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House BILL NO. 313
Kitzhaber

INTRODUCED BY

A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING RESTRICTIONS ON THE PLACE OF RESIDENCE AFTER RELEASE OF SEXUAL OR VIOLENT OFFENDERS; AMENDING SECTIONS 46-18-202, 46-18-254, 46-18-255, 46-23-215, 46-23-218, 46-23-412, 46-23-421, 46-23-503, 46-23-505, AND 46-23-1002, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 46-18-202, MCA, is amended to read:

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

- (a) prohibition of the defendant's holding public office;
- (b) prohibition of the defendant's owning or carrying a dangerous weapon;
- (c) restrictions on the defendant's freedom of association;
- (d) restrictions on the defendant's freedom of movement;
- (e) reasonable restrictions on place of residence after release from custody of any sexual or violent offender, as defined in 46-23-502, that are designed to protect the class or classes of persons containing the likely victims of further offenses by the defendant, such as but not limited to distance restrictions on residence within a designated proximity to a school, day-care center, public park, or other recreational facility frequented by minors;

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

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

1 a statement of the reasons for the restriction.

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

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

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

13 **"46-18-254. Release of sexual or violent offender -- duties of court and department.** A sexual or
14 violent offender must be informed in writing at the time of sentencing of the duty to register under
15 46-18-255; Title 46, chapter 23, part 5; and this section by the court in which the offender is sentenced.
16 The department of corrections shall obtain the address at which the person expects to reside upon release
17 or discharge or suspension of the person's sentence. The department of corrections shall inform the
18 appropriate law enforcement agency having local jurisdiction where the person expects to reside and shall
19 verify that the intended place of residence does not violate any residence restriction imposed by a court
20 under 46-18-202."
21

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

23 **"46-18-255. Sentence upon conviction -- restriction on employment and residence.** A judge
24 sentencing a person upon conviction of a sexual or violent offense shall, in addition to any restrictions on
25 residence imposed under 46-18-202, as a condition to probation, parole, or deferment or suspension of
26 sentence, impose upon the defendant reasonable employment or occupational prohibitions and restrictions
27 designed to protect the class or classes of persons containing the likely victims of further offenses by the
28 defendant, such as but not limited to distance restrictions on residence within a designated proximity to
29 a school, day-care center, public park, or other recreational facility frequented by minors."
30

1 **Section 4.** Section 46-23-215, MCA, is amended to read:

2 **"46-23-215. Conditions of parole.** (1) A prisoner while on parole remains in the legal custody of
3 the institution from which the prisoner was released but is subject to the orders of the board.

4 (2) (a) When an order for parole is issued, it must recite the conditions of parole. An order for
5 parole may include reasonable restrictions on place of residence after release that are designed to protect
6 the class or classes of persons containing the likely victims of further offenses by the defendant, such as
7 but not limited to distance restrictions on residence within a designated proximity to a school, day-care
8 center, public park, or other recreational facility frequented by minors. A sexual or violent offender, as
9 defined in 46-23-502, may not be released into a community that does not have appropriate treatment
10 available for the type of offense committed.

11 (b) If restitution was imposed as part of the sentence under 46-18-201, the order of parole must
12 contain a condition to pay restitution to the victim.

13 (c) If a restriction on residence was imposed as part of the sentence under 46-18-202, the order
14 of parole must contain conditions restricting residence that are designed to protect the class or classes of
15 persons containing the likely victims of further offenses by the defendant, such as but not limited to
16 distance restrictions on residence within a designated proximity to a school, day-care center, public park,
17 or other recreational facility frequented by minors. A sexual or violent offender, as defined in 46-23-502,
18 may not be released into a community that does not have appropriate treatment available for the type of
19 offense committed.

20 (d) An order for parole or any parole agreement signed by a prisoner may contain a clause waiving
21 extradition.

22 (3) Whenever a prisoner in the Montana state prison has been approved for parole on condition that
23 the prisoner obtain employment or secure suitable living arrangements or on any other condition that is
24 difficult to fulfill while incarcerated, the warden may grant the prisoner a furlough, not to exceed 10 days,
25 for purposes of fulfilling the condition. While on furlough, the prisoner remains in the legal custody of the
26 prison and is subject to all other conditions recited by the board."
27

28 **Section 5.** Section 46-23-218, MCA, is amended to read:

29 **"46-23-218. Authority of board to adopt rules.** The board may adopt any other rules it considers
30 proper or necessary with respect to the eligibility of prisoners for parole, the conduct of parole hearings,

1 and conditions to be imposed upon parolees, including reasonable residence restrictions on sexual or violent
2 offenders, such as but not limited to distance restrictions on residence within a designated proximity to a
3 school, day-care center, public park, or other recreational facility frequented by minors. A sexual or violent
4 offender, as defined in 46-23-502, may not be released into a community that does not have appropriate
5 treatment available for the type of offense committed."

6
7 **Section 6.** Section 46-23-412, MCA, is amended to read:

8 **"46-23-412. Board's action on application.** The board shall approve or deny the application of each
9 prisoner after careful study of the prisoner's release plans, the prisoner's criminal history, restrictions on
10 residence of sexual or violent offenders, and all other pertinent case material. The board shall grant the
11 applicant a hearing consistent with the procedural rules adopted by it for parole hearings pursuant to
12 46-23-218."

13
14 **Section 7.** Section 46-23-421, MCA, is amended to read:

15 **"46-23-421. Responsibility of department and supervising agent.** The department ~~shall be~~ is
16 responsible for the activities of a prisoner participating in a supervised release program under this part. The
17 department may delegate jurisdictional supervision to a supervising agent who ~~shall be~~ is responsible for
18 the activities of the prisoner during ~~his~~ the supervised release, including compliance with residence
19 restrictions on sexual or violent offenders. A sexual or violent offender, as defined in 46-23-502, may not
20 be released into a community that does not have appropriate treatment available for the type of offense
21 committed."

22
23 **Section 8.** Section 46-23-503, MCA, is amended to read:

24 **"46-23-503. Release of sexual or violent offender from place of confinement -- duties of official**
25 **in charge.** A sexual ~~of~~ or violent offender who is released from the custody of the department of corrections
26 must be informed in writing prior to release of the duty to register under 46-18-254, 46-18-255, and this
27 part by the official in charge of the place of confinement. The official shall obtain the address at which the
28 person expects to reside upon the person's release and report the address to the department of corrections.
29 The department shall inform the appropriate law enforcement agency having local jurisdiction where the
30 person expects to reside and shall verify that the intended place of residence does not violate any residence

1 restriction imposed by a court under 46-18-202."

2

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

4 **"46-23-505. Notice of change of address -- duty to inform -- forwarding of information.** If a person
5 required to register under 46-18-254, 46-18-255, and this part changes residence, the person shall within
6 10 days give written notification of the person's new address to the law enforcement agency with whom
7 the person last registered. The law enforcement agency shall, within 3 days after receipt of the information,
8 forward it to the department, the department of justice, and the local law enforcement agency having
9 jurisdiction over the new place of residence and shall forward a copy of the statement, fingerprints, and
10 photographs of the person to the local law enforcement agency having jurisdiction over the new place of
11 residence. The department shall verify that the intended place of residence does not violate any residence
12 restriction imposed by a court under 46-18-202. A sexual or violent offender may not be released into a
13 community that does not have appropriate treatment available for the type of offense committed."

14

15 **Section 10.** Section 46-23-1002, MCA, is amended to read:

16 **"46-23-1002. Powers of the department.** The department may:

- 17 (1) appoint probation and parole officers and other employees necessary to administer this part;
- 18 (2) authorize probation and parole officers to carry firearms, including concealed firearms, when
19 necessary. The department shall adopt rules establishing firearms training requirements and procedures for
20 authorizing the carrying of firearms.
- 21 (3) adopt rules for the conduct of persons placed on parole or probation, including reasonable
22 restrictions on place of residence after release from custody of any sexual or violent offender, as defined
23 in 46-23-502, that are designed to protect the class or classes of persons containing the likely victims of
24 further offenses by the defendant, such as but not limited to distance restrictions on residence within a
25 designated proximity to a school, day-care center, public park, or other recreational facility frequented by
26 minors. A sexual or violent offender, as defined in 46-23-502, may not be released into a community that
27 does not have appropriate treatment available for the type of offense committed. ~~except that the~~ The
28 department may not make any rule conflicting with conditions of parole imposed by the board or conditions
29 of probation imposed by a court."

30

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0313, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

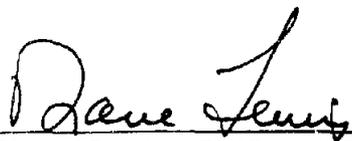
A bill for an act authorizing restrictions on the place of residence after release of sexual or violent offenders; and providing an immediate effective date.

ASSUMPTIONS:

1. The Department of Corrections (DOC) currently performs over 1,500 pre-sentence investigation reports annually. These reports inform the District Court judge of a variety of issues related to the offender, including information relative to their residence. These pre-sentence investigations take an average of 7.5 hours to complete. The additional requirements outlined by this bill would require additional work hours. The DOC is unable to estimate the number of offenders that the court would impose residential restrictions on; therefore, it is unable to quantify the number of additional hours required to perform the necessary investigations.
2. The DOC currently performs placement investigations on all offenders paroled from Montana State Prison, the Women's Prison or pre-release facilities. These investigations are designed to advise the Board of Pardons and Parole (BOPP) of the appropriateness of the parolee's proposed residence.
3. If the BOPP deems it necessary and appropriate to require sex offender counseling, the placement investigation includes the availability and willingness of a provider to provide such treatment.
4. This bill will significantly impact the ability of the BOPP and the DOC to return offenders to their communities (20 sex offenders and 104 violent offenders were paroled in 1995). This could increase the length of incarceration for these offenders. The DOC is not able to determine the costs associated with this increase in incarceration.

FISCAL IMPACT:

The DOC is unable to estimate the fiscal impact of this bill because it is unknown to what degree the Courts would impose residential restrictions on sexual and violent offenders. There would likely be increased costs in two areas: costs of investigations and costs of extended incarceration for sexual and violent offenders.

 1-28-97

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

SAM KITZENBERG, PRIMARY SPONSOR DATE

Fiscal Note for HB0313, as introduced

HB 313