



Law and Justice Interim Committee
62nd Montana Legislature

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TO: Members, Law and Justice Interim Committee

FROM: David Niss, Staff Attorney

RE: Montana's Loss of Federal Grant Money Because of the State's Refusal to Implement the Federal Sex Offender Registration and Notification Act

DATE: January 30, 2012

I
Introduction

The staff of the Law and Justice Interim Committee (Committee) was recently informed by the staff of the Montana Board of Crime Control that Montana faces a 10% reduction in federal grant money to implement the federal Sex Offender Registration and Notification Act (SORNA) if the State does not adopt specified changes to the Montana sexual offender registration program. This memorandum explains the history of SORNA and the state's lack of compliance.

II
Discussion

SORNA is part of the federal Adam Walsh Child Protection and Safety Act of 2006 (P.L. 109-248) which requires states to create a sex offender registration system. SORNA requires that states adopt a number of federally mandated changes to state sexual offender registration programs by July 27, 2011, or face a 10% reduction in the Edward Byrne Memorial Justice Assistance Grant (BJAG) money granted to states by the U.S. Department of Justice's Office of Justice Programs to implement the changes. The loss in federal funding would occur when FY2012 grant money is distributed to the states.

SORNA requires that states (1) classify sexual offenders on their propensity to reoffend based only upon the offense that has been committed, (2) lengthen the period of time an offender must remain registered with the state, (3) require that an offender make periodic appearances before a law enforcement agency for verification of certain matters such as where the offender is residing, and (4) impose specified penalties for a

failure to register. As of December 14, 2011, the U.S. Department of Justice reported that only 15 states had substantially implemented SORNA's requirements.

Among the most important federal requirements with which some states, including Montana, have refused to comply is the requirement that states base their categorization of offenders not upon an assessment of the risk that an offenders poses of reoffending but rather upon only the offense committed. Those states, including Montana, claim that the risk assessment method of categorizing offenders is a better method of classification because it is based upon the psychology of each individual offender rather than simply upon the offense committed (whether an offender is categorized as a level I, II, or III offender makes a differences in matters such as how long the offender must remain registered with the state). The federal Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART) under the U.S. Justice Department reports that the current state method of classification of an offender based upon a risk assessment is problematic for at least eleven states. The expense of implementing the federal classification method based only upon the offense committed is also an issue for many states because the federal classification system would add more offenders to the state registry and thereby make the registry more expensive to administer. For Montana, that noncomplying method of offender classification is problematic because the use of the risk assessment method for classification is mandated by statute.

In 2011, legislation was introduced in the Montana House of Representatives at the request of the Montana Department of Justice to amend Montana law to allow compliance with SORNA. House Bill 109 (HB109)(MacDonald) would have amended several sections of law to delete the requirements for a sexual offender evaluation report by a qualified sexual offender evaluator. The bill would have also deleted the authority of the Department of Corrections to designate a classification level for a sexual offender if the sentencing court had failed to do so and would have deleted the requirement for the Department to adopt rules for the qualification of sexual offender evaluators. The House Judiciary Committee tabled the bill at its first hearing because the bill was opposed by numerous witnesses. As a result of the death of HB109, Montana is facing the loss of \$87,600 according to the National Conference of State Legislatures (NCSL).

III Conclusion

Montana, along with many other states, has refused to comply with the federal requirement that a sexual offender be classified for the offender's propensity to reoffend based solely upon the offense for which the offender was sentenced and not upon a risk assessment. Because Montana law requires that the offender be classified based upon a risk assessment, NCSL has reported that Montana will lose \$87,600 in federal grant money in 2012. The soonest that Montana could comply with SORNA is 2013

because the 63rd Legislature would have to make changes to state statutes to allow implementation of SORNA.

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