

SENATE BILL NO. 84

INTRODUCED BY S. FITZPATRICK

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4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO PSYCHOSEXUAL
5 EVALUATIONS OF CRIMINAL DEFENDANTS; ALLOWING A DISTRICT COURT TO ORDER THAT A NEW
6 PSYCHOSEXUAL EVALUATION BE PERFORMED IF ONE HAS BEEN PERFORMED PRIOR TO A PLEA OR
7 A VERDICT OR FINDING OF GUILTY; REQUIRING THE COURT TO SELECT THE SEXUAL OFFENDER
8 EVALUATOR WHO PERFORMS THE EVALUATION; CLARIFYING PAYMENT OF COSTS FOR
9 PSYCHOSEXUAL EVALUATIONS; AMENDING SECTION 46-18-111, MCA; AND PROVIDING AN
10 APPLICABILITY DATE."

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

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

15 **"46-18-111. Presentence investigation -- when required -- definition.** (1) (a) (i) Upon the acceptance
16 of a plea or upon a verdict or finding of guilty to one or more felony offenses, the district court shall direct the
17 probation and parole officer to make a presentence investigation and report unless an investigation and report
18 has been provided to the court prior to the plea or the verdict or finding of guilty. If an investigation and report
19 provided to the court prior to the plea or the verdict or finding of guilty includes a psychosexual evaluation, the
20 court may order that a new psychosexual evaluation be performed as provided in subsection (1)(b) prior to
21 sentencing.

22 (ii) Unless additional information is required under subsections (1)(b), (1)(c), or (1)(d) or unless more time
23 is required to allow for victim input, a preliminary or final presentence investigation and report must be available
24 to the court within 30 days of the plea or the verdict or finding of guilty.

25 (iii) The district court shall consider the presentence investigation report prior to sentencing.

26 (b) (i) If the defendant was convicted of an offense under 45-5-502, 45-5-503, 45-5-504, 45-5-507,
27 45-5-601(3), 45-5-602(3), 45-5-603(2)(b), 45-5-625, 45-5-627, 45-5-704, 45-5-705, or 45-8-218 or if the defendant
28 was convicted under 46-23-507 and the offender was convicted of failure to register as a sexual offender pursuant
29 to Title 46, chapter 23, part 5, the investigation must include a psychosexual evaluation of the defendant and a
30 recommendation as to treatment of the defendant in the least restrictive environment, considering the risk the

1 defendant presents to the community and the defendant's needs, unless the defendant was sentenced under
2 46-18-219.

3 (ii) The evaluation must be completed by a sexual offender evaluator selected by the court and who is
4 a member of the Montana sex offender treatment association or has comparable credentials acceptable to the
5 department of labor and industry. The psychosexual evaluation must be made available to the county attorney's
6 office, the defense attorney, the probation and parole officer, and the sentencing judge. If a defendant has
7 previously been sentenced for an offense that requires a psychosexual evaluation or if an evaluation was
8 performed prior to the plea or verdict or finding of guilty, the court may order that a new evaluation be performed
9 prior to sentencing.

10 (iii) All costs related to the evaluation, including an updated evaluation ordered by the court as allowed
11 in subsection (1)(a)(i) or (1)(b)(ii), must be paid by the defendant. If the defendant is determined by the district
12 court to be indigent, all costs related to the evaluation, including an updated evaluation ordered by the court as
13 allowed in subsection (1)(a)(i) or (1)(b)(ii), are the responsibility of the district court and must be paid by the
14 county or the state, or both, under Title 3, chapter 5, part 9. The district court may order subsequent psychosexual
15 evaluations at the request of the county attorney. The requestor of any subsequent psychosexual evaluations
16 is responsible for the cost of the evaluation.

17 (c) If the defendant was convicted of an offense under 45-5-212(2)(b) or (2)(c), the investigation may
18 include a mental health evaluation of the defendant and a recommendation as to treatment of the defendant in
19 the least restrictive environment, considering the risk the defendant presents to the community and the
20 defendant's needs. The evaluation must be completed by a qualified psychiatrist, licensed clinical psychologist,
21 advanced practice registered nurse, or other professional with comparable credentials acceptable to the
22 department of labor and industry. The mental health evaluation must be made available to the county attorney's
23 office, the defense attorney, the probation and parole officer, and the sentencing judge. All costs related to the
24 evaluation must be paid by the defendant. If the defendant is determined by the district court to be indigent, all
25 costs related to the evaluation are the responsibility of the district court and must be paid by the county or the
26 state, or both, under Title 3, chapter 5, part 9.

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

