legislature intends that sexual offender evaluators possess education and experience similar to the education and experience requirements of therapists certified by the Montana sex offender treatment association. The legislature further intends that rules for evaluating the risk of repeat offenses by sexual offenders include the following factors:

- (1) whether the sexual offender has a mental abnormality;
- (2) whether the sexual offender's conduct is repetitive and compulsive;
- (3) whether drugs or alcohol played a part in the offense or offenses;
- (4) whether the sexual offender served the maximum term for the offense or offenses;
- (5) whether the offense or offenses involved a child;
- (6) the age of the sexual offender at the commission of the offense or offenses;
- (7) the relationship between the sexual offender and the victim or victims;
- (8) whether the offense or offenses involved use of a weapon;
- (9) the number, date, and nature of prior offenses;
- (10) conditions of release that minimize risk of another offense, including whether the sexual offender is under supervision or receiving counseling and treatment;
- (11) physical conditions that minimize the risk of another offense, such as advanced age or existing illness of the sexual offender;
- (12) whether psychological or psychiatric profiles of the sexual offender indicate a risk of recidivism;
- (13) the sexual offender's response to and participation in treatment;
- (14) recent behavior of the sexual offender;
- (15) recent threats or gestures by the sexual offender against persons; and
- (16) a review of any victim impact statements.

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

Section 1. Section 41-5-523, MCA, is amended to read:

"41-5-523. Disposition -- sentence to correctional facility -- commitment to department --

1 **placement and evaluation of youth -- restrictions.** (1) If a youth is found to be a delinquent youth or a youth
2 in need of supervision, the youth court may enter its judgment making one or more of the following
3 dispositions:

4 (a) retain jurisdiction in a disposition provided under subsection (1)(b) or (1)(d);

5 (b) place the youth on probation;

6 (c) subject to subsections (1)(n)(i), (2)(a), (2)(b), and (6), sentence a youth to one of the state
7 youth correctional facilities established under 52-5-101 and, as part of the sentence, deny the youth
8 eligibility for release without the express approval of the sentencing judge until the youth reaches 18 years
9 of age. A youth may not be sentenced to a state youth correctional facility unless the department informs
10 the judge that space is available for the youth at that facility. The sentencing judge may not place
11 limitations on the release unless recommended by the youth placement committee.

12 (d) require a youth found to be delinquent to register as a ~~sex~~ sexual or violent offender pursuant
13 to ~~46-18-254 and 46-23-506~~ 46-23-504;

14 (e) place the youth in an in-state residence that ensures that the youth is accountable, provides
15 for rehabilitation, and protects the public. Before placement, the sentencing judge shall seek and consider
16 placement recommendations from the youth placement committee. The judge may not place the youth in
17 an in-state residence unless the department informs the judge that resources are available for placement
18 of the youth at that residence.

19 (f) commit the youth to the department. In an order committing a youth to the department:

20 (i) the court shall determine whether continuation in the youth's own home would be contrary to
21 the welfare of the youth and whether reasonable efforts have been made to prevent or eliminate the need
22 for removal of the youth from the youth's home;

23 (ii) in the case of a delinquent youth who is determined by the court to be a serious juvenile
24 offender, the judge may specify that the youth be placed in a state youth correctional facility if the judge
25 finds that the placement is necessary for the protection of the public. The court may order the department
26 to notify the court within 5 working days before the proposed release of a youth from a youth correctional
27 facility. Once a youth is committed to the department for placement in a state youth correctional facility,
28 the department is responsible for determining an appropriate date of release into an appropriate placement.

29 (g) order restitution by the youth or the youth's parents;

30 (h) impose a fine as authorized by law if the violation alleged would constitute a criminal offense

1 if committed by an adult;

2 (i) require the performance of community service;

3 (j) require the youth, the youth's parents or guardians, or the persons having legal custody of the

4 youth to receive counseling services;

5 (k) require the medical and psychological evaluation of the youth, the youth's parents or guardians,

6 or the persons having legal custody of the youth;

7 (l) require the parents, guardians, or other persons having legal custody of the youth to furnish

8 services the court may designate;

9 (m) order further care, treatment, evaluation, or relief that the court considers beneficial to the

10 youth and the community and that does not obligate funding from the department for services outside the

11 state of Montana without the department's approval, except that a youth may not be placed by a youth

12 court in a residential treatment facility as defined in 50-5-101. Only the department may, pursuant to

13 subsection (1)(f), place a youth in a residential treatment facility.

14 (n) commit the youth to a mental health facility if, based upon the testimony of a professional

15 person as defined in 53-21-102, the court finds that the youth is seriously mentally ill as defined in

16 53-21-102. The youth is entitled to all rights provided by 53-21-114 through 53-21-119.

17 (i) A youth adjudicated mentally ill or seriously mentally ill as defined in 53-21-102 may not be

18 committed or sentenced to a state youth correctional facility.

19 (ii) A youth adjudicated to be mentally ill or seriously mentally ill after placement in or sentencing

20 to a state youth correctional facility must be moved to a more appropriate placement in response to the

21 youth's mental health needs and consistent with the disposition alternatives available in 53-21-127.

22 (o) place the youth under home arrest as provided in Title 46, chapter 18, part 10.

23 (2) When a youth is committed to the department, the department shall determine the appropriate

24 placement and rehabilitation program for the youth after considering the recommendations made under

25 41-5-527 by the youth placement committee. Placement is subject to the following limitations:

26 (a) A youth in need of supervision or adjudicated delinquent for commission of an act that would

27 not be a criminal offense if committed by an adult may not be placed in a state youth correctional facility.

28 (b) A youth may not be held in a state youth correctional facility for a period of time in excess of

29 the maximum period of imprisonment that could be imposed on an adult convicted of the offense or

30 offenses that brought the youth under the jurisdiction of the youth court. This section does not limit the

1 power of the department to enter into an aftercare agreement with the youth pursuant to 52-5-126.

2 (c) A youth may not be placed in or transferred to a penal institution or other facility used for the
3 execution of sentence of adults convicted of crimes.

4 (3) A youth placed in a state youth correctional facility or other facility or program operated by the
5 department or who signs an aftercare agreement under 52-5-126 must be supervised by the department.

6 A youth who is placed in any other placement by the department, the youth court, or the youth court's
7 juvenile probation officer must be supervised by the probation officer of the youth court having jurisdiction
8 over the youth under 41-5-205 whether or not the youth is committed to the department. Supervision by
9 the youth probation officer includes but is not limited to:

10 (a) submitting information and documentation necessary for the person, committee, or team that
11 is making the placement recommendation to determine an appropriate placement for the youth;

12 (b) securing approval for payment of special education costs from the youth's school district of
13 residence or the office of public instruction, as required in Title 20, chapter 7, part 4;

14 (c) submitting an application to a facility in which the youth may be placed; and

15 (d) case management of the youth.

16 (4) The youth court may order a youth to receive a medical or psychological evaluation at any time
17 prior to final disposition if the youth waives the youth's constitutional rights in the manner provided for in
18 41-5-303. The county determined by the court as the residence of the youth is responsible for the cost of
19 the evaluation, except as provided in subsection (5). A county may contract with the department or other
20 public or private agencies to obtain evaluation services ordered by the court.

21 (5) The youth court shall determine the financial ability of the youth's parents to pay the cost of
22 an evaluation ordered by the court under subsection (4). If they are financially able, the court shall order
23 the youth's parents to pay all or part of the cost of the evaluation.

24 (6) The youth court may not order placement or evaluation of a youth at a state youth correctional
25 facility unless the youth is found to be a delinquent youth or is alleged to have committed an offense that
26 is transferable to criminal court under 41-5-206.

27 (7) An evaluation of a youth may not be performed at the Montana state hospital unless the youth
28 is transferred to the district court under 41-5-206, 41-5-208, or 41-5-1105.

29 (8) An order of the court may be modified at any time. In the case of a youth committed to the
30 department, an order pertaining to the youth may be modified only upon notice to the department and

1 subsequent hearing.

2 (9) Whenever the court commits a youth to the department, it shall transmit with the dispositional
3 judgment copies of medical reports, social history material, education records, and any other clinical,
4 predisposition, or other reports and information pertinent to the care and treatment of the youth.

5 (10) If a youth is committed to the department, the court shall examine the financial ability of the
6 youth's parents or guardians to pay a contribution covering all or part of the costs for the care,
7 commitment, and treatment of the youth, including the costs of necessary medical, dental, and other health
8 care.

9 (11) If the court determines that the youth's parents or guardians are financially able to pay a
10 contribution as provided in subsection (10), the court shall order the youth's parents or guardians to pay
11 an amount based on the uniform child support guidelines adopted by the department of public health and
12 human services pursuant to 40-5-209.

13 (12) (a) Except as provided in subsection (12)(b), contributions ordered under this section and each
14 modification of an existing order are enforceable by immediate or delinquency income withholding, or both,
15 under Title 40, chapter 5, part 4. An order for contribution that is inconsistent with this section is
16 nevertheless subject to withholding for the payment of the contribution without need for an amendment
17 of the support order or for any further action by the court.

18 (b) A court-ordered exception from contributions under this section must be in writing and be
19 included in the order. An exception from the immediate income withholding requirement may be granted
20 if the court finds there is:

21 (i) good cause not to require immediate income withholding; or

22 (ii) an alternative arrangement between the department and the person who is ordered to pay
23 contributions.

24 (c) A finding of good cause not to require immediate income withholding must, at a minimum, be
25 based upon:

26 (i) a written determination and explanation by the court of the reasons why the implementation of
27 immediate income withholding is not in the best interests of the youth; and

28 (ii) proof of timely payment of previously ordered support in cases involving modification of
29 contributions ordered under this section.

30 (d) An alternative arrangement must:

- (i) provide sufficient security to ensure compliance with the arrangement;
- (ii) be in writing and be signed by a representative of the department and the person required to make contributions; and
- (iii) if approved by the court, be entered into the record of the proceeding.

5 (13) Upon a showing of a change in the financial ability of the youth's parents or guardians to pay,
6 the court may modify its order for the payment of contributions required under subsection (11).

(14) (a) If the court orders the payment of contributions under this section, the department shall apply to the department of public health and human services for support enforcement services pursuant to Title IV-D of the Social Security Act.

10 (b) The department of public health and human services may collect and enforce a contribution
11 order under this section by any means available under law, including the remedies provided for in Title 40,
12 chapter 5, parts 2 and 4."

13

Section 2. Section 44-6-101, MCA, is amended to read:

"44-6-101. Definitions. As used in this part, the following definitions apply:

(1) "Department" means the department of justice provided for in 2-15-2001.

(2) "DNA" means deoxyribonucleic acid.

(3) "DNA identification index" means the DNA identification record system established under 02.

20 (4) "DNA record" means DNA identification information stored in the DNA identification index for
21 purposes of establishing identification in connection with law enforcement investigations or supporting
22 statistical interpretation of the results of DNA analysis. The DNA record is considered the objective form
23 of the results of a DNA analysis, such as the numerical representation of DNA fragment lengths,
24 autoradiographs and the digital image of autoradiographs, and discrete allele assignment numbers.

25 (5) "DNA testing" means DNA analysis of materials derived from the human body for the purposes
26 of identification consistent with this part.

(6) "Forensic DNA laboratory" means any laboratory operated by state government that performs DNA analysis on materials derived from the human body for use as evidence in a criminal proceeding or for purposes of identification.

30 (7) "Marker" means a method of describing individuals by genetic profile, such as blood or DNA

1 type, and has the specific meaning given to the word by department rule, which must take into account
2 the meaning generally given to the word for forensic typing by DNA technologists.

3 (8) "Sexual offense" means the offenses contained in the definition of that term in 46-23-502.

4 (9) "Violent offense" means an offense has the meaning contained in 45-5-102, 45-5-103,
5 45-5-202, 45-5-302, 45-5-303, 45-5-401, or 45-6-103 or an equivalent offense under federal law or the
6 law of another state 46-23-502."

7

8 **Section 3.** Section 46-18-201, MCA, is amended to read:

9 **"46-18-201. (Temporary) Sentences that may be imposed.** (1) Whenever a person has been found
10 guilty of an offense upon a verdict or a plea of guilty, the court may:

11 (a) defer imposition of sentence, except as provided in 61-8-714 and 61-8-722 for sentences for
12 driving under the influence of alcohol or drugs or as provided in 61-6-304, for a period, except as otherwise
13 provided, not exceeding 1 year for any misdemeanor or for a period not exceeding 3 years for any felony.
14 The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the
15 period of the deferred imposition. Reasonable restrictions or conditions may include:

16 (i) jail base release;

17 (ii) jail time not exceeding 180 days;

18 (iii) conditions for probation;

19 (iv) payment of the costs of confinement;

20 (v) payment of a fine as provided in 46-18-231;

21 (vi) payment of costs as provided in 46-18-232 and 46-18-233;

22 (vii) payment of costs of court-appointed counsel as provided in 46-8-113;

23 (viii) with the approval of the facility or program, an order that the offender be placed in a
24 community corrections facility or program as provided in 53-30-321;

25 (ix) community service;

26 (x) home arrest as provided in Title 46, chapter 18, part 10;

27 (xi) any other reasonable conditions considered necessary for rehabilitation or for the protection of
28 society;

29 (xii) payment of expenses for use of a judge pro tempore or special master as provided in 3-5-116;

30 or

(xiii) any combination of the restrictions or conditions in subsections (1)(a)(i) through (1)(a)(xii).

(b) suspend execution of sentence for a period up to the maximum sentence allowed or for a period of 6 months, whichever is greater, for each particular offense. The sentencing judge may impose on the defendant any reasonable restrictions or conditions during the period of suspended sentence. Reasonable restrictions or conditions may include any of those listed in subsection (1)(a).

(c) impose a fine as provided by law for the offense;

(d) require payment of costs as provided in 46-18-232 or payment of costs of court-appointed counsel as provided in 46-8-113;

(e) impose a county jail or state prison sentence, as provided in Title 45, for the offense or commit the defendant to the department of corrections for placement in an appropriate correctional institution or program;

(f) with the approval of the facility or program, order the offender to be placed in a community corrections facility or program as provided in 53-30-321; or

(g) impose any combination of subsections (1)(b) through (1)(f).

(2) In addition to any penalties imposed pursuant to subsection (1), if the court finds that the victim of the offense has sustained a pecuniary loss, the court shall require payment of restitution to the victim as provided in 46-18-241 through 46-18-249. If the court determines that the defendant is unable to pay restitution, then it may impose, in addition to any other sentence, community service under 46-18-241.

(3) If a financial obligation is imposed as a condition under subsection (1)(a), sentence may be deferred for a period not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for a felony, regardless of whether any other conditions are imposed.

(4) If any restrictions or conditions imposed under subsection (1)(a) or (1)(b) are violated, the court shall consider any elapsed time and either expressly allow part or all of it as a credit against the sentence or reject all or part as a credit. The court shall state its reasons in the order. Credit, however, must be allowed for jail or home arrest time already served.

(5) Except as provided in 45-9-202 and 46-18-222, the imposition or execution of the first 2 years of a sentence of imprisonment imposed under the following sections may not be deferred or suspended: 45-5-103, 45-5-202(3) relating to aggravated assault, 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-502(3), 45-5-503(2) and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(4), and 45-9-103(2).

(6) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a sentence

1 of imprisonment imposed under 45-5-102 may not be deferred or suspended.

2 (7) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred
3 in the case of a defendant who has been convicted of a felony on a prior occasion, whether or not the
4 sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was
5 suspended.

6 (8) If the victim was less than 16 years old, the imposition or execution of the first 30 days of a
7 sentence of imprisonment imposed under 45-5-503, 45-5-504, 45-5-505, or 45-5-507 may not be deferred
8 or suspended. Section 46-18-222 does not apply to the first 30 days of the imprisonment.

9 (9) In imposing a sentence on a defendant convicted of a sexual or violent offense as defined in
10 46-23-502, the court may not waive the registration requirement provided in ~~46-18-254, 46-18-255, and~~
11 Title 46, chapter 23, part 5.

12 (10) A person convicted of a sexual offense, as defined in 46-23-502, and sentenced to
13 imprisonment in the state prison shall enroll in the educational phase of the prison's sexual offender
14 program.

15 (11) In sentencing a nonviolent felony offender, the court shall first consider alternatives to
16 imprisonment of the offender in the state prison, including placement of the offender in a community
17 corrections facility or program. In considering alternatives to imprisonment, the court shall examine the
18 sentencing criteria contained in 46-18-225. If the offender is subsequently sentenced to the state prison
19 or the women's correctional system, the court shall state its reasons why alternatives to imprisonment were
20 not selected, based on the criteria contained in 46-18-225.

21 **46-18-201. (Effective July 1, 1997) Sentences that may be imposed.** (1) Whenever a person has
22 been found guilty of an offense upon a verdict or a plea of guilty, the court may:

23 (a) defer imposition of sentence, except as provided in 61-8-714 and 61-8-722 for sentences for
24 driving under the influence of alcohol or drugs or as provided in 61-6-304, for a period, except as otherwise
25 provided, not exceeding 1 year for any misdemeanor or for a period not exceeding 3 years for any felony.

26 The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the
27 period of the deferred imposition. Reasonable restrictions or conditions may include:

28 (i) jail base release;

29 (ii) jail time not exceeding 180 days;

30 (iii) conditions for probation;

- (iv) payment of the costs of confinement;
- (v) payment of a fine as provided in 46-18-231;
- (vi) payment of costs as provided in 46-18-232 and 46-18-233;
- (vii) payment of costs of court-appointed counsel as provided in 46-8-113;
- (viii) with the approval of the facility or program, an order that the offender be placed in a community corrections facility or program as provided in 53-30-321;
- (ix) community service;
- (x) home arrest as provided in Title 46, chapter 18, part 10;
- (xi) any other reasonable conditions considered necessary for rehabilitation or for the protection of the public;
- (xii) payment of expenses for use of a judge pro tempore or special master as provided in 3-5-116;
- (xiii) any combination of the restrictions or conditions in subsections (1)(a)(i) through (1)(a)(xii).

(b) suspend execution of sentence for a period up to the maximum sentence allowed or for a period of months, whichever is greater, for each particular offense. The sentencing judge may impose on the defendant any reasonable restrictions or conditions during the period of suspended sentence. Reasonable restrictions or conditions may include any of those listed in subsection (1)(a).

- (c) impose a fine as provided by law for the offense;
- (d) require payment of costs as provided in 46-18-232 or payment of costs of court-appointed counsel as provided in 46-8-113;
- (e) impose a county jail or state prison sentence, as provided in Title 45, for the offense or commit the defendant to the department of corrections for placement in an appropriate correctional institution or prison;
- (f) with the approval of the facility or program, order the offender to be placed in a community corrections facility or program as provided in 53-30-321; or
- (g) impose any combination of subsections (1)(b) through (1)(f).

(2) In addition to any penalties imposed pursuant to subsection (1), if the court finds that the victim of the offense has sustained a pecuniary loss, the court shall require payment of restitution to the victim as provided in 46-18-241 through 46-18-249. If the court determines that the defendant is unable to pay restitution, then it may impose, in addition to any other sentence, community service under 46-18-241.

(3) If a financial obligation is imposed as a condition under subsection (1)(a), sentence may be deferred for a period not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for a felony, regardless of whether any other conditions are imposed.

(4) If any restrictions or conditions imposed under subsection (1)(a) or (1)(b) are violated, the court shall consider any elapsed time and either expressly allow part or all of it as a credit against the sentence or reject all or part as a credit. The court shall state its reasons in the order. Credit, however, must be allowed for jail or home arrest time already served.

12 (6) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a sentence
13 of imprisonment imposed under 45-5-102 may not be deferred or suspended.

14 (7) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred
15 in the case of a defendant who has been convicted of a felony on a prior occasion, whether or not the
16 sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was
17 suspended.

18 (8) If the victim was less than 16 years old, the imposition or execution of the first 30 days of a
19 sentence of imprisonment imposed under 45-5-503, 45-5-504, 45-5-505, or 45-5-507 may not be deferred
20 or suspended. Section 46-18-222 does not apply to the first 30 days of the imprisonment.

21 (9) In imposing a sentence on a defendant convicted of a sexual or violent offense as defined in
22 46-23-502, the court may not waive the registration requirement provided in ~~46-18-254, 46-18-255,~~ and
23 Title 46, chapter 23, part 5.

24 (10) A person convicted of a sexual offense, as defined in 46-23-502, and sentenced to
25 imprisonment in the state prison shall enroll in and complete the educational phase of the prison's sexual
26 offender program.

(11) In sentencing a nonviolent felony offender, the court shall first consider alternatives to imprisonment of the offender in the state prison, including placement of the offender in a community corrections facility or program. In considering alternatives to imprisonment, the court shall examine the sentencing criteria contained in 46-18-225. If the offender is subsequently sentenced to the state prison

1 or the women's correctional system, the court shall state its reasons why alternatives to imprisonment were
2 not selected, based on the criteria contained in 46-18-225.

3 (12) Except as provided in 46-18-222, a provision of this section that conflicts with 46-18-219 does
4 not apply to a person sentenced under 46-18-219."

5

6 **Section 4.** Section 46-23-501, MCA, is amended to read:

7 **"46-23-501. Short title. Sections 46-18-254, Section 46-18-255,"** and this part may be cited as
8 the "Sexual or Violent Offender Registration Act".

9

10 **Section 5.** Section 46-23-502, MCA, is amended to read:

11 **"46-23-502. Definitions. As used in 46-18-254, 46-18-255, and this part, the following definitions
12 apply:**

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

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

18 (3) "PERSONALITY DISORDER" MEANS A PERSONALITY DISORDER AS DEFINED IN THE FOURTH
19 EDITION OF THE DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS ADOPTED BY THE
20 AMERICAN PSYCHIATRIC ASSOCIATION.

21 (3)(4) "Predatory sexual offense" means a sexual offense COMMITTED AGAINST A STRANGER
22 OR against a person with whom a relationship has been established or furthered for the primary purpose
23 of victimization or against a stranger.

24 (4)(5) "Sexual offender evaluator" means a person qualified under rules established by the
25 department to conduct sexual offender and sexually violent predator evaluations.

26 (2)(5)(6) "Sexual offense" means:

27 (a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-502(3),
28 45-5-503, 45-5-504(2)(c), 45-5-507 (unless the act occurred between two consenting persons 16 years
29 of age or older), or 45-5-625; or

30 (b) any violation of a law of another state or the federal government reasonably equivalent to a

1 violation listed in subsection ~~(2)(a) (5)(a) (6)(A)~~.

2 ~~(3)(6)(7)~~ "Sexual or violent offender" means a person who has been convicted of a sexual or
3 violent offense.

4 ~~(7)(8)~~ "Sexually violent predator" means a person who has been convicted of a sexual offense and
5 who suffers from a mental abnormality or a personality disorder that makes the person likely to engage in
6 predatory sexual offenses.

7 ~~(4)(8)(9)~~ "Violent offense" means:

8 (a) any violation of ~~or attempt, solicitation, or conspiracy to commit a violation of~~ 45-5-102,
9 45-5-103, 45-5-202, ~~45-5-206 (third or subsequent offense), 45-5-301 (when the victim is less than 18~~
10 ~~years of age and the offender is not a parent of the victim), 45-5-302, 45-5-303, 45-5-401, 45-5-603(1)(b),~~
11 or 45-6-103; or

12 (b) any violation of a law of another state or the federal government reasonably equivalent to a
13 violation listed in subsection ~~(4)(a) (8)(a) (9)(A)~~.

14

15 **Section 6.** Section 46-23-503, MCA, is amended to read:

16 **"46-23-503. Release of sexual or violent offender from place of confinement -- duties of official**
17 **in charge.** ~~(1)~~ A sexual or violent offender who is released from the custody of the department of
18 corrections must be informed in writing ~~not less than 10 days~~ prior to release of the duty to register under
19 ~~46-18-254, 46-18-255, and this part by the official in charge of the place of confinement.~~

20 ~~(2) Prior to the offender's release from custody, the official shall obtain the address at which~~
21 ~~the person expects to reside upon the person's release and report and give to the department of justice and~~
22 ~~to the sheriff of the county in which the offender intends to reside or, if the offender intends to reside in~~
23 ~~a municipality, to the chief of police of the municipality:~~

24 ~~(a) the address to the department of corrections. The department shall inform the appropriate law~~
25 ~~enforcement agency having local jurisdiction where the person expects to reside, at which the offender~~
26 ~~intends to reside upon release from the department's custody;~~

27 ~~(b) the offender's fingerprints and photo, unless they are already in the possession of the~~
28 ~~department of justice, sheriff, or chief of police; and~~

29 ~~(c) a form signed by and read to or by the offender stating that the offender's duty to register~~
30 ~~under this part has been explained to the offender."~~

1 Section 7. Section 46-23-504, MCA, is amended to read:

2 "46-23-504. Persons required to register -- procedure. (1) A sexual or violent offender shall, within
3 14 days of conviction or release from prison or;

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

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

9 (c) shall register within 14 10 days of entering a county of this state for the purpose of residing
10 or setting up a temporary domicile for 14 10 days or more, if the offender was sentenced in another state.

11 (2) register, as required under 46-18-254, 46-18-255, and this part, Registration under subsection
12 (1)(a) or MUST BE WITH THE PROBATION OFFICE HAVING SUPERVISION OVER THE OFFENDER.

13 REGISTRATION UNDER SUBSECTION (1)(c) must be with the chief of police of the municipality or the
14 sheriff of the county if the offender resides in an area other than a municipality. Whichever person the AN
15 offender registers with UNDER SUBSECTION (1)(C) shall notify the other person of the registration.

16 (2)(3) At the time of registering, the person offender shall sign a statement in writing giving the
17 information required by the department of justice. The chief of police or sheriff shall fingerprint the person
18 offender, unless the person's offender's fingerprints are on file with the department of justice, and shall
19 photograph the person offender. Within 3 days, the chief of police or sheriff shall send copies of the
20 statement, fingerprints, and photographs to the department and the department of justice and to the sheriff
21 of the county where the person resides, if registration is with the chief of police.

22 (4) The department of justice shall mail a registration verification form each 90 days to an offender
23 designated as a level 3 offender under [section 12] and each year to a violent offender or an offender
24 designated as a level 1 or level 2 offender under [section 12]. The form must require the offender's current
25 address and notarized signature. Within 10 days after receipt of the form, the offender shall complete the
26 form and return it to the department.

27 (3)(5) The person registered under this section offender is responsible, if able to pay, for costs
28 associated with registration. The fees charged for registration may not exceed the actual costs of
29 registration. THE DEPARTMENT OF JUSTICE MAY ADOPT A RULE ESTABLISHING FEES TO COVER
30 REGISTRATION COSTS INCURRED BY THE DEPARTMENT OF JUSTICE IN MAINTAINING REGISTRATION

1 AND ADDRESS VERIFICATION RECORDS. THE FEES MUST BE DEPOSITED IN THE GENERAL FUND.

2 ~~(4)(6)~~ The clerk of the district court in the county in which a person is convicted of a sexual or
3 violent offense shall notify the sheriff in that county of the conviction within ~~14~~ 10 days after entry of the
4 judgment."

5

6 **Section 8.** Section 46-23-505, MCA, is amended to read:

7 **"46-23-505. Notice of change of address -- duty to inform -- forwarding of information.** If ~~a person~~
8 an offender required to register under ~~46-18-254, 46-18-255, and~~ this part changes residence, the ~~person~~
9 offender shall within 10 days of the change give written notification of the ~~person's~~ new address to the
10 law enforcement agency with whom the ~~person~~ offender last registered. The ~~law enforcement~~ agency shall,
11 within 3 days after receipt of the ~~information~~ new address, forward it ~~and the offender's fingerprints and~~
12 photograph to the ~~department~~, the department of justice, and the ~~local law enforcement agency~~ having
13 jurisdiction over the new place of residence and which shall forward a copy of the ~~statement~~ new address,
14 fingerprints, and photographs of the person photograph to the ~~local law enforcement agency~~ sheriff having
15 jurisdiction over the new place of residence and to the chief of police of the municipality of the new place
16 of residence if the new place of residence is in a municipality."

17

18 **Section 9.** Section 46-23-506, MCA, is amended to read:

19 **"46-23-506. Duration of registration.** (1) A ~~person~~ sexual offender required to register under
20 ~~46-18-254, 46-18-255, and~~ this part shall comply with ~~46-18-254, 46-18-255, and~~ this part register for
21 the remainder of the ~~person's~~ offender's life, except as provided in subsection ~~(2)~~ (3) of this section or
22 during a period of time during which the ~~person~~ offender is in prison.

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

24 (a) for the 10 years following release from confinement or, if not confined following sentencing,
25 for the 10 years following the conclusion of the sentencing hearing; or
26 (b) if convicted during the 10-year period provided in subsection (2)(a) of failing to register or keep
27 registration current or of a felony, for the remainder of the offender's life unless relieved of the duty to
28 register as provided in subsection (3).

29 ~~(2)(3)~~ At any time after 10 years ~~since the date of the offender's last conviction of a sexual or~~
30 violent offense of registration, the offender may petition ~~a district~~ the sentencing court or the district court

1 for the judicial district in which the offender resides for an order relieving the offender of the duty to
2 register under 46-18-254, 46-18-255, and this part. The petition must be served on the county attorney
3 in the county where the petition is filed. Prior to a hearing on the petition, the county attorney shall mail
4 a copy of the petition to the victim of the last offense for which the offender was convicted if the victim's
5 address is reasonably available. The court shall consider any written or oral statements of the victim. The
6 court may grant the petition upon finding that:

7 (a) the offender has remained a law-abiding citizen; and
8 (b) continued registration is not necessary for public protection and that relief from registration is
9 in the best interests of society. If the offender was designated as a sexually violent predator under [section
10 12], the court is also required to find that the offender no longer suffers from a mental abnormality or
11 personality disorder that makes the offender likely to engage in a predatory sexual offense.

12 ~~(3)~~(4) The offender may move that all or part of the proceedings in a hearing under subsection ~~(2)~~
13 ~~(3)~~ be closed to the public, or the judge may ~~take action~~ close them on the judge's own motion.
14 Notwithstanding closure of the ~~If a~~ proceeding is closed to the public, the judge shall permit a victim of the
15 offense to be present unless the judge determines that exclusion of the victim is necessary to protect the
16 offender's right of privacy or the safety of the victim. If the victim is present, the judge, at the victim's
17 request, shall permit the presence of an individual to provide support to the victim unless the judge
18 determines that exclusion of the individual is necessary to protect the offender's right to privacy."

19
20 **Section 10.** Section 46-23-507, MCA, is amended to read:

21 **"46-23-507. Penalty.** A sexual or violent offender who knowingly fails to register, verify
22 registration, or keep registration current under 46-18-254, 46-18-255, and this part may be sentenced to
23 a term of imprisonment of not more than 5 years or may be fined not more than \$10,000, or both."

24
25 **Section 11.** Section 46-23-508, MCA, is amended to read:

26 **"46-23-508. Dissemination of information in register.** (1) Information in the register maintained
27 under 46-18-254 and this part is confidential criminal justice information, as defined in 44-5-103, except
28 that:

29 ~~(1)~~(a) the name of a registered sexual or violent offender is public criminal justice information, as
30 defined in 44-5-103; and

(2) before releasing from a state prison an inmate who is a sexual offender, if the department believes that release of information concerning the inmate is necessary for public protection, the department shall petition the district court for the judicial district in which the prison is located or for the judicial district in which the inmate intends to reside for an order allowing the department to release relevant and necessary register information regarding the inmate to the public. The court shall grant the order if the court finds that the information is necessary for public protection.

(i) if an offender was given a level 1 designation under [section 12], the agency with which the offender is registered shall notify the agency in whose jurisdiction the offense occurred of the registration;

12 (ii) if an offender was given a level 2 designation under [section 12], the agency with which the
13 offender is registered may disseminate the offender's name to the public with the notation that the offender
14 is a sexual or violent offender and may notify a victim of the offense and any agency, organization, or
15 group serving persons who have characteristics similar to those of a previous victim of the offender of:

16 (A) the offender's approximate, but not exact, address, such as by stating the neighborhood, town,
17 or part of a county;

18 (B) the type of victim targeted by the offense;

19 (C) the name, photograph, and physical description of the offender;

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

21 (E) any conditions imposed by the court upon the offender for the safety of the public; and

22 (iii) if an offender was given a level 3 designation under [section 12], the agency shall give the
23 victim and the public notification that includes the information contained in subsection (1)(b)(ii), except that
24 the offender's exact address must be included. The agency shall also include the date of the offender's
25 release from confinement or if not confined, the date the offender was sentenced, with a notation that the
26 offender was not confined, and shall include the community in which the offense occurred.

27 (C) PRIOR TO RELEASE OF INFORMATION UNDER SUBSECTION (1)(B), A LAW ENFORCEMENT
28 AGENCY MAY, IN ITS SOLE DISCRETION, REQUEST AN IN CAMERA REVIEW BY A DISTRICT COURT OF
29 THE DETERMINATION BY THE LAW ENFORCEMENT AGENCY UNDER SUBSECTION (1)(B). THE COURT
30 SHALL REVIEW A REQUEST UNDER THIS SUBSECTION (1)(C) AND SHALL, AS SOON AS POSSIBLE,

1 RENDER ITS OPINION SO THAT RELEASE OF THE INFORMATION IS NOT DELAYED BEYOND RELEASE
2 OF THE OFFENDER FROM CONFINEMENT.

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

5

6 NEW SECTION. Section 12. Sexual offender evaluations and designations -- rulemaking authority.

7 (1) The department shall adopt rules for the qualification of sexual offender evaluators who conduct sexual
8 offender and sexually violent predator evaluations and for determinations by sexual offender evaluators of
9 the risk of a repeat offense and the threat an offender poses to the public safety.

10 (2) Prior to sentencing of a person convicted of a sexual offense, the department or a sexual
11 offender evaluator shall provide the court with a sexual offender evaluation report recommending one of
12 the following levels of designation for the offender:

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

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

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

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

18 (a) review the sexual offender evaluation report, any statement by a victim, and any statement by
19 the offender;

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

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

22 (4) (A) AN OFFENDER DESIGNATED AS A LEVEL 2 OR LEVEL 3 OFFENDER MAY PETITION THE
23 SENTENCING COURT TO CHANGE THE OFFENDER'S DESIGNATION IF THE OFFENDER HAS ENROLLED
24 IN AND SUCCESSFULLY COMPLETED THE TREATMENT PHASE OF EITHER THE PRISON'S SEXUAL
25 OFFENDER PROGRAM OR OF AN EQUIVALENT PROGRAM APPROVED BY THE DEPARTMENT. AFTER
26 CONSIDERING THE PETITION, THE COURT MAY CHANGE THE OFFENDER'S RISK LEVEL DESIGNATION
27 IF THE COURT FINDS BY CLEAR AND CONVINCING EVIDENCE THAT THE OFFENDER'S RISK OF
28 COMMITTING A REPEAT SEXUAL OFFENSE HAS CHANGED SINCE THE TIME SENTENCE WAS IMPOSED.
29 THE COURT SHALL IMPOSE ONE OF THE THREE RISK LEVELS SPECIFIED IN THIS SECTION.

30

1 **NEW SECTION. Section 13. Expungement of records on reversal of conviction.** Upon final
2 reversal of a conviction of a sexual or violent offense, the sentencing court shall order the expungement
3 of any records kept by a court, law enforcement agency, or other state or local government agency under
4 this part.

5

6 **NEW SECTION. Section 14. Immunity from suit.** A state or local governmental entity, a private
7 entity, or an officer or employee of an entity is not liable in negligence, EXCEPT GROSS NEGLIGENCE OR
8 WILLFUL OR WANTON MISCONDUCT, for damages arising from a GOOD FAITH discretionary release or
9 dissemination of or GOOD FAITH failure to release or disseminate information under this part.

10

11 **NEW SECTION. Section 15. Repealer.** Section 46-18-254, MCA, is repealed.

12

13 **NEW SECTION. Section 16. Codification instruction.** [Sections 12 through 14] are intended to
14 be codified as an integral part of Title 46, chapter 23, part 5, and the provisions of Title 46, chapter 23,
15 part 5, apply to [sections 12 through 14].

16

17 **NEW SECTION. Section 17. Two-thirds vote required.** Because [section 14] [THIS ACT] limits
18 governmental liability, Article II, section 18, of the Montana constitution requires a vote of two-thirds of
19 the members of each house of the legislature for passage OF [THIS ACT].

20

21 **NEW SECTION. Section 18. Applicability.** The provisions of [this act] relating to registration apply
22 to:

23 (1) sexual offenders who are sentenced or who are in the custody or under the supervision of the
24 department of corrections on or after July 1, 1989; and

25 (2) violent offenders who are sentenced or who are in the custody or under the supervision of the
26 department of corrections on or after October 1, 1995.

27

-END-