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INTRODUCED BY _____
(Primary Sponsor)

BY REQUEST OF THE DEPARTMENT OF CORRECTIONS

A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE BOARD OF PSYCHOLOGISTS AND THE BOARD OF SOCIAL WORK EXAMINERS AND PROFESSIONAL COUNSELORS TO ESTABLISH AND MAINTAIN STANDARDS FOR SEXUAL OFFENDER EVALUATORS; AND AMENDING SECTIONS 46-18-111, 46-18-207, AND 46-23-509, MCA."

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

Section 1. Section 46-18-111, MCA, is amended to read:

"46-18-111. Presentence investigation -- when required. (1) (a) Upon the acceptance of a plea or upon a verdict or finding of guilty to one or more felony offenses, the district court shall direct the probation officer to make a presentence investigation and report. The district court shall consider the presentence investigation report prior to sentencing.

(b) If the defendant was convicted of an offense under 45-5-502, 45-5-503, 45-5-504, 45-5-505, 45-5-507, 45-5-625, 45-5-627, 45-5-601(3), 45-5-602(3), or 45-5-603(2)(c) or if the defendant was convicted under 46-23-507 and the offender was convicted of failure to register as a sexual offender pursuant to Title 46, chapter 23, part 5, the investigation must include a psychosexual evaluation of the defendant and a recommendation as to treatment of the defendant in the least restrictive environment, considering the risk the defendant presents to the community and the defendant's needs, unless the defendant was sentenced under 46-18-219. The evaluation must be completed by a ~~sex~~ sexual offender ~~therapist~~ evaluator who is a member of ~~the Montana sex offender treatment association or has comparable credentials acceptable to the department of labor and industry~~ meets the standards established by the board of psychologists provided for in 2-15-1741 or the board of social work examiners and professional counselors provided for in 2-15-1744. The standards established by the board of psychologists or the board of social work examiners and professional counselors must be based on best practices as established by the Montana sex offender treatment association and the association for the treatment of sexual abusers. The psychosexual evaluation must be made available to the county attorney's



1 office, the defense attorney, the probation and parole officer, and the sentencing judge. All costs related to the
2 evaluation must be paid by the defendant. If the defendant is determined by the district court to be indigent, all
3 costs related to the evaluation are the responsibility of the district court and must be paid by the county or the
4 state, or both, under Title 3, chapter 5, part 9.

5 (c) When, pursuant to 46-14-311, the court has ordered a presentence investigation and a report
6 pursuant to this section, the mental evaluation required by 46-14-311 must be attached to the presentence
7 investigation report and becomes part of the report. The report must be made available to persons and entities
8 as provided in 46-18-113.

9 (2) The court shall order a presentence investigation report unless the court makes a finding that a report
10 is unnecessary. Unless the court makes that finding, a defendant convicted of any offense not enumerated in
11 subsection (1) that may result in incarceration for 1 year or more may not be sentenced before a written
12 presentence investigation report by a probation and parole officer is presented to and considered by the district
13 court. The district court may order a presentence investigation for a defendant convicted of a misdemeanor only
14 if the defendant was convicted of a misdemeanor that the state originally charged as a sexual or violent offense
15 as defined in 46-23-502.

16 (3) The defendant shall pay to the department of corrections a \$50 fee at the time that the report is
17 completed, unless the court determines that the defendant is not able to pay the fee within a reasonable time.
18 The fee may be retained by the department and used to finance contracts entered into under 53-1-203(5)."

19

20 **Section 2.** Section 46-18-207, MCA, is amended to read:

21 **"46-18-207. Sexual offender treatment.** (1) Upon sentencing a person convicted of a sexual offense,
22 as defined in 46-23-502, the court shall designate the offender as a level 1, 2, or 3 offender pursuant to
23 46-23-509.

24 (2) (a) Except as provided in subsection (2)(b), the court shall order an offender convicted of a sexual
25 offense, as defined in 46-23-502, except an offense under 45-5-301 through 45-5-303, and sentenced to
26 imprisonment in a state prison to:

27 (i) enroll in and successfully complete the educational phase of the prison's sexual offender treatment
28 program;

29 (ii) if the person has been or will be designated as a level 3 offender pursuant to 46-23-509, enroll in and
30 successfully complete the cognitive and behavioral phase of the prison's sexual offender treatment program; and

1 (iii) if the person is sentenced pursuant to 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3),
2 45-5-603(2)(c), or 45-5-625(4) and is released on parole, remain in an outpatient sex offender treatment program
3 for the remainder of the person's life.

4 (b) A person who has been sentenced to life imprisonment without possibility of release may not
5 participate in treatment provided pursuant to this section.

6 (3) A person who has been ordered to enroll in and successfully complete a phase of a state prison's
7 sexual offender treatment program is not eligible for parole unless that phase of the program has been
8 successfully completed as certified by a sexual offender evaluator to the board of pardons and parole.

9 (4) (a) Except for an offender sentenced pursuant to 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3),
10 45-5-603(2)(c), or 45-5-625(4), during an offender's term of commitment to the department of corrections or a
11 state prison, the department may place the person in a residential sexual offender treatment program approved
12 by the department under 53-1-203.

13 (b) If the person successfully completes a residential sexual offender treatment program approved by
14 the department of corrections, the remainder of the term must be served on probation unless the department
15 petitions the sentencing court to amend the original sentencing judgment.

16 (5) If, following a conviction for a sexual offense as defined in 46-23-502, any portion of a person's
17 sentence is suspended, during the suspended portion of the sentence the person:

18 (a) shall abide by the standard conditions of probation established by the department of corrections;

19 (b) shall pay the costs of imprisonment, probation, and any sexual offender treatment if the person is
20 financially able to pay those costs;

21 (c) may have no contact with the victim or the victim's immediate family unless approved by the victim
22 or the victim's parent or guardian, the person's therapists, and the person's probation officer;

23 (d) shall comply with all requirements and conditions of sexual offender treatment as directed by the
24 person's ~~sex offender therapist~~ sexual offender evaluator;

25 (e) may not enter an establishment where alcoholic beverages are sold for consumption on the premises
26 or where gambling takes place;

27 (f) may not consume alcoholic beverages;

28 (g) shall enter and remain in an aftercare program as directed by the person's probation officer;

29 (h) shall submit to random or routine drug and alcohol testing;

30 (i) may not possess pornographic material or access pornography through the internet; and

1 (j) at the discretion of the probation and parole officer, may be subject to electronic monitoring or
2 continuous satellite monitoring.

3 (6) The sentencing of a sexual offender is subject to 46-18-202(2) and 46-18-219.

4 (7) The sentencing court may, upon petition by the department of corrections, modify a sentence of a
5 sexual offender to impose any part of a sentence that was previously suspended."
6

7 **Section 3.** Section 46-23-509, MCA, is amended to read:

8 **"46-23-509. Sexual offender evaluations and designations -- rulemaking authority.** (1) The
9 ~~department shall adopt rules for~~ board of psychologists provided for in 2-15-1741 and the board of social work
10 examiners and professional counselors provided for in 2-15-1744 shall establish and maintain standards for the
11 qualification of sexual offender evaluators who conduct sexual offender and sexually violent predator evaluations
12 and for determinations by sexual offender evaluators of the risk of a repeat offense and the threat that an offender
13 poses to the public safety. The standards established by the board of psychologists or the board of social work
14 examiners and professional counselors must be based on best practices as established by the Montana sex
15 offender treatment association and the association for the treatment of sexual abusers.

16 (2) Prior to sentencing of a person convicted of a sexual offense, ~~the department or~~ a sexual offender
17 evaluator who meets the standards established by the board of psychologists or the board of social work
18 examiners and professional counselors shall provide the court with a sexual offender evaluation report
19 recommending one of the following levels of designation for the offender:

20 (a) level 1, the risk of a repeat sexual offense is low;

21 (b) level 2, the risk of a repeat sexual offense is moderate;

22 (c) level 3, the risk of a repeat sexual offense is high, there is a threat to public safety, and the sexual
23 offender evaluator believes that the offender is a sexually violent predator.

24 (3) Upon sentencing the offender, the court shall:

25 (a) review the sexual offender evaluation report, any statement by a victim, and any statement by the
26 offender;

27 (b) designate the offender as level 1, 2, or 3; and

28 (c) designate a level 3 offender as a sexually violent predator.

29 (4) An offender designated as a level 2 offender or given a level designation by another state, the federal
30 government, or the department under subsection (6) that is determined by the court to be similar to level 2 may

1 petition the sentencing court or the district court for the judicial district in which the offender resides to change
2 the offender's designation if the offender has enrolled in and successfully completed the treatment phase of either
3 the prison's sexual offender treatment program or of an equivalent program approved by the department. After
4 considering the petition, the court may change the offender's risk level designation if the court finds by clear and
5 convincing evidence that the offender's risk of committing a repeat sexual offense has changed since the time
6 sentence was imposed. The court shall impose one of the three risk levels specified in this section.

7 (5) If, at the time of sentencing, the sentencing judge did not apply a level designation to a sexual
8 offender who is required to register under this part and who was sentenced prior to October 1, 1997, the
9 department shall designate the offender as level 1, 2, or 3 when the offender is released from confinement.

10 (6) If an offense is covered by 46-23-502(9)(b), the offender registers under 46-23-504(1)(c), and the
11 offender was given a risk level designation after conviction by another state or the federal government, the
12 department of justice may give the offender the risk level designation assigned by the other state or the federal
13 government.

14 (7) The lack of a fixed residence is a factor that may be considered by the sentencing court or by the
15 department in determining the risk level to be assigned to an offender pursuant to this section."

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