



**DEPARTMENT OF CORRECTIONS
PROBATION AND PAROLE DIVISION
OPERATIONAL PROCEDURE**

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| Procedure No.: PPD 1.5.1000 | Subject: SEXUAL AND VIOLENT OFFENDER REGISTRATION AND LEVEL DESIGNATION |
| Reference: DOC 1.5.10; DOC 1.5.13; 45-5-513, MCA; 46-18-201, MCA; 46-18-203, MCA; 46-23-501 through 509, MCA; 53-1-203, MCA; <i>State v. Sample</i> | Page 1 of 8 |
| Effective Date: 02/11/16 | Revision Dates: 07/18/16; 11/13/17 |
| Signature / Title: /s/ Kevin Olson, Probation and Parole Division Administrator | |

I. PURPOSE:

Probation and Parole Division employees will enforce the applicable Montana statutes in the release, registration, and notification requirements for sexual and violent offenders. In addition, established procedures will be followed for requesting a sexual offender level designation, if not previously provided by the courts.

II. DEFINITIONS:

High-Risk Sexual Offender – A person 18 years of age or older who is designated as a sexually violent predator under §46-23-509, MCA, and has committed a sexual offense against a victim 12 years of age or younger.

PPD-Probation and Parole Division – The Division oversees the Probation & Parole regional offices, interstate transfers, and the facilities providing assessments and sanctions, prerelease, and treatment services.

Registration Agency – The police department of the city or town in which an offender resides; or the sheriff's office of the county in which an offender resides, if the residence is in a place other than a city or town.

Release from Custody – Placement of an offender outside of the confines of a state correctional facility or PPD program/facility, i.e. parole, probation, conditional release, discharge, in or out of the state of Montana.

Residence – The location at which a person regularly resides, regardless of the number of days or nights spent at that location, that can be located by a street address, including a house, apartment building, motel, hotel, or recreational or other vehicle. The term does not mean a homeless shelter.

Sexual Offender Evaluator – A person qualified under Administrative Rules of Montana §20.7.Subchapter 3 to conduct psychosexual evaluations of sexual offenders and sexually violent predators.

Sexual Offender Level Designation – A level given to a person convicted of a sexual offense that indicates the risk of a repeated sexual offense by that person and the threat posed to public safety (also referred to as “tier-level designation”):

Level 1 – the risk of a repeat sexual offense is low;

Level 2 – the risk of a repeat sexual offense is moderate;

Level 3 – the risk of a repeat sexual offense is high, there is a threat to public safety, and the sexual offender evaluator believes that the offender is a sexually violent predator.

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Sexual Offense – Any violation of, or attempt, solicitation, or conspiracy to commit a violation of the offenses contained in the definition under §46-23-502(9)(a), MCA; any violation of a law of another state, a tribal government, or the federal government that is reasonably equivalent to a violation listed in (9)(a) or for which the offender was required to register after an adjudication or conviction.

Sexual or Violent Offender – A person who has been convicted of or, in youth court, found to have committed or been adjudicated for a sexual or violent offense.

Transient – An offender who has no residence.

Violent Offense – Any violation of, or attempt, solicitation, or conspiracy to commit a violation of the offenses contained in the definition under §46-23-502(13)(a), MCA; any violation of a law of another state, a tribal government, or the federal government reasonably equivalent to a violation listed in (13)(a).

III. PROCEDURES:

A. APPLICABLE OFFENSES

1. The Montana Department of Justice (DOJ) maintains the Sexual/Violent Offender Registry (SVOR). Information contained on the registry must be disseminated according to §46-23-508, MCA.

2. **Montana Code Annotated Sexual Offender Registration Applicable Offenses**

Conviction on or after 7/1/1989:

- §45-5-301 Unlawful Restraint (victim is <18 and offender is not parent of victim)
- §45-5-302 Kidnapping (victim is <18 and offender is not parent of victim)
- §45-5-303 Aggravated Kidnapping (victim is <18 and offender is not parent of victim)
- §45-5-502(3) Sexual Assault (victim is <16 and offender is 3 or more years older)
- §45-5-503 Sexual Intercourse w/out Consent
- §45-5-504(1) Indecent Exposure (1st conviction-victim is <18 and offender is 18 or older)
- §45-5-504(2)(c) Indecent Exposure (3rd or subsequent conviction)
- §45-5-507 Incest (victim is <18 and offender is 3 or more years older)
- §45-5-603(1)(b) Aggravated Promotion of Prostitution (victim is <18)
- §45-5-625 Sexual Abuse of Children

Conviction on or after 5/11/2007:

- §45-5-507(5) Incest (victim is 12 or younger and offender is 18 or older at time of offense)
- §45-5-601(3) Prostitution (victim is <18 and offender is 18 or older at time of offense)
- §45-5-602(3) Promoting Prostitution (victim is <12 and offender is 18 or older at time of offense)
- §45-5-603(2)(b) Aggravated Promotion of Prostitution (victim is <12 and offender is 18 or older at time of offense)

Conviction between 7/1/2013 and 7/1/2015:

- §45-5-310 Sexual Servitude of Child
- §45-5-311 Patronizing a Child

Conviction on or after 4/2/2015:

- §45-5-502 Sexual Assault (offender is professional licensed under Title 37 and offense committed during treatment, consultation, interview, or evaluation of a person's physical or mental condition, ailment, disease, or injury)

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Conviction on or after 7/1/2015:

- §45-5-704 Sexual Servitude
- §45-5-705 Patronizing Victim of Sexual Servitude

Conviction on or after 10/1/2015:

- §45-5-504(3) Indecent Exposure (victim is <16 and offender is more than 4 years older)

Conviction on or after 10/1/2017:

- §45-5-503(1) Sexual Intercourse without Consent
- §45-5-503(3) Sexual Intercourse without Consent (victim is <16 and offender is more than 4 years older)
- §45-5-503(4) Sexual Intercourse without Consent (victim is 12 or younger and offender is 18 or older at time of offense)
- §45-5-508 Aggravated Sexual Intercourse without Consent

- a. Sexual offenders sentenced by any state or federal court on or after July 1, 1989, or who, as a result of sentencing, are under the supervision of the Department on or after July 1, 1989 are required to register with the DOJ's SVOR.
- b. An offender convicted of an applicable offense is required to register for life.
 - i. Except for certain circumstances, [see §46-23-506(5)]:
 - 1) a Level 1 sexual offender may return to the court after 10 years and request this requirement be removed.
 - 2) a Level 2 sexual offender may return to the court after 25 years and request this requirement be removed.
 - ii. Release from probation or parole does not automatically relieve the offender of the duty to register.
 - iii. The DOJ will review the cases of those offenders convicted of Sexual Servitude of Child (§45-5-310, MCA, repealed 7/1/2015) and/or Patronizing a Child (§45-5-311, MCA, repealed 7/1/2015) to determine if registration is still required.
- c. Offenders ordered by the court to register regardless of the offense are no longer required to register once their sentence is discharged.

3. Montana Code Annotated Violent Offender Registration Applicable Offenses

- §45-5-102 Deliberate Homicide
- §45-5-103 Mitigated Deliberate Homicide
- §45-5-202 Aggravated Assault
- §45-5-206 Partner/Family Member Assault (3rd or subsequent offense)
- §45-5-302 Kidnapping (if victim is not a minor)
- §45-5-303 Aggravated Kidnapping (if victim is not a minor)
- §45-5-401 Robbery
- §45-6-103 Arson
- §45-5-210(1)(b) Assault on a Peace Officer (reasonable apprehension of serious bodily injury)
- §45-5-210(1)(c) Assault on a Peace Officer (bodily injury with a weapon)
- §45-5-210(1)(d) Assault on a Peace Officer (serious bodily injury)
- §45-5-212 Assault on a Minor
- §45-5-213 Assault With a Weapon
- §45-9-132 Operation of a Clandestine Lab (**conviction on or after 10/1/2003**)

Conviction on or after 5/19/2017:

- §45-5-215 Strangulation of a Partner or Family Member

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- a. Violent offenders sentenced by any state or federal court on or after October 1, 1995, or who, as a result of sentencing, are under the supervision of the Department on or after October 1, 1995 are required to register with the DOJ.
 - b. A violent offender is required to register for 10 years following the date of sentencing or release from a state correctional facility, whichever is later; however, this does not include PPD programs/facilities.
 - i. If the offender is convicted of failing to register or maintain registration, or another felony offense during this time, he/she will be required to register for life.
 - ii. Offenders who were on the DOJ's Violent Offender Registry prior to October 1, 2005, will not be required to register after 10 years.
 - iii. Any offender who is on the Registry after October 1, 2005, will not be relieved of the duty to register until a petition is filed with the sentencing court and an order is granted by the court relieving the offender of registration.
 - iv. Being released from probation or parole does not automatically relieve the offender of the duty to register.
 - c. Offenders ordered by the court to register regardless of the offense are no longer required to register once their sentence is discharged.
4. Crimes of Attempt, Solicitation, Conspiracy, or Accountability: The definitions of sexual offense and violent offense include the crimes of attempt (§45-4-103, MCA), solicitation (§45-4-101, MCA), and conspiracy (§45-4-102, MCA); therefore, offenders who are found guilty of the crimes of attempt, solicitation, or conspiracy of one of the qualifying offenses are required to register as a sexual or violent offender [§§46-23-502(9) and (13), MCA]. The Attorney General's Office also considers accountability an offense for which registration is required (§§45-2-301 and 302, MCA).
 5. Deferred Sentences: When an offender has served his/her deferred sentence, the offender is not automatically removed from the SVOR. The DOJ requires a dismissal order before the offender is removed.
 6. DNA Testing/Collection: Effective October 1, 2013, an offender required to register as a sexual or violent offender under §46-23-504, MCA, shall provide a biological sample for DNA analysis (§44-6-103, MCA).
 7. Mandated Continuous Satellite-Based Monitoring (§46-23-1010, MCA):
 - a. Some convictions of applicable offenses, require an offender to participate in continuous satellite-based monitoring when released on parole.
 - b. Level 3 Sex Offenders: If a sexual offender committed his/her offense on or after July 1, 2005, and is designated as a Level 3 sexual offender by the court, the sentencing judge shall, as a condition of probation, parole, conditional release, or deferment or suspension of sentence, require the offender to participate in the program for the continuous satellite-based monitoring of sexual offenders (§46-18-206, MCA).
 - c. An offender on continuous satellite-based monitoring shall pay to the Department or designee a supervisory fee of no more than \$4000 a year (§46-23-1031, MCA). The offender may complete and submit *PPD 1.5.100(B) GPS Fee Waiver Request*.

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B. PROCEDURES AND RESPONSIBILITIES FOR REGISTRATION OF SEXUAL AND VIOLENT OFFENDERS

1. Registration of Offenders Due to be Released from Custody:
 - a. At least 10 days prior to the release of custody of a sexual/violent offender, the IPPO or Prerelease Liaison will:
 - i. use *PPD 1.5.100(A) Duty to Register Letter* to inform the offender in writing of his/her statutory obligation to register with the appropriate registration agency (agency) within three (3) business days of arrival in a city or county. Offender must read and sign *Letter*;
 - ii. complete the *SVOR Registration Form* including the address at which the offender intends to reside and ensuring offender has initialed and signed the 3rd page;
 - 1) when applicable for high-risk sexual offenders being released to Probation & Parole supervision, IPPO/PRC Liaison will verify the offender's residence and place of employment comply with court-ordered conditions and/or the requirements of §45-5-513, MCA.
 - iii. send the *SVOR Registration Form* and a copy of the *Duty to Register Letter* to DOJ. If emailing forms to dojsvor@mt.gov, email subject line must have the offender's registration type, name, and date of birth.
 - iv. provide copies of the forms to the agency where the offender intends to reside.
 - v. if an offender registered previously with the local agency upon arrival at a prerelease, inform the offender using *PPD 1.5.100(A) Duty to Register Letter* to re-contact the local agency within three (3) business days to inform officials of the offender's intended address change.

PRC Liaison
 - vi. verify that a DNA sample has been collected (see *DOC Policy 1.5.13, DNA Testing/Collection of Biological Samples*).

IPPO/PRC Liaison
 - b. Offenders failing to register may be prosecuted under §46-23-507, MCA, and will be subject to disciplinary action.
2. Registration of Offenders under Probation & Parole (P&P) Supervision:

P&P Officer

 - a. P&P Officers will verify that each sexual/violent offender remanded to their supervision has complied with the statutory obligation to register with the appropriate agency within three (3) business days of arrival. The Officer can do this through written documentation, a phone call, or DOJ's SVOR registry on the internet. This contact will be documented in offender's OMIS chronological history. The Officer must also record the intended address of the offender.
 - i. when applicable for high-risk sexual offenders, P&P Officer will verify the offender's residence and place of employment comply with court-ordered conditions and/or the requirements of §45-5-513, MCA.

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- b. If the offender has not registered, the P&P Officer will follow the procedures outlined in Section B.1 above.
 - c. The offender must register a change in residence, name, student, employment, or transient status with the agency last registered with, in person, within three (3) business days. The agency must be contacted to verify the offender has registered these changes.
 - i. Offender must complete *SVOR-Change of Information Form* to inform the DOJ of any changes in status.
 - ii. when applicable for high-risk sexual offenders, P&P Officer will verify the offender’s residence and place of employment comply with court-ordered conditions and/or the requirements of §45-5-513, MCA.
 - iii. P&P Officer will forward a copy to the DOJ. If e-mailing to dojsvor@mt.gov, email subject line must have the offender’s registration type, name, and date of birth.
 - iv. Documentation that these notifications were completed should be maintained in OMIS.
 - d. If an offender fails to register or keep registration current, Officer will complete *P&P 100-1(A) Report of Violation* pursuant to *P&P 100-1 Report of Violation on Probationers and Parolees*. If the offender is residing in a county other than the sentencing county, the Officer will also contact the county attorney of the county where new criminal charges may be pursued.
 - e. Officer will inform offender of the requirement to provide a DNA sample following the procedures of *DOC Policy 1.5.13, DNA Testing/Collection of Biological Samples*.
3. Registration of Offenders Placed in any PPD Program/Facility:
- a. Verification will be made that each sexual/violent offender being referred to or placed in a PPD program/facility has complied with the statutory obligation to register with the appropriate local agency. The Officer can do this through written documentation, a phone call, or DOJ’s SVOR registry on the Internet. This contact will be documented in the offender’s OMIS chronological history.
 - b. If the offender has not registered, the Officer will follow the procedures outlined in Section B.1 above.
 - c. The Officer must notify DOJ of the change in residence status by having the offender complete the *SVOR-Change of Information Form* and forwarding a copy to the DOJ. If e-mailing to dojsvor@mt.gov, email subject line must have the offender’s registration type, name, and date of birth. Documentation that this notification was completed should be maintained in OMIS.
 - d. Verification will be made that a DNA sample has been collected (see *DOC Policy 1.5.13, DNA Testing/Collection of Biological Samples*).
4. Registration of persons moving to Montana on interstate transfer:
- a. The Interstate Compact Section will review all interstate applications coming in to the state of Montana to determine if the

Offender/
P&P Officer

IPPO/PRC Liaison/
P&P Officer

Interstate Section

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offender meets the registration requirements of a sexual or violent offender. If registration is required, the offender shall provide a biological sample for DNA analysis. The supervising Officer will be notified so that these requirements are included in the supervision conditions if the offender is accepted.

- b. If an offender has a tier-level designation from the other state or the federal government, Interstate Section will notify DOJ, which will determine whether to give the offender the level designation assigned by the other state or federal government.
- c. The P&P Officer will be responsible for having the offender complete registration following the procedures outlined in Section B.1 above upon acceptance. P&P Officer

C. SEXUAL OFFENDER LEVEL DESIGNATION OF RISK TO RE-OFFEND

- 1. Notification: A notice indicating the level designation assigned to a sexual offender being released from a state correctional facility will be prepared by prison treatment staff and provided to the DOJ and local agency.
- 2. Request for Designation: When a P&P Officer/IPPO determines that the court did not impose a sexual offender level designation at the time of sentencing on an offender who was sentenced after October 1, 1997 and is required to register with the DOJ as a sexual offender, the P&P Officer/IPPO will research the offender’s file to determine whether a psychosexual evaluation was completed. The evaluation must be completed by a qualified evaluator and recommend a tier-level designation.
 - a. *PPD 1.5.1001(C) Request for Sexual Offender Level Designation* is completed by the P&P Officer/IPPO, noting whether the psychosexual evaluation was completed and the tier-level designation recommended.
 - b. If evaluation was completed, the P&P Officer/IPPO will:
 - i. Review *Request* with the offender and advise that he/she may seek counsel before signing the document.
 - ii. Advise offender that, if he/she objects to the recommended designation, he/she is entitled to a hearing before the court pursuant to §46-23-509, MCA, and has a right to counsel at the hearing.
 - iii. Offender seeks counsel or signs *Request* form agreeing or disagreeing to the tier-level designation.
 - c. *Request for Sexual Offender Level Designation* is submitted to Deputy Chief/POII for review and signature, then forwarded to the County Attorney in the sentencing jurisdiction or the county in which the offender resides. A copy of the *Request* will be placed in offender’s field file and a copy is forwarded to the DOJ’s Prosecution Services Bureau Chief.
 - d. County Attorney files a petition with the sentencing District Court or the District Court for the county in which the offender resides, requesting a tier-level designation be assigned to the offender.
 - e. P&P Officer/IPPO will add tier-level designation to OMIS under Offender Information when notified of the designation given by the court.

E. SEXUAL/VIOLENT OFFENDER REGISTRATION REQUIREMENTS

- 1. The offender must remain aware of continuing registration requirements after his/her period of supervision expires.

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2. A sexual/violent offender must register with the local agency within three (3) business days of entering a county of Montana if he/she:
 - a. will be residing or setting up a temporary residence for 10 days or more or for an aggregate period exceeding 30 days in a calendar year;
 - b. was sentenced for a sexual or violent offense in another state and will reside in Montana for a period of 10 days or more,
 - c. returns to Montana after residing out of state;
 - d. temporarily works or attends school in Montana for a period of 10 days or more; or
 - e. is a transient.
3. If the offender regularly resides in more than one county or city or town, he/she is required to register with the appropriate agency of each county or city or town. The agency will require the offender to provide the locations of all residences and designate one of them as the offender's primary residence.
4. If the offender is a transient, he/she must report monthly, in person, to the agency in the county where he/she is living on the day designated by the agency and during normal business hours.
5. Offenders must appear in person at the agency last registered with and give notice within three (3) business days when changing name, residence, employment, or student or transient status. A post office box is not sufficient unless a street address is also provided. If an offender does not have a street address, he/she must register as a transient and provide a description of the physical location(s) where he/she stays.
 - a. Before the offender moves to another state, he/she must inform the last agency registered with in person of the move to keep their Montana registration file current; and
 - b. He/she must register in the new state within the time frame required by the new state.
 - c. If the offender moves back to Montana, registration is required within three (3) business days.
6. Offenders physically absent from their county of residence for more than 10 consecutive days will register in the county where they are physically located on the 11th day even if they claim to maintain a residence in that county. If offender is present in any subsequent county for more than 24 hours, he/she is required to register in that subsequent county until he/she registers again in his/her county of residence.
7. Registered sexual offenders and violent offenders designated as a Level 1 offender will receive a verification letter in the mail from the Montana DOJ once a year; every 180 days if offender was designated a Level 2 sex offender; or every 90 days if offender was designated a Level 3 sex offender. If the offender has not received an offender verification letter within a year [or within 180 or 90 days (based on Level)], the offender should call (406) 444-2497 (for sexual offender) or (406) 444-9877 (for violent offenders).
 - a. For a transient offender, the DOJ will mail the verification form to the agency with which he/she last registered.
 - b. Offenders will have 10 days to sign the letter before a notary public and return it, in person, to the local agency with which they last registered.
 - c. Offenders are required to provide fingerprints and have a current photograph taken when necessary in order to keep registration current.
8. Failure to register or keep registration current and accurate, may result in conviction of a separate felony offense and a sentence to prison for up to five (5) years, a fine of \$10,000, or both.

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9. The offender must pay for costs associated with registration if able and will be notified of the costs and to what agency they must be paid.

10. Sexual/violent offenders must register in states where they work or attend school.

IV. CLOSING:

Questions concerning this procedure shall be directed to the Deputy Chief or designee, Probation & Parole Bureau Chief, or the Department’s Legal Unit.

V. FORMS:

- PPD 1.5.1000 (A) Duty to Register Letter
- PPD 1.5.1000 (B) GPS Fee Waiver Request
- PPD 1.5.1000 (C) Request for Sexual Offender Level Designation
- SVOR DOJ Change of Information Form
- SVOR DOJ Sexual/Violent Offender Registration Form