

1 SENATE BILL NO. 39

2 INTRODUCED BY K. REGIER

3 BY REQUEST OF THE LAW AND JUSTICE INTERIM COMMITTEE
4

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

16
17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
1819 ~~NEW SECTION. Section 1. Board of sexual offender evaluators and treatment providers. (1)(a)~~20 ~~The governor shall appoint, with the consent of the senate, a board of sexual offender evaluators and treatment~~
21 ~~providers consisting of five members.~~22 ~~(b) Two members must be current sexual offender evaluators or treatment providers.~~23 ~~(c) Two members must be licensed psychologists or licensed psychiatrists with experience treating~~
24 ~~sexual offenders.~~25 ~~(d) One member must be appointed from and represent the general public and may not be engaged~~
26 ~~in evaluating or treating sexual offenders.~~27 ~~(2) The board is allocated to the department for administrative purposes only as provided in 2-15-121.~~28 ~~_____ (3) Members shall serve staggered 4-year terms.~~

1

2 ~~NEW SECTION. Section 2. Sexual offender evaluator or treatment provider credential--~~3 ~~rulemaking-- definitions.~~ (1) The board shall issue a sexual offender evaluator or treatment provider
4 credential to an individual who applies to the department and meets the following professional qualifications:5 (a) ~~is a professional licensed in Montana or another state as:~~6 (i) ~~a physician;~~7 (ii) ~~an advanced practice registered nurse with a psychiatric specialty;~~8 (iii) ~~a clinical psychologist;~~9 (iv) ~~a licensed clinical social worker;~~10 (v) ~~a licensed clinical professional counselor; or~~11 (vi) ~~a licensed marriage and family therapist;~~12 (b) ~~has at least 40 hours of documented training in the specialty of sexual offender evaluation and~~
13 ~~treatment; and~~14 (c) ~~is a full or clinical member of at least one relevant national or state organization that has ethics of~~
15 ~~practice to which the individual adheres.~~16 (2) ~~The board shall maintain a list of credentialed sexual offender evaluators and treatment providers~~
17 ~~and provide the list to a district court sentencing a defendant as provided in 46-18-111.~~18 (3) ~~A credential is valid for 2 years.~~19 (4) ~~The board shall adopt rules to implement [sections 2 and 3].~~20 (5) ~~As used in this section and [section 3], the following definitions apply:~~21 (a) ~~"Board" means the board of sexual offender evaluators and treatment providers established in~~
22 ~~[section 1]; and~~23 (b) ~~"Department" means the department of labor and industry.~~

24

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

26 for evidence-based assessment, evaluation, treatment and behavioral monitoring of sexual offenders, including

27 the transition into community-based treatment from a prison treatment setting. The board shall:

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

1 offender:

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

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

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

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

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

10

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

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

13 **JOINTLY:**

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

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

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

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

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

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

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

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

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

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

24 **(B) CREATE A SUBCOMMITTEE TO DRAFT REQUIREMENTS FOR SEXUAL OFFENDER EVALUATORS. THE**

25 **SUBCOMMITTEE MUST INCLUDE ONE MEMBER OF EACH BOARD AND TWO LICENSED SEXUAL OFFENDER EVALUATORS.**

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

27 **A SEXUAL OFFENDER:**

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

- 1 (II) LEVEL 2, THE RISK OF A REPEAT SEXUAL OFFENSE IS MODERATE; OR
- 2 (III) LEVEL 3, THE RISK OF A REPEAT SEXUAL OFFENSE IS HIGH, THERE IS A THREAT TO PUBLIC SAFETY, AND
- 3 THE SEXUAL OFFENDER EVALUATOR BELIEVES THAT THE OFFENDER IS A SEXUALLY VIOLENT PREDATOR; AND
- 4 ~~(C)~~(D) USING RECOMMENDATIONS FROM THE SUBCOMMITTEE, SET AND ENFORCE EDUCATIONAL AND
- 5 EXPERIENTIAL REQUIREMENTS FOR LICENSEES OF EACH OF THE BOARDS TO OBTAIN A LICENSE ENDORSEMENT AS A
- 6 SEXUAL OFFENDER EVALUATOR. A PERSON MAY NOT PERFORM SEXUAL OFFENDER EVALUATIONS FOR PURPOSES OF
- 7 THIS SECTION WITHOUT FIRST OBTAINING A LICENSE ENDORSEMENT.
- 8 (3) THE EDUCATIONAL AND EXPERIENTIAL REQUIREMENTS SET PURSUANT TO SUBSECTION (2)(D) MUST
- 9 INCLUDE THAT AN EVALUATOR:
- 10 (A) IS A PROFESSIONAL LICENSED IN MONTANA OR IN ANOTHER STATE AS:
- 11 (I) A PHYSICIAN;
- 12 (II) AN ADVANCED PRACTICE REGISTERED NURSE;
- 13 (III) A CLINICAL PSYCHOLOGIST;
- 14 (IV) A CLINICAL SOCIAL WORKER;
- 15 (V) A CLINICAL PROFESSIONAL COUNSELOR; OR
- 16 (VI) A MARRIAGE AND FAMILY THERAPIST;
- 17 (B) HAS 2,000 DOCUMENTED HOURS OF SUPERVISED EXPERIENCE IN THE EVALUATION AND TREATMENT OF
- 18 SEXUAL OFFENDERS WITHIN THE LAST 4 YEARS, AT LEAST 400 HOURS OF WHICH ARE FACE-TO-FACE EVALUATIONS OF
- 19 SEXUAL OFFENDERS OR THERAPY SESSIONS WITH SEXUAL OFFENDERS;
- 20 (C) HAS COMPLETED AT LEAST 10 SEXUAL OFFENDER EVALUATIONS UNDER SUPERVISION IN THE PAST 4
- 21 YEARS; AND
- 22 (D) IS A FULL OR CLINICAL MEMBER OF AT LEAST ONE RELEVANT NATIONAL PROFESSIONAL ORGANIZATION
- 23 THAT HAS ETHICS OF PRACTICE FOR SEXUAL OFFENDER ASSESSMENT AND TREATMENT.

24

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

26 **"46-18-111. Presentence investigation -- when required -- definition.** (1) (a) (i) Upon the

27 acceptance of a plea or upon a verdict or finding of guilty to one or more felony offenses, except as provided in

28 subsection (1)(d), the district court may request and direct the probation and parole officer to make a

1 presentence investigation and report unless an investigation and report has been provided to the court prior to
2 the plea or the verdict or finding of guilty.

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

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

8 (b) (i) If the defendant was convicted of an offense under 45-5-502, 45-5-503, 45-5-504, 45-5-507,
9 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-
10 218 or if the defendant was convicted under 46-23-507 and the offender was convicted of failure to register as a
11 sexual offender pursuant to Title 46, chapter 23, part 5, the court shall order a psychosexual evaluation of the
12 defendant ~~that includes unless the defendant is sentenced under 46-18-219. The evaluation must include:~~

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

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

18 (C) the defendant's needs.

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

25 (iii) All costs related to the evaluation, including an evaluation ordered by the court as allowed in
26 subsection (1)(b)(ii), must be paid by the defendant. If the defendant is determined by the district court to be
27 indigent, all costs related to the evaluation, including an evaluation ordered by the court as allowed in
28 subsection (1)(b)(ii), are the responsibility of the district court and must be paid by the county or the state, or

1 both, under Title 3, chapter 5, part 9. The district court may order subsequent psychosexual evaluations at the
2 request of the county attorney. The requestor of any subsequent psychosexual evaluations is responsible for
3 the cost of the evaluation.

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

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

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

16 (d) If the defendant is convicted of a violent offense, as defined in 46-23-502, or if the defendant is
17 convicted of a crime for which a victim or entity may be entitled to restitution, and the amount of restitution is not
18 contained in a plea agreement, the court shall order a presentence investigation.

19 (e) When, pursuant to 46-14-311, the court has ordered a presentence investigation and a report
20 pursuant to this section, the mental evaluation must be attached to the presentence investigation report and
21 becomes part of the report. The report must be made available to persons and entities as provided in 46-18-
22 113.

23 (2) The district court may order a presentence investigation for a defendant convicted of a
24 misdemeanor only if the defendant was convicted of a misdemeanor that the state originally charged as a
25 sexual or violent offense as defined in 46-23-502.

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

- 1 (4) For the purposes of 46-18-112 and this section, "probation and parole officer" means:
- 2 (a) a probation and parole officer who is employed by the department of corrections pursuant to 46-
- 3 23-1002; or
- 4 (b) an employee of the department of corrections who has received specific training or who
- 5 possesses specific expertise to make a presentence investigation and report but who is not required to be
- 6 licensed as a probation and parole officer by the public safety officer standards and training council created in
- 7 2-15-2029."

8

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

10 **"46-23-509. Psychosexual evaluations and sexual offender designations --rulemaking**

11 **authority.** (1) ~~The department shall adopt rules for the qualification of sexual offender evaluators who conduct~~

12 ~~psychosexual evaluations of sexual offenders and sexually violent predators and for determinations by sexual~~

13 ~~offender evaluators of the risk of a repeat offense and the threat that an offender poses to the public safety.~~

14 ~~(2) Prior to sentencing of a person convicted of a sexual offense, the department or a sexual offender~~

15 ~~evaluator who has a credential issued by the board of sexual offender evaluators and treatment providers~~

16 LICENSE ENDORSEMENT AS PROVIDED FOR IN [SECTION 1] shall provide the court with a psychosexual evaluation

17 report recommending one of the following levels of designation for the offender:

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

22 ~~(3)~~(2) Upon sentencing the offender, the court shall:

- 23 (a) review the psychosexual evaluation report, any statement by a victim, and any statement by the
- 24 offender;
- 25 (b) designate the offender as level 1, 2, or 3; and
- 26 (c) designate a level 3 offender as a sexually violent predator.

27 ~~(4)~~(3) An offender designated as a level 2 offender or given a level designation by another state, the

28 federal government, or the department under subsection ~~(6)~~(5) that is determined by the court to be similar to

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

8 ~~(5)(4)~~ If, at the time of sentencing, the sentencing judge did not apply a level designation to a sexual
 9 offender who is required to register under this part and who was sentenced prior to October 1, 1997, the
 10 department shall designate the offender as level 1, 2, or 3 when the offender is released from confinement.

11 ~~(6)(5)~~ If an offense is covered by 46-23-502(9)(b), the offender registers under 46-23-504(1)(c), and
 12 the offender was given a risk level designation after conviction by another state or the federal government, the
 13 department of justice may give the offender the risk level designation assigned by the other state or the federal
 14 government. All offenders convicted in another state or by the federal government who are not currently under
 15 the supervision of the department or the youth court and were not given a risk level designation after conviction
 16 shall provide to the department of justice all prior risk assessments and psychosexual evaluations done to
 17 evaluate the offender's risk to reoffend. Any offender without a risk assessment or psychosexual evaluation
 18 shall, at the offender's expense, undergo a psychosexual evaluation with a sexual offender evaluator who ~~is a~~
 19 ~~member of the Montana sex offender treatment association or has comparable credentials acceptable to the~~
 20 ~~department of labor and industry~~ has a credential issued by the board of sexual offender evaluators and
 21 treatment providers HAS A LICENSE ENDORSEMENT AS PROVIDED FOR IN [SECTION 1]. The results of the
 22 psychosexual evaluation may be requested by the attorney general or a county attorney for purposes of
 23 petitioning a district court to assign a risk level designation.

24 ~~(7)(6)~~ The lack of a fixed residence is a factor that may be considered by the sentencing court or by
 25 the department in determining the risk level to be assigned to an offender pursuant to this section.

26 ~~(8)(7)~~ Upon obtaining information that indicates that a sexual offender who is required to register
 27 under this part does not have a level 1, 2, or 3 designation, the attorney general, the county attorney that
 28 prosecuted the offender and obtained a conviction for a sexual offense, or the county attorney for the county in

1 which the offender resides may, at any time, petition the district court that sentenced the offender for a sexual
 2 offense or the district court for the judicial district in which the offender resides to designate the offender as
 3 level 1, 2, or 3. Upon the filing of the petition, the court may order a psychosexual evaluation report at the
 4 petitioner's expense. The court shall provide the offender with an opportunity for a hearing prior to designating
 5 the offender. The petitioner shall provide the offender with notice of the petition and notice of the hearing."
 6

7 ~~NEW SECTION. Section 6. Transition. (1) Within 60 days of [the effective date of this section], the~~
 8 ~~commissioner of the department of labor and industry shall make initial appointments to the board established~~
 9 ~~in [section 1] and designate the term length of the members necessary to achieve staggered terms.~~

10 (2) ~~The board of sexual offender evaluators and treatment providers shall issue a credential to an~~
 11 ~~individual who is licensed by the department of labor and industry and who is a full or clinical member of the~~
 12 ~~Montana sex offender treatment association on [the effective date of this act]. The individual is subject to the~~
 13 ~~requirements of [section 2] after the expiration of that credential.~~

14
 15 ~~NEW SECTION. Section 4. Codification instruction. (1) [Section 1] is intended to be codified as~~
 16 ~~an integral part of Title 2, chapter 15, part 17, and the provisions of Title 2, chapter 15, part 17, apply to [section~~
 17 ~~4].~~

18 (2) ~~[Sections 2 through 3] are intended to be codified as an integral part of Title 37, and the provisions~~
 19 ~~of Title 37 apply to [sections 2 through 3].~~ [SECTION 1] IS INTENDED TO BE CODIFIED AS AN INTEGRAL PART OF TITLE
 20 37, CHAPTER 1, PART 1, AND THE PROVISIONS OF TITLE 37, CHAPTER 1, PART 1, APPLY TO [SECTION 1].

21
 22 ~~NEW SECTION. Section 5. Effective dates DATE. (1) Except as provided in subsection (2), [this act]~~
 23 ~~[THIS ACT] is effective on passage and approval~~ JANUARY 1, 2022.

24 (2) ~~[Sections 4 and 5] are effective January 1, 2022.~~

25 - END -