

SENATE BILL NO. 84

INTRODUCED BY VAUGHN, MANNING, HARP, KEATING, CODY, DARKO,  
PETERSON, SMITH, GIACOMETTO, RICE, ECK, RASMUSSEN, WALKER

IN THE SENATE

JANUARY 7, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
JANUARY 17, 1989	ON MOTION BY CHIEF SPONSOR, SENATORS MANNING, HARP, KEATING, ECK, RASMUSSEN, AND WALKER; AND REPRESENTATIVES CODY, DARKO, PETERSON, SMITH, GIACOMETTO, AND RICE ADDED AS SPONSORS.
FEBRUARY 2, 1989	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 3, 1989	PRINTING REPORT.
FEBRUARY 4, 1989	SECOND READING, DO PASS.
FEBRUARY 6, 1989	ENGROSSING REPORT.
FEBRUARY 7, 1989	THIRD READING, PASSED. AYES, 46; NOES, 4.
	TRANSMITTED TO HOUSE.

IN THE HOUSE

FEBRUARY 7, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
FEBRUARY 20, 1989	FIRST READING.
MARCH 7, 1989	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 10, 1989	SECOND READING, CONCURRED IN.

MARCH 11, 1989

THIRD READING, CONCURRED IN.  
AYES, 92; NOES, 0.

RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

MARCH 14, 1989

RECEIVED FROM HOUSE.

SECOND READING, AMENDMENTS  
CONCURRED IN.

MARCH 16, 1989

THIRD READING, AMENDMENTS  
CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 *Senate* BILL NO. *84*  
2 INTRODUCED BY *Arate Hughes*

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THE  
5 REGISTRATION OF SEXUAL OFFENDERS BY THE DEPARTMENT OF  
6 INSTITUTIONS AND LOCAL LAW ENFORCEMENT AGENCIES; PROVIDING  
7 THAT REGISTRATION CANNOT BE WAIVED IN IMPOSING SENTENCE;  
8 REQUIRING MANDATORY TREATMENT FOR SEXUAL OFFENDERS  
9 IMPRISONED IN THE STATE PRISON; AMENDING SECTION 46-18-201,  
10 MCA; AND PROVIDING AN EFFECTIVE DATE."  
11

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

13 NEW SECTION. Section 1. Short title. [Sections 1  
14 through 8] may be cited as the "Sexual Offender Registration  
15 Act".

16 NEW SECTION. Section 2. Definitions. As used in  
17 [sections 1 through 8], the following definitions apply:

18 (1) "Department" means the department of institutions  
19 provided for in Title 2, chapter 15, part 23.

20 (2) "Sexual offender" means a person who has been  
21 convicted of a sexual offense.

22 (3) "Sexual offense" means:

23 (a) any violation of 45-5-502, 45-5-503, 45-5-504,  
24 45-5-505, 45-5-507, or 45-5-625; or

25 (b) any violation of a law of another state or the

1 federal government reasonably equivalent to a violation  
2 listed in subsection (3)(a).

3 NEW SECTION. Section 3. Release of sexual offender --  
4 duties of court and department. A sexual offender must be  
5 informed in writing at the time of sentencing of his duty to  
6 register under [sections 1 through 8] by the court in which  
7 he is sentenced. The department shall obtain the address  
8 where the person expects to reside upon release or discharge  
9 or suspension of his sentence. The department shall inform  
10 the appropriate law enforcement agency having local  
11 jurisdiction where the person expects to reside.

12 NEW SECTION. Section 4. Release of sexual offender  
13 from place of confinement -- duties of official in charge.  
14 A sexual offender who is released from the custody of the  
15 department of institutions or the department of family  
16 services must be informed in writing prior to release of his  
17 duty to register under [sections 1 through 8] by the  
18 official in charge of the place of confinement. The official  
19 shall obtain the address where the person expects to reside  
20 upon his release and report the address to the department of  
21 institutions. The department shall inform the appropriate  
22 law enforcement agency having local jurisdiction where the  
23 person expects to reside.

24 NEW SECTION. Section 5. Duty to register. A sexual  
25 offender shall, within 14 days of coming into a county in

1 which he resides or is temporarily domiciled, register, as  
2 required under [sections 1 through 8], with the chief of  
3 police of the municipality or the sheriff of the county if  
4 he resides in an area other than a municipality.

5 NEW SECTION. Section 6. Change of address -- duty to  
6 inform. If a person required to register under [sections 1  
7 through 8] changes his residence, he shall within 10 days  
8 give written notification of his new address to the law  
9 enforcement agency with whom he last registered. The law  
10 enforcement agency shall, within 3 days after receipt of  
11 such information, forward it to the department. The  
12 department shall forward the information to the law  
13 enforcement agency having local jurisdiction over the new  
14 place of residence.

15 NEW SECTION. Section 7. Duration of registration. (1)  
16 A person required to register under [sections 1 through 8]  
17 shall comply with [sections 1 through 8] for a period of 10  
18 years after conviction, if not imprisoned during that  
19 period. If a person required to register under [sections 1  
20 through 8] is imprisoned during the initial 10-year period,  
21 he shall comply with the provisions of [sections 1 through  
22 8] for a period of 10 years after release from prison.

23 (2) Liability for noncompliance with [sections 1  
24 through 8] terminates at the expiration of 10 years from the  
25 date of initial registration, provided that during the

1 10-year period the convicted sexual offender does not again  
2 become subject to [sections 1 through 8].

3 NEW SECTION. Section 8. Penalty. A sexual offender  
4 who knowingly fails to register under [sections 1 through 8]  
5 is guilty of a misdemeanor on a first offense. On each  
6 subsequent offense, the person is guilty of a felony.

7 Section 9. Section 46-18-201, MCA, is amended to read:

8 "46-18-201. Sentences that may be imposed. (1)  
9 Whenever a person has been found guilty of an offense upon a  
10 verdict or a plea of guilty, the court may:

11 (a) defer imposition of sentence, excepting sentences  
12 for driving under the influence of alcohol or drugs, for a  
13 period, except as otherwise provided, not exceeding 1 year  
14 for any misdemeanor or for a period not exceeding 3 years  
15 for any felony. The sentencing judge may impose upon the  
16 defendant any reasonable restrictions or conditions during  
17 the period of the deferred imposition. Such reasonable  
18 restrictions or conditions may include:

- 19 (i) jail base release;
- 20 (ii) jail time not exceeding 180 days;
- 21 (iii) conditions for probation;
- 22 (iv) restitution;
- 23 (v) payment of the costs of confinement;
- 24 (vi) payment of a fine as provided in 46-18-231;
- 25 (vii) payment of costs as provided in 46-18-232 and

1 46-18-233;

2 (viii) payment of costs of court appointed counsel as

3 provided in 46-8-113;

4 (ix) community service;

5 (x) any other reasonable conditions considered

6 necessary for rehabilitation or for the protection of

7 society; or

8 (xi) any combination of the above.

9 (b) suspend execution of sentence up to the maximum

10 sentence allowed for each particular offense. The sentencing

11 judge may impose on the defendant any reasonable

12 restrictions or conditions during the period of suspended

13 sentence. Such reasonable restrictions or conditions may

14 include any of those listed in subsections (1)(a)(i) through

15 (1)(a)(xi).

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

17 (d) require payment of costs as provided in 46-18-232

18 or payment of costs of court-appointed counsel as provided

19 in 46-8-113;

20 (e) commit the defendant to a correctional

21 institution, with or without a fine as provided by law for

22 the offense;

23 (f) impose any combination of subsections (1)(b)

24 through (1)(e).

25 (2) If any financial obligation is imposed as a

1 condition under subsection (1)(a), sentence may be deferred

2 for a period not exceeding 2 years for any misdemeanor or

3 for a period not exceeding 6 years for any felony,

4 regardless of whether any other conditions are imposed.

5 (3) If any restrictions or conditions imposed under

6 subsection (1)(a) or (1)(b) are violated, the court shall

7 consider any elapsed time and either expressly allow part or

8 all of it as a credit against the sentence or reject all or

9 part as a credit and state its reasons in the order. Credit,

10 however, must be allowed for jail time already served.

11 (4) Except as provided in 46-18-222, the imposition or

12 execution of the first 2 years of a sentence of imprisonment

13 imposed under the following sections may not be deferred or

14 suspended: 45-5-103, 45-5-202(3) relating to aggravated

15 assault, 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-503(2)

16 and (3), 45-9-101(2) and (3), 45-9-102(3), and 45-9-103(2).

17 (5) Except as provided in 46-18-222, the imposition or

18 execution of the first 10 years of a sentence of

19 imprisonment imposed under 45-5-102 may not be deferred or

20 suspended.

21 (6) Except as provided in 46-18-222, imposition of

22 sentence in a felony case may not be deferred in the case of

23 a defendant who has been convicted of a felony on a prior

24 occasion, whether or not the sentence was imposed,

25 imposition of the sentence was deferred, or execution of the

1 sentence was suspended.

2 (7) If the victim was less than 16 years old, the  
3 imposition or execution of the first 30 days of a sentence  
4 of imprisonment imposed under 45-5-502(3), 45-5-503,  
5 45-5-504, 45-5-505, or 45-5-507 may not be deferred or  
6 suspended. Section 46-18-222 does not apply to the first 30  
7 days of such imprisonment.

8 (8) In imposing a sentence on a defendant convicted of  
9 a sexual offense as defined in [section 2], the court may  
10 not waive the registration requirement provided in [sections  
11 1 through 8].

12 (9) A person convicted of a sexual offense, as defined  
13 in [section 2], and sentenced to imprisonment in the state  
14 prison shall enroll in the prison's sexual offender  
15 treatment program."

16 NEW SECTION. Section 10. Extension of authority. Any  
17 existing authority to make rules on the subject of the  
18 provisions of [this act] is extended to the provisions of  
19 [this act].

20 NEW SECTION. Section 11. Effective date. [This act]  
21 is effective July 1, 1989.

-End-

## STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB084, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

A bill for an act entitled: "An act requiring the registration of sexual offenders by the Department of Institutions and local law enforcement agencies; providing that registration cannot be waived in imposing sentence; requiring mandatory treatment for sexual offenders imprisoned in the state prison, amending section 46-18-201, MCA; and providing an effective date."

ASSUMPTIONS:

Assume mandatory enrollment of all sex offenders in the educational phase of treatment.

FISCAL IMPACT:

	<u>Proposed Law</u>	
	<u>FY90</u>	<u>FY91</u>
<u>Expenditures:</u> FTE	4.00	4.00
Personal Services	\$ 98,934	\$ 98,906
Operating Expenses	3,642	3,642
Equipment	10,588	-0-
Total	\$113,164	\$102,548
<u>Funding:</u>		
General Fund	\$113,164	\$102,548

LONG RANGE EFFECTS OF PROPOSED LEGISLATION:

If adequate staff and financial resources are committed to execution of this bill, the average length of stay of sex offenders could be reduced, assuming that successful program graduates are more readily paroled. If this is the case, the bill could have a positive impact on prison overcrowding.



RAY SHACKLEFORD, BUDGET DIRECTOR  
OFFICE OF BUDGET AND PROGRAM PLANNING

1/14/89

DATE



ELEANOR L. VAUGHN, PRIMARY SPONSOR

DATE

Fiscal Note for SB084, as introduced

513 84

APPROVED BY COMMITTEE  
ON JUDICIARY

## SENATE BILL NO. 84

INTRODUCED BY VAUGHN, MANNING, HARP, KEATING, CODY, DARKO,  
PETERSON, SMITH, GIACOMETTO, RICE, ECK, RASMUSSEN, WALKER

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THE  
REGISTRATION OF SEXUAL OFFENDERS BY THE DEPARTMENT OF  
INSTITUTIONS AND LOCAL LAW ENFORCEMENT AGENCIES; PROVIDING  
THAT REGISTRATION CANNOT BE WAIVED IN IMPOSING SENTENCE;  
REQUIRING MANDATORY TREATMENT FOR SEXUAL OFFENDERS  
IMPRISONED IN THE STATE PRISON; RESTRICTING EMPLOYMENT OF  
PERSONS REQUIRED TO REGISTER; AMENDING SECTION 46-18-201,  
MCA; AND PROVIDING AN EFFECTIVE DATE."

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

NEW SECTION. Section 1. Short title. [Sections 1  
through 8 9] may be cited as the "Sexual Offender  
Registration Act".

NEW SECTION. Section 2. Definitions. As used in  
[sections 1 through 8 9], the following definitions apply:

(1) "Department" means the department of institutions  
provided for in Title 2, chapter 15, part 23.

(2) "Sexual offender" means a person who has been  
convicted of a sexual offense.

(3) "Sexual offense" means:

(a) any violation of 45-5-502(3), 45-5-503, 45-5-504,

45-5-505, 45-5-507, or 45-5-625; or

(b) any violation of a law of another state or the  
federal government reasonably equivalent to a violation  
listed in subsection (3)(a).

NEW SECTION. Section 3. Release of sexual offender --  
duties of court and department. A sexual offender must be  
informed in writing at the time of sentencing of his duty to  
register under [sections 1 through 8 9] by the court in  
which he is sentenced. The department shall obtain the  
address where the person expects to reside upon release or  
discharge or suspension of his sentence. The department  
shall inform the appropriate law enforcement agency having  
local jurisdiction where the person expects to reside.

NEW SECTION. Section 4. Release of sexual offender  
from place of confinement -- duties of official in charge.  
A sexual offender who is released from the custody of the  
department of institutions or the department of family  
services must be informed in writing prior to release of his  
duty to register under [sections 1 through 8 9] by the  
official in charge of the place of confinement. The official  
shall obtain the address where the person expects to reside  
upon his release and report the address to the department of  
institutions. The department shall inform the appropriate  
law enforcement agency having local jurisdiction where the  
person expects to reside.

**NEW SECTION. Section 5.** Duty to register. A sexual offender shall, within 14 days of coming into a county in which he resides or is temporarily domiciled, register, as required under [sections 1 through 8 9], with the chief of police of the municipality or the sheriff of the county if he resides in an area other than a municipality.

**NEW SECTION. Section 6.** Change of address -- duty to inform. If a person required to register under [sections 1 through 8 9] changes his residence, he shall within 10 days give written notification of his new address to the law enforcement agency with whom he last registered. The law enforcement agency shall, within 3 days after receipt of such information, forward it to the department.--The department--shall--forward--the--information--to---the---law enforcement--agency--having--local-jurisdiction-over-the-new place-of-residence AND THE LOCAL LAW ENFORCEMENT AGENCY HAVING LOCAL JURISDICTION OVER THE NEW PLACE OF RESIDENCE.

**NEW SECTION. Section 7.** Duration of registration. (1) A person required to register under [sections 1 through 8 9] shall comply with [sections 1 through 8 9] for a period of 10 years after conviction, if not imprisoned during that period. If a person required to register under [sections 1 through 8 9] is imprisoned during the initial 10-year period, he shall comply with the provisions of [sections 1 through 8 9] for a period of 10 years after release from

prison.

(2) Liability for noncompliance with [sections 1 through 8 9] terminates at the expiration of 10 years from the date of initial registration, provided that during the 10-year period the convicted sexual offender does not again become subject to [sections 1 through 8 9].

**NEW SECTION. Section 8.** Penalty. A sexual offender who knowingly fails to register under [sections 1 through 8 9] ~~is guilty of a misdemeanor on a first offense. On each subsequent offense, the person is guilty of a felony~~ MAY BE SENTENCED TO A TERM OF IMPRISONMENT OF NOT LESS THAN 90 DAYS OR A FINE NOT TO EXCEED \$250, OR BOTH.

**NEW SECTION. SECTION 9.** EMPLOYMENT RESTRICTIONS. (1) A PERSON REQUIRED TO REGISTER UNDER [SECTIONS 1 THROUGH 9] MAY NOT BE EMPLOYED IN OR OWN OR OPERATE A CHILD DAY-CARE FACILITY OR BE EMPLOYED BY A SCHOOL DISTRICT FOR THE DURATION OF THE REGISTRATION.

(2) A PERSON REQUIRED TO REGISTER UNDER [SECTIONS 1 THROUGH 9] WHO HOLDS A TEACHER OR SPECIALIST CERTIFICATE SHALL HAVE THAT CERTIFICATE SUSPENDED FOR THE DURATION OF THE REGISTRATION.

**Section 10.** Section 46-18-201, MCA, is amended to read:

**"46-18-201. Sentences that may be imposed. (1)** Whenever a person has been found guilty of an offense upon a

1 verdict or a plea of guilty, the court may:

2 (a) defer imposition of sentence, excepting sentences  
3 for driving under the influence of alcohol or drugs, for a  
4 period, except as otherwise provided, not exceeding 1 year  
5 for any misdemeanor or for a period not exceeding 3 years  
6 for any felony. The sentencing judge may impose upon the  
7 defendant any reasonable restrictions or conditions during  
8 the period of the deferred imposition. Such reasonable  
9 restrictions or conditions may include:

- 10 (i) jail base release;
- 11 (ii) jail time not exceeding 180 days;
- 12 (iii) conditions for probation;
- 13 (iv) restitution;
- 14 (v) payment of the costs of confinement;
- 15 (vi) payment of a fine as provided in 46-18-231;
- 16 (vii) payment of costs as provided in 46-18-232 and  
17 46-18-233;
- 18 (viii) payment of costs of court appointed counsel as  
19 provided in 46-8-113;
- 20 (ix) community service;
- 21 (x) any other reasonable conditions considered  
22 necessary for rehabilitation or for the protection of  
23 society; or
- 24 (xi) any combination of the above.
- 25 (b) suspend execution of sentence up to the maximum

1 sentence allowed for each particular offense. The sentencing  
2 judge may impose on the defendant any reasonable  
3 restrictions or conditions during the period of suspended  
4 sentence. Such reasonable restrictions or conditions may  
5 include any of those listed in subsections (1)(a)(i) through  
6 (1)(a)(xi).

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

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

11 (e) commit the defendant to a correctional  
12 institution, with or without a fine as provided by law for  
13 the offense;

14 (f) impose any combination of subsections (1)(b)  
15 through (1)(e).

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

21 (3) If any restrictions or conditions imposed under  
22 subsection (1)(a) or (1)(b) are violated, the court shall  
23 consider any elapsed time and either expressly allow part or  
24 all of it as a credit against the sentence or reject all or  
25 part as a credit and state its reasons in the order. Credit,

however, must be allowed for jail time already served.

(4) Except as provided in 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), 45-5-503(2) and (3), 45-9-101(2) and (3), 45-9-102(3), and 45-9-103(2).

(5) 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.

(6) 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.

(7) 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 45-5-502(3), 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 such imprisonment.

(8) In imposing a sentence on a defendant convicted of a sexual offense as defined in [section 2], the court may

not waive the registration requirement provided in [sections 1 through 8 9].

(9) A person convicted of a sexual offense, as defined in [section 2], and sentenced to imprisonment in the state prison shall enroll in the EDUCATIONAL PHASE OF THE prison's sexual offender treatment program."

NEW SECTION. Section 11. Extension of authority. Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

NEW SECTION. SECTION 12. SEVERABILITY. IF A PART OF [THIS ACT] IS INVALID, ALL VALID PARTS THAT ARE SEVERABLE FROM THE INVALID PART REMAIN IN EFFECT. IF A PART OF [THIS ACT] IS INVALID IN ONE OR MORE OF ITS APPLICATIONS, THE PART REMAINS IN EFFECT IN ALL VALID APPLICATIONS THAT ARE SEVERABLE FROM THE INVALID APPLICATIONS.

NEW SECTION. Section 13. Effective date. [This act] is effective July 1, 1989.

-End-

## SENATE BILL NO. 84

INTRODUCED BY VAUGHN, MANNING, HARP, KEATING, CODY, DARKO,  
PETERSON, SMITH, GIACOMETTO, RICE, ECK, RASMUSSEN, WALKER

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(a) any violation of 45-5-502(3), 45-5-503, 45-5-504,

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register under [sections 1 through 8 9] by the court in  
which he is sentenced. The department shall obtain the  
address where the person expects to reside upon release or  
discharge or suspension of his sentence. The department  
shall inform the appropriate law enforcement agency having  
local jurisdiction where the person expects to reside.

NEW SECTION. Section 4. Release of sexual offender  
from place of confinement -- duties of official in charge.  
A sexual offender who is released from the custody of the  
department of institutions or the department of family  
services must be informed in writing prior to release of his  
duty to register under [sections 1 through 8 9] by the  
official in charge of the place of confinement. The official  
shall obtain the address where the person expects to reside  
upon his release and report the address to the department of  
institutions. The department shall inform the appropriate  
law enforcement agency having local jurisdiction where the  
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**NEW SECTION. Section 5.** Duty to register. A sexual offender shall, within 14 days of coming into a county in which he resides or is temporarily domiciled, register, as required under [sections 1 through 8 9], with the chief of police of the municipality or the sheriff of the county if he resides in an area other than a municipality.

**NEW SECTION. Section 6.** Change of address -- duty to inform. If a person required to register under [sections 1 through 8 9] changes his residence, he shall within 10 days give written notification of his new address to the law enforcement agency with whom he last registered. The law enforcement agency shall, within 3 days after receipt of such information, forward it to the department--The department--shall--forward--the--information--to---the---law enforcement--agency--having--local-jurisdiction-over-the-new place-of-residence AND THE LOCAL LAW ENFORCEMENT AGENCY HAVING LOCAL JURISDICTION OVER THE NEW PLACE OF RESIDENCE.

**NEW SECTION. Section 7.** Duration of registration. (1) A person required to register under [sections 1 through 8 9] shall comply with [sections 1 through 8 9] for a period of 10 years after conviction, if not imprisoned during that period. If a person required to register under [sections 1 through 8 9] is imprisoned during the initial 10-year period, he shall comply with the provisions of [sections 1 through 8 9] for a period of 10 years after release from

prison.

(2) Liability for noncompliance with [sections 1 through 8 9] terminates at the expiration of 10 years from the date of initial registration, provided that during the 10-year period the convicted sexual offender does not again become subject to [sections 1 through 8 9].

**NEW SECTION. Section 8.** Penalty. A sexual offender who knowingly fails to register under [sections 1 through 8 9] is-guilty-of-a-misdemeanor-on-a-first--offense--On--each subsequent--offense, the-person-is-guilty-of-a-felony MAY BE SENTENCED TO A TERM OF IMPRISONMENT OF NOT LESS THAN 90 DAYS OR A FINE NOT TO EXCEED \$250, OR BOTH.

**NEW SECTION. SECTION 9. EMPLOYMENT RESTRICTIONS.** (1) A PERSON REQUIRED TO REGISTER UNDER [SECTIONS 1 THROUGH 9] MAY NOT BE EMPLOYED IN OR OWN OR OPERATE A CHILD DAY-CARE FACILITY OR BE EMPLOYED BY A SCHOOL DISTRICT FOR THE DURATION OF THE REGISTRATION.

(2) A PERSON REQUIRED TO REGISTER UNDER [SECTIONS 1 THROUGH 9] WHO HOLDS A TEACHER OR SPECIALIST CERTIFICATE SHALL HAVE THAT CERTIFICATE SUSPENDED FOR THE DURATION OF THE REGISTRATION.

**Section 10.** Section 46-18-201, MCA, is amended to read:

**"46-18-201. Sentences that may be imposed.** (1) Whenever a person has been found guilty of an offense upon a

1 verdict or a plea of guilty, the court may:

2 (a) defer imposition of sentence, excepting sentences  
3 for driving under the influence of alcohol or drugs, for a  
4 period, except as otherwise provided, not exceeding 1 year  
5 for any misdemeanor or for a period not exceeding 3 years  
6 for any felony. The sentencing judge may impose upon the  
7 defendant any reasonable restrictions or conditions during  
8 the period of the deferred imposition. Such reasonable  
9 restrictions or conditions may include:

- 10 (i) jail base release;
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- 12 (iii) conditions for probation;
- 13 (iv) restitution;
- 14 (v) payment of the costs of confinement;
- 15 (vi) payment of a fine as provided in 46-18-231;
- 16 (vii) payment of costs as provided in 46-18-232 and
- 17 46-18-233;
- 18 (viii) payment of costs of court appointed counsel as
- 19 provided in 46-8-113;
- 20 (ix) community service;
- 21 (x) any other reasonable conditions considered
- 22 necessary for rehabilitation or for the protection of
- 23 society; or
- 24 (xi) any combination of the above.
- 25 (b) suspend execution of sentence up to the maximum

1 sentence allowed for each particular offense. The sentencing  
2 judge may impose on the defendant any reasonable  
3 restrictions or conditions during the period of suspended  
4 sentence. Such reasonable restrictions or conditions may  
5 include any of those listed in subsections (1)(a)(i) through  
6 (1)(a)(xi).

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

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

11 (e) commit the defendant to a correctional  
12 institution, with or without a fine as provided by law for  
13 the offense;

14 (f) impose any combination of subsections (1)(b)  
15 through (1)(e).

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

21 (3) If any restrictions or conditions imposed under  
22 subsection (1)(a) or (1)(b) are violated, the court shall  
23 consider any elapsed time and either expressly allow part or  
24 all of it as a credit against the sentence or reject all or  
25 part as a credit and state its reasons in the order. Credit,

1 however, must be allowed for jail time already served.

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

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

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

18 (7) If the victim was less than 16 years old, the  
19 imposition or execution of the first 30 days of a sentence  
20 of imprisonment imposed under 45-5-502(3), 45-5-503,  
21 45-5-504, 45-5-505, or 45-5-507 may not be deferred or  
22 suspended. Section 46-18-222 does not apply to the first 30  
23 days of such imprisonment.

24 (8) In imposing a sentence on a defendant convicted of  
25 a sexual offense as defined in [section 2], the court may

1 not waive the registration requirement provided in [sections  
2 1 through 9].

3 (9) A person convicted of a sexual offense, as defined  
4 in [section 2], and sentenced to imprisonment in the state  
5 prison shall enroll in the EDUCATIONAL PHASE OF THE prison's  
6 sexual offender treatment program."

7 NEW SECTION. Section 11. Extension of authority. Any  
8 existing authority to make rules on the subject of the  
9 provisions of [this act] is extended to the provisions of  
10 [this act].

11 NEW SECTION. SECTION 12. SEVERABILITY. IF A PART OF  
12 [THIS ACT] IS INVALID, ALL VALID PARTS THAT ARE SEVERABLE  
13 FROM THE INVALID PART REMAIN IN EFFECT. IF A PART OF [THIS  
14 ACT] IS INVALID IN ONE OR MORE OF ITS APPLICATIONS, THE PART  
15 REMAINS IN EFFECT IN ALL VALID APPLICATIONS THAT ARE  
16 SEVERABLE FROM THE INVALID APPLICATIONS.

17 NEW SECTION. Section 13. Effective date. [This act]  
18 is effective July 1, 1989.

-End-

STANDING COMMITTEE REPORT

March 7, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that SENATE BILL 84 (third reading copy -- blue) be concurred in as amended.

Signed: Dave Brown  
Dave Brown, Chairman

[REP. Cody WILL CARRY THIS BILL ON THE HOUSE FLOOR]

And, that such amendments read:

1. Page 2, line 1.

Following: "45-5-507"

Insert: "(unless the act occurred between 2 consenting persons 16 years of age or older)"

2. Page 4, line 2.

Strike: "Liability for noncompliance with"

Insert: "A convicted sexual offender's duty to register under"

3. Page 4, lines 13 through 21.

Strike: "EMPLOYMENT" on line 13 through end of line 21

Insert: "Sentence upon conviction--restriction on employment.  
A judge sentencing a person upon conviction of a sexual offense shall, as a condition to probation, parole, or deferment or suspension of sentence, impose upon the defendant reasonable employment or occupational prohibitions and restrictions designed to protect the class or classes of persons containing the likely victims of further offenses by the defendant."

SB 84

HOUSE

531049SC.HRV

## SENATE BILL NO. 84

INTRODUCED BY VAUGHN, MANNING, HARP, KEATING, CODY, DARKO,  
PETERSON, SMITH, GIACOMETTO, RICE, ECK, RASMUSSEN, WALKER

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THE  
REGISTRATION OF SEXUAL OFFENDERS BY THE DEPARTMENT OF  
INSTITUTIONS AND LOCAL LAW ENFORCEMENT AGENCIES; PROVIDING  
THAT REGISTRATION CANNOT BE WAIVED IN IMPOSING SENTENCE;  
REQUIRING MANDATORY TREATMENT FOR SEXUAL OFFENDERS  
IMPRISONED IN THE STATE PRISON; RESTRICTING EMPLOYMENT OF  
PERSONS REQUIRED TO REGISTER; AMENDING SECTION 46-18-201,  
MCA; AND PROVIDING AN EFFECTIVE DATE."

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

NEW SECTION. Section 1. Short title. [Sections 1  
through 8 9] may be cited as the "Sexual Offender  
Registration Act".

NEW SECTION. Section 2. Definitions. As used in  
[sections 1 through 8 9], the following definitions apply:

(1) "Department" means the department of institutions  
provided for in Title 2, chapter 15, part 23.

(2) "Sexual offender" means a person who has been  
convicted of a sexual offense.

(3) "Sexual offense" means:

(a) any violation of 45-5-502(3), 45-5-503, 45-5-504,

45-5-505, 45-5-507 {UNLESS THE ACT OCCURRED BETWEEN TWO  
CONSENTING PERSONS 16 YEARS OF AGE OR OLDER}, or 45-5-625;  
or

(b) any violation of a law of another state or the  
federal government reasonably equivalent to a violation  
listed in subsection (3)(a).

NEW SECTION. Section 3. Release of sexual offender --  
duties of court and department. A sexual offender must be  
informed in writing at the time of sentencing of his duty to  
register under [sections 1 through 8 9] by the court in  
which he is sentenced. The department shall obtain the  
address where the person expects to reside upon release or  
discharge or suspension of his sentence. The department  
shall inform the appropriate law enforcement agency having  
local jurisdiction where the person expects to reside.

NEW SECTION. Section 4. Release of sexual offender  
from place of confinement -- duties of official in charge.  
A sexual offender who is released from the custody of the  
department of institutions or the department of family  
services must be informed in writing prior to release of his  
duty to register under [sections 1 through 8 9] by the  
official in charge of the place of confinement. The official  
shall obtain the address where the person expects to reside  
upon his release and report the address to the department of  
institutions. The department shall inform the appropriate

1 law enforcement agency having local jurisdiction where the  
2 person expects to reside.

3 NEW SECTION. Section 5. Duty to register. A sexual  
4 offender shall, within 14 days of coming into a county in  
5 which he resides or is temporarily domiciled, register, as  
6 required under [sections 1 through 8 9], with the chief of  
7 police of the municipality or the sheriff of the county if  
8 he resides in an area other than a municipality.

9 NEW SECTION. Section 6. Change of address -- duty to  
10 inform. If a person required to register under [sections 1  
11 through 8 9] changes his residence, he shall within 10 days  
12 give written notification of his new address to the law  
13 enforcement agency with whom he last registered. The law  
14 enforcement agency shall, within 3 days after receipt of  
15 such information, forward it to the department.--The  
16 department--shall--forward--the--information--to---the---law  
17 enforcement--agency--having--local-jurisdiction-over-the-new  
18 place-of-residence AND THE LOCAL LAW ENFORCEMENT AGENCY  
19 HAVING LOCAL JURISDICTION OVER THE NEW PLACE OF RESIDENCE.

20 NEW SECTION. Section 7. Duration of registration. (1)  
21 A person required to register under [sections 1 through 8 9]  
22 shall comply with [sections 1 through 8 9] for a period of  
23 10 years after conviction, if not imprisoned during that  
24 period. If a person required to register under [sections 1  
25 through 8 9] is imprisoned during the initial 10-year

1 period, he shall comply with the provisions of [sections 1  
2 through 8 9] for a period of 10 years after release from  
3 prison.

4 (2) Stability--for--noncompliance--with A CONVICTED  
5 SEXUAL OFFENDER'S DUTY TO REGISTER UNDER [sections 1 through  
6 8 9] terminates at the expiration of 10 years from the date  
7 of initial registration, provided that during the 10-year  
8 period the convicted sexual offender does not again become  
9 subject to [sections 1 through 8 9].

10 NEW SECTION. Section 8. Penalty. A sexual offender  
11 who knowingly fails to register under [sections 1 through 8  
12 9] is-guilty-of-a-misdemeanor-on-a-first--offense--On--each  
13 subsequent--offense, the person is guilty of a felony MAY BE  
14 SENTENCED TO A TERM OF IMPRISONMENT OF NOT LESS THAN 90 DAYS  
15 OR A FINE NOT TO EXCEED \$250, OR BOTH.

16 NEW SECTION. SECTION 9. -EMPLOYMENT-----RESTRICTIONS.  
17 SENTENCE UPON CONVICTION -- RESTRICTION ON EMPLOYMENT. (1)--A  
18 PERSON-REQUIRED-TO-REGISTER-UNDER-{SECTIONS-1-THROUGH-9}-MAY  
19 NOT--BE--EMPLOYED--IN--OR--OWN--OR--OPERATE-A-CHILD-DAY-CARE  
20 FACILITY-OR--BE--EMPLOYED--BY--A--SCHOOL--DISTRICT--FOR--THE  
21 DURATION-OF-THE-REGISTRATION.

22 (2)--A--PERSON--REQUIRED--TO-REGISTER-UNDER-{SECTIONS-1  
23 THROUGH-9}-WHO-HOLDS-A--TEACHER--OR--SPECIALIST-CERTIFICATE  
24 SHALL-HAVE--THAT--CERTIFICATE-SUSPENDED-FOR-THE-DURATION-OF  
25 THE--REGISTRATION. A JUDGE SENTENCING A PERSON UPON

1 CONVICTION OF A SEXUAL OFFENSE SHALL, AS A CONDITION TO  
 2 PROBATION, PAROLE, OR DEFERMENT OR SUSPENSION OF SENTENCE,  
 3 IMPOSE UPON THE DEFENDANT REASONABLE EMPLOYMENT OR  
 4 OCCUPATIONAL PROHIBITIONS AND RESTRICTIONS DESIGNED TO  
 5 PROTECT THE CLASS OR CLASSES OF PERSONS CONTAINING THE  
 6 LIKELY VICTIMS OF FURTHER OFFENSES BY THE DEFENDANT.

7 **Section 10.** Section 46-18-201, MCA, is amended to  
 8 read:

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

12 (a) defer imposition of sentence, excepting sentences  
 13 for driving under the influence of alcohol or drugs, for a  
 14 period, except as otherwise provided, not exceeding 1 year  
 15 for any misdemeanor or for a period not exceeding 3 years  
 16 for any felony. The sentencing judge may impose upon the  
 17 defendant any reasonable restrictions or conditions during  
 18 the period of the deferred imposition. Such reasonable  
 19 restrictions or conditions may include:

- 20 (i) jail base release;
- 21 (ii) jail time not exceeding 180 days;
- 22 (iii) conditions for probation;
- 23 (iv) restitution;
- 24 (v) payment of the costs of confinement;
- 25 (vi) payment of a fine as provided in 46-18-231;

1 (vii) payment of costs as provided in 46-18-232 and  
 2 46-18-233;

3 (viii) payment of costs of court appointed counsel as  
 4 provided in 46-8-113;

5 (ix) community service;

6 (x) any other reasonable conditions considered  
 7 necessary for rehabilitation or for the protection of  
 8 society; or

9 (xi) any combination of the above.

10 (b) suspend execution of sentence up to the maximum  
 11 sentence allowed for each particular offense. The sentencing  
 12 judge may impose on the defendant any reasonable  
 13 restrictions or conditions during the period of suspended  
 14 sentence. Such reasonable restrictions or conditions may  
 15 include any of those listed in subsections (1)(a)(i) through  
 16 (1)(a)(xi).

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

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

21 (e) commit the defendant to a correctional  
 22 institution, with or without a fine as provided by law for  
 23 the offense;

24 (f) impose any combination of subsections (1)(b)  
 25 through (1)(e).

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

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

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

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

22 (6) Except as provided in 46-18-222, imposition of  
23 sentence in a felony case may not be deferred in the case of  
24 a defendant who has been convicted of a felony on a prior  
25 occasion, whether or not the sentence was imposed,

1 imposition of the sentence was deferred, or execution of the  
2 sentence was suspended.

3 (7) If the victim was less than 16 years old, the  
4 imposition or execution of the first 30 days of a sentence  
5 of imprisonment imposed under 45-5-502(3), 45-5-503,  
6 45-5-504, 45-5-505, or 45-5-507 may not be deferred or  
7 suspended. Section 46-18-222 does not apply to the first 30  
8 days of such imprisonment.

9 (8) In imposing a sentence on a defendant convicted of  
10 a sexual offense as defined in [section 2], the court may  
11 not waive the registration requirement provided in [sections  
12 1 through 8 9].

13 (9) A person convicted of a sexual offense, as defined  
14 in [section 2], and sentenced to imprisonment in the state  
15 prison shall enroll in the EDUCATIONAL PHASE OF THE prison's  
16 sexual offender treatment program."

17 NEW SECTION. Section 11. Extension of authority. Any  
18 existing authority to make rules on the subject of the  
19 provisions of [this act] is extended to the provisions of  
20 [this act].

21 NEW SECTION. SECTION 12. SEVERABILITY. IF A PART OF  
22 [THIS ACT] IS INVALID, ALL VALID PARTS THAT ARE SEVERABLE  
23 FROM THE INVALID PART REMAIN IN EFFECT. IF A PART OF [THIS  
24 ACT] IS INVALID IN ONE OR MORE OF ITS APPLICATIONS, THE PART  
25 REMAINS IN EFFECT IN ALL VALID APPLICATIONS THAT ARE

SB 0084/03

1 SEVERABLE FROM THE INVALID APPLICATIONS.

2 NEW SECTION. **Section 13.** Effective date. [This act]

3 is effective July 1, 1989.

-End-