

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 CERTAIN EVALUATIONS; CLARIFYING PAYMENT OF  
9 COSTS FOR PSYCHOSEXUAL EVALUATIONS; AMENDING SECTION 46-18-111, MCA; AND PROVIDING  
10 AN 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 UNLESS A PSYCHOSEXUAL EVALUATION HAS BEEN PROVIDED TO THE COURT PRIOR TO THE PLEA OR THE~~  
4 ~~VERDICT OR FINDING OF GUILTY, THE evaluation must be completed by a sexual offender evaluator selected by the~~  
5 ~~court and who is a member of the Montana sex offender treatment association or has comparable credentials~~  
6 acceptable to the department of labor and industry. The psychosexual evaluation must be made available to the  
7 county attorney's office, the defense attorney, the probation and parole officer, and the sentencing judge. ~~If a~~  
8 ~~defendant has previously been sentenced for an offense that requires a psychosexual evaluation or if an~~  
9 ~~evaluation was performed prior to the plea or verdict or finding of guilty, the court may order that a new evaluation~~  
10 ~~be performed prior to sentencing.~~

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

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

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

1 as provided in 46-18-113.

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

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

12 (4) For the purposes of 46-18-112 and this section, "probation and parole officer" means:

13 (a) a probation and parole officer who is employed by the department of corrections pursuant to  
14 46-23-1002; or

15 (b) an employee of the department of corrections who has received specific training or who possesses  
16 specific expertise to make a presentence investigation and report but who is not required to be licensed as a  
17 probation and parole officer by the public safety officer standards and training council created in 2-15-2029."

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19 **NEW SECTION. Section 2. Applicability.** [Section 1] applies to presentence investigations ordered  
20 on or after October 1, 2019.

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