

House BILL NO. 214

*Leo Hong Run*

INTRODUCED BY *Debra J. Rothel, Christine Tross, Furdle, Jack*

*Simpkins, Suzanne, James, Peck, Roney, Ahner*

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO

REGISTRATION OF SEXUAL OFFENDERS; EXTENDING REGISTRATION REQUIREMENTS AND

EMPLOYMENT RESTRICTIONS TO CERTAIN VIOLENT OFFENDERS; MAKING REGISTRATION OF VIOLENT

OFFENDERS MANDATORY; REVISING THE DEFINITION OF SEXUAL OFFENSE FOR PURPOSES OF

REGISTRATION; REVISING THE PROCEDURES FOR REGISTRATION; MAKING REGISTRATION A LIFETIME

REQUIREMENT; INCREASING THE PENALTY FOR FAILURE TO REGISTER; AUTHORIZING RELEASE TO THE

PUBLIC AND OTHER LAW ENFORCEMENT AGENCIES OF REGISTRATION INFORMATION NECESSARY FOR

PUBLIC PROTECTION; PROVIDING IMMUNITY FOR LAW ENFORCEMENT AGENCIES FOR THE RELEASE

OR FAILURE TO RELEASE REGISTRATION INFORMATION; AMENDING SECTIONS 44-5-301, 46-18-201,

46-18-254, 46-18-255, 46-23-501, 46-23-502, 46-23-503, 46-23-504, 46-23-505, 46-23-506, AND

46-23-507, MCA; AND PROVIDING A RETROACTIVE APPLICABILITY DATE."

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

Section 1. Section 44-5-301, MCA, is amended to read:

"44-5-301. Dissemination of public criminal justice information. (1) There are no restrictions on the dissemination of public criminal justice information, except for the following:

(a) Whenever a record or index is compiled by name or universal identifier from a manual or automated system, only information about convictions, deferred prosecutions, or deferred sentences is available to the public.

(b) Whenever the conviction record reflects only misdemeanors or deferred prosecutions and whenever there are no convictions, except for traffic, regulatory, or fish and game offenses for a period of 5 years from the date of the last conviction, no record or index may be disseminated pursuant to subsection (1)(a). However, the original documents are available to the public from the originating criminal justice agency.

(2) All public criminal justice information is available from the agency that is the source of the original documents and that is authorized to maintain the documents according to applicable law. These

*Handwritten notes and signatures on the left margin, including names like 'Wilson' and 'Walt'.*

*Handwritten signatures and names across the top of the bill text, including 'Heron', 'Cobb', 'Carey', 'Riggle', 'McClintock', 'Fryck', 'Nelson', 'Hart', 'Ream', 'Grinde', 'Menahan', 'Anderson', 'Baldwin', 'Sullivan', 'Silva'.*

1 documents ~~shall~~ must be open, subject to the restrictions in this section, during the normal business hours  
 2 of the agency. A reasonable charge may be made by a criminal justice agency for providing a copy of public  
 3 criminal justice information.

4 (3) In addition to any other information authorized to be released under this section, a law  
 5 enforcement agency is authorized to release relevant information that is necessary to protect the public,  
 6 as provided under [section 12]."  
 7

8 **Section 2.** Section 46-18-201, MCA, is amended to read:

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

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

- 16 (i) jail base release;
- 17 (ii) jail time not exceeding 180 days;
- 18 (iii) conditions for probation;
- 19 (iv) restitution;
- 20 (v) payment of the costs of confinement;
- 21 (vi) payment of a fine as provided in 46-18-231;
- 22 (vii) payment of costs as provided in 46-18-232 and 46-18-233;
- 23 (viii) payment of costs of court-appointed counsel as provided in 46-8-113;
- 24 (ix) with the approval of the facility or program, an order that the offender ~~to~~ be placed in a  
 25 community corrections facility or program as provided in 53-30-321;
- 26 (x) community service;
- 27 (xi) home arrest as provided in Title 46, chapter 18, part 10;
- 28 (xii) any other reasonable conditions considered necessary for rehabilitation or for the protection  
 29 of society; or
- 30 (xiii) any combination of ~~the above~~ subsections (1)(a)(i) through (1)(a)(xii).

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

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

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

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

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

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

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

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

21 (4) Except as provided in 45-9-202 and 46-18-222, the imposition or execution of the first 2 years  
22 of a sentence of imprisonment imposed under the following sections may not be deferred or suspended:  
23 45-5-103, 45-5-202(3) relating to aggravated assault, 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-502(3),  
24 45-5-503(2) and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(4), and 45-9-103(2).

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

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

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

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

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

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

17 **Section 3.** Section 46-18-254, MCA, is amended to read:

18 **"46-18-254. Release of sexual or violent offender -- duties of court and department.** A sexual or  
19 violent offender must be informed in writing at the time of sentencing of the duty to register under  
20 46-18-255; Title 46, chapter 23, part 5; and this section by the court in which the offender is sentenced.  
21 The department of corrections and human services shall obtain the address ~~where~~ at which the person  
22 expects to reside upon release or discharge or suspension of the person's sentence. The department of  
23 corrections and human services shall inform the appropriate law enforcement agency having local  
24 jurisdiction where the person expects to reside."  
25

26 **Section 4.** Section 46-18-255, MCA, is amended to read:

27 **"46-18-255. Sentence upon conviction -- restriction on employment.** A judge sentencing a person  
28 upon conviction of a sexual or violent offense shall, as a condition to probation, parole, or deferment or  
29 suspension of sentence, impose upon the defendant reasonable employment or occupational prohibitions  
30 and restrictions designed to protect the class or classes of persons containing the likely victims of further

1 offenses by the defendant."

2

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

4 **"46-23-501. Short title.** Sections 46-18-254, 46-18-255, and this part may be cited as the "Sexual  
5 or Violent Offender Registration Act"."

6

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

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

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

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

14 (3) "Sexual offense" means:

15 (a) any violation of 45-5-502(3), 45-5-503, ~~45-5-506~~, 45-5-507 (unless the act occurred between  
16 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 (4) "Violent offense" means:

20 (a) any violation of 45-5-102, 45-5-103, 45-5-202, 45-5-302, 45-5-303, 45-5-401, or 45-6-103;

21 or

22 (b) any violation of a law of another state or the federal government reasonably equivalent to a  
23 violation listed in subsection (4)(a)."

24

25 **Section 7.** Section 46-23-503, MCA, is amended to read:

26 **"46-23-503. Release of sexual or violent offender from place of confinement -- duties of official**  
27 **in charge.** A sexual or violent offender who is released from the custody of the department of corrections  
28 and human services or the department of family services must be informed in writing prior to release of ~~his~~  
29 the duty to register under 46-18-254, 46-18-255, and this part by the official in charge of the place of  
30 confinement. The official shall obtain the address ~~where~~ at which the person expects to reside upon ~~his~~ the

1 person's release and report the address to the department of corrections and human services. The  
 2 department shall inform the appropriate law enforcement agency having local jurisdiction where the person  
 3 expects to reside."  
 4

5 **Section 8.** Section 46-23-504, MCA, is amended to read:

6 **"46-23-504. Duty Persons required to register -- procedure.** (1) A sexual or violent offender shall,  
 7 within 14 days of ~~coming into~~ conviction or release from prison or within 14 days of entering a county ~~in~~  
 8 ~~which he resides or is temporarily domiciled~~ of this state for the purpose of residing or setting up a  
 9 temporary domicile for 14 days or more, register, as required under 46-18-254, 46-18-255, and this part,  
 10 with the chief of police of the municipality or the sheriff of the county if ~~he~~ the offender resides in an area  
 11 other than a municipality.

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

18 (3) The person registered under this section is responsible, if able to pay, for costs associated with  
 19 registration. The fees charged for registration may not exceed the actual costs of registration.

20 (4) The clerk of the district court in the county in which a person is convicted of a sexual or violent  
 21 offense shall notify the sheriff in that county of the conviction within 14 days after entry of the judgment."  
 22

23 **Section 9.** Section 46-23-505, MCA, is amended to read:

24 **"46-23-505. Change Notice of change of address -- duty to inform -- forwarding of information.**  
 25 If a person required to register under 46-18-254, 46-18-255, and this part changes ~~his~~ the residence, ~~he~~ the  
 26 person shall within 10 days give written notification of ~~his~~ the person's new address to the law  
 27 enforcement agency with whom ~~he~~ the person last registered. The law enforcement agency shall, within  
 28 3 days after receipt of ~~such~~ the information, forward it to the department, the department of justice, and  
 29 the local law enforcement agency having jurisdiction over the new place of residence and shall forward a  
 30 copy of the statement, fingerprints, and photographs of the person to the local law enforcement agency

1 having jurisdiction over the new place of residence."

2

3 **Section 10.** Section 46-23-506, MCA, is amended to read:

4 **"46-23-506. Duration of registration.** (1) A person required to register under 46-18-254,  
5 46-18-255, and this part shall comply with 46-18-254, 46-18-255, and this part for the remainder of the  
6 person's life, except as provided in subsection (2) of this section or during a period of 10 years after  
7 conviction, if not imprisoned during that period. If a person required to register under 46-18-254,  
8 46-18-255, and this part is imprisoned during the initial 10 year period, he shall comply with the provisions  
9 of 46-18-254, 46-18-255, and this part for a period of 10 years after release from prison time during which  
10 the person is in prison.

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

15 (2) At any time after 10 years since the date of the offender's last conviction for a sexual or violent  
16 offense, the offender may petition a district court for an order relieving the offender of the duty to register  
17 under 46-18-254, 46-18-255, and this part. The petition must be served on the county attorney in the  
18 county where the petition is filed. Prior to a hearing on the petition, the county attorney shall mail a copy  
19 of the petition to the victim of the last offense for which the offender was convicted if the victim's address  
20 is reasonably available. The court shall consider any written or oral statements of the victim. The court  
21 may grant the petition upon finding that:

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

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

25

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

27 **"46-23-507. Penalty.** A sexual or violent offender who knowingly fails to register under 46-18-254,  
28 46-18-255, and this part ~~may~~ shall be sentenced to a term of imprisonment imprisoned in the state prison  
29 for a term of not less than 90 days or a fine not to exceed \$250, or both 2 years or more than 5 years or  
30 may be fined not more than \$10,000, or both."





STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0214, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

A bill generally revising the laws relating to the registration of sexual offenders; extending registration requirements and employment restrictions to certain violent offenders; and making the registration of violent offenders mandatory.

ASSUMPTIONS:

1. This bill would create a lifetime registry of offenders convicted of the offenses defined in HB214. The proposed registry would operate much like the current sex offender registry.
2. Of total inmates in FY94, 831-997 or 45-54% would fall under the provisions of HB214.
3. The current sex offender registry contains over 1,400 offenders names and addresses. A registry for HB214 will be much larger, especially given the lifetime provisions of the bill.
4. Failure to register for offenses defined will result in a 2 - 5 year sentence in the Montana State Prison (MSP). It is impossible to determine the number of offenders that will fail to register, but it is assumed that there will be some offenders who will not register, thus increasing the population at MSP.
5. There will be computer programming time needed to implement provisions of this bill, estimated at 100 hours at \$50 per hour = \$5,000.
6. All original photographs and finger prints will remain on file at the Department of Corrections and Human Services (DCHS). DCHS will need to purchase a PC, color scanner, color laser printer, and associated software - or other undetermined photographic equipment, and/or services to provide quality duplicates for local law enforcement agencies.
7. Electronic transfer of information is not possible at the state or county level without the additional equipment.

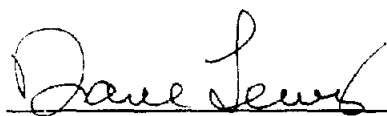
FISCAL IMPACT:

Expenditures:

	<u>FY96</u>	<u>FY97</u>
	<u>Difference</u>	<u>Difference</u>
DCHS:		
Operating Expenses	\$6,000	\$1,000
Equipment	<u>\$15,700</u>	<u>          </u>
Total General Fund Impact	\$21,700	\$1,000

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

As the life-time register for sexual and violent offenders increases, DCHS may need additional FTE and computer equipment including imaging equipment and possibly disk storage to effectively maintain this registry and disseminate the information efficiently.

 1-20-95  
DAVE LEWIS, BUDGET DIRECTOR      DATE  
Office of Budget and Program Planning

 1-25  
DEB KOTTEL, PRIMARY SPONSOR      DATE

## 1 HOUSE BILL NO. 214

2 INTRODUCED BY KOTTEL, CHRISTIAENS, TUSS, HURDLE, CLARK, HEAVY RUNNER, SIMPKINS,  
3 SQUIRES, GRIMES, PECK, RANEY, AHNER, TREXLER, HERRON, PAVLOVICH, QUILICI, BOHLINGER,  
4 ANDERSON, COBB, CAREY, TROPILA, COCCHIARELLA, SCHWINDEN, MENAHAN, MCCULLOCH,  
5 LYNCH, REHBEIN, REAM, GRINDE, T. NELSON, HARPER, HARRINGTON, J. JOHNSON, HAGENER,  
6 SIMON, SOFT, WELDON, SHEA

7  
8 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO  
9 REGISTRATION OF SEXUAL OFFENDERS; EXTENDING REGISTRATION REQUIREMENTS AND  
10 EMPLOYMENT RESTRICTIONS TO CERTAIN VIOLENT OFFENDERS; MAKING REGISTRATION OF VIOLENT  
11 OFFENDERS MANDATORY; REVISING THE DEFINITION OF SEXUAL OFFENSE FOR PURPOSES OF  
12 REGISTRATION; REVISING THE PROCEDURES FOR REGISTRATION; MAKING REGISTRATION A LIFETIME  
13 REQUIREMENT; INCREASING THE PENALTY FOR FAILURE TO REGISTER; AUTHORIZING RELEASE TO THE  
14 PUBLIC AND OTHER LAW ENFORCEMENT AGENCIES OF REGISTRATION INFORMATION NECESSARY FOR  
15 PUBLIC PROTECTION; ~~PROVIDING IMMUNITY FOR LAW ENFORCEMENT AGENCIES FOR THE RELEASE~~  
16 ~~OR FAILURE TO RELEASE REGISTRATION INFORMATION; AND~~ AMENDING SECTIONS 44-5-301,  
17 46-18-201, 46-18-254, 46-18-255, 46-23-501, 46-23-502, 46-23-503, 46-23-504, 46-23-505,  
18 46-23-506, AND 46-23-507, MCA; ~~AND PROVIDING A RETROACTIVE APPLICABILITY DATE."~~

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5 ~~documents shall must be open, subject to the restrictions in this section, during the normal business hours~~  
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17 provided, not exceeding 1 year for any misdemeanor or for a period not exceeding 3 years for any felony.  
18 The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the  
19 period of the deferred imposition. Reasonable restrictions or conditions may include:

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21 (ii) jail time not exceeding 180 days;

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28 (ix) with the approval of the facility or program, an order that the offender ~~to~~ be placed in a  
29 community corrections facility or program as provided in 53-30-321;

30 (x) community service;

1 (xi) home arrest as provided in Title 46, chapter 18, part 10;

2 (xii) any other reasonable conditions considered necessary for rehabilitation or for the protection  
3 of society; or

4 (xiii) any combination of ~~the above~~ subsections (1)(a)(i) through (1)(a)(xii).

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

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

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14 correctional institution or program;

15 (f) with the approval of the facility or program, order the offender to be placed in a community  
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17 (g) impose any combination of subsections (1)(b) through (1)(f).

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22 shall consider any elapsed time and either expressly allow part or all of it as a credit against the sentence  
23 or reject all or part as a credit and state its reasons in the order. Credit, however, must be allowed for jail  
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28 45-5-503(2) and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(4), and 45-9-103(2).

29 (5) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a sentence  
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1           (6) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred  
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4 suspended.

5           (7) If the victim was less than 16 years old, the imposition or execution of the first 30 days of a  
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7 or suspended. Section 46-18-222 does not apply to the first 30 days of the imprisonment.

8           (8) In imposing a sentence on a defendant convicted of a sexual or violent offense as defined in  
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19 not selected, based on the criteria contained in 46-18-225."

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5 offenses by the defendant."  
6

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

8           **"46-23-501. Short title.** Sections 46-18-254, 46-18-255, and this part may be cited as the "Sexual  
9 or Violent Offender Registration Act"."  
10

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

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

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

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

18           (3) "Sexual offense" means:

19           (a) any violation of 45-5-502(3), 45-5-503, 45-5-504(2)(C), ~~45-5-506~~, 45-5-507 (unless the act  
20 occurred between two consenting persons 16 years of age or older), or 45-5-625; or

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

23           (4) "Violent offense" means:

24           (a) any violation of 45-5-102, 45-5-103, 45-5-202, 45-5-302, 45-5-303, 45-5-401, or 45-6-103;  
25 or

26           (b) any violation of a law of another state or the federal government reasonably equivalent to a  
27 violation listed in subsection (4)(a)."  
28

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

30           **"46-23-503. Release of sexual or violent offender from place of confinement -- duties of official**

1 **in charge.** A sexual or violent offender who is released from the custody of the department of corrections  
 2 and human services or the department of family services must be informed in writing prior to release of ~~his~~  
 3 the duty to register under 46-18-254, 46-18-255, and this part by the official in charge of the place of  
 4 confinement. The official shall obtain the address ~~where~~ at which the person expects to reside upon ~~his~~ the  
 5 person's release and report the address to the department of corrections and human services. The  
 6 department shall inform the appropriate law enforcement agency having local jurisdiction where the person  
 7 expects to reside."

8

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

10 "**46-23-504. Duty Persons required to register -- procedure.** (1) A sexual or violent offender shall,  
 11 within 14 days of ~~coming into~~ conviction or release from prison or within 14 days of entering a county in  
 12 ~~which he resides or is temporarily domiciled~~ of this state for the purpose of residing or setting up a  
 13 temporary domicile for 14 days or more, register, as required under 46-18-254, 46-18-255, and this part,  
 14 with the chief of police of the municipality or the sheriff of the county if ~~he~~ the offender resides in an area  
 15 other than a municipality.

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

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

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

26

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

28 "**46-23-505. Change Notice of change of address -- duty to inform -- forwarding of information.**  
 29 If a person required to register under 46-18-254, 46-18-255, and this part changes ~~his~~ residence, ~~he~~ the  
 30 person shall within 10 days give written notification of ~~his~~ the person's new address to the law

1 enforcement agency with whom ~~he~~ the person last registered. The law enforcement agency shall, within  
 2 3 days after receipt of ~~such~~ the information, forward it to the department, the department of justice, and  
 3 the local law enforcement agency having jurisdiction over the new place of residence and shall forward a  
 4 copy of the statement, fingerprints, and photographs of the person to the local law enforcement agency  
 5 having jurisdiction over the new place of residence."

6  
 7 **Section 9.** Section 46-23-506, MCA, is amended to read:

8 **"46-23-506. Duration of registration.** (1) A person required to register under 46-18-254,  
 9 46-18-255, and this part shall comply with 46-18-254, 46-18-255, and this part for the remainder of the  
 10 person's life, except as provided in subsection (2) of this section or during a period of 10 years after  
 11 conviction, if not imprisoned during that period. If a person required to register under 46-18-254,  
 12 46-18-255, and this part is imprisoned during the initial 10 year period, he shall comply with the provisions  
 13 of 46-18-254, 46-18-255, and this part for a period of 10 years after release from prison time during which  
 14 the person is in prison.

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

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

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

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

29  
 30 **Section 10.** Section 46-23-507, MCA, is amended to read:



1           ~~"46-23-507. Penalty. A sexual or violent offender who knowingly fails to register under 46-18-254,~~  
 2 ~~46-18-255, and this part may shall MAY be sentenced to a term of imprisonment imprisoned in the state~~  
 3 ~~prison for a term SENTENCED TO A TERM OF IMPRISONMENT of not less than 90 days or a fine not to~~  
 4 ~~exceed \$250, or both 2 years or more than 5 years or may be fined not more than \$10,000, or both."~~

5  
 6           ~~NEW SECTION. Section 12. Sexual or violent offenders—release of information to public—when~~  
 7 ~~authorized—immunity. (1) A law enforcement agency is authorized to release relevant and necessary~~  
 8 ~~information regarding sexual or violent offenders registered under 46-18-254, 46-18-255, and this part to~~  
 9 ~~the public when the release of information is necessary for public protection.~~

10           ~~(2) A governmental entity and its employees, as defined in 2-9-101, are immune from civil liability~~  
 11 ~~for damages for any discretionary decision to release relevant and necessary information, unless it is shown~~  
 12 ~~that the governmental entity or its employees acted with gross negligence or in bad faith. The~~  
 13 ~~authorization and immunity in this section apply to information regarding a person required to register under~~  
 14 ~~46-18-254, 46-18-255, and this part. The immunity provided under this section applies to the release of~~  
 15 ~~relevant information to other governmental entities and employees and to the general public.~~

16           ~~(3) Except as otherwise provided by law, this section may not impose liability upon a governmental~~  
 17 ~~entity or its employees for failing to release information as provided in subsection (2).~~

18           ~~(4) Information authorized to be released under this section is public criminal justice information~~  
 19 ~~as defined in 44-5-103.~~

20  
 21           ~~NEW SECTION. SECTION 11. DISSEMINATION OF INFORMATION IN REGISTER. INFORMATION~~  
 22 ~~IN THE REGISTER MAINTAINED UNDER 46-18-254 AND THIS PART IS CONFIDENTIAL CRIMINAL JUSTICE~~  
 23 ~~INFORMATION, AS DEFINED IN 44-5-103, EXCEPT THAT:~~

24           ~~(1) THE NAME OF A REGISTERED SEXUAL OFFENDER IS PUBLIC CRIMINAL JUSTICE~~  
 25 ~~INFORMATION, AS DEFINED IN 44-5-103; AND~~

26           ~~(2) BEFORE RELEASING FROM A STATE PRISON AN INMATE WHO IS A SEXUAL OFFENDER, IF~~  
 27 ~~THE DEPARTMENT BELIEVES THAT RELEASE OF INFORMATION CONCERNING THE INMATE IS~~  
 28 ~~NECESSARY FOR PUBLIC PROTECTION, THE DEPARTMENT SHALL PETITION THE DISTRICT COURT FOR~~  
 29 ~~THE JUDICIAL DISTRICT IN WHICH THE PRISON IS LOCATED OR FOR THE JUDICIAL DISTRICT IN WHICH~~  
 30 ~~THE INMATE INTENDS TO RESIDE FOR AN ORDER ALLOWING THE DEPARTMENT TO RELEASE~~

1 RELEVANT AND NECESSARY REGISTER INFORMATION REGARDING THE INMATE TO THE PUBLIC. THE  
2 COURT SHALL GRANT THE ORDER IF THE COURT FINDS THAT THE INFORMATION IS NECESSARY FOR  
3 PUBLIC PROTECTION.

4  
5 NEW SECTION. Section 12. Codification instruction. [Section ~~42 11~~] is intended to be codified  
6 as an integral part of Title 46, chapter 23, part 5, and the provisions of Title 46, chapter 23, part 5, apply  
7 to [section ~~42 11~~].

8  
9 NEW SECTION. Section 14. Two-thirds vote required. ~~Because [section 12] limits governmental~~  
10 ~~liability, Article II, section 18, of the Montana constitution requires a vote of two-thirds of the members of~~  
11 ~~each house of the legislature for passage.~~

12  
13 NEW SECTION. Section 15. Retroactive applicability. ~~[This act] applies retroactively, within the~~  
14 ~~meaning of 1-2-109, to persons convicted of a sexual or violent offense before [the effective date of this~~  
15 ~~act], as well as to persons convicted of a sexual or violent offense after [the effective date of this act],~~  
16 ~~regardless of the date of the crime.~~

17 -END-

## HOUSE BILL NO. 214

INTRODUCED BY KOTTEL, CHRISTIAENS, TUSS, HURDLE, CLARK, HEAVY RUNNER, SIMPKINS,  
 SQUIRES, GRIMES, PECK, RANEY, AHNER, TREXLER, HERRON, PAVLOVICH, QUILICI, BOHLINGER,  
 ANDERSON, COBB, CAREY, TROPILA, COCCHIARELLA, SCHWINDEN, MENAHAN, MCCULLOCH,  
 LYNCH, REHBEIN, REAM, GRINDE, T. NELSON, HARPER, HARRINGTON, J. JOHNSON, HAGENER,  
 SIMON, SOFT, WELDON, SHEA

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO  
 REGISTRATION OF SEXUAL OFFENDERS; EXTENDING REGISTRATION REQUIREMENTS AND  
 EMPLOYMENT RESTRICTIONS TO CERTAIN VIOLENT OFFENDERS; MAKING REGISTRATION OF VIOLENT  
 OFFENDERS MANDATORY; REVISING THE DEFINITION OF SEXUAL OFFENSE FOR PURPOSES OF  
 REGISTRATION; REVISING THE PROCEDURES FOR REGISTRATION; MAKING REGISTRATION A LIFETIME  
 REQUIREMENT; INCREASING THE PENALTY FOR FAILURE TO REGISTER; AUTHORIZING RELEASE TO THE  
 PUBLIC AND OTHER LAW ENFORCEMENT AGENCIES OF REGISTRATION INFORMATION NECESSARY FOR  
 PUBLIC PROTECTION; ~~PROVIDING IMMUNITY FOR LAW ENFORCEMENT AGENCIES FOR THE RELEASE~~  
~~OR FAILURE TO RELEASE REGISTRATION INFORMATION;~~ AND AMENDING SECTIONS 44-5-301,  
 46-18-201, 46-18-254, 46-18-255, 46-23-501, 46-23-502, 46-23-503, 46-23-504, 46-23-505,  
 46-23-506, AND 46-23-507, MCA; ~~AND PROVIDING A RETROACTIVE APPLICABILITY DATE.~~"

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

~~Section 1. Section 44-5-301, MCA, is amended to read:~~

~~"44-5-301. Dissemination of public criminal justice information. (1) There are no restrictions on the  
 dissemination of public criminal justice information, except for the following:~~

~~(a) Whenever a record or index is compiled by name or universal identifier from a manual or  
 automated system, only information about convictions, deferred prosecutions, or deferred sentences is  
 available to the public.~~

~~(b) Whenever the conviction record reflects only misdemeanors or deferred prosecutions and  
 whenever there are no convictions, except for traffic, regulatory, or fish and game offenses for a period  
 of 5 years from the date of the last conviction, no record or index may be disseminated pursuant to~~

1 ~~subsection (1)(a). However, the original documents are available to the public from the originating criminal~~  
 2 ~~justice agency.~~

3 ~~(2) All public criminal justice information is available from the agency that is the source of the~~  
 4 ~~original documents and that is authorized to maintain the documents according to applicable law. These~~  
 5 ~~documents shall must be open, subject to the restrictions in this section, during the normal business hours~~  
 6 ~~of the agency. A reasonable charge may be made by a criminal justice agency for providing a copy of public~~  
 7 ~~criminal justice information.~~

8 ~~(3) In addition to any other information authorized to be released under this section, a law~~  
 9 ~~enforcement agency is authorized to release relevant information that is necessary to protect the public,~~  
 10 ~~as provided under [section 12]."~~

11  
 12 **Section 1.** Section 46-18-201, MCA, is amended to read:

13 **"46-18-201. Sentences that may be imposed.** (1) Whenever a person has been found guilty of an  
 14 offense upon a verdict or a plea of guilty, the court may:

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

20 (i) jail base release;

21 (ii) jail time not exceeding 180 days;

22 (iii) conditions for probation;

23 (iv) restitution;

24 (v) payment of the costs of confinement;

25 (vi) payment of a fine as provided in 46-18-231;

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

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

28 (ix) with the approval of the facility or program, an order that the offender ~~to~~ be placed in a  
 29 community corrections facility or program as provided in 53-30-321;

30 (x) community service;

1 (xi) home arrest as provided in Title 46, chapter 18, part 10;

2 (xii) any other reasonable conditions considered necessary for rehabilitation or for the protection  
3 of society; or

4 (xiii) any combination of ~~the above~~ subsections (1)(a)(i) through (1)(a)(xii).

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

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

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

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

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

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

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

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

25 (4) Except as provided in 45-9-202 and 46-18-222, the imposition or execution of the first 2 years  
26 of a sentence of imprisonment imposed under the following sections may not be deferred or suspended:  
27 45-5-103, 45-5-202(3) relating to aggravated assault, 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-502(3),  
28 45-5-503(2) and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(4), and 45-9-103(2).

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

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

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

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

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

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

21 **Section 2.** Section 46-18-254, MCA, is amended to read:

22 **"46-18-254. Release of sexual or violent offender -- duties of court and department.** A sexual or  
 23 violent offender must be informed in writing at the time of sentencing of the duty to register under  
 24 46-18-255; Title 46, chapter 23, part 5; and this section by the court in which the offender is sentenced.  
 25 The department of corrections and human services shall obtain the address ~~where~~ at which the person  
 26 expects to reside upon release or discharge or suspension of the person's sentence. The department of  
 27 corrections and human services shall inform the appropriate law enforcement agency having local  
 28 jurisdiction where the person expects to reside."  
 29

30 **Section 3.** Section 46-18-255, MCA, is amended to read:

1           **"46-18-255. Sentence upon conviction -- restriction on employment.** A judge sentencing a person  
2 upon conviction of a sexual or violent offense shall, as a condition to probation, parole, or deferment or  
3 suspension of sentence, impose upon the defendant reasonable employment or occupational prohibitions  
4 and restrictions designed to protect the class or classes of persons containing the likely victims of further  
5 offenses by the defendant."

6

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

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

10

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

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

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

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

18           (3) "Sexual offense" means:

19           (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  
20 occurred between two consenting persons 16 years of age or older), or 45-5-625; or

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

23           (4) "Violent offense" means:

24           (a) any violation of 45-5-102, 45-5-103, 45-5-202, 45-5-302, 45-5-303, 45-5-401, or 45-6-103;

25 or

26           (b) any violation of a law of another state or the federal government reasonably equivalent to a  
27 violation listed in subsection (4)(a)."

28

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

30           **"46-23-503. Release of sexual or violent offender from place of confinement -- duties of official**

1 **in charge.** A sexual or violent offender who is released from the custody of the department of corrections  
 2 and human services or the department of family services must be informed in writing prior to release of ~~his~~  
 3 the duty to register under 46-18-254, 46-18-255, and this part by the official in charge of the place of  
 4 confinement. The official shall obtain the address ~~where~~ at which the person expects to reside upon ~~his~~ the  
 5 person's release and report the address to the department of corrections and human services. The  
 6 department shall inform the appropriate law enforcement agency having local jurisdiction where the person  
 7 expects to reside."

8  
 9 **Section 7.** Section 46-23-504, MCA, is amended to read:

10 **"46-23-504. Duty Persons required to register -- procedure.** (1) A sexual or violent offender shall,  
 11 within 14 days of ~~coming into~~ conviction or release from prison or within 14 days of entering a county in  
 12 which he resides or is temporarily domiciled of this state for the purpose of residing or setting up a  
 13 temporary domicile for 14 days or more, register, as required under 46-18-254, 46-18-255, and this part,  
 14 with the chief of police of the municipality or the sheriff of the county if ~~he~~ the offender resides in an area  
 15 other than a municipality.

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

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

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

26  
 27 **Section 8.** Section 46-23-505, MCA, is amended to read:

28 **"46-23-505. Change Notice of change of address -- duty to inform -- forwarding of information.**  
 29 If a person required to register under 46-18-254, 46-18-255, and this part changes ~~his~~ residence, ~~he~~ the  
 30 person shall within 10 days give written notification of ~~his~~ the person's new address to the law



1 enforcement agency with whom ~~he~~ the person last registered. The law enforcement agency shall, within  
2 3 days after receipt of ~~such~~ the information, forward it to the department, the department of justice, and  
3 the local law enforcement agency having jurisdiction over the new place of residence and shall forward a  
4 copy of the statement, fingerprints, and photographs of the person to the local law enforcement agency  
5 having jurisdiction over the new place of residence."

6  
7 **Section 9.** Section 46-23-506, MCA, is amended to read:

8 "**46-23-506. Duration of registration.** (1) A person required to register under 46-18-254,  
9 46-18-255, and this part shall comply with 46-18-254, 46-18-255, and this part for the remainder of the  
10 person's life, except as provided in subsection (2) of this section or during a period of 10 years after  
11 conviction, if not imprisoned during that period. If a person required to register under 46-18-254,  
12 46-18-255, and this part is imprisoned during the initial 10-year period, he shall comply with the provisions  
13 of 46-18-254, 46-18-255, and this part for a period of 10 years after release from prison time during which  
14 the person is in prison.

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

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

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

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

29  
30 **Section 10.** Section 46-23-507, MCA, is amended to read:

1           ~~"46-23-507. Penalty. A sexual or violent offender who knowingly fails to register under 46-18-254,~~  
 2 ~~46-18-255, and this part may shall MAY be sentenced to a term of imprisonment imprisoned in the state~~  
 3 ~~prison for a term SENTENCED TO A TERM OF IMPRISONMENT of not less than 90 days or a fine not to~~  
 4 ~~exceed \$250, or both 2 years or more than 5 years or may be fined not more than \$10,000, or both."~~

5  
 6           ~~NEW SECTION. Section 12. Sexual or violent offenders release of information to public when~~  
 7 ~~authorized immunity. (1) A law enforcement agency is authorized to release relevant and necessary~~  
 8 ~~information regarding sexual or violent offenders registered under 46-18-254, 46-18-255, and this part to~~  
 9 ~~the public when the release of information is necessary for public protection.~~

10           ~~(2) A governmental entity and its employees, as defined in 2-9-101, are immune from civil liability~~  
 11 ~~for damages for any discretionary decision to release relevant and necessary information, unless it is shown~~  
 12 ~~that the governmental entity or its employees acted with gross negligence or in bad faith. The~~  
 13 ~~authorization and immunity in this section apply to information regarding a person required to register under~~  
 14 ~~46-18-254, 46-18-255, and this part. The immunity provided under this section applies to the release of~~  
 15 ~~relevant information to other governmental entities and employees and to the general public.~~

16           ~~(3) Except as otherwise provided by law, this section may not impose liability upon a governmental~~  
 17 ~~entity or its employees for failing to release information as provided in subsection (2).~~

18           ~~(4) Information authorized to be released under this section is public criminal justice information~~  
 19 ~~as defined in 44-5-103.~~

20  
 21           ~~NEW SECTION. SECTION 11. DISSEMINATION OF INFORMATION IN REGISTER. INFORMATION~~  
 22 ~~IN THE REGISTER MAINTAINED UNDER 46-18-254 AND THIS PART IS CONFIDENTIAL CRIMINAL JUSTICE~~  
 23 ~~INFORMATION, AS DEFINED IN 44-5-103, EXCEPT THAT:~~

24           ~~(1) THE NAME OF A REGISTERED SEXUAL OFFENDER IS PUBLIC CRIMINAL JUSTICE~~  
 25 ~~INFORMATION, AS DEFINED IN 44-5-103; AND~~

26           ~~(2) BEFORE RELEASING FROM A STATE PRISON AN INMATE WHO IS A SEXUAL OFFENDER, IF~~  
 27 ~~THE DEPARTMENT BELIEVES THAT RELEASE OF INFORMATION CONCERNING THE INMATE IS~~  
 28 ~~NECESSARY FOR PUBLIC PROTECTION, THE DEPARTMENT SHALL PETITION THE DISTRICT COURT FOR~~  
 29 ~~THE JUDICIAL DISTRICT IN WHICH THE PRISON IS LOCATED OR FOR THE JUDICIAL DISTRICT IN WHICH~~  
 30 ~~THE INMATE INTENDS TO RESIDE FOR AN ORDER ALLOWING THE DEPARTMENT TO RELEASE~~

1 RELEVANT AND NECESSARY REGISTER INFORMATION REGARDING THE INMATE TO THE PUBLIC. THE  
2 COURT SHALL GRANT THE ORDER IF THE COURT FINDS THAT THE INFORMATION IS NECESSARY FOR  
3 PUBLIC PROTECTION.

4  
5 NEW SECTION. Section 12. Codification instruction. [Section ~~42 11~~] is intended to be codified  
6 as an integral part of Title 46, chapter 23, part 5, and the provisions of Title 46, chapter 23, part 5, apply  
7 to [section ~~42 11~~].

8  
9 ~~NEW SECTION. Section 14. Two-thirds vote required. Because [section 12] limits governmental~~  
10 ~~liability, Article II, section 18, of the Montana constitution requires a vote of two-thirds of the members of~~  
11 ~~each house of the legislature for passage.~~

12  
13 ~~NEW SECTION. Section 15. Retroactive applicability. [This act] applies retroactively, within the~~  
14 ~~meaning of 1-2-109, to persons convicted of a sexual or violent offense before [the effective date of this~~  
15 ~~act], as well as to persons convicted of a sexual or violent offense after [the effective date of this act],~~  
16 ~~regardless of the date of the crime.~~

17 -END-

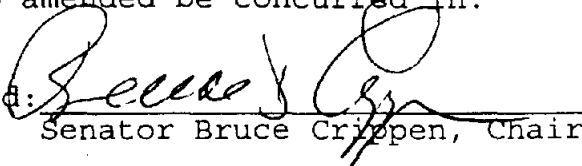
SENATE STANDING COMMITTEE REPORT

Page 1 of 1  
March 15, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration HB 214 (third reading copy -- blue), respectfully report that HB 214 be amended as follows and as so amended be concurred in.

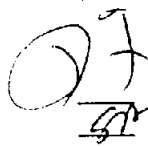
Signed:

  
Senator Bruce Crippen, Chair

That such amendments read:

1. Page 5, line 19.  
Following: "~~45-5-505,~~"  
Insert: "45-5-505,"

-END-



Amd. Coord.  
Sec. of Senate

Sen. Christians  
Senator Carrying Bill

HB 214

SENATE

SENATE COMMITTEE OF THE WHOLE AMENDMENT

March 20, 1995 12:40 pm

Mr. Chairman: I move to amend HB 214 (third reading copy -- blue).

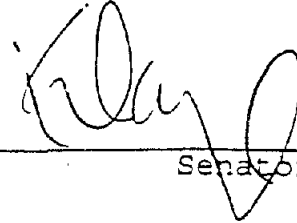
ADOPT

3/23/95

REJECT

3/20

Signed: \_\_\_\_\_



Senator Klampe

That such amendments read:

AMEND SENATE JUDICIARY COMMITTEE REPORT DATED MARCH 15, 1995, AS FOLLOWS:

Amendment No. 1

Following: "45-5-505"

Insert: (as that section pertains to deviate sexual conduct with an animal as described in 45-2-101)

-END-



Amd. Coord.

HB 214  
SENATE

641240CW.SRF

## 1 HOUSE BILL NO. 214

2 INTRODUCED BY KOTTEL, CHRISTIAENS, TUSS, HURDLE, CLARK, HEAVY RUNNER, SIMPKINS,  
 3 SQUIRES, GRIMES, PECK, RANEY, AHNER, TREXLER, HERRON, PAVLOVICH, QUILICI, BOHLINGER,  
 4 ANDERSON, COBB, CAREY, TROPILA, COCCHIARELLA, SCHWINDEN, MENAHAN, MCCULLOCH,  
 5 LYNCH, REHBEIN, REAM, GRINDE, T. NELSON, HARPER, HARRINGTON, J. JOHNSON, HAGENER,  
 6 SIMON, SOFT, WELDON, SHEA

7  
 8 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO  
 9 REGISTRATION OF SEXUAL OFFENDERS; EXTENDING REGISTRATION REQUIREMENTS AND  
 10 EMPLOYMENT RESTRICTIONS TO CERTAIN VIOLENT OFFENDERS; MAKING REGISTRATION OF VIOLENT  
 11 OFFENDERS MANDATORY; REVISING THE DEFINITION OF SEXUAL OFFENSE FOR PURPOSES OF  
 12 REGISTRATION; REVISING THE PROCEDURES FOR REGISTRATION; MAKING REGISTRATION A LIFETIME  
 13 REQUIREMENT; INCREASING THE PENALTY FOR FAILURE TO REGISTER; AUTHORIZING RELEASE TO THE  
 14 PUBLIC AND OTHER LAW ENFORCEMENT AGENCIES OF REGISTRATION INFORMATION NECESSARY FOR  
 15 PUBLIC PROTECTION; ~~PROVIDING IMMUNITY FOR LAW ENFORCEMENT AGENCIES FOR THE RELEASE~~  
 16 ~~OR FAILURE TO RELEASE REGISTRATION INFORMATION;~~ AND AMENDING SECTIONS 44-5-301,  
 17 46-18-201, 46-18-254, 46-18-255, 46-23-501, 46-23-502, 46-23-503, 46-23-504, 46-23-505,  
 18 46-23-506, AND 46-23-507, MCA; ~~AND PROVIDING A RETROACTIVE APPLICABILITY DATE."~~

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

21  
 22 ~~Section 1. Section 44-5-301, MCA, is amended to read:~~

23 ~~"44-5-301. Dissemination of public criminal justice information. (1) There are no restrictions on the~~  
 24 ~~dissemination of public criminal justice information, except for the following:~~

25 ~~(a) Whenever a record or index is compiled by name or universal identifier from a manual or~~  
 26 ~~automated system, only information about convictions, deferred prosecutions, or deferred sentences is~~  
 27 ~~available to the public.~~

28 ~~(b) Whenever the conviction record reflects only misdemeanors or deferred prosecutions and~~  
 29 ~~whenever there are no convictions, except for traffic, regulatory, or fish and game offenses for a period~~  
 30 ~~of 5 years from the date of the last conviction, no record or index may be disseminated pursuant to~~

1 subsection (1)(a). However, the original documents are available to the public from the originating criminal  
2 justice agency.

3 ~~(2) All public criminal justice information is available from the agency that is the source of the~~  
4 ~~original documents and that is authorized to maintain the documents according to applicable law. These~~  
5 ~~documents shall must be open, subject to the restrictions in this section, during the normal business hours~~  
6 ~~of the agency. A reasonable charge may be made by a criminal justice agency for providing a copy of public~~  
7 ~~criminal justice information.~~

8 ~~(3) In addition to any other information authorized to be released under this section, a law~~  
9 ~~enforcement agency is authorized to release relevant information that is necessary to protect the public,~~  
10 ~~as provided under [section 12]."~~

11

12 **Section 1.** Section 46-18-201, MCA, is amended to read:

13 **"46-18-201. Sentences that may be imposed.** (1) Whenever a person has been found guilty of an  
14 offense upon a verdict or a plea of guilty, the court may:

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

- 20 (i) jail base release;
- 21 (ii) jail time not exceeding 180 days;
- 22 (iii) conditions for probation;
- 23 (iv) restitution;
- 24 (v) payment of the costs of confinement;
- 25 (vi) payment of a fine as provided in 46-18-231;
- 26 (vii) payment of costs as provided in 46-18-232 and 46-18-233;
- 27 (viii) payment of costs of court-appointed counsel as provided in 46-8-113;
- 28 (ix) with the approval of the facility or program, an order that the offender ~~to~~ be placed in a  
29 community corrections facility or program as provided in 53-30-321;
- 30 (x) community service;

1 (xi) home arrest as provided in Title 46, chapter 18, part 10;

2 (xii) any other reasonable conditions considered necessary for rehabilitation or for the protection  
3 of society; or

4 (xiii) any combination of ~~the above~~ subsections (1)(a)(i) through (1)(a)(xii).

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

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

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

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

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

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

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

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

25 (4) Except as provided in 45-9-202 and 46-18-222, the imposition or execution of the first 2 years  
26 of a sentence of imprisonment imposed under the following sections may not be deferred or suspended:  
27 45-5-103, 45-5-202(3) relating to aggravated assault, 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-502(3),  
28 45-5-503(2) and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(4), and 45-9-103(2).

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



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

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

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

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

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

21 **Section 2.** Section 46-18-254, MCA, is amended to read:

22 "**46-18-254. Release of sexual or violent offender -- duties of court and department.** A sexual or  
23 violent offender must be informed in writing at the time of sentencing of the duty to register under  
24 46-18-255; Title 46, chapter 23, part 5; and this section by the court in which the offender is sentenced.  
25 The department of corrections and human services shall obtain the address ~~where~~ at which the person  
26 expects to reside upon release or discharge or suspension of the person's sentence. The department of  
27 corrections and human services shall inform the appropriate law enforcement agency having local  
28 jurisdiction where the person expects to reside."  
29

30 **Section 3.** Section 46-18-255, MCA, is amended to read:

1           **"46-18-255. Sentence upon conviction -- restriction on employment.** A judge sentencing a person  
 2 upon conviction of a sexual or violent offense shall, as a condition to probation, parole, or deferment or  
 3 suspension of sentence, impose upon the defendant reasonable employment or occupational prohibitions  
 4 and restrictions designed to protect the class or classes of persons containing the likely victims of further  
 5 offenses by the defendant."

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

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

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

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

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

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

18           (3) "Sexual offense" means:

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

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

23           (4) "Violent offense" means:

24           (a) any violation of 45-5-102, 45-5-103, 45-5-202, 45-5-302, 45-5-303, 45-5-401, or 45-6-103;

25 or

26           (b) any violation of a law of another state or the federal government reasonably equivalent to a  
 27 violation listed in subsection (4)(a)."

28  
 29           **Section 6.** Section 46-23-503, MCA, is amended to read:

30           **"46-23-503. Release of sexual or violent offender from place of confinement -- duties of official**

1 **in charge.** A sexual or violent offender who is released from the custody of the department of corrections  
 2 and human services or the department of family services must be informed in writing prior to release of ~~his~~  
 3 the duty to register under 46-18-254, 46-18-255, and this part by the official in charge of the place of  
 4 confinement. The official shall obtain the address ~~where~~ at which the person expects to reside upon ~~his~~ the  
 5 person's release and report the address to the department of corrections and human services. The  
 6 department shall inform the appropriate law enforcement agency having local jurisdiction where the person  
 7 expects to reside."

8  
 9 **Section 7.** Section 46-23-504, MCA, is amended to read:

10 **"46-23-504. Duty Persons required to register -- procedure.** (1) A sexual or violent offender shall,  
 11 within 14 days of ~~coming into~~ conviction or release from prison or within 14 days of entering a county ~~in~~  
 12 ~~which he resides or is temporarily domiciled~~ of this state for the purpose of residing or setting up a  
 13 temporary domicile for 14 days or more, register, as required under 46-18-254, 46-18-255, and this part,  
 14 with the chief of police of the municipality or the sheriff of the county if ~~he~~ the offender resides in an area  
 15 other than a municipality.

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

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

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

26  
 27 **Section 8.** Section 46-23-505, MCA, is amended to read:

28 **"46-23-505. Change Notice of change of address -- duty to inform -- forwarding of information.**  
 29 If a person required to register under 46-18-254, 46-18-255, and this part changes ~~his~~ residence, ~~he~~ the  
 30 person shall within 10 days give written notification of ~~his~~ the person's new address to the law

1 enforcement agency with whom ~~he~~ the person last registered. The law enforcement agency shall, within  
 2 3 days after receipt of ~~such~~ the information, forward it to the department, the department of justice, and  
 3 the local law enforcement agency having jurisdiction over the new place of residence and shall forward a  
 4 copy of the statement, fingerprints, and photographs of the person to the local law enforcement agency  
 5 having jurisdiction over the new place of residence."

6  
 7 **Section 9.** Section 46-23-506, MCA, is amended to read:

8 **"46-23-506. Duration of registration.** (1) A person required to register under 46-18-254,  
 9 46-18-255, and this part shall comply with 46-18-254, 46-18-255, and this part for the remainder of the  
 10 person's life, except as provided in subsection (2) of this section or during a period of 10 years after  
 11 conviction, if not imprisoned during that period. If a person required to register under 46-18-254,  
 12 46-18-255, and this part is imprisoned during the initial 10-year period, he shall comply with the provisions  
 13 of 46-18-254, 46-18-255, and this part for a period of 10 years after release from prison time during which  
 14 the person is in prison.

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

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

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

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

29  
 30 **Section 10.** Section 46-23-507, MCA, is amended to read:

1           "46-23-507. **Penalty.** A sexual or violent offender who knowingly fails to register under 46-18-254,  
2 46-18-255, and this part ~~may shall~~ MAY be sentenced to a term of imprisonment ~~imprisoned in the state~~  
3 ~~prison for a term~~ SENTENCED TO A TERM OF IMPRISONMENT of not ~~less than 90 days~~ or a fine not to  
4 exceed \$250, or both 2 years or more than 5 years or may be fined not more than \$10,000, or both."

5  
6           ~~NEW SECTION. Section 12. Sexual or violent offenders — release of information to public — when~~  
7 ~~authorized — immunity. (1) A law enforcement agency is authorized to release relevant and necessary~~  
8 ~~information regarding sexual or violent offenders registered under 46-18-254, 46-18-255, and this part to~~  
9 ~~the public when the release of information is necessary for public protection.~~

10           ~~(2) A governmental entity and its employees, as defined in 2-9-101, are immune from civil liability~~  
11 ~~for damages for any discretionary decision to release relevant and necessary information, unless it is shown~~  
12 ~~that the governmental entity or its employees acted with gross negligence or in bad faith. The~~  
13 ~~authorization and immunity in this section apply to information regarding a person required to register under~~  
14 ~~46-18-254, 46-18-255, and this part. The immunity provided under this section applies to the release of~~  
15 ~~relevant information to other governmental entities and employees and to the general public.~~

16           ~~(3) Except as otherwise provided by law, this section may not impose liability upon a governmental~~  
17 ~~entity or its employees for failing to release information as provided in subsection (2).~~

18           ~~(4) Information authorized to be released under this section is public criminal justice information~~  
19 ~~as defined in 44-5-103.~~

20  
21           NEW SECTION. SECTION 11. DISSEMINATION OF INFORMATION IN REGISTER. INFORMATION  
22 IN THE REGISTER MAINTAINED UNDER 46-18-254 AND THIS PART IS CONFIDENTIAL CRIMINAL JUSTICE  
23 INFORMATION, AS DEFINED IN 44-5-103, EXCEPT THAT:

24           (1) THE NAME OF A REGISTERED SEXUAL OFFENDER IS PUBLIC CRIMINAL JUSTICE  
25 INFORMATION, AS DEFINED IN 44-5-103; AND

26           (2) BEFORE RELEASING FROM A STATE PRISON AN INMATE WHO IS A SEXUAL OFFENDER, IF  
27 THE DEPARTMENT BELIEVES THAT RELEASE OF INFORMATION CONCERNING THE INMATE IS  
28 NECESSARY FOR PUBLIC PROTECTION, THE DEPARTMENT SHALL PETITION THE DISTRICT COURT FOR  
29 THE JUDICIAL DISTRICT IN WHICH THE PRISON IS LOCATED OR FOR THE JUDICIAL DISTRICT IN WHICH  
30 THE INMATE INTENDS TO RESIDE FOR AN ORDER ALLOWING THE DEPARTMENT TO RELEASE

1 RELEVANT AND NECESSARY REGISTER INFORMATION REGARDING THE INMATE TO THE PUBLIC. THE  
2 COURT SHALL GRANT THE ORDER IF THE COURT FINDS THAT THE INFORMATION IS NECESSARY FOR  
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6 as an integral part of Title 46, chapter 23, part 5, and the provisions of Title 46, chapter 23, part 5, apply  
7 to [section ~~42 11~~].

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

12  
13 ~~NEW SECTION. Section 15. Retroactive applicability. [This act] applies retroactively, within the~~  
14 ~~meaning of 1-2-109, to persons convicted of a sexual or violent offense before [the effective date of this~~  
15 ~~act], as well as to persons convicted of a sexual or violent offense after [the effective date of this act],~~  
16 ~~regardless of the date of the crime.~~

17 -END-

1 HOUSE BILL NO. 214

2 INTRODUCED BY KOTTEL, CHRISTIAENS, TUSS, HURDLE, CLARK, HEAVY RUNNER, SIMPKINS,  
3 SQUIRES, GRIMES, PECK, RANEY, AHNER, TREXLER, HERRON, PAVLOVICH, QUILICI, BOHLINGER,  
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8 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO  
9 REGISTRATION OF SEXUAL OFFENDERS; EXTENDING REGISTRATION REQUIREMENTS AND  
10 EMPLOYMENT RESTRICTIONS TO CERTAIN VIOLENT OFFENDERS; MAKING REGISTRATION OF VIOLENT  
11 OFFENDERS MANDATORY; REVISING THE DEFINITION OF SEXUAL OFFENSE FOR PURPOSES OF  
12 REGISTRATION; REVISING THE PROCEDURES FOR REGISTRATION; MAKING REGISTRATION A LIFETIME  
13 REQUIREMENT; INCREASING THE PENALTY FOR FAILURE TO REGISTER; AUTHORIZING RELEASE TO THE  
14 PUBLIC AND OTHER LAW ENFORCEMENT AGENCIES OF REGISTRATION INFORMATION NECESSARY FOR  
15 PUBLIC PROTECTION; ~~PROVIDING IMMUNITY FOR LAW ENFORCEMENT AGENCIES FOR THE RELEASE~~  
16 ~~OR FAILURE TO RELEASE REGISTRATION INFORMATION; AND~~ AMENDING SECTIONS 44-5-301,  
17 46-18-201, 46-18-254, 46-18-255, 46-23-501, 46-23-502, 46-23-503, 46-23-504, 46-23-505,  
18 46-23-506, AND 46-23-507, MCA; ~~AND PROVIDING A RETROACTIVE APPLICABILITY DATE.~~"

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25 ~~(a) Whenever a record or index is compiled by name or universal identifier from a manual or~~  
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27 ~~available to the public.~~

28 ~~(b) Whenever the conviction record reflects only misdemeanors or deferred prosecutions and~~  
29 ~~whenever there are no convictions, except for traffic, regulatory, or fish and game offenses for a period~~  
30 ~~of 5 years from the date of the last conviction, no record or index may be disseminated pursuant to~~

1 ~~subsection (1)(a). However, the original documents are available to the public from the originating criminal~~  
 2 ~~justice agency.~~

3 ~~(2) All public criminal justice information is available from the agency that is the source of the~~  
 4 ~~original documents and that is authorized to maintain the documents according to applicable law. These~~  
 5 ~~documents shall must be open, subject to the restrictions in this section, during the normal business hours~~  
 6 ~~of the agency. A reasonable charge may be made by a criminal justice agency for providing a copy of public~~  
 7 ~~criminal justice information.~~

8 ~~(3) In addition to any other information authorized to be released under this section, a law~~  
 9 ~~enforcement agency is authorized to release relevant information that is necessary to protect the public,~~  
 10 ~~as provided under [section 12]."~~

11  
 12 **Section 1.** Section 46-18-201, MCA, is amended to read:

13 **"46-18-201. Sentences that may be imposed.** (1) Whenever a person has been found guilty of an  
 14 offense upon a verdict or a plea of guilty, the court may:

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

20 (i) jail base release;

21 (ii) jail time not exceeding 180 days;

22 (iii) conditions for probation;

23 (iv) restitution;

24 (v) payment of the costs of confinement;

25 (vi) payment of a fine as provided in 46-18-231;

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

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

28 (ix) with the approval of the facility or program, an order that the offender ~~to~~ be placed in a  
 29 community corrections facility or program as provided in 53-30-321;

30 (x) community service;



1 (xi) home arrest as provided in Title 46, chapter 18, part 10;

2 (xii) any other reasonable conditions considered necessary for rehabilitation or for the protection  
3 of society; or

4 (xiii) any combination of ~~the above~~ subsections (1)(a)(i) through (1)(a)(xii).

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

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

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

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

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

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

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

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

25 (4) Except as provided in 45-9-202 and 46-18-222, the imposition or execution of the first 2 years  
26 of a sentence of imprisonment imposed under the following sections may not be deferred or suspended:  
27 45-5-103, 45-5-202(3) relating to aggravated assault, 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-502(3),  
28 45-5-503(2) and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(4), and 45-9-103(2).

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

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

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

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

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

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

21 **Section 2.** Section 46-18-254, MCA, is amended to read:

22 "**46-18-254. Release of sexual or violent offender -- duties of court and department.** A sexual or  
23 violent offender must be informed in writing at the time of sentencing of the duty to register under  
24 46-18-255; Title 46, chapter 23, part 5; and this section by the court in which the offender is sentenced.  
25 The department of corrections and human services shall obtain the address ~~where~~ at which the person  
26 expects to reside upon release or discharge or suspension of the person's sentence. The department of  
27 corrections and human services shall inform the appropriate law enforcement agency having local  
28 jurisdiction where the person expects to reside."  
29

30 **Section 3.** Section 46-18-255, MCA, is amended to read:

1           **"46-18-255. Sentence upon conviction -- restriction on employment.** A judge sentencing a person  
 2 upon conviction of a sexual or violent offense shall, as a condition to probation, parole, or deferment or  
 3 suspension of sentence, impose upon the defendant reasonable employment or occupational prohibitions  
 4 and restrictions designed to protect the class or classes of persons containing the likely victims of further  
 5 offenses by the defendant."

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

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

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

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

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

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

18           (3) "Sexual offense" means:

19           (a) any violation of 45-5-502(3), 45-5-503, 45-5-504(2)(C), ~~45-5-505~~, 45-5-505 (AS THAT  
 20 SECTION PERTAINS TO DEVIATE SEXUAL CONDUCT WITH AN ANIMAL AS DESCRIBED IN 45-2-101),  
 21 45-5-507 (unless the act occurred between two consenting persons 16 years of age or older), or 45-5-625;  
 22 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           (4) "Violent offense" means:

26           (a) any violation of 45-5-102, 45-5-103, 45-5-202, 45-5-302, 45-5-303, 45-5-401, or 45-6-103;  
 27 or

28           (b) any violation of a law of another state or the federal government reasonably equivalent to a  
 29 violation listed in subsection (4)(a)."

30

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

2           **"46-23-503. Release of sexual or violent offender from place of confinement -- duties of official**  
3 **in charge.** A sexual or violent offender who is released from the custody of the department of corrections  
4 and human services or the department of family services must be informed in writing prior to release of ~~his~~  
5 the duty to register under 46-18-254, 46-18-255, and this part by the official in charge of the place of  
6 confinement. The official shall obtain the address ~~where~~ at which the person expects to reside upon ~~his~~ the  
7 person's release and report the address to the department of corrections and human services. The  
8 department shall inform the appropriate law enforcement agency having local jurisdiction where the person  
9 expects to reside."

10  
11           **Section 7.** Section 46-23-504, MCA, is amended to read:

12           **"46-23-504. Duty Persons required to register -- procedure.** (1) A sexual or violent offender shall,  
13 within 14 days of ~~coming into~~ conviction or release from prison or within 14 days of entering a county ~~in~~  
14 ~~which he resides or is temporarily domiciled~~ of this state for the purpose of residing or setting up a  
15 temporary domicile for 14 days or more, register, as required under 46-18-254, 46-18-255, and this part,  
16 with the chief of police of the municipality or the sheriff of the county if ~~he~~ the offender resides in an area  
17 other than a municipality.

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

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

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

28  
29           **Section 8.** Section 46-23-505, MCA, is amended to read:

30           **"46-23-505. Change Notice of change of address -- duty to inform -- forwarding of information.**

1 If a person required to register under 46-18-254, 46-18-255, and this part changes his residence, ~~he~~ the  
 2 person shall within 10 days give written notification of ~~his~~ the person's new address to the law  
 3 enforcement agency with whom ~~he~~ the person last registered. The law enforcement agency shall, within  
 4 3 days after receipt of ~~such~~ the information, forward it to the department, the department of justice, and  
 5 the local law enforcement agency having jurisdiction over the new place of residence and shall forward a  
 6 copy of the statement, fingerprints, and photographs of the person to the local law enforcement agency  
 7 having jurisdiction over the new place of residence."

8  
 9 **Section 9.** Section 46-23-506, MCA, is amended to read:

10 "**46-23-506. Duration of registration.** (1) A person required to register under 46-18-254,  
 11 46-18-255, and this part shall comply with 46-18-254, 46-18-255, and this part for the remainder of the  
 12 person's life, except as provided in subsection (2) of this section or during a period of 10 years after  
 13 conviction, if not imprisoned during that period. If a person required to register under 46-18-254,  
 14 46-18-255, and this part is imprisoned during the initial 10-year period, he shall comply with the provisions  
 15 of 46-18-254, 46-18-255, and this part for a period of 10 years after release from prison time during which  
 16 the person is in prison.

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

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

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

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

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

2           "**46-23-507. Penalty.** A sexual or violent offender who knowingly fails to register under 46-18-254,  
3 46-18-255, and this part ~~may shall~~ **MAY** be sentenced to a term of imprisonment ~~imprisoned in the state~~  
4 ~~prison for a term~~ **SENTENCED TO A TERM OF IMPRISONMENT** of not less than ~~90 days or a fine not to~~  
5 ~~exceed \$250, or both 2 years or more than 5 years or may be fined not more than \$10,000, or both."~~

6  
7           ~~**NEW SECTION. Section 12. Sexual or violent offenders—release of information to public—when**~~  
8 ~~**authorized—immunity.** (1) A law enforcement agency is authorized to release relevant and necessary~~  
9 ~~information regarding sexual or violent offenders registered under 46-18-254, 46-18-255, and this part to~~  
10 ~~the public when the release of information is necessary for public protection.~~

11           ~~(2) A governmental entity and its employees, as defined in 2-9-101, are immune from civil liability~~  
12 ~~for damages for any discretionary decision to release relevant and necessary information, unless it is shown~~  
13 ~~that the governmental entity or its employees acted with gross negligence or in bad faith. The~~  
14 ~~authorization and immunity in this section apply to information regarding a person required to register under~~  
15 ~~46-18-254, 46-18-255, and this part. The immunity provided under this section applies to the release of~~  
16 ~~relevant information to other governmental entities and employees and to the general public.~~

17           ~~(3) Except as otherwise provided by law, this section may not impose liability upon a governmental~~  
18 ~~entity or its employees for failing to release information as provided in subsection (2).~~

19           ~~(4) Information authorized to be released under this section is public criminal justice information~~  
20 ~~as defined in 44-5-103.~~

21  
22           ~~**NEW SECTION. SECTION 11. DISSEMINATION OF INFORMATION IN REGISTER. INFORMATION**~~  
23 ~~**IN THE REGISTER MAINTAINED UNDER 46-18-254 AND THIS PART IS CONFIDENTIAL CRIMINAL JUSTICE**~~  
24 ~~**INFORMATION, AS DEFINED IN 44-5-103, EXCEPT THAT:**~~

25           ~~**(1) THE NAME OF A REGISTERED SEXUAL OFFENDER IS PUBLIC CRIMINAL JUSTICE**~~  
26 ~~**INFORMATION, AS DEFINED IN 44-5-103; AND**~~

27           ~~**(2) BEFORE RELEASING FROM A STATE PRISON AN INMATE WHO IS A SEXUAL OFFENDER, IF**~~  
28 ~~**THE DEPARTMENT BELIEVES THAT RELEASE OF INFORMATION CONCERNING THE INMATE IS**~~  
29 ~~**NECESSARY FOR PUBLIC PROTECTION, THE DEPARTMENT SHALL PETITION THE DISTRICT COURT FOR**~~  
30 ~~**THE JUDICIAL DISTRICT IN WHICH THE PRISON IS LOCATED OR FOR THE JUDICIAL DISTRICT IN WHICH**~~

1 THE INMATE INTENDS TO RESIDE FOR AN ORDER ALLOWING THE DEPARTMENT TO RELEASE  
2 RELEVANT AND NECESSARY REGISTER INFORMATION REGARDING THE INMATE TO THE PUBLIC. THE  
3 COURT SHALL GRANT THE ORDER IF THE COURT FINDS THAT THE INFORMATION IS NECESSARY FOR  
4 PUBLIC PROTECTION.

5  
6 NEW SECTION. Section 12. Codification instruction. [Section ~~42~~ 11] is intended to be codified  
7 as an integral part of Title 46, chapter 23, part 5, and the provisions of Title 46, chapter 23, part 5, apply  
8 to [section ~~42~~ 11].

9  
10 NEW SECTION. ~~Section 14. Two thirds vote required.~~ ~~Because [section 12] limits governmental~~  
11 ~~liability, Article II, section 18, of the Montana constitution requires a vote of two thirds of the members of~~  
12 ~~each house of the legislature for passage.~~

13  
14 NEW SECTION. ~~Section 15. Retroactive applicability.~~ ~~[This act] applies retroactively, within the~~  
15 ~~meaning of 1-2-109, to persons convicted of a sexual or violent offense before [the effective date of this~~  
16 ~~act], as well as to persons convicted of a sexual or violent offense after [the effective date of this act],~~  
17 ~~regardless of the date of the crime.~~

18 -END-