

SENATE BILL NO. 39

INTRODUCED BY K. REGIER

BY REQUEST OF THE LAW AND JUSTICE INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO SEXUAL OFFENDER EVALUATIONS AND TREATMENT; ~~ESTABLISHING A BOARD OF SEXUAL OFFENDER EVALUATORS AND TREATMENT PROVIDERS TO CREDENTIAL~~ PROVIDING THAT THE BOARD OF BEHAVIORAL HEALTH AND CERTAIN OTHER BOARDS JOINTLY ESTABLISH AND MAINTAIN STANDARDS AND GUIDELINES FOR EVIDENCE-BASED ASSESSMENT, EVALUATION, TREATMENT, AND BEHAVIORAL MONITORING OF SEXUAL OFFENDERS; PROVIDING FOR A LICENSE ENDORSEMENT FOR CERTAIN PROFESSIONALS WHO CONDUCT PSYCHOSEXUAL EVALUATIONS OR PROVIDE TREATMENT TO OF SEXUAL OFFENDERS; REVISING QUALIFICATIONS FOR SEXUAL OFFENDER EVALUATORS; ~~AMENDING RULEMAKING; PROVIDING TRANSITION INSTRUCTIONS;~~ PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 46-18-111 AND 46-23-509, MCA; AND PROVIDING ~~EFFECTIVE DATES~~ A DELAYED EFFECTIVE DATE."

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

~~NEW SECTION.~~ **Section 1. Board of sexual offender evaluators and treatment providers.** ~~(1)(a)~~

~~The governor shall appoint, with the consent of the senate, a board of sexual offender evaluators and treatment providers consisting of five members.~~

~~(b) Two members must be current sexual offender evaluators or treatment providers.~~

~~(c) Two members must be licensed psychologists or licensed psychiatrists with experience treating sexual offenders.~~

~~(d) One member must be appointed from and represent the general public and may not be engaged in evaluating or treating sexual offenders.~~

~~(2) The board is allocated to the department for administrative purposes only as provided in 2-15-121.~~

~~(3) Members shall serve staggered 4-year terms.~~

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~~NEW SECTION. Section 2. Sexual offender evaluator or treatment provider credential--~~

~~rulemaking-- definitions.~~(1) The board shall issue a sexual offender evaluator or treatment provider credential to an individual who applies to the department and meets the following professional qualifications:

~~(a) is a professional licensed in Montana or another state as:~~

~~(i) a physician;~~

~~(ii) an advanced practice registered nurse with a psychiatric specialty;~~

~~(iii) a clinical psychologist;~~

~~(iv) a licensed clinical social worker;~~

~~(v) a licensed clinical professional counselor; or~~

~~(vi) a licensed marriage and family therapist;~~

~~(b) has at least 40 hours of documented training in the specialty of sexual offender evaluation and treatment; and~~

~~(c) is a full or clinical member of at least one relevant national or state organization that has ethics of practice to which the individual adheres.~~

~~(2) The board shall maintain a list of credentialed sexual offender evaluators and treatment providers and provide the list to a district court sentencing a defendant as provided in 46-18-111.~~

~~(3) A credential is valid for 2 years.~~

~~(4) The board shall adopt rules to implement [sections 2 and 3].~~

~~(5) As used in this section and [section 3], the following definitions apply:~~

~~(a) "Board" means the board of sexual offender evaluators and treatment providers established in [section 1]; and~~

~~(b) "Department" means the department of labor and industry.~~

~~NEW SECTION. Section 3. Duties.~~The board shall establish and maintain standards and guidelines

~~for evidence based assessment, evaluation, treatment, and behavioral monitoring of sexual offenders, including the transition into community based treatment from a prison treatment setting. The board shall:~~

1 ~~(1) require sexual offender evaluators to use the following levels of risk designations for a sexual~~  
2 ~~offender:~~

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

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

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

7 ~~(2) review applications from individuals applying for or renewing a credential to provide sexual~~  
8 ~~offender treatment to offenders under the state's jurisdiction; and~~

9 ~~(3) investigate complaints against approved providers and make recommendations to the department~~  
10 ~~regarding disposition of the complaints.~~

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12 **NEW SECTION. SECTION 1. DEFINITION -- JOINT DUTIES OF BOARDS -- SEXUAL OFFENDER EVALUATOR**

13 **LICENSE ENDORSEMENT -- RULEMAKING. (1) AS USED IN THIS SECTION, "BOARDS" MEANS THE FOLLOWING BOARDS**

14 **JOINTLY:**

15 **(A) BOARD OF BEHAVIORAL HEALTH AS ESTABLISHED IN 2-15-1744;**

16 **(B) BOARD OF MEDICAL EXAMINERS AS ESTABLISHED IN 2-15-1731;**

17 **(C) BOARD OF NURSING AS ESTABLISHED IN 2-15-1734;**

18 **(D) BOARD OF PSYCHOLOGISTS AS ESTABLISHED IN 2-15-1741; AND**

19 **(E) BOARD OF SOCIAL WORK EXAMINERS AND PROFESSIONAL COUNSELORS.**

20 **(2) THE BOARDS SHALL:**

21 **(A) JOINTLY ESTABLISH, DEVELOP RULES, AND MAINTAIN STANDARDS, CONSISTENT WITH APPROPRIATE**

22 **NATIONAL STANDARDS FOR EVALUATION AND TREATMENT OF SEXUAL OFFENDERS, AND GUIDELINES FOR EVIDENCE-**

23 **BASED ASSESSMENT, EVALUATION, TREATMENT, AND BEHAVIORAL MONITORING OF SEXUAL OFFENDERS, INCLUDING THE**

24 **TRANSITION INTO COMMUNITY-BASED TREATMENT FROM A PRISON SETTING;**

25 **(B) REQUIRE SEXUAL OFFENDER EVALUATORS TO USE THE FOLLOWING LEVELS OF RISK DESIGNATIONS FOR A**

26 **SEXUAL OFFENDER:**

27 **(i) LEVEL 1, THE RISK OF A REPEAT SEXUAL OFFENSE IS LOW;**

28 **(ii) LEVEL 2, THE RISK OF A REPEAT SEXUAL OFFENSE IS MODERATE; OR**

1           (III) LEVEL 3, THE RISK OF A REPEAT SEXUAL OFFENSE IS HIGH, THERE IS A THREAT TO PUBLIC SAFETY, AND  
 2 THE SEXUAL OFFENDER EVALUATOR BELIEVES THAT THE OFFENDER IS A SEXUALLY VIOLENT PREDATOR; AND

3           (C) SET AND ENFORCE EDUCATIONAL AND EXPERIENTIAL REQUIREMENTS FOR LICENSEES OF EACH OF THE  
 4 BOARDS TO OBTAIN A LICENSE ENDORSEMENT AS A SEXUAL OFFENDER EVALUATOR. A PERSON MAY NOT PERFORM  
 5 SEXUAL OFFENDER EVALUATIONS FOR PURPOSES OF THIS SECTION WITHOUT FIRST OBTAINING A LICENSE  
 6 ENDORSEMENT.

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 8           **Section 2.** Section 46-18-111, MCA, is amended to read:

9           **"46-18-111. Presentence investigation -- when required -- definition.** (1) (a) (i) Upon the  
 10 acceptance of a plea or upon a verdict or finding of guilty to one or more felony offenses, except as provided in  
 11 subsection (1)(d), the district court may request and direct the probation and parole officer to make a  
 12 presentence investigation and report unless an investigation and report has been provided to the court prior to  
 13 the plea or the verdict or finding of guilty.

14           (ii) Unless additional information is required under subsection (1)(b), (1)(c), (1)(d), or (1)(e) or unless  
 15 more time is required to allow for victim input, a preliminary or final presentence investigation and report, if  
 16 requested, must be available to the court within 30 business days of the plea or the verdict or finding of guilty.

17           (iii) If a presentence investigation report has been requested, the district court shall consider the  
 18 presentence investigation report prior to sentencing.

19           (b) (i) If the defendant was convicted of an offense under 45-5-502, 45-5-503, 45-5-504, 45-5-507,  
 20 45-5-508, 45-5-601(3), 45-5-602(3), 45-5-603(2)(b) or (2)(c), 45-5-625, 45-5-627, 45-5-704, 45-5-705, or 45-8-  
 21 218 or if the defendant was convicted under 46-23-507 and the offender was convicted of failure to register as a  
 22 sexual offender pursuant to Title 46, chapter 23, part 5, the court shall order a psychosexual evaluation of the  
 23 defendant ~~that includes~~ unless the defendant is sentenced under 46-18-219. The evaluation must include:

24           (A) a recommendation as to treatment of the defendant in the least restrictive environment,  
 25 considering the risk the defendant presents to the community and the defendant's needs, ~~unless the defendant~~  
 26 ~~was sentenced under 46-18-219;~~

27           (B) an identification of the level of risk the defendant presents to the community using the standards  
 28 established in ~~section 3~~ [SECTION 1]; and

1           (C) the defendant's needs.

2           (ii) Unless a psychosexual evaluation has been provided to the court prior to the plea or the verdict or  
3 finding of guilty, the evaluation must be completed by a sexual offender evaluator selected by the court and  
4 who has ~~credentials acceptable to the department of labor and industry and the court a credential issued by the~~  
5 ~~board of sexual offender evaluators and treatment providers~~ A LICENSE ENDORSEMENT AS PROVIDED FOR IN  
6 [SECTION 1]. The psychosexual evaluation must be made available to the county attorney's office, the defense  
7 attorney, the probation and parole officer, and the sentencing judge.

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

15           (c) (i) If the defendant was convicted of an offense under 45-5-212(2)(b) or (2)(c), the investigation  
16 may include a mental health evaluation of the defendant and a recommendation as to treatment of the  
17 defendant in the least restrictive environment, considering the risk the defendant presents to the community  
18 and the defendant's needs.

19           (ii) The evaluation must be completed by a qualified psychiatrist, licensed clinical psychologist,  
20 advanced practice registered nurse, LICENSED CLINICAL SOCIAL WORKER, LICENSED CLINICAL PROFESSIONAL  
21 COUNSELOR, LICENSED MARRIAGE AND FAMILY THERAPIST, or other professional with comparable credentials  
22 acceptable to the department of labor and industry. The mental health evaluation must be made available to the  
23 county attorney's office, the defense attorney, the probation and parole officer, and the sentencing judge.

24           (iii) All costs related to the evaluation must be paid by the defendant. If the defendant is determined by  
25 the district court to be indigent, all costs related to the evaluation are the responsibility of the district court and  
26 must be paid by the county or the state, or both, under Title 3, chapter 5, part 9.

27           (d) If the defendant is convicted of a violent offense, as defined in 46-23-502, or if the defendant is  
28 convicted of a crime for which a victim or entity may be entitled to restitution, and the amount of restitution is not

1 contained in a plea agreement, the court shall order a presentence investigation.

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

6 (2) The district court may order a presentence investigation for a defendant convicted of a  
7 misdemeanor only if the defendant was convicted of a misdemeanor that the state originally charged as a  
8 sexual or violent offense 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 46-  
14 23-1002; or

15 (b) an employee of the department of corrections who has received specific training or who  
16 possesses specific expertise to make a presentence investigation and report but who is not required to be  
17 licensed as a probation and parole officer by the public safety officer standards and training council created in  
18 2-15-2029."

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

21 **"46-23-509. Psychosexual evaluations and sexual offender designations --rulemaking**

22 **authority.** (1) ~~The department shall adopt rules for the qualification of sexual offender evaluators who conduct~~  
23 ~~psychosexual evaluations of sexual offenders and sexually violent predators and for determinations by sexual~~  
24 ~~offender evaluators of the risk of a repeat offense and the threat that an offender poses to the public safety.~~

25 (2) ~~Prior to sentencing of a person convicted of a sexual offense, the department or a sexual offender~~  
26 ~~evaluator who has a credential issued by the board of sexual offender evaluators and treatment~~

27 ~~providers~~ LICENSE ENDORSEMENT AS PROVIDED FOR IN [SECTION 1] shall provide the court with a psychosexual  
28 evaluation report recommending one of the following levels of designation for the offender:

- 1 (a) level 1, the risk of a repeat sexual offense is low;  
2 (b) level 2, the risk of a repeat sexual offense is moderate;  
3 (c) level 3, the risk of a repeat sexual offense is high, there is a threat to public safety, and the sexual  
4 offender evaluator believes that the offender is a sexually violent predator.

5 ~~(3)~~(2) Upon sentencing the offender, the court shall:

- 6 (a) review the psychosexual evaluation report, any statement by a victim, and any statement by the  
7 offender;  
8 (b) designate the offender as level 1, 2, or 3; and  
9 (c) designate a level 3 offender as a sexually violent predator.

10 ~~(4)~~(3) An offender designated as a level 2 offender or given a level designation by another state, the  
11 federal government, or the department under subsection ~~(6)~~(5) that is determined by the court to be similar to  
12 level 2 may petition the sentencing court or the district court for the judicial district in which the offender resides  
13 to change the offender's designation if the offender has enrolled in and successfully completed the treatment  
14 phase of either the prison's sexual offender treatment program or of an equivalent program approved by the  
15 department. After considering the petition, the court may change the offender's risk level designation if the court  
16 finds by clear and convincing evidence that the offender's risk of committing a repeat sexual offense has  
17 changed since the time sentence was imposed. The court shall impose one of the three risk levels specified in  
18 this section.

19 ~~(5)~~(4) If, at the time of sentencing, the sentencing judge did not apply a level designation to a sexual  
20 offender who is required to register under this part and who was sentenced prior to October 1, 1997, the  
21 department shall designate the offender as level 1, 2, or 3 when the offender is released from confinement.

22 ~~(6)~~(5) If an offense is covered by 46-23-502(9)(b), the offender registers under 46-23-504(1)(c), and  
23 the offender was given a risk level designation after conviction by another state or the federal government, the  
24 department of justice may give the offender the risk level designation assigned by the other state or the federal  
25 government. All offenders convicted in another state or by the federal government who are not currently under  
26 the supervision of the department or the youth court and were not given a risk level designation after conviction  
27 shall provide to the department of justice all prior risk assessments and psychosexual evaluations done to  
28 evaluate the offender's risk to reoffend. Any offender without a risk assessment or psychosexual evaluation

1 shall, at the offender's expense, undergo a psychosexual evaluation with a sexual offender evaluator who is a  
 2 member of the Montana sex offender treatment association or has comparable credentials acceptable to the  
 3 department of labor and industry ~~has a credential issued by the board of sexual offender evaluators and~~  
 4 ~~treatment providers~~ HAS A LICENSE ENDORSEMENT AS PROVIDED FOR IN [SECTION 1]. The results of the  
 5 psychosexual evaluation may be requested by the attorney general or a county attorney for purposes of  
 6 petitioning a district court to assign a risk level designation.

7 ~~(7)(6)~~ The lack of a fixed residence is a factor that may be considered by the sentencing court or by  
 8 the department in determining the risk level to be assigned to an offender pursuant to this section.

9 ~~(8)(7)~~ Upon obtaining information that indicates that a sexual offender who is required to register  
 10 under this part does not have a level 1, 2, or 3 designation, the attorney general, the county attorney that  
 11 prosecuted the offender and obtained a conviction for a sexual offense, or the county attorney for the county in  
 12 which the offender resides may, at any time, petition the district court that sentenced the offender for a sexual  
 13 offense or the district court for the judicial district in which the offender resides to designate the offender as  
 14 level 1, 2, or 3. Upon the filing of the petition, the court may order a psychosexual evaluation report at the  
 15 petitioner's expense. The court shall provide the offender with an opportunity for a hearing prior to designating  
 16 the offender. The petitioner shall provide the offender with notice of the petition and notice of the hearing."  
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18 ~~NEW SECTION. Section 6. Transition.~~ (1) Within 60 days of [the effective date of this section], the  
 19 commissioner of the department of labor and industry shall make initial appointments to the board established  
 20 in [section 1] and designate the term length of the members necessary to achieve staggered terms.

21 (2) The board of sexual offender evaluators and treatment providers shall issue a credential to an  
 22 individual who is licensed by the department of labor and industry and who is a full or clinical member of the  
 23 Montana sex offender treatment association on [the effective date of this act]. The individual is subject to the  
 24 requirements of [section 2] after the expiration of that credential.  
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26 ~~NEW SECTION. Section 4. Codification instruction.~~ (1) [Section 1] is intended to be codified as  
 27 an integral part of Title 2, chapter 15, part 17, and the provisions of Title 2, chapter 15, part 17, apply to [section  
 28 4].



