

1 (5) Consent is ineffective under this section if the victim is less than 14 years old and the offender
2 is 3 or more years older than the victim."

3
4 **Section 2.** Section 45-5-503, MCA, is amended to read:

5 **"45-5-503. Sexual intercourse without consent.** (1) A person who knowingly has sexual
6 intercourse without consent with another person commits the offense of sexual intercourse without
7 consent. A person may not be convicted under this section based on the age of the person's spouse, as
8 provided in 45-5-501(1)(b)(iii).

9 (2) A person convicted of sexual intercourse without consent shall be:

10 (a) imprisoned in the state prison for a term of not less than 2 years or more than 20 years and
11 may be fined not more than \$50,000, except as provided in 46-18-222; or

12 (b) sentenced to the department of corrections and human services for placement by the
13 department in an appropriate correctional institution or program for life. In addition, the offender may be
14 fined not more than \$50,000.

15 (3) (a) If the victim is less than 16 years old and the offender is 3 or more years older than the
16 victim or if the offender inflicts bodily injury upon anyone in the course of committing sexual intercourse
17 without consent, the offender shall be:

18 (i) imprisoned in the state prison for ~~any a~~ a term of not less than 2 years or more than 40 years and
19 may be fined not more than \$50,000, except as provided in 46-18-222. ~~An act "in the course of~~
20 ~~committing sexual intercourse without consent" includes an attempt to commit the offense or flight after~~
21 ~~the attempt or commission; or~~

22 (ii) sentenced to the department of corrections and human services for placement by the department
23 in an appropriate correctional institution or program for life. In addition, the offender may be fined not more
24 than \$50,000.

25 (b) If two or more persons are convicted of sexual intercourse without consent with the same
26 victim in an incident in which each offender was present at the location where another offender's offense
27 occurred during a time period in which each offender could have reasonably known of the other's offense,
28 each offender shall be:

29 (i) imprisoned in the state prison for a term of not less than 5 years or more than 40 years and may
30 be fined not more than \$50,000, except as provided in 46-18-222; or

1 (ii) sentenced to the department of corrections and human services for placement by the
 2 department in an appropriate correctional institution or program for life. In addition, the offender may be
 3 fined not more than \$50,000.

4 (4) In addition to any sentence imposed under subsection (2) or (3), after determining the financial
 5 resources and future ability of the offender to pay restitution as required by 46-18-242, the court shall
 6 require the offender, if able, to pay the victim's reasonable medical and counseling costs that result from
 7 the offense. The amount, method, and time of payment must be determined in the same manner as
 8 provided for in 46-18-244.

9 (5) As used in subsection (3), an act "in the course of committing sexual intercourse without
 10 consent" includes an attempt to commit the offense or flight after the attempt or commission."

11
 12 **Section 3.** Section 45-5-504, MCA, is amended to read:

13 "**45-5-504. Indecent exposure.** (1) A person who, for the purpose of arousing or gratifying the
 14 person's own sexual desire of himself or the sexual desire of any person, exposes ~~his~~ the person's genitals
 15 under circumstances in which ~~he~~ the person knows ~~his~~ the conduct is likely to cause affront or alarm
 16 commits the offense of indecent exposure.

17 (2) (a) A person convicted of the offense of indecent exposure shall be fined an amount not to
 18 exceed \$500 or be imprisoned in the county jail for a term of not more than 6 months, or both.

19 (b) On a second conviction, ~~he~~ the person shall be fined an amount not to exceed \$1,000 or be
 20 imprisoned in the county jail for a term of not more than 1 year, or both.

21 (c) On a third or subsequent conviction, ~~he~~ the person shall be:

22 (i) fined an amount not to exceed \$10,000 or be imprisoned in the state prison for a term of not
 23 more than 5 years, or both; or

24 (ii) sentenced to the department of corrections and human services for placement by the
 25 department in an appropriate correctional institution or program for life. In addition, the offender may be
 26 fined not more than \$10,000."

27
 28 **Section 4.** Section 45-5-507, MCA, is amended to read:

29 "**45-5-507. Incest.** (1) A person commits the offense of incest if ~~he~~ the person knowingly marries,
 30 cohabits with, has sexual intercourse with, or has sexual contact, as defined in 45-2-101, with an ancestor,

1 a descendant, a brother or sister of the whole or half blood, or any stepson or stepdaughter. The
 2 relationships referred to ~~herein~~ in this subsection include blood relationships without regard to legitimacy,
 3 relationships of parent and child by adoption, and relationships involving a stepson or stepdaughter.

4 (2) Consent is a defense under this section to incest with or upon a stepson or stepdaughter, but
 5 consent is ineffective if the victim is less than 18 years old.

6 (3) A person convicted of incest shall be:

7 (a) imprisoned in the state prison for ~~any~~ a term not to exceed 20 years or be fined an amount not
 8 to exceed \$50,000, or both; or

9 (b) sentenced to the department of corrections and human services for placement by the
 10 department in an appropriate correctional institution or program for life. In addition, the offender may be
 11 fined not more than \$50,000.

12 (4) If the victim is under 16 years of age and the offender is 3 or more years older than the victim
 13 or if the offender inflicts bodily injury upon anyone in the course of committing incest, ~~he~~ the offender shall
 14 be:

15 (a) imprisoned in the state prison for ~~any~~ a term not to exceed 20 years and may be fined not more
 16 than \$50,000; or

17 (b) sentenced to the department of corrections and human services for placement by the
 18 department in an appropriate correctional institution or program for life. In addition, the offender may be
 19 fined not more than \$50,000.

20 (5) In addition to any sentence imposed under subsection (3) or (4), after determining the financial
 21 resources and future ability of the offender to pay restitution as required by 46-18-242, the court shall
 22 require the offender, if able, to pay the victim's reasonable costs of counseling that result from the offense.
 23 The amount, method, and time of payment must be determined in the same manner as provided for in
 24 46-18-244."

25

26 **Section 5.** Section 45-5-625, MCA, is amended to read:

27 **"45-5-625. Sexual abuse of children.** (1) A person commits the offense of sexual abuse of
 28 children if the person ~~knowingly~~:

29 (a) knowingly employs, uses, or permits the employment or use of a child in an exhibition of sexual
 30 conduct, actual or simulated;

1 (b) knowingly photographs, films, videotapes, develops or duplicates the photographs, films, or
 2 videotapes, or records a child engaging in sexual conduct, actual or simulated;

3 (c) knowingly persuades, entices, counsels, or procures a child to engage in sexual conduct, actual
 4 or simulated, for use as designated in subsection (1)(a), (1)(b), or (1)(d);

5 (d) knowingly processes, develops, prints, publishes, transports, distributes, sells, ~~possesses with~~
 6 ~~intent to sell~~, exhibits, or advertises any visual or print medium in which children are engaged in sexual
 7 conduct, actual or simulated;

8 (e) knowingly possesses ~~material referred to in subsection (1)(d)~~ any visual or print medium in
 9 which children are engaged in sexual conduct, actual or simulated; or

10 (f) finances any of the activities described in subsections (1)(a) through (1)(d) and (1)(g), knowing
 11 that the activity is of the nature described in those subsections; or

12 (g) possesses with intent to sell any visual or print medium in which children are engaged in sexual
 13 conduct, actual or simulated.

14 (2) (a) ~~Except as provided in subsections (2)(b) and (2)(c), a~~ A person convicted of the offense of
 15 sexual abuse of children shall be:

16 (i) fined not to exceed \$10,000 or be imprisoned in the state prison for any a term not to exceed
 17 20 years, or both; or

18 (ii) sentenced to the department of corrections and human services for placement by the department
 19 in an appropriate correctional institution or program for life. In addition, the offender may be fined not more
 20 than \$10,000.

21 (b) If the victim is under 16 years of age, a person convicted of the offense of sexual abuse of
 22 children shall be:

23 (i) fined not to exceed \$10,000 or be imprisoned in the state prison for any a term not to exceed
 24 50 years, or both; or

25 (ii) sentenced to the department of corrections and human services for placement by the department
 26 in an appropriate correctional institution or program for life. In addition, the offender may be fined not more
 27 than \$10,000.

28 (c) A person convicted of the offense of sexual abuse of children for the possession of material,
 29 as provided in subsection (1)(e), shall be fined not to exceed \$500 or be imprisoned in the county jail for
 30 a term not to exceed 6 months, or both.

1 (3) An offense is not committed under subsections (1)(d) through ~~(1)(f)~~ (1)(g) if the visual or print
 2 medium is processed, developed, printed, published, transported, distributed, sold, possessed, or possessed
 3 with intent to sell, or if such an activity is financed, as part of a sex offender information or treatment
 4 course or program conducted or approved by the department of corrections and human services."

5
 6 **Section 6.** Section 46-23-502, MCA, is amended to read:

7 **"46-23-502. Definitions.** As used in 46-18-254, 46-18-255, and this part, the following definitions
 8 apply:

9 (1) "Department" means the department of corrections and human services provided for in Title
 10 2, chapter 15, part 23.

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

12 (3) "Sexual offense" means:

13 (a) any violation of 45-5-502(3), 45-5-503, 45-5-504(2)(c), 45-5-505, 45-5-507 (unless the act
 14 occurred between two consenting persons 16 years of age or older), or 45-5-625; or

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

17
 18 **Section 7.** Section 46-23-506, MCA, is amended to read:

19 **"46-23-506. Duration of registration.** (1) A person required to register under 46-18-254,
 20 46-18-255, and this part shall comply with 46-18-254, 46-18-255, and this part for the remainder of the
 21 person's life, except as provided in subsection (2) of this section or during a period of 10 years after
 22 conviction, if not imprisoned during that period. If a person required to register under 46-18-254,
 23 46-18-255, and this part is imprisoned during the initial 10-year period, he shall comply with the provisions
 24 of 46-18-254, 46-18-255, and this part for a period of 10 years after release from prison time during which
 25 the person is in prison.

26 (2) ~~A convicted sexual offender's duty to register under 46-18-254, 46-18-255, and this part~~
 27 ~~terminates at the expiration of 10 years from the date of initial registration, provided that during the 10-year~~
 28 ~~period the convicted sexual offender does not again become subject to 46-18-254, 46-18-255, and this~~
 29 ~~part. At any time after 10 years since the date of the sexual offender's last conviction of a sexual offense,~~
 30 ~~the sexual offender may petition the court that sentenced the sexual offender for the last conviction or, if~~

1 that court is not in this state, the district court for the judicial district in which the sexual offender resides
 2 for an order relieving the sexual offender of the duty to register under 46-18-254, 46-18-255, and this part.
 3 Within 3 days after the petition is filed, the sexual offender shall mail a copy of the petition to the victim
 4 or victims, if still living, of the last sexual offense for which the sexual offender was convicted. The court
 5 shall consider any written or oral statements of the victim or victims. The court may grant the petition
 6 upon finding that:

7 (a) the sexual 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."

10
 11 **Section 8.** Section 46-23-507, MCA, is amended to read:

12 "**46-23-507. Penalty.** A sexual offender who knowingly fails to register under 46-18-254,
 13 46-18-255, and this part may be sentenced to a term of imprisonment of not less than 90 days or more
 14 than 5 years or a fine may be fined not to exceed \$250 more than \$5,000, or both."

15
 16 **NEW SECTION. Section 9. Dissemination of information in register.** Information in the register
 17 maintained under 46-18-254 and this part is confidential criminal justice information, as defined in
 18 44-5-103, except that:

19 (1) the name of a registered sexual offender is public criminal justice information, as defined in
 20 44-5-103; and

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

27
 28 **NEW SECTION. Section 10. Codification instruction.** [Section 9] is intended to be codified as an
 29 integral part of Title 46, chapter 23, part 5, and the provisions of Title 46 apply to [section 9].

30 -END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0157, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

A bill allowing certain sex offenders to be sentenced to the Department of Corrections and Human Services (DCHS) for life, to be placed in an appropriate correctional institution or program, increasing fines for these offenses, providing that offenders register as sexual offenders for life unless the court finds that public protection no longer demands registration, and regulating the dissemination of material in the sex offender register.

ASSUMPTIONS:

1. Current financial profile of prospective defendants will continue.
2. For the offenders defined in this bill, the length of stay in Montana State Prison will not change.
3. The five year average number of offenders convicted of the crimes defined in this bill is 185 persons per year.
4. The increase in workload will be experienced in the Probation and Parole Bureau of the DCHS. Probation and Parole will need 2.00 FTE in FY96 and 3.00 FTE in FY97. These FTE and their associated operating budgets result in total general fund costs of \$110,038 in FY96 and \$114,669 in FY97, as included in the Governor's proposed budget.
5. The duration of registration under 45-18-254 and 45-18-255, MCA, will increase from the current 10 years to a lifetime registration. The costs of registering these offenders from the current 10 years to a lifetime registration will be minimal and DCHS will absorb these costs within its recommended budget.

FISCAL IMPACT:

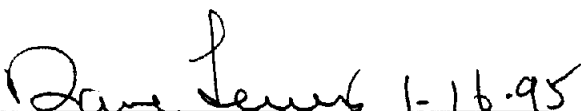
No further impact.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

This bill will increase the number of convicted sex offenders in the corrections system at an estimated rate of 185 per year. Probation and Parole will continue to need additional FTE to supervise these people and maintain a manageable caseload.

TECHNICAL NOTES:

Historically, most defendants convicted under this section are either indigent or have limited financial resources. A court may not sentence a defendant to pay a fine unless the defendant is or will be able to pay the fine [see 46-18-231, MCA].


DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

 1-17-95
MATT DENNY, PRIMARY SPONSOR DATE

Fiscal Note for HB0157, as introduced

HB 157

1 HOUSE BILL NO. 157

2 INTRODUCED BY DENNY, HOLDEN, BRAINARD, DEVANEY, AHNER, KEENAN, S. SMITH, SLITER,
3 CLARK, KNOX, FORBES, BARNETT, BOHLINGER, HERRON, MERCER, STOVALL, BURNETT,
4 MURDOCK, TAYLOR, MCKEE, MASOLO, ARNOTT, L. SMITH, FISHER, MILLS, BAER, WELLS,
5 EMERSON, SOFT, ELLIS, MCGEE, BOHARSKI, SOMERVILLE
6 BY REQUEST OF THE DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES
7

8 A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING CERTAIN SEX OFFENDERS TO BE SENTENCED TO
9 THE DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES FOR LIFE, TO BE PLACED IN AN
10 APPROPRIATE CORRECTIONAL INSTITUTION OR PROGRAM; INCREASING FINES FOR THOSE OFFENSES;
11 PROVIDING THAT THOSE PERSONS ARE TO REGISTER AS SEXUAL OFFENDERS FOR THE REMAINDER
12 OF THEIR LIVES UNLESS A COURT FINDS THAT PUBLIC PROTECTION NO LONGER DEMANDS
13 REGISTRATION; REGULATING THE DISSEMINATION OF MATERIAL IN THE SEX OFFENDER REGISTER;
14 AND AMENDING SECTIONS 45-5-502, 45-5-503, 45-5-504, 45-5-507, 45-5-625, 46-23-502, 46-23-506,
15 AND 46-23-507, MCA."
16

17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
18

19 **Section 1.** Section 45-5-502, MCA, is amended to read:

20 "**45-5-502. Sexual assault.** (1) A person who knowingly subjects another person to any sexual
21 contact without consent commits the offense of sexual assault.

22 (2) A person convicted of sexual assault shall be fined not to exceed \$500 or be imprisoned in the
23 county jail for ~~any~~ a term not to exceed 6 months, or both.

24 (3) If the victim is less than 16 years old and the offender is 3 or more years older than the victim
25 or if the offender inflicts bodily injury upon anyone in the course of committing sexual assault, ~~he~~ the
26 offender shall be:

27 (a) imprisoned in the state prison for ~~any~~ a term of not less than 2 years or more than 20 years and
28 may be fined not more than \$50,000; or

29 (b) sentenced to the department of corrections and human services for placement by the
30 department in an appropriate correctional institution or program for life. In addition, the offender may be

1 fined not more than \$50,000.

2 (4) An act "in the course of committing sexual assault" ~~shall include~~ includes an attempt to commit
3 the offense or flight after the attempt or commission.

4 (5) Consent is ineffective under this section if the victim is less than 14 years old and the offender
5 is 3 or more years older than the victim."

6

7 **Section 2.** Section 45-5-503, MCA, is amended to read:

8 **"45-5-503. Sexual intercourse without consent.** (1) A person who knowingly has sexual
9 intercourse without consent with another person commits the offense of sexual intercourse without
10 consent. A person may not be convicted under this section based on the age of the person's spouse, as
11 provided in 45-5-501(1)(b)(iii).

12 (2) A person convicted of sexual intercourse without consent shall be:

13 (a) imprisoned in the state prison for a term of not less than 2 years or more than 20 years and
14 may be fined not more than \$50,000, except as provided in 46-18-222; or

15 (b) sentenced to the department of corrections and human services for placement by the
16 department in an appropriate correctional institution or program for life. In addition, the offender may be
17 fined not more than \$50,000.

18 (3) (a) If the victim is less than 16 years old and the offender is 3 or more years older than the
19 victim or if the offender inflicts bodily injury upon anyone in the course of committing sexual intercourse
20 without consent, the offender shall be:

21 (i) imprisoned in the state prison for any a term of not less than 2 years or more than 40 years and
22 may be fined not more than \$50,000, except as provided in 46-18-222. ~~An act "in the course of~~
23 ~~committing sexual intercourse without consent" includes an attempt to commit the offense or flight after~~
24 ~~the attempt or commission; or~~

25 (ii) sentenced to the department of corrections and human services for placement by the department
26 in an appropriate correctional institution or program for life. In addition, the offender may be fined not more
27 than \$50,000.

28 (b) If two or more persons are convicted of sexual intercourse without consent with the same
29 victim in an incident in which each offender was present at the location where another offender's offense
30 occurred during a time period in which each offender could have reasonably known of the other's offense,

1 each offender shall be:

2 (i) imprisoned in the state prison for a term of not less than 5 years or more than 40 years and may
3 be fined not more than \$50,000, except as provided in 46-18-222; or

4 (ii) sentenced to the department of corrections and human services for placement by the
5 department in an appropriate correctional institution or program for life. In addition, the offender may be
6 fined not more than \$50,000.

7 (4) In addition to any sentence imposed under subsection (2) or (3), after determining the financial
8 resources and future ability of the offender to pay restitution as required by 46-18-242, the court shall
9 require the offender, if able, to pay the victim's reasonable medical and counseling costs that result from
10 the offense. The amount, method, and time of payment must be determined in the same manner as
11 provided for in 46-18-244.

12 (5) As used in subsection (3), an act "in the course of committing sexual intercourse without
13 consent" includes an attempt to commit the offense or flight after the attempt or commission."

14

15 **Section 3.** Section 45-5-504, MCA, is amended to read:

16 **"45-5-504. Indecent exposure.** (1) A person who, for the purpose of arousing or gratifying the
17 person's own sexual desire ~~of himself~~ or the sexual desire of any person, exposes ~~his~~ the person's genitals
18 under circumstances in which ~~he~~ the person knows ~~his~~ the conduct is likely to cause affront or alarm
19 commits the offense of indecent exposure.

20 (2) (a) A person convicted of the offense of indecent exposure shall be fined an amount not to
21 exceed \$500 or be imprisoned in the county jail for a term of not more than 6 months, or both.

22 (b) On a second conviction, ~~he~~ the person shall be fined an amount not to exceed \$1,000 or be
23 imprisoned in the county jail for a term of not more than 1 year, or both.

24 (c) On a third or subsequent conviction, ~~he~~ the person shall be:

25 (i) fined an amount not to exceed \$10,000 or be imprisoned in the state prison for a term of not
26 more than 5 years, or both; or

27 (ii) sentenced to the department of corrections and human services for placement by the
28 department in an appropriate correctional institution or program for life. In addition, the offender may be
29 fined not more than \$10,000."

30

1 **Section 4.** Section 45-5-507, MCA, is amended to read:

2 **"45-5-507. Incest.** (1) A person commits the offense of incest if ~~he~~ the person knowingly marries,
3 cohabits with, has sexual intercourse with, or has sexual contact, as defined in 45-2-101, with an ancestor,
4 a descendant, a brother or sister of the whole or half blood, or any stepson or stepdaughter. The
5 relationships referred to ~~herein~~ in this subsection include blood relationships without regard to legitimacy,
6 relationships of parent and child by adoption, and relationships involving a stepson or stepdaughter.

7 (2) Consent is a defense under this section to incest with or upon a stepson or stepdaughter, but
8 consent is ineffective if the victim is less than 18 years old.

9 (3) A person convicted of incest shall be:

10 (a) imprisoned in the state prison for any a term not to exceed 20 years or be fined an amount not
11 to exceed \$50,000, or both; or

12 (b) sentenced to the department of corrections and human services for placement by the
13 department in an appropriate correctional institution or program for life. In addition, the offender may be
14 fined not more than \$50,000.

15 (4) If the victim is under 16 years of age and the offender is 3 or more years older than the victim
16 or if the offender inflicts bodily injury upon anyone in the course of committing incest, ~~he~~ the offender shall
17 be:

18 (a) imprisoned in the state prison for any a term not to exceed 20 years and may be fined not more
19 than \$50,000; or

20 (b) sentenced to the department of corrections and human services for placement by the
21 department in an appropriate correctional institution or program for life. In addition, the offender may be
22 fined not more than \$50,000.

23 (5) In addition to any sentence imposed under subsection (3) or (4), after determining the financial
24 resources and future ability of the offender to pay restitution as required by 46-18-242, the court shall
25 require the offender, if able, to pay the victim's reasonable costs of counseling that result from the offense.
26 The amount, method, and time of payment must be determined in the same manner as provided for in
27 46-18-244."

28

29 **Section 5.** Section 45-5-625, MCA, is amended to read:

30 **"45-5-625. Sexual abuse of children.** (1) A person commits the offense of sexual abuse of

1 children if the person ~~knowingly~~:

2 (a) knowingly employs, uses, or permits the employment or use of a child in an exhibition of sexual
3 conduct, actual or simulated;

4 (b) knowingly photographs, films, videotapes, develops or duplicates the photographs, films, or
5 videotapes, or records a child engaging in sexual conduct, actual or simulated;

6 (c) knowingly persuades, entices, counsels, or procures a child to engage in sexual conduct, actual
7 or simulated, for use as designated in subsection (1)(a), (1)(b), or (1)(d);

8 (d) knowingly processes, develops, prints, publishes, transports, distributes, sells, ~~possesses with~~
9 ~~intent to sell~~, exhibits, or advertises any visual or print medium in which children are engaged in sexual
10 conduct, actual or simulated;

11 (e) knowingly possesses ~~material referred to in subsection (1)(d)~~ any visual or print medium in
12 which children are engaged in sexual conduct, actual or simulated; ~~or~~

13 (f) finances any of the activities described in subsections (1)(a) through (1)(d) and (1)(g), knowing
14 that the activity is of the nature described in those subsections; or

15 (g) possesses with intent to sell any visual or print medium in which children are engaged in sexual
16 conduct, actual or simulated.

17 (2) (a) ~~Except as provided in subsections (2)(b) and (2)(c), a~~ A person convicted of the offense of
18 sexual abuse of children shall be:

19 (i) fined not to exceed \$10,000 or be imprisoned in the state prison for any a term not to exceed
20 20 years, or both; or

21 (ii) sentenced to the department of corrections and human services for placement by the department
22 in an appropriate correctional institution or program for life. In addition, the offender may be fined not more
23 than \$10,000.

24 (b) If the victim is under 16 years of age, a person convicted of the offense of sexual abuse of
25 children shall be:

26 (i) fined not to exceed \$10,000 or be imprisoned in the state prison for any a term not to exceed
27 50 years, or both; or

28 (ii) sentenced to the department of corrections and human services for placement by the department
29 in an appropriate correctional institution or program for life. In addition, the offender may be fined not more
30 than \$10,000.

1 (c) A person convicted of the offense of sexual abuse of children for the possession of material,
 2 as provided in subsection (1)(e), shall be fined not to exceed \$500 or be imprisoned in the county jail for
 3 a term not to exceed 6 months, or both.

4 (3) An offense is not committed under subsections (1)(d) through ~~(1)(f)~~ (1)(g) if the visual or print
 5 medium is processed, developed, printed, published, transported, distributed, sold, possessed, or possessed
 6 with intent to sell, or if such an activity is financed, as part of a sex offender information or treatment
 7 course or program conducted or approved by the department of corrections and human services."

8

9 **Section 6.** Section 46-23-502, MCA, is amended to read:

10 **"46-23-502. Definitions.** As used in 46-18-254, 46-18-255, and this part, the following definitions
 11 apply:

12 (1) "Department" means the department of corrections and human services provided for in Title
 13 2, chapter 15, part 23.

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

15 (3) "Sexual offense" means:

16 (a) any violation of 45-5-502(3), 45-5-503, 45-5-504(2)(c), 45-5-505, 45-5-507 (unless the act
 17 occurred between two consenting persons 16 years of age or older), or 45-5-625; or

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

20

21 **Section 7.** Section 46-23-506, MCA, is amended to read:

22 **"46-23-506. Duration of registration.** (1) A person required to register under 46-18-254,
 23 46-18-255, and this part shall comply with 46-18-254, 46-18-255, and this part for the remainder of the
 24 person's life, except as provided in subsection (2) of this section or during a period of 10 years after
 25 conviction, if not imprisoned during that period. If a person required to register under 46-18-254,
 26 46-18-255, and this part is imprisoned during the initial 10-year period, he shall comply with the provisions
 27 of 46-18-254, 46-18-255, and this part for a period of 10 years after release from prison time during which
 28 the person is in prison.

29 (2) ~~A convicted sexual offender's duty to register under 46-18-254, 46-18-255, and this part~~
 30 ~~terminates at the expiration of 10 years from the date of initial registration, provided that during the 10-year~~

1 ~~period the convicted sexual offender does not again become subject to 46-18-254, 46-18-255, and this~~
 2 ~~part. At any time after 10 years since the date of the sexual offender's last conviction of a sexual offense,~~
 3 ~~the sexual offender may petition the court that sentenced the sexual offender for the last conviction or, if~~
 4 ~~that court is not in this state, the district court for the judicial district in which the sexual offender resides~~
 5 A DISTRICT COURT for an order relieving the sexual offender of the duty to register under 46-18-254,
 6 46-18-255, and this part. Within 3 days after the petition is filed, the sexual offender shall mail a copy of
 7 the petition to the victim or victims, if still living, of the last sexual offense for which the sexual offender
 8 was convicted THE PETITION MUST BE SERVED ON THE COUNTY ATTORNEY IN THE COUNTY WHERE
 9 THE PETITION IS FILED. PRIOR TO A HEARING ON THE PETITION, THE COUNTY ATTORNEY SHALL MAIL
 10 A COPY OF THE PETITION TO THE VICTIM OF THE LAST OFFENSE FOR WHICH THE SEXUAL OFFENDER
 11 WAS CONVICTED IF THE VICTIM'S ADDRESS IS REASONABLY AVAILABLE. The court shall consider any
 12 written or oral statements of the victim or victims. The court may grant the petition upon finding that:
 13 (a) the sexual offender has remained a law-abiding citizen; and
 14 (b) continued registration is not necessary for public protection and that relief from registration is
 15 in the best interests of society."

16
 17 **Section 8.** Section 46-23-507, MCA, is amended to read:

18 **"46-23-507. Penalty.** A sexual offender who knowingly fails to register under 46-18-254,
 19 46-18-255, and this part may be sentenced to a term of imprisonment of not ~~less than 90 days or more~~
 20 than 5 years or a fine may be fined not to exceed \$250 more than \$5,000 \$10,000, or both."

21
 22 **NEW SECTION. Section 9. Dissemination of information in register.** Information in the register
 23 maintained under 46-18-254 and this part is confidential criminal justice information, as defined in
 24 44-5-103, except that:

25 (1) the name of a registered sexual offender is public criminal justice information, as defined in
 26 44-5-103; and

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

1 register information regarding the inmate to the public. The court shall grant the order if the court finds
2 that the information is necessary for public protection.

3

4 **NEW SECTION. Section 10. Codification instruction.** [3Section 9] is intended to be codified as
5 an integral part of Title 46, chapter 23, part 5, and the provisions of Title 46 apply to [section 9].

6

-END-

HOUSE BILL NO. 157

INTRODUCED BY DENNY, HOLDEN, BRAINARD, DEVANEY, AHNER, KEENAN, S. SMITH, SLITER,
 CLARK, KNOX, FORBES, BARNETT, BOHLINGER, HERRON, MERCER, STOVALL, BURNETT,
 MURDOCK, TAYLOR, MCKEE, MASOLO, ARNOTT, L. SMITH, FISHER, MILLS, BAER, WELLS,
 EMERSON, SOFT, ELLIS, MCGEE, BOHARSKI, SOMERVILLE
 BY REQUEST OF THE DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING CERTAIN SEX OFFENDERS TO BE SENTENCED TO
 THE DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES FOR LIFE, TO BE PLACED IN AN
 APPROPRIATE CORRECTIONAL INSTITUTION OR PROGRAM; INCREASING FINES FOR THOSE OFFENSES;
 PROVIDING THAT THOSE PERSONS ARE TO REGISTER AS SEXUAL OFFENDERS FOR THE REMAINDER
 OF THEIR LIVES UNLESS A COURT FINDS THAT PUBLIC PROTECTION NO LONGER DEMANDS
 REGISTRATION; REGULATING THE DISSEMINATION OF MATERIAL IN THE SEX OFFENDER REGISTER;
 AND AMENDING SECTIONS 45-5-502, 45-5-503, 45-5-504, 45-5-507, 45-5-625, 46-23-502, 46-23-506,
 AND 46-23-507, MCA."

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

Section 1. Section 45-5-502, MCA, is amended to read:

"45-5-502. Sexual assault. (1) A person who knowingly subjects another person to any sexual
 contact without consent commits the offense of sexual assault.

(2) A person convicted of sexual assault shall be fined not to exceed \$500 or be imprisoned in the
 county jail for ~~any~~ a term not to exceed 6 months, or both.

(3) If the victim is less than 16 years old and the offender is 3 or more years older than the victim
 or if the offender inflicts bodily injury upon anyone in the course of committing sexual assault, ~~he~~ the
offender shall be:

(a) imprisoned in the state prison for any a term of not less than 2 years or more than 20 years and
 may be fined not more than \$50,000; or

(b) sentenced to the department of corrections and human services for placement by the
 department in an appropriate correctional institution or program for life. In addition, the offender may be

1 fined not more than \$50,000.

2 (4) An act "in the course of committing sexual assault" ~~shall include~~ includes an attempt to commit
3 the offense or flight after the attempt or commission.

4 (5) Consent is ineffective under this section if the victim is less than 14 years old and the offender
5 is 3 or more years older than the victim."
6

6

7 **Section 2.** Section 45-5-503, MCA, is amended to read:

8 **"45-5-503. Sexual intercourse without consent.** (1) A person who knowingly has sexual
9 intercourse without consent with another person commits the offense of sexual intercourse without
10 consent. A person may not be convicted under this section based on the age of the person's spouse, as
11 provided in 45-5-501(1)(b)(iii).

12 (2) A person convicted of sexual intercourse without consent shall be:

13 (a) imprisoned in the state prison for a term of not less than 2 years or more than 20 years and
14 may be fined not more than \$50,000, except as provided in 46-18-222; or

15 (b) sentenced to the department of corrections and human services for placement by the
16 department in an appropriate correctional institution or program for life. In addition, the offender may be
17 fined not more than \$50,000.

18 (3) (a) If the victim is less than 16 years old and the offender is 3 or more years older than the
19 victim or if the offender inflicts bodily injury upon anyone in the course of committing sexual intercourse
20 without consent, the offender shall be:

21 (i) imprisoned in the state prison for ~~any a~~ a term of not less than 2 years or more than 40 years and
22 may be fined not more than \$50,000, except as provided in 46-18-222. ~~An act "in the course of~~
23 ~~committing sexual intercourse without consent" includes an attempt to commit the offense or flight after~~
24 ~~the attempt or commission; or~~

25 (ii) sentenced to the department of corrections and human services for placement by the department
26 in an appropriate correctional institution or program for life. In addition, the offender may be fined not more
27 than \$50,000.

28 (b) If two or more persons are convicted of sexual intercourse without consent with the same
29 victim in an incident in which each offender was present at the location where another offender's offense
30 occurred during a time period in which each offender could have reasonably known of the other's offense,

1 each offender shall be:

2 (i) imprisoned in the state prison for a term of not less than 5 years or more than 40 years and may
3 be fined not more than \$50,000, except as provided in 46-18-222; or

4 (ii) sentenced to the department of corrections and human services for placement by the
5 department in an appropriate correctional institution or program for life. In addition, the offender may be
6 fined not more than \$50,000.

7 (4) In addition to any sentence imposed under subsection (2) or (3), after determining the financial
8 resources and future ability of the offender to pay restitution as required by 46-18-242, the court shall
9 require the offender, if able, to pay the victim's reasonable medical and counseling costs that result from
10 the offense. The amount, method, and time of payment must be determined in the same manner as
11 provided for in 46-18-244.

12 (5) As used in subsection (3), an act "in the course of committing sexual intercourse without
13 consent" includes an attempt to commit the offense or flight after the attempt or commission."

14

15 **Section 3.** Section 45-5-504, MCA, is amended to read:

16 **"45-5-504. Indecent exposure.** (1) A person who, for the purpose of arousing or gratifying the
17 person's own sexual desire of himself or the sexual desire of any person, exposes ~~his~~ the person's genitals
18 under circumstances in which ~~he~~ the person knows ~~his~~ the conduct is likely to cause affront or alarm
19 commits the offense of indecent exposure.

20 (2) (a) A person convicted of the offense of indecent exposure shall be fined an amount not to
21 exceed \$500 or be imprisoned in the county jail for a term of not more than 6 months, or both.

22 (b) On a second conviction, ~~he~~ the person shall be fined an amount not to exceed \$1,000 or be
23 imprisoned in the county jail for a term of not more than 1 year, or both.

24 (c) On a third or subsequent conviction, ~~he~~ the person shall be:

25 (i) fined an amount not to exceed \$10,000 or be imprisoned in the state prison for a term of not
26 more than 5 years, or both; or

27 (ii) sentenced to the department of corrections and human services for placement by the
28 department in an appropriate correctional institution or program for life. In addition, the offender may be
29 fined not more than \$10,000."

30

1 **Section 4.** Section 45-5-507, MCA, is amended to read:

2 **"45-5-507. Incest.** (1) A person commits the offense of incest if ~~he~~ the person knowingly marries,
3 cohabits with, has sexual intercourse with, or has sexual contact, as defined in 45-2-101, with an ancestor,
4 a descendant, a brother or sister of the whole or half blood, or any stepson or stepdaughter. The
5 relationships referred to ~~herein~~ in this subsection include blood relationships without regard to legitimacy,
6 relationships of parent and child by adoption, and relationships involving a stepson or stepdaughter.

7 (2) Consent is a defense under this section to incest with or upon a stepson or stepdaughter, but
8 consent is ineffective if the victim is less than 18 years old.

9 (3) A person convicted of incest shall be:

10 (a) imprisoned in the state prison for any a term not to exceed 20 years or be fined an amount not
11 to exceed \$50,000, or both; or

12 (b) sentenced to the department of corrections and human services for placement by the
13 department in an appropriate correctional institution or program for life. In addition, the offender may be
14 fined not more than \$50,000.

15 (4) If the victim is under 16 years of age and the offender is 3 or more years older than the victim
16 or if the offender inflicts bodily injury upon anyone in the course of committing incest, ~~he~~ the offender shall
17 be:

18 (a) imprisoned in the state prison for any a term not to exceed 20 years and may be fined not more
19 than \$50,000; or

20 (b) sentenced to the department of corrections and human services for placement by the
21 department in an appropriate correctional institution or program for life. In addition, the offender may be
22 fined not more than \$50,000.

23 (5) In addition to any sentence imposed under subsection (3) or (4), after determining the financial
24 resources and future ability of the offender to pay restitution as required by 46-18-242, the court shall
25 require the offender, if able, to pay the victim's reasonable costs of counseling that result from the offense.
26 The amount, method, and time of payment must be determined in the same manner as provided for in
27 46-18-244."

28

29 **Section 5.** Section 45-5-625, MCA, is amended to read:

30 **"45-5-625. Sexual abuse of children.** (1) A person commits the offense of sexual abuse of

1 children if the person ~~knowingly~~:

2 (a) knowingly employs, uses, or permits the employment or use of a child in an exhibition of sexual
3 conduct, actual or simulated;

4 (b) knowingly photographs, films, videotapes, develops or duplicates the photographs, films, or
5 videotapes, or records a child engaging in sexual conduct, actual or simulated;

6 (c) knowingly persuades, entices, counsels, or procures a child to engage in sexual conduct, actual
7 or simulated, for use as designated in subsection (1)(a), (1)(b), or (1)(d);

8 (d) knowingly processes, develops, prints, publishes, transports, distributes, sells, ~~possesses with~~
9 ~~intent to sell~~, exhibits, or advertises any visual or print medium in which children are engaged in sexual
10 conduct, actual or simulated;

11 (e) knowingly possesses ~~material referred to in subsection (1)(d)~~ any visual or print medium in
12 which children are engaged in sexual conduct, actual or simulated; ~~or~~

13 (f) finances any of the activities described in subsections (1)(a) through (1)(d) and (1)(g), knowing
14 that the activity is of the nature described in those subsections; or

15 (g) possesses with intent to sell any visual or print medium in which children are engaged in sexual
16 conduct, actual or simulated.

17 (2) (a) ~~Except as provided in subsections (2)(b) and (2)(c), a~~ A person convicted of the offense of
18 sexual abuse of children shall be:

19 (i) fined not to exceed \$10,000 or be imprisoned in the state prison for any a term not to exceed
20 20 years, or both; or

21 (ii) sentenced to the department of corrections and human services for placement by the department
22 in an appropriate correctional institution or program for life. In addition, the offender may be fined not more
23 than \$10,000.

24 (b) If the victim is under 16 years of age, a person convicted of the offense of sexual abuse of
25 children shall be:

26 (i) fined not to exceed \$10,000 or be imprisoned in the state prison for any a term not to exceed
27 50 years, or both; or

28 (ii) sentenced to the department of corrections and human services for placement by the department
29 in an appropriate correctional institution or program for life. In addition, the offender may be fined not more
30 than \$10,000.

1 (c) A person convicted of the offense of sexual abuse of children for the possession of material,
2 as provided in subsection (1)(e), shall be fined not to exceed \$500 or be imprisoned in the county jail for
3 a term not to exceed 6 months, or both.

4 (3) An offense is not committed under subsections (1)(d) through ~~(1)(f)~~ (1)(g) if the visual or print
5 medium is processed, developed, printed, published, transported, distributed, sold, possessed, or possessed
6 with intent to sell, or if such an activity is financed, as part of a sex offender information or treatment
7 course or program conducted or approved by the department of corrections and human services."

8

9 **Section 6.** Section 46-23-502, MCA, is amended to read:

10 **"46-23-502. Definitions.** As used in 46-18-254, 46-18-255, and this part, the following definitions
11 apply:

12 (1) "Department" means the department of corrections and human services provided for in Title
13 2, chapter 15, part 23.

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

15 (3) "Sexual offense" means:

16 (a) any violation of 45-5-502(3), 45-5-503, 45-5-504(2)(c), 45-5-505, 45-5-507 (unless the act
17 occurred between two consenting persons 16 years of age or older), or 45-5-625; or

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

20

21 **Section 7.** Section 46-23-506, MCA, is amended to read:

22 **"46-23-506. Duration of registration.** (1) A person required to register under 46-18-254,
23 46-18-255, and this part shall comply with 46-18-254, 46-18-255, and this part for the remainder of the
24 person's life, except as provided in subsection (2) of this section or during a period of 10 years after
25 conviction, if not imprisoned during that period. If a person required to register under 46-18-254,
26 46-18-255, and this part is imprisoned during the initial 10-year period, he shall comply with the provisions
27 of 46-18-254, 46-18-255, and this part for a period of 10 years after release from prison time during which
28 the person is in prison.

29 (2) ~~A convicted sexual offender's duty to register under 46-18-254, 46-18-255, and this part~~
30 ~~terminates at the expiration of 10 years from the date of initial registration, provided that during the 10-year~~

1 ~~period the convicted sexual offender does not again become subject to 46-18-254, 46-18-255, and this~~
 2 ~~part. At any time after 10 years since the date of the sexual offender's last conviction of a sexual offense,~~
 3 ~~the sexual offender may petition the court that sentenced the sexual offender for the last conviction or, if~~
 4 ~~that court is not in this state, the district court for the judicial district in which the sexual offender resides~~
 5 A DISTRICT COURT for an order relieving the sexual offender of the duty to register under 46-18-254,
 6 46-18-255, and this part. Within 3 days after the petition is filed, the sexual offender shall mail a copy of
 7 the petition to the victim or victims, if still living, of the last sexual offense for which the sexual offender
 8 was convicted THE PETITION MUST BE SERVED ON THE COUNTY ATTORNEY IN THE COUNTY WHERE
 9 THE PETITION IS FILED. PRIOR TO A HEARING ON THE PETITION, THE COUNTY ATTORNEY SHALL MAIL
 10 A COPY OF THE PETITION TO THE VICTIM OF THE LAST OFFENSE FOR WHICH THE SEXUAL OFFENDER
 11 WAS CONVICTED IF THE VICTIM'S ADDRESS IS REASONABLY AVAILABLE. The court shall consider any
 12 written or oral statements of the victim or victims. The court may grant the petition upon finding that:

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

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

16
 17 **Section 8.** Section 46-23-507, MCA, is amended to read:

18 **"46-23-507. Penalty.** A sexual offender who knowingly fails to register under 46-18-254,
 19 46-18-255, and this part may be sentenced to a term of imprisonment of not ~~less than 90 days or more~~
 20 ~~than 5 years or a fine may be fined not to exceed \$250 more than \$5,000~~ **\$10,000**, or both."

21
 22 **NEW SECTION. Section 9. Dissemination of information in register.** Information in the register
 23 maintained under 46-18-254 and this part is confidential criminal justice information, as defined in
 24 44-5-103, except that:

25 (1) the name of a registered sexual offender is public criminal justice information, as defined in
 26 44-5-103; and

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

1 register information regarding the inmate to the public. The court shall grant the order if the court finds
2 that the information is necessary for public protection.

3

4 NEW SECTION. **Section 10. Codification instruction.** [3Section 9] is intended to be codified as
5 an integral part of Title 46, chapter 23, part 5, and the provisions of Title 46 apply to [section 9].

6

-END-

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 10, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration HB 157 (third reading copy -- blue), respectfully report that HB 157 be amended as follows and as so amended be concurred in.

Signed: 
Senator Bruce Crippen, Chair

That such amendments read:

1. Page 7, line 2.
Following: "of the"
Strike: "sexual"

2. Page 7, line 3.
Following: "the"
Strike: "sexual"


3. Page 7, line 5.
Following: "relieving the"
Strike: "sexual"

4. Page 7, line 10.
Following: "WHICH THE"
Strike: "SEXUAL"

5. Page 7, line 13.
Following: "the"
Strike: "sexual"

6. Page 7, line 16.
Insert: "(3) The offender may move that all or part of the proceedings in a hearing under subsection (2) be closed to the public, or the judge may take action on the judge's own motion. Notwithstanding closure of the proceeding 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."

-END-


Amd. Coord.
Sec. of Senate


Senator Holden
Senator Carrying Bill

HB 157

SENATE

SENATE COMMITTEE OF THE WHOLE AMENDMENT

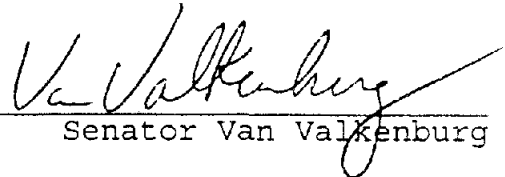
March 22, 1995 1:56 pm

Mr. Chairman: I move to amend HB 157 (reference copy -- salmon).

ADOPT
v.v.

REJECT

Signed: _____


Senator Van Valkenburg

That such amendments read:

1. Title, line 10.

Following: "PLACED"

Insert: "IN A COMMUNITY-BASED PROGRAM FOR LIFE OR"

2. Title, line 11.

Following: "APPROPRIATE"

Insert: "MONTANA"

Strike: "OR PROGRAM"

Insert: "FOR NOT LONGER THAN THE PERMISSIBLE PRISON SENTENCE"

3. Page 2, line 1.

Page 2, line 17.

Page 2, line 27.

Page 3, line 6.

Page 3, line 29.

Page 4, line 13.

Page 4, line 21.

Page 5, line 22.

Page 5, line 29.

Strike: "an appropriate correctional institution or"

Insert: "a community-based"

Following: "life"

Insert: "or in an appropriate Montana correctional institution for any period not exceeding the maximum possible prison sentence without the right to earn good time, to be released on parole, or to be placed on furlough or supervised release"

-END-



Amd. Coord.

HB 157
SENATE

661356CW.SPV

1 HOUSE BILL NO. 157

2 INTRODUCED BY DENNY, HOLDEN, BRAINARD, DEVANEY, AHNER, KEENAN, S. SMITH, SLITER,
 3 CLARK, KNOX, FORBES, BARNETT, BOHLINGER, HERRON, MERCER, STOVALL, BURNETT,
 4 MURDOCK, TAYLOR, MCKEE, MASOLO, ARNOTT, L. SMITH, FISHER, MILLS, BAER, WELLS,
 5 EMERSON, SOFT, ELLIS, MCGEE, BOHARSKI, SOMERVILLE, KOTTEL, MCCULLOCH, LARSON,
 6 HEAVY RUNNER, SHEA, GALVIN

7 BY REQUEST OF THE DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES

8
 9 A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING CERTAIN SEX OFFENDERS TO BE SENTENCED TO
 10 THE DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES FOR LIFE, TO BE PLACED IN A
 11 COMMUNITY-BASED PROGRAM FOR LIFE OR IN AN APPROPRIATE MONTANA CORRECTIONAL
 12 INSTITUTION OR PROGRAM FOR NOT LONGER THAN THE PERMISSIBLE PRISON SENTENCE;
 13 INCREASING FINES FOR THOSE OFFENSES; PROVIDING THAT THOSE PERSONS ARE TO REGISTER AS
 14 SEXUAL OFFENDERS FOR THE REMAINDER OF THEIR LIVES UNLESS A COURT FINDS THAT PUBLIC
 15 PROTECTION NO LONGER DEMANDS REGISTRATION; REGULATING THE DISSEMINATION OF MATERIAL
 16 IN THE SEX OFFENDER REGISTER; AND AMENDING SECTIONS 45-5-502, 45-5-503, 45-5-504, 45-5-507,
 17 45-5-625, 46-23-502, 46-23-506, AND 46-23-507, MCA."

18
 19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

20
 21 **Section 1.** Section 45-5-502, MCA, is amended to read:

22 **"45-5-502. Sexual assault.** (1) A person who knowingly subjects another person to any sexual
 23 contact without consent commits the offense of sexual assault.

24 (2) A person convicted of sexual assault shall be fined not to exceed \$500 or be imprisoned in the
 25 county jail for ~~any~~ a term not to exceed 6 months, or both.

26 (3) If the victim is less than 16 years old and the offender is 3 or more years older than the victim
 27 or if the offender inflicts bodily injury upon anyone in the course of committing sexual assault, ~~he~~ the
 28 offender shall be:

29 (a) imprisoned in the state prison for ~~any~~ a term of not less than 2 years or more than 20 years and
 30 may be fined not more than \$50,000; or

1 (b) sentenced to the department of corrections and human services for placement by the
 2 department in an appropriate correctional institution or A COMMUNITY-BASED program for life OR IN AN
 3 APPROPRIATE MONTANA CORRECTIONAL INSTITUTION FOR ANY PERIOD NOT EXCEEDING THE
 4 MAXIMUM POSSIBLE PRISON SENTENCE WITHOUT THE RIGHT TO EARN GOOD TIME, TO BE RELEASED
 5 ON PAROLE, OR TO BE PLACED ON FURLOUGH OR SUPERVISED RELEASE. In addition, the offender may
 6 be fined not more than \$50,000.

7 (4) An act "in the course of committing sexual assault" ~~shall include~~ includes an attempt to commit
 8 the offense or flight after the attempt or commission.

9 (5) Consent is ineffective under this section if the victim is less than 14 years old and the offender
 10 is 3 or more years older than the victim."

11
 12 **Section 2.** Section 45-5-503, MCA, is amended to read:

13 **"45-5-503. Sexual intercourse without consent.** (1) A person who knowingly has sexual
 14 intercourse without consent with another person commits the offense of sexual intercourse without
 15 consent. A person may not be convicted under this section based on the age of the person's spouse, as
 16 provided in 45-5-501(1)(b)(iii).

17 (2) A person convicted of sexual intercourse without consent shall be:

18 (a) imprisoned in the state prison for a term of not less than 2 years or more than 20 years and
 19 may be fined not more than \$50,000, except as provided in 46-18-222; or

20 (b) sentenced to the department of corrections and human services for placement by the
 21 department in an appropriate correctional institution or A COMMUNITY-BASED program for life OR IN AN
 22 APPROPRIATE MONTANA CORRECTIONAL INSTITUTION FOR ANY PERIOD NOT EXCEEDING THE
 23 MAXIMUM POSSIBLE PRISON SENTENCE WITHOUT THE RIGHT TO EARN GOOD TIME, TO BE RELEASED
 24 ON PAROLE, OR TO BE PLACED ON FURLOUGH OR SUPERVISED RELEASE. In addition, the offender may
 25 be fined not more than \$50,000.

26 (3) (a) If the victim is less than 16 years old and the offender is 3 or more years older than the
 27 victim or if the offender inflicts bodily injury upon anyone in the course of committing sexual intercourse
 28 without consent, the offender shall be:

29 (i) imprisoned in the state prison for any a term of not less than 2 years or more than 40 years and
 30 may be fined not more than \$50,000, except as provided in 46-18-222. ~~An act "in the course of~~

1 ~~committing sexual intercourse without consent" includes an attempt to commit the offense or flight after~~
 2 ~~the attempt or commission; or~~

3 (ii) sentenced to the department of corrections and human services for placement by the department
 4 in an appropriate correctional institution or A COMMUNITY-BASED program for life OR IN AN
 5 APPROPRIATE MONTANA CORRECTIONAL INSTITUTION FOR ANY PERIOD NOT EXCEEDING THE
 6 MAXIMUM POSSIBLE PRISON SENTENCE WITHOUT THE RIGHT TO EARN GOOD TIME, TO BE RELEASED
 7 ON PAROLE, OR TO BE PLACED ON FURLOUGH OR SUPERVISED RELEASE. In addition, the offender may
 8 be fined not more than \$50,000.

9 (b) If two or more persons are convicted of sexual intercourse without consent with the same
 10 victim in an incident in which each offender was present at the location where another offender's offense
 11 occurred during a time period in which each offender could have reasonably known of the other's offense,
 12 each offender shall be:

13 (i) imprisoned in the state prison for a term of not less than 5 years or more than 40 years and may
 14 be fined not more than \$50,000, except as provided in 46-18-222; or

15 (ii) sentenced to the department of corrections and human services for placement by the
 16 department in an appropriate correctional institution or A COMMUNITY-BASED program for life OR IN AN
 17 APPROPRIATE MONTANA CORRECTIONAL INSTITUTION FOR ANY PERIOD NOT EXCEEDING THE
 18 MAXIMUM POSSIBLE PRISON SENTENCE WITHOUT THE RIGHT TO EARN GOOD TIME, TO BE RELEASED
 19 ON PAROLE, OR TO BE PLACED ON FURLOUGH OR SUPERVISED RELEASE. In addition, the offender may
 20 be fined not more than \$50,000.

21 (4) In addition to any sentence imposed under subsection (2) or (3), after determining the financial
 22 resources and future ability of the offender to pay restitution as required by 46-18-242, the court shall
 23 require the offender, if able, to pay the victim's reasonable medical and counseling costs that result from
 24 the offense. The amount, method, and time of payment must be determined in the same manner as
 25 provided for in 46-18-244.

26 (5) As used in subsection (3), an act "in the course of committing sexual intercourse without
 27 consent" includes an attempt to commit the offense or flight after the attempt or commission."

28
 29 **Section 3.** Section 45-5-504, MCA, is amended to read:

30 **"45-5-504. Indecent exposure.** (1) A person who, for the purpose of arousing or gratifying the

1 person's own sexual desire ~~of himself~~ or the sexual desire of any person, exposes ~~his~~ the person's genitals
 2 under circumstances in which ~~he~~ the person knows ~~his~~ the conduct is likely to cause affront or alarm
 3 commits the offense of indecent exposure.

4 (2) (a) A person convicted of the offense of indecent exposure shall be fined an amount not to
 5 exceed \$500 or be imprisoned in the county jail for a term of not more than 6 months, or both.

6 (b) On a second conviction, ~~he~~ the person shall be fined an amount not to exceed \$1,000 or be
 7 imprisoned in the county jail for a term of not more than 1 year, or both.

8 (c) On a third or subsequent conviction, ~~he~~ the person shall be:

9 (i) fined an amount not to exceed \$10,000 or be imprisoned in the state prison for a term of not
 10 more than 5 years, or both; or

11 (ii) sentenced to the department of corrections and human services for placement by the
 12 department in an appropriate correctional institution or A COMMUNITY-BASED program for life OR IN AN
 13 APPROPRIATE MONTANA CORRECTIONAL INSTITUTION FOR ANY PERIOD NOT EXCEEDING THE
 14 MAXIMUM POSSIBLE PRISON SENTENCE WITHOUT THE RIGHT TO EARN GOOD TIME, TO BE RELEASED
 15 ON PAROLE, OR TO BE PLACED ON FURLOUGH OR SUPERVISED RELEASE. In addition, the offender may
 16 be fined not more than \$10,000."

17

18 **Section 4.** Section 45-5-507, MCA, is amended to read:

19 "**45-5-507. Incest.** (1) A person commits the offense of incest if ~~he~~ the person knowingly marries,
 20 cohabits with, has sexual intercourse with, or has sexual contact, as defined in 45-2-101, with an ancestor,
 21 a descendant, a brother or sister of the whole or half blood, or any stepson or stepdaughter. The
 22 relationships referred to ~~herein in this subsection~~ include blood relationships without regard to legitimacy,
 23 relationships of parent and child by adoption, and relationships involving a stepson or stepdaughter.

24 (2) Consent is a defense under this section to incest with or upon a stepson or stepdaughter, but
 25 consent is ineffective if the victim is less than 18 years old.

26 (3) A person convicted of incest shall be:

27 (a) imprisoned in the state prison for ~~any~~ a term not to exceed 20 years or be fined an amount not
 28 to exceed \$50,000, or both; or

29 (b) sentenced to the department of corrections and human services for placement by the
 30 department in an appropriate correctional institution or A COMMUNITY-BASED program for life OR IN AN

1 APPROPRIATE MONTANA CORRECTIONAL INSTITUTION FOR ANY PERIOD NOT EXCEEDING THE
 2 MAXIMUM POSSIBLE PRISON SENTENCE WITHOUT THE RIGHT TO EARN GOOD TIME, TO BE RELEASED
 3 ON PAROLE, OR TO BE PLACED ON FURLOUGH OR SUPERVISED RELEASE. In addition, the offender may
 4 be fined not more than \$50,000.

5 (4) If the victim is under 16 years of age and the offender is 3 or more years older than the victim
 6 or if the offender inflicts bodily injury upon anyone in the course of committing incest, ~~he~~ the offender shall
 7 be:

8 (a) imprisoned in the state prison for ~~any~~ a term not to exceed 20 years and may be fined not more
 9 than \$50,000; or

10 (b) sentenced to the department of corrections and human services for placement by the
 11 department in an appropriate correctional institution or A COMMUNITY-BASED program for life OR IN AN
 12 APPROPRIATE MONTANA CORRECTIONAL INSTITUTION FOR ANY PERIOD NOT EXCEEDING THE
 13 MAXIMUM POSSIBLE PRISON SENTENCE WITHOUT THE RIGHT TO EARN GOOD TIME, TO BE RELEASED
 14 ON PAROLE, OR TO BE PLACED ON FURLOUGH OR SUPERVISED RELEASE. In addition, the offender may
 15 be fined not more than \$50,000.

16 (5) In addition to any sentence imposed under subsection (3) or (4), after determining the financial
 17 resources and future ability of the offender to pay restitution as required by 46-18-242, the court shall
 18 require the offender, if able, to pay the victim's reasonable costs of counseling that result from the offense.
 19 The amount, method, and time of payment must be determined in the same manner as provided for in
 20 46-18-244."

21
 22 **Section 5.** Section 45-5-625, MCA, is amended to read:

23 "**45-5-625. Sexual abuse of children.** (1) A person commits the offense of sexual abuse of
 24 children if the person ~~knowingly~~:

25 (a) knowingly employs, uses, or permits the employment or use of a child in an exhibition of sexual
 26 conduct, actual or simulated;

27 (b) knowingly photographs, films, videotapes, develops or duplicates the photographs, films, or
 28 videotapes, or records a child engaging in sexual conduct, actual or simulated;

29 (c) knowingly persuades, entices, counsels, or procures a child to engage in sexual conduct, actual
 30 or simulated, for use as designated in subsection (1)(a), (1)(b), or (1)(d);

1 (d) knowingly processes, develops, prints, publishes, transports, distributes, sells, ~~possesses with~~
 2 ~~intent to sell~~, exhibits, or advertises any visual or print medium in which children are engaged in sexual
 3 conduct, actual or simulated;

4 (e) knowingly possesses ~~material referred to in subsection (1)(d)~~ any visual or print medium in
 5 which children are engaged in sexual conduct, actual or simulated; ~~or~~

6 (f) finances any of the activities described in subsections (1)(a) through (1)(d) and (1)(g), knowing
 7 that the activity is of the nature described in those subsections; or

8 (g) possesses with intent to sell any visual or print medium in which children are engaged in sexual
 9 conduct, actual or simulated.

10 (2) (a) ~~Except as provided in subsections (2)(b) and (2)(c), a~~ A person convicted of the offense of
 11 sexual abuse of children shall be:

12 (i) fined not to exceed \$10,000 or be imprisoned in the state prison for ~~any~~ a term not to exceed
 13 20 years, or both; or

14 (ii) sentenced to the department of corrections and human services for placement by the department
 15 in an appropriate correctional institution or A COMMUNITY-BASED program for life OR IN AN
 16 APPROPRIATE MONTANA CORRECTIONAL INSTITUTION FOR ANY PERIOD NOT EXCEEDING THE
 17 MAXIMUM POSSIBLE PRISON SENTENCE WITHOUT THE RIGHT TO EARN GOOD TIME, TO BE RELEASED
 18 ON PAROLE, OR TO BE PLACED ON FURLOUGH OR SUPERVISED RELEASE. In addition, the offender may
 19 be fined not more than \$10,000.

20 (b) If the victim is under 16 years of age, a person convicted of the offense of sexual abuse of
 21 children shall be:

22 (i) fined not to exceed \$10,000 or be imprisoned in the state prison for ~~any~~ a term not to exceed
 23 50 years, or both; or

24 (ii) sentenced to the department of corrections and human services for placement by the department
 25 in an appropriate correctional institution or A COMMUNITY-BASED program for life OR IN AN
 26 APPROPRIATE MONTANA CORRECTIONAL INSTITUTION FOR ANY PERIOD NOT EXCEEDING THE
 27 MAXIMUM POSSIBLE PRISON SENTENCE WITHOUT THE RIGHT TO EARN GOOD TIME, TO BE RELEASED
 28 ON PAROLE, OR TO BE PLACED ON FURLOUGH OR SUPERVISED RELEASE. In addition, the offender may
 29 be fined not more than \$10,000.

30 (c) A person convicted of the offense of sexual abuse of children for the possession of material,

1 as provided in subsection (1)(e), shall be fined not to exceed \$500 or be imprisoned in the county jail for
2 a term not to exceed 6 months, or both.

3 (3) An offense is not committed under subsections (1)(d) through ~~(1)(f)~~ (1)(g) if the visual or print
4 medium is processed, developed, printed, published, transported, distributed, sold, possessed, or possessed
5 with intent to sell, or if such an activity is financed, as part of a sex offender information or treatment
6 course or program conducted or approved by the department of corrections and human services."

7
8 **Section 6.** Section 46-23-502, MCA, is amended to read:

9 **"46-23-502. Definitions.** As used in 46-18-254, 46-18-255, and this part, the following definitions
10 apply:

11 (1) "Department" means the department of corrections and human services provided for in Title
12 2, chapter 15, part 23.

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

14 (3) "Sexual offense" means:

15 (a) any violation of 45-5-502(3), 45-5-503, 45-5-504(2)(c), 45-5-505, 45-5-507 (unless the act
16 occurred between two consenting persons 16 years of age or older), or 45-5-625; or

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

19
20 **Section 7.** Section 46-23-506, MCA, is amended to read:

21 **"46-23-506. Duration of registration.** (1) A person required to register under 46-18-254,
22 46-18-255, and this part shall comply with 46-18-254, 46-18-255, and this part for the remainder of the
23 person's life, except as provided in subsection (2) of this section or during a period of ~~10 years after~~
24 ~~conviction, if not imprisoned during that period. If a person required to register under 46-18-254,~~
25 ~~46-18-255, and this part is imprisoned during the initial 10-year period, he shall comply with the provisions~~
26 ~~of 46-18-254, 46-18-255, and this part for a period of 10 years after release from prison~~ time during which
27 the person is in prison.

28 (2) ~~A convicted sexual offender's duty to register under 46-18-254, 46-18-255, and this part~~
29 ~~terminates at the expiration of 10 years from the date of initial registration, provided that during the 10-year~~
30 ~~period the convicted sexual offender does not again become subject to 46-18-254, 46-18-255, and this~~

1 ~~part. At any time after 10 years since the date of the sexual offender's last conviction of a sexual offense,~~
 2 ~~the sexual offender may petition the court that sentenced the sexual offender for the last conviction or, if~~
 3 ~~that court is not in this state, the district court for the judicial district in which the sexual offender resides~~
 4 A DISTRICT COURT for an order relieving the sexual offender of the duty to register under 46-18-254,
 5 46-18-255, and this part. Within 3 days after the petition is filed, the sexual offender shall mail a copy of
 6 the petition to the victim or victims, if still living, of the last sexual offense for which the sexual offender
 7 was convicted. THE PETITION MUST BE SERVED ON THE COUNTY ATTORNEY IN THE COUNTY WHERE
 8 THE PETITION IS FILED. PRIOR TO A HEARING ON THE PETITION, THE COUNTY ATTORNEY SHALL MAIL
 9 A COPY OF THE PETITION TO THE VICTIM OF THE LAST OFFENSE FOR WHICH THE SEXUAL OFFENDER
 10 WAS CONVICTED IF THE VICTIM'S ADDRESS IS REASONABLY AVAILABLE. The court shall consider any
 11 written or oral statements of the victim or victims. The court may grant the petition upon finding that:

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

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

15 (3) THE OFFENDER MAY MOVE THAT ALL OR PART OF THE PROCEEDINGS IN A HEARING
 16 UNDER SUBSECTION (2) BE CLOSED TO THE PUBLIC, OR THE JUDGE MAY TAKE ACTION ON THE
 17 JUDGE'S OWN MOTION. NOTWITHSTANDING CLOSURE OF THE PROCEEDING TO THE PUBLIC, THE
 18 JUDGE SHALL PERMIT A VICTIM OF THE OFFENSE TO BE PRESENT UNLESS THE JUDGE DETERMINES
 19 THAT EXCLUSION OF THE VICTIM IS NECESSARY TO PROTECT THE OFFENDER'S RIGHT OF PRIVACY
 20 OR THE SAFETY OF THE VICTIM. IF THE VICTIM IS PRESENT, THE JUDGE, AT THE VICTIM'S REQUEST,
 21 SHALL PERMIT THE PRESENCE OF AN INDIVIDUAL TO PROVIDE SUPPORT TO THE VICTIM UNLESS THE
 22 JUDGE DETERMINES THAT EXCLUSION OF THE INDIVIDUAL IS NECESSARY TO PROTECT THE
 23 OFFENDER'S RIGHT TO PRIVACY."

24

25 **Section 8.** Section 46-23-507, MCA, is amended to read:

26 **"46-23-507. Penalty.** A sexual offender who knowingly fails to register under 46-18-254,
 27 46-18-255, and this part may be sentenced to a term of imprisonment of not less than ~~90 days or more~~
 28 ~~than 5 years or a fine may be fined not to exceed \$250~~ more than \$10,000, or both."

29

30 **NEW SECTION. Section 9. Dissemination of information in register.** Information in the register

1 maintained under 46-18-254 and this part is confidential criminal justice information, as defined in
2 44-5-103, except that:

3 (1) the name of a registered sexual offender is public criminal justice information, as defined in
4 44-5-103; and

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

11

12 NEW SECTION. **Section 10. Codification instruction.** [Section 9] is intended to be codified as an
13 integral part of Title 46, chapter 23, part 5, and the provisions of Title 46 apply to [section 9].

14

-END-



FREE CONFERENCE COMMITTEE

on House Bill 157
Report No. 1, April 7, 1995

Page 1 of 6

Mr. Speaker and Mr. President:

We, your Free Conference Committee met and considered **House Bill 157** and recommend the following amendments:

1. Title, line 9.
Following: "AN ACT"
Strike: "ALLOWING"
Insert: "INCREASING PENALTIES FOR"
2. Title, lines 9 through 13.
Following: "SEX" on line 9
Strike: remainder of line 9 through first "THOSE" on line 13
3. Title, line 13.
Following: "OFFENSES;"
Insert: "INCREASING THE MAXIMUM PENALTY FOR CERTAIN SEX OFFENSES
TO LIFE IMPRISONMENT"
Strike: "THOSE PERSONS"
Insert: "CERTAIN SEXUAL OFFENDERS"
4. Title, line 17.
Following: "45-5-625,"
Insert: "46-18-202,"
5. Page 1, lines 28 and 29.
Following: "be" on line 28
Strike: remainder of line 28 through "imprisoned" on line 29
Insert: "punished by life imprisonment or by imprisonment"
6. Page 1, line 29.
Strike: "20"
Insert: "100"
7. Page 1, line 30 through page 2, line 6.
Following: "\$50,000" on line 30
Strike: remainder of line 30 through "\$50,000" on page 2, line 6
8. Page 2, lines 17 and 18.
Following: "be" on line 17
Strike: remainder of line 17 through "imprisoned" on line 18

ADOPT

REJECT

HB 157
FCCR#1

801554CC.Hbk

Insert: "punished by life imprisonment or by imprisonment"

9. Page 2, line 18.

Strike: "20"

Insert: "100"

10. Page 2, lines 19 through 25.

Following: "46-18-222" on line 19

Strike: remainder of line 19 through "\$50,000" on line 25

11. Page 2, lines 28 and 29.

Following: "be" on line 28

Strike: remainder of line 28 through "imprisoned" on line 29

Insert: "punished by life imprisonment or by imprisonment"

12. Page 2, line 29.

Strike: "2"

Insert: "4"

Strike: "40"

Insert: "100"

13. Page 3, line 2 through page 3, line 8.

Following: "~~commissioner~~" on line 2

Strike: remainder of line 2 through "\$50,000" on line 8

14. Page 3, lines 12 and 13.

Following: "be" on line 12

Strike: remainder of line 12 through "imprisoned" on line 13

Insert: "punished by life imprisonment or by imprisonment"

15. Page 3, line 13.

Strike: "40"

Insert: "100"

16. Page 3, lines 14 through 20.

Following: "46-18-222" on line 14

Strike: remainder of line 14 through "\$50,000" on line 20

17. Page 4, lines 8 and 9.

Following: "be" on line 8

Strike: remainder of line 8 through "imprisoned" on line 9

Insert: "punished by life imprisonment or by imprisonment"

18. Page 4, line 9.

Following: second "not"

Insert: "less than 5 years or"

19. Page 4, line 10.

Strike: "5"
Insert: "100"
Following: "years"
Strike: remainder of line 10
Insert: "and may be fined not more than \$10,000"

20. Page 4, lines 11 through 16.
Strike: line 11 in its entirety through "\$10,000" on line 16

21. Page 4, lines 26 and 27.
Following: "be" on line 26
Strike: remainder of line 26 through "imprisoned" on line 27
Insert: "punished by life imprisonment or by imprisonment"

22. Page 4, line 27.
Strike: "20"
Insert: "100"

23. Page 4, line 28 through page 5, line 4.
Following: "\$50,000" on line 28
Strike: remainder of line 28 through "\$50,000" on page 5, line 4

24. Page 5, lines 7 and 8.
Following: "be" on line 7
Strike: remainder of line 7 through "imprisoned" on line 8
Insert: "punished by life imprisonment or by imprisonment"

25. Page 5, line 8.
Following: "term"
Strike: "not to exceed 20"
Insert: "of not less than 4 years or more than 100"

26. Page 5, lines 9 through 15.
Following: "\$50,000" on line 9
Strike: remainder of line 9 through "\$50,000" on line 15

27. Page 6, lines 11 and 12.
Following: "be" on line 11
Strike: remainder of line 11 through "imprisoned" on line 12
Insert: "punished by life imprisonment or by imprisonment"

28. Page 6, line 13.
Strike: "20"
Insert: "100"
Following: "years"
Strike: remainder of line 13
Insert: "and may be fined not more than \$10,000"

29. Page 6, lines 14 through 19.

Strike: line 14 in its entirety through "\$10,000" on line 19

30. Page 6, lines 21 and 22.

Following: "be" on line 21

Strike: remainder of line 21 through "imprisoned" on line 22

Insert: "punished by life imprisonment or by imprisonment"

31. Page 6, lines 22 and 23.

Following: "term" on line 22

Strike: remainder of line 22 through "50" on line 23

Insert: "of not less than 4 years or more than 100"

32. Page 6, line 23.

Following: "years"

Strike: remainder of line 23

Insert: "and may be fined not more than \$10,000"

33. Page 6, lines 24 through 29.

Strike: line 24 in its entirety through "\$10,000" on line 29

34. Page 7, line 7.

Insert: "Section 6. Section 46-18-202, MCA, is amended to read:

"46-18-202. Additional restrictions on sentence. (1) The district court may also impose any of the following restrictions or conditions on the sentence provided for in 46-18-201 that it considers necessary to obtain the objectives of rehabilitation and the protection of society:

(a) prohibition of the defendant's holding public office;

(b) prohibition of the defendant's owning or carrying a dangerous weapon;

(c) restrictions on the defendant's freedom of association;

(d) restrictions on the defendant's freedom of movement;

(e) any other limitation reasonably related to the objectives of rehabilitation and the protection of society.

(2) Whenever the district court imposes a sentence of imprisonment in the state prison for a term exceeding 1 year, the court may also impose the restriction that the defendant be ineligible for parole and participation in the supervised release program while serving that term. If such a restriction is to be imposed, the court shall state the reasons for it in writing. If the court finds that the restriction is necessary for the protection of society, it shall impose the restriction as part of the sentence and the judgment shall contain a statement of the reasons for the

restriction.

(3) The judge in a justice's, city, or municipal court does not have the authority to restrict an individual's rights as enumerated in subsection (1)(a).

(4) When the district court imposes a sentence of probation as defined in 46-23-1001, any probation agreement signed by the defendant may contain a clause waiving extradition.

(5) Whenever the district court imposes a sentence of imprisonment in the state prison for a violation of 45-5-502(3), 45-5-503, 45-5-504(2)(c), 45-5-507 (unless the act occurred between two consenting persons 16 years of age or older), or 45-5-625, the court may also impose the restriction that the defendant be ineligible for a good time allowance while serving that term. If such a restriction is to be imposed, the court shall state the reasons for it in writing. If the court finds that the restriction is necessary for the protection of society, it shall impose the restriction as part of the sentence and the judgment must contain a statement of the reasons for the restriction."

Renumber: subsequent sections

35. Page 7, line 15.
Strike: "45-5-505,"

36. Page 9, lines 12 and 13.
Strike: "9"
Insert: "10"

37. Page 9, line 14.
Insert: "NEW SECTION. Section 12. Coordination instruction. If [this act] and House Bill No. 214 are both passed and approved, then the amendment to 46-23-502(3)(a) in House Bill No. 214 is void."

We recommend that the amendments considered above to House Bill 157 be acceded to by the senate.

And this FREE Conference Committee report be adopted.

For the House:

Clark

Bob Clark

Chair

Denny

Matt Denny

Shea

Pat Shea

For the Senate:

Crippen

[Signature]

Chair

Grosfield

[Signature]

Halligan

[Signature]

1 HOUSE BILL NO. 157

2 INTRODUCED BY DENNY, HOLDEN, BRAINARD, DEVANEY, AHNER, KEENAN, S. SMITH, SLITER,
 3 CLARK, KNOX, FORBES, BARNETT, BOHLINGER, HERRON, MERCER, STOVALL, BURNETT,
 4 MURDOCK, TAYLOR, MCKEE, MASOLO, ARNOTT, L. SMITH, FISHER, MILLS, BAER, WELLS,
 5 EMERSON, SOFT, ELLIS, MCGEE, BOHARSKI, SOMERVILLE, KOTTEL, MCCULLOCH, LARSON,
 6 HEAVY RUNNER, SHEA, GALVIN

7 BY REQUEST OF THE DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES
 8

9 A BILL FOR AN ACT ENTITLED: "AN ACT ~~ALLOWING~~ INCREASING PENALTIES FOR CERTAIN SEX
 10 ~~OFFENDERS TO BE SENTENCED TO THE DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES FOR~~
 11 ~~LIFE, TO BE PLACED IN A COMMUNITY-BASED PROGRAM FOR LIFE OR IN AN APPROPRIATE MONTANA~~
 12 ~~CORRECTIONAL INSTITUTION OR PROGRAM FOR NOT LONGER THAN THE PERMISSIBLE PRISON~~
 13 ~~SENTENCE; INCREASING FINES FOR THOSE OFFENSES; INCREASING THE MAXIMUM PENALTY FOR~~
 14 ~~CERTAIN SEX OFFENSES TO LIFE IMPRISONMENT PROVIDING THAT THOSE PERSONS CERTAIN SEXUAL~~
 15 ~~OFFENDERS ARE TO REGISTER AS SEXUAL OFFENDERS FOR THE REMAINDER OF THEIR LIVES UNLESS~~
 16 A COURT FINDS THAT PUBLIC PROTECTION NO LONGER DEMANDS REGISTRATION; REGULATING THE
 17 DISSEMINATION OF MATERIAL IN THE SEX OFFENDER REGISTER; AND AMENDING SECTIONS 45-5-502,
 18 45-5-503, 45-5-504, 45-5-507, 45-5-625, 46-18-202, 46-23-502, 46-23-506, AND 46-23-507, MCA."
 19

20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 21

22 **Section 1.** Section 45-5-502, MCA, is amended to read:

23 "**45-5-502. Sexual assault.** (1) A person who knowingly subjects another person to any sexual
 24 contact without consent commits the offense of sexual assault.

25 (2) A person convicted of sexual assault shall be fined not to exceed \$500 or be imprisoned in the
 26 county jail for ~~any~~ a term not to exceed 6 months, or both.

27 (3) If the victim is less than 16 years old and the offender is 3 or more years older than the victim
 28 or if the offender inflicts bodily injury upon anyone in the course of committing sexual assault, ~~he~~ the
 29 offender shall be:

30 ~~(a) imprisoned~~ PUNISHED BY LIFE IMPRISONMENT OR BY IMPRISONMENT in the state prison for

1 any a term of not less than 2 years or more than ~~20~~ 100 years and may be fined not more than \$50,000;
2 ~~or~~

3 ~~(b) sentenced to the department of corrections and human services for placement by the~~
4 ~~department in an appropriate correctional institution or A COMMUNITY BASED program for life OR IN AN~~
5 ~~APPROPRIATE MONTANA CORRECTIONAL INSTITUTION FOR ANY PERIOD NOT EXCEEDING THE~~
6 ~~MAXIMUM POSSIBLE PRISON SENTENCE WITHOUT THE RIGHT TO EARN GOOD TIME, TO BE RELEASED~~
7 ~~ON PAROLE, OR TO BE PLACED ON FURLOUGH OR SUPERVISED RELEASE. In addition, the offender may~~
8 ~~be fined not more than \$50,000.~~

9 (4) An act "in the course of committing sexual assault" ~~shall include~~ includes an attempt to commit
10 the offense or flight after the attempt or commission.

11 (5) Consent is ineffective under this section if the victim is less than 14 years old and the offender
12 is 3 or more years older than the victim."

13

14 **Section 2.** Section 45-5-503, MCA, is amended to read:

15 "**45-5-503. Sexual intercourse without consent.** (1) A person who knowingly has sexual
16 intercourse without consent with another person commits the offense of sexual intercourse without
17 consent. A person may not be convicted under this section based on the age of the person's spouse, as
18 provided in 45-5-501(1)(b)(iii).

19 (2) A person convicted of sexual intercourse without consent shall be;

20 ~~(a) imprisoned~~ PUNISHED BY LIFE IMPRISONMENT OR BY IMPRISONMENT in the state prison for
21 a term of not less than 2 years or more than ~~20~~ 100 years and may be fined not more than \$50,000,
22 except as provided in 46-18-222; ~~or~~

23 ~~(b) sentenced to the department of corrections and human services for placement by the~~
24 ~~department in an appropriate correctional institution or A COMMUNITY BASED program for life OR IN AN~~
25 ~~APPROPRIATE MONTANA CORRECTIONAL INSTITUTION FOR ANY PERIOD NOT EXCEEDING THE~~
26 ~~MAXIMUM POSSIBLE PRISON SENTENCE WITHOUT THE RIGHT TO EARN GOOD TIME, TO BE RELEASED~~
27 ~~ON PAROLE, OR TO BE PLACED ON FURLOUGH OR SUPERVISED RELEASE. In addition, the offender may~~
28 ~~be fined not more than \$50,000.~~

29 (3) (a) If the victim is less than 16 years old and the offender is 3 or more years older than the
30 victim or if the offender inflicts bodily injury upon anyone in the course of committing sexual intercourse

1 without consent, the offender shall be:

2 ~~(i) imprisoned~~ PUNISHED BY LIFE IMPRISONMENT OR BY IMPRISONMENT in the state prison for
 3 ~~any a~~ term of not less than ~~2~~ 4 years or more than ~~40~~ 100 years and may be fined not more than \$50,000,
 4 except as provided in 46-18-222. ~~An act "in the course of committing sexual intercourse without consent"~~
 5 ~~includes an attempt to commit the offense or flight after the attempt or commission.; or~~

6 ~~(ii) sentenced to the department of corrections and human services for placement by the department~~
 7 ~~in an appropriate correctional institution or A COMMUNITY BASED program for life OR IN AN~~
 8 ~~APPROPRIATE MONTANA CORRECTIONAL INSTITUTION FOR ANY PERIOD NOT EXCEEDING THE~~
 9 ~~MAXIMUM POSSIBLE PRISON SENTENCE WITHOUT THE RIGHT TO EARN GOOD TIME, TO BE RELEASED~~
 10 ~~ON PAROLE, OR TO BE PLACED ON FURLOUGH OR SUPERVISED RELEASE. In addition, the offender may~~
 11 ~~be fined not more than \$50,000.~~

12 (b) If two or more persons are convicted of sexual intercourse without consent with the same
 13 victim in an incident in which each offender was present at the location where another offender's offense
 14 occurred during a time period in which each offender could have reasonably known of the other's offense,
 15 each offender shall be:

16 ~~(i) imprisoned~~ PUNISHED BY LIFE IMPRISONMENT OR BY IMPRISONMENT in the state prison for
 17 a term of not less than 5 years or more than ~~40~~ 100 years and may be fined not more than \$50,000,
 18 except as provided in 46-18-222; ~~or~~

19 ~~(ii) sentenced to the department of corrections and human services for placement by the~~
 20 ~~department in an appropriate correctional institution or A COMMUNITY BASED program for life OR IN AN~~
 21 ~~APPROPRIATE MONTANA CORRECTIONAL INSTITUTION FOR ANY PERIOD NOT EXCEEDING THE~~
 22 ~~MAXIMUM POSSIBLE PRISON SENTENCE WITHOUT THE RIGHT TO EARN GOOD TIME, TO BE RELEASED~~
 23 ~~ON PAROLE, OR TO BE PLACED ON FURLOUGH OR SUPERVISED RELEASE. In addition, the offender may~~
 24 ~~be fined not more than \$50,000.~~

25 (4) In addition to any sentence imposed under subsection (2) or (3), after determining the financial
 26 resources and future ability of the offender to pay restitution as required by 46-18-242, the court shall
 27 require the offender, if able, to pay the victim's reasonable medical and counseling costs that result from
 28 the offense. The amount, method, and time of payment must be determined in the same manner as
 29 provided for in 46-18-244.

30 (5) As used in subsection (3), an act "in the course of committing sexual intercourse without

1 consent" includes an attempt to commit the offense or flight after the attempt or commission."

2

3 **Section 3.** Section 45-5-504, MCA, is amended to read:

4 **"45-5-504. Indecent exposure.** (1) A person who, for the purpose of arousing or gratifying the
5 person's own sexual desire of himself or the sexual desire of any person, exposes ~~his~~ the person's genitals
6 under circumstances in which ~~he~~ the person knows ~~his~~ the conduct is likely to cause affront or alarm
7 commits the offense of indecent exposure.

8 (2) (a) A person convicted of the offense of indecent exposure shall be fined an amount not to
9 exceed \$500 or be imprisoned in the county jail for a term of not more than 6 months, or both.

10 (b) On a second conviction, ~~he~~ the person shall be fined an amount not to exceed \$1,000 or be
11 imprisoned in the county jail for a term of not more than 1 year, or both.

12 (c) On a third or subsequent conviction, ~~he~~ the person shall be:

13 ~~(i) fined an amount not to exceed \$10,000 or be imprisoned~~ PUNISHED BY LIFE IMPRISONMENT
14 OR BY IMPRISONMENT in the state prison for a term of not LESS THAN 5 YEARS; OR more than ~~5~~ 100
15 years, or both; or AND MAY BE FINED NOT MORE THAN \$10,000

16 ~~(ii) sentenced to the department of corrections and human services for placement by the~~
17 ~~department in an appropriate correctional institution or A COMMUNITY BASED program for life OR IN AN~~
18 ~~APPROPRIATE MONTANA CORRECTIONAL INSTITUTION FOR ANY PERIOD NOT EXCEEDING THE~~
19 ~~MAXIMUM POSSIBLE PRISON SENTENCE WITHOUT THE RIGHT TO EARN GOOD TIME, TO BE RELEASED~~
20 ~~ON PAROLE, OR TO BE PLACED ON FURLOUGH OR SUPERVISED RELEASE. In addition, the offender may~~
21 ~~be fined not more than \$10,000."~~

22

23 **Section 4.** Section 45-5-507, MCA, is amended to read:

24 **"45-5-507. Incest.** (1) A person commits the offense of incest if ~~he~~ the person knowingly marries,
25 cohabits with, has sexual intercourse with, or has sexual contact, as defined in 45-2-101, with an ancestor,
26 a descendant, a brother or sister of the whole or half blood, or any stepson or stepdaughter. The
27 relationships referred to ~~herein~~ in this subsection include blood relationships without regard to legitimacy,
28 relationships of parent and child by adoption, and relationships involving a stepson or stepdaughter.

29 (2) Consent is a defense under this section to incest with or upon a stepson or stepdaughter, but
30 consent is ineffective if the victim is less than 18 years old.

1 (3) A person convicted of incest shall be:

2 ~~(a) imprisoned~~ PUNISHED BY LIFE IMPRISONMENT OR BY IMPRISONMENT in the state prison for
3 any a term not to exceed ~~20~~ 100 years or be fined an amount not to exceed \$50,000, ~~or both; or~~

4 ~~(b) sentenced to the department of corrections and human services for placement by the~~
5 ~~department in an appropriate correctional institution or A COMMUNITY BASED program for life OR IN AN~~
6 ~~APPROPRIATE MONTANA CORRECTIONAL INSTITUTION FOR ANY PERIOD NOT EXCEEDING THE~~
7 ~~MAXIMUM POSSIBLE PRISON SENTENCE WITHOUT THE RIGHT TO EARN GOOD TIME, TO BE RELEASED~~
8 ~~ON PAROLE, OR TO BE PLACED ON FURLOUGH OR SUPERVISED RELEASE. In addition, the offender may~~
9 ~~be fined not more than \$50,000.~~

10 (4) If the victim is under 16 years of age and the offender is 3 or more years older than the victim
11 or if the offender inflicts bodily injury upon anyone in the course of committing incest, ~~he~~ the offender shall
12 be:

13 ~~(a) imprisoned~~ PUNISHED BY LIFE IMPRISONMENT OR BY IMPRISONMENT in the state prison for
14 any a term not to exceed ~~20~~ OF NOT LESS THAN 4 YEARS OR MORE THAN 100 years and may be fined
15 not more than \$50,000; ~~or~~

16 ~~(b) sentenced to the department of corrections and human services for placement by the~~
17 ~~department in an appropriate correctional institution or A COMMUNITY BASED program for life OR IN AN~~
18 ~~APPROPRIATE MONTANA CORRECTIONAL INSTITUTION FOR ANY PERIOD NOT EXCEEDING THE~~
19 ~~MAXIMUM POSSIBLE PRISON SENTENCE WITHOUT THE RIGHT TO EARN GOOD TIME, TO BE RELEASED~~
20 ~~ON PAROLE, OR TO BE PLACED ON FURLOUGH OR SUPERVISED RELEASE. In addition, the offender may~~
21 ~~be fined not more than \$50,000.~~

22 (5) In addition to any sentence imposed under subsection (3) or (4), after determining the financial
23 resources and future ability of the offender to pay restitution as required by 46-18-242, the court shall
24 require the offender, if able, to pay the victim's reasonable costs of counseling that result from the offense.
25 The amount, method, and time of payment must be determined in the same manner as provided for in
26 46-18-244."

27

28 **Section 5.** Section 45-5-625, MCA, is amended to read:

29 **"45-5-625. Sexual abuse of children.** (1) A person commits the offense of sexual abuse of
30 children if the person knowingly:

1 (a) knowingly employs, uses, or permits the employment or use of a child in an exhibition of sexual
2 conduct, actual or simulated;

3 (b) knowingly photographs, films, videotapes, develops or duplicates the photographs, films, or
4 videotapes, or records a child engaging in sexual conduct, actual or simulated;

5 (c) knowingly persuades, entices, counsels, or procures a child to engage in sexual conduct, actual
6 or simulated, for use as designated in subsection (1)(a), (1)(b), or (1)(d);

7 (d) knowingly processes, develops, prints, publishes, transports, distributes, sells, ~~possesses with~~
8 ~~intent to sell~~, exhibits, or advertises any visual or print medium in which children are engaged in sexual
9 conduct, actual or simulated;

10 (e) knowingly possesses ~~material referred to in subsection (1)(d)~~ any visual or print medium in
11 which children are engaged in sexual conduct, actual or simulated; ~~or~~

12 (f) finances any of the activities described in subsections (1)(a) through (1)(d) and (1)(g), knowing
13 that the activity is of the nature described in those subsections; or

14 (g) possesses with intent to sell any visual or print medium in which children are engaged in sexual
15 conduct, actual or simulated.

16 (2) (a) ~~Except as provided in subsections (2)(b) and (2)(c), a~~ A person convicted of the offense of
17 sexual abuse of children shall be:

18 ~~(i) fined not to exceed \$10,000 or be imprisoned~~ PUNISHED BY LIFE IMPRISONMENT OR BY
19 IMPRISONMENT in the state prison for any a term not to exceed 20 100 years, or both, or AND MAY BE
20 FINED NOT MORE THAN \$10,000

21 ~~(ii) sentenced to the department of corrections and human services for placement by the department~~
22 ~~in an appropriate correctional institution or A COMMUNITY BASED program for life OR IN AN~~
23 ~~APPROPRIATE MONTANA CORRECTIONAL INSTITUTION FOR ANY PERIOD NOT EXCEEDING THE~~
24 ~~MAXIMUM POSSIBLE PRISON SENTENCE WITHOUT THE RIGHT TO EARN GOOD TIME, TO BE RELEASED~~
25 ~~ON PAROLE, OR TO BE PLACED ON FURLOUGH OR SUPERVISED RELEASE. In addition, the offender may~~
26 ~~be fined not more than \$10,000.~~

27 (b) If the victim is under 16 years of age, a person convicted of the offense of sexual abuse of
28 children shall be:

29 ~~(i) fined not to exceed \$10,000 or be imprisoned~~ PUNISHED BY LIFE IMPRISONMENT OR BY
30 IMPRISONMENT in the state prison for any a term not to exceed 50 OF NOT LESS THAN 4 YEARS OR

1 MORE THAN 100 years, or both, or AND MAY BE FINED NOT MORE THAN \$10,000
 2 (iii) sentenced to the department of corrections and human services for placement by the department
 3 in an appropriate correctional institution or A COMMUNITY BASED program for life OR IN AN
 4 APPROPRIATE MONTANA CORRECTIONAL INSTITUTION FOR ANY PERIOD NOT EXCEEDING THE
 5 MAXIMUM POSSIBLE PRISON SENTENCE WITHOUT THE RIGHT TO EARN GOOD TIME, TO BE RELEASED
 6 ON PAROLE, OR TO BE PLACED ON FURLOUGH OR SUPERVISED RELEASE. In addition, the offender may
 7 be fined not more than \$10,000.

8 (c) A person convicted of the offense of sexual abuse of children for the possession of material,
 9 as provided in subsection (1)(e), shall be fined not to exceed \$500 or be imprisoned in the county jail for
 10 a term not to exceed 6 months, or both.

11 (3) An offense is not committed under subsections (1)(d) through ~~(1)(f)~~ (1)(g) if the visual or print
 12 medium is processed, developed, printed, published, transported, distributed, sold, possessed, or possessed
 13 with intent to sell, or if such an activity is financed, as part of a sex offender information or treatment
 14 course or program conducted or approved by the department of corrections and human services."
 15

16 **SECTION 6. SECTION 46-18-202, MCA, IS AMENDED TO READ:**

17 **"46-18-202. Additional restrictions on sentence.** (1) The district court may also impose any of the
 18 following restrictions or conditions on the sentence provided for in 46-18-201 that it considers necessary
 19 to obtain the objectives of rehabilitation and the protection of society:

- 20 (a) prohibition of the defendant's holding public office;
 21 (b) prohibition of the defendant's owning or carrying a dangerous weapon;
 22 (c) restrictions on the defendant's freedom of association;
 23 (d) restrictions on the defendant's freedom of movement;
 24 (e) any other limitation reasonably related to the objectives of rehabilitation and the protection of
 25 society.

26 (2) Whenever the district court imposes a sentence of imprisonment in the state prison for a term
 27 exceeding 1 year, the court may also impose the restriction that the defendant be ineligible for parole and
 28 participation in the supervised release program while serving that term. If such a restriction is to be
 29 imposed, the court shall state the reasons for it in writing. If the court finds that the restriction is necessary
 30 for the protection of society, it shall impose the restriction as part of the sentence and the judgment shall

1 contain a statement of the reasons for the restriction.

2 (3) The judge in a justice's, city, or municipal court does not have the authority to restrict an
3 individual's rights as enumerated in subsection (1)(a).

4 (4) When the district court imposes a sentence of probation as defined in 46-23-1001; any
5 probation agreement signed by the defendant may contain a clause waiving extradition.

6 (5) Whenever the district court imposes a sentence of imprisonment in the state prison for a
7 violation of 45-5-502(3), 45-5-503, 45-5-504(2)(c), 45-5-507 (unless the act occurred between two
8 consenting persons 16 years of age or older), or 45-5-625, the court may also impose the restriction that
9 the defendant be ineligible for a good time allowance while serving that term. If such a restriction is to be
10 imposed, the court shall state the reasons for it in writing. If the court finds that the restriction is necessary
11 for the protection of society, it shall impose the restriction as part of the sentence and the judgment must
12 contain a statement of the reasons for the restriction."
13

14 **Section 7.** Section 46-23-502, MCA, is amended to read:

15 **"46-23-502. Definitions.** As used in 46-18-254, 46-18-255, and this part, the following definitions
16 apply:

17 (1) "Department" means the department of corrections and human services provided for in Title
18 2, chapter 15, part 23.

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

20 (3) "Sexual offense" means:

21 (a) any violation of 45-5-502(3), 45-5-503, 45-5-504(2)(c), 45-5-505, 45-5-507 (unless the act
22 occurred between two consenting persons 16 years of age or older), or 45-5-625; or

23 (b) any violation of a law of another state or the federal government reasonably equivalent to a
24 violation listed in subsection (3)(a)."
25

26 **Section 8.** Section 46-23-506, MCA, is amended to read:

27 **"46-23-506. Duration of registration.** (1) A person required to register under 46-18-254,
28 46-18-255, and this part shall comply with 46-18-254, 46-18-255, and this part for the remainder of the
29 person's life, except as provided in subsection (2) of this section or during a period of 10 years after
30 conviction, if not imprisoned during that period. If a person required to register under 46-18-254,

1 ~~46-18-255, and this part is imprisoned during the initial 10-year period, he shall comply with the provisions~~
 2 ~~of 46-18-254, 46-18-255, and this part for a period of 10 years after release from prison time during which~~
 3 ~~the person is in prison.~~

4 (2) ~~A convicted sexual offender's duty to register under 46-18-254, 46-18-255, and this part~~
 5 ~~terminates at the expiration of 10 years from the date of initial registration, provided that during the 10-year~~
 6 ~~period the convicted sexual offender does not again become subject to 46-18-254, 46-18-255, and this~~
 7 ~~part. At any time after 10 years since the date of the sexual offender's last conviction of a sexual offense,~~
 8 ~~the sexual offender may petition the court that sentenced the sexual offender for the last conviction or, if~~
 9 ~~that court is not in this state, the district court for the judicial district in which the sexual offender resides~~
 10 ~~A DISTRICT COURT for an order relieving the sexual offender of the duty to register under 46-18-254,~~
 11 ~~46-18-255, and this part. Within 3 days after the petition is filed, the sexual offender shall mail a copy of~~
 12 ~~the petition to the victim or victims, if still living, of the last sexual offense for which the sexual offender~~
 13 ~~was convicted~~ THE PETITION MUST BE SERVED ON THE COUNTY ATTORNEY IN THE COUNTY WHERE
 14 THE PETITION IS FILED. PRIOR TO A HEARING ON THE PETITION, THE COUNTY ATTORNEY SHALL MAIL
 15 A COPY OF THE PETITION TO THE VICTIM OF THE LAST OFFENSE FOR WHICH THE SEXUAL OFFENDER
 16 WAS CONVICTED IF THE VICTIM'S ADDRESS IS REASONABLY AVAILABLE. The court shall consider any
 17 written or oral statements of the victim ~~or victims.~~ The court may grant the petition upon finding that:

18 (a) the sexual offender has remained a law-abiding citizen; and
 19 (b) continued registration is not necessary for public protection and that relief from registration is
 20 in the best interests of society.

21 (3) THE OFFENDER MAY MOVE THAT ALL OR PART OF THE PROCEEDINGS IN A HEARING
 22 UNDER SUBSECTION (2) BE CLOSED TO THE PUBLIC, OR THE JUDGE MAY TAKE ACTION ON THE
 23 JUDGE'S OWN MOTION. NOTWITHSTANDING CLOSURE OF THE PROCEEDING TO THE PUBLIC, THE
 24 JUDGE SHALL PERMIT A VICTIM OF THE OFFENSE TO BE PRESENT UNLESS THE JUDGE DETERMINES
 25 THAT EXCLUSION OF THE VICTIM IS NECESSARY TO PROTECT THE OFFENDER'S RIGHT OF PRIVACY
 26 OR THE SAFETY OF THE VICTIM. IF THE VICTIM IS PRESENT, THE JUDGE, AT THE VICTIM'S REQUEST,
 27 SHALL PERMIT THE PRESENCE OF AN INDIVIDUAL TO PROVIDE SUPPORT TO THE VICTIM UNLESS THE
 28 JUDGE DETERMINES THAT EXCLUSION OF THE INDIVIDUAL IS NECESSARY TO PROTECT THE
 29 OFFENDER'S RIGHT TO PRIVACY."

30

