



AN ACT REVISING LAWS RELATED TO SEXUAL OFFENDER EVALUATIONS AND TREATMENT; 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 OF SEXUAL OFFENDERS; REVISING QUALIFICATIONS FOR SEXUAL OFFENDER EVALUATORS; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 46-18-111 AND 46-23-509, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

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

Section 1. Definition -- joint duties of boards -- sexual offender evaluator license endorsement

-- rulemaking. (1) As used in this section, "boards" means the following boards jointly:

- (a) board of behavioral health as established in 2-15-1744;
- (b) board of medical examiners as established in 2-15-1731;
- (c) board of nursing as established in 2-15-1734; and
- (d) board of psychologists as established in 2-15-1741.

(2) The boards shall:

(a) jointly establish, develop rules, and maintain standards, consistent with appropriate national standards for evaluation and treatment of sexual offenders, and guidelines for evidence-based assessment, evaluation, treatment, and behavioral monitoring of sexual offenders, including the transition into community-based treatment from a prison setting;

(b) create a subcommittee to draft requirements for sexual offender evaluators. The subcommittee must include one member of each board and two licensees of the boards listed in subsection (1) who have

been engaged in the practice of evaluating sexual offenders during the last 4 years.

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

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

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

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

(d) using recommendations from the subcommittee, set and enforce educational and experiential requirements for licensees of each of the boards to obtain a license endorsement as a sexual offender evaluator. A person may not perform sexual offender evaluations for purposes of this section without first obtaining a license endorsement.

(3) The requirements set pursuant to subsection (2)(d) must include that an evaluator:

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

(i) a physician;

(ii) an advanced practice registered nurse;

(iii) a clinical psychologist;

(iv) a clinical social worker;

(v) a clinical professional counselor; or

(vi) a marriage and family therapist;

(b) has 2,000 documented hours of supervised experience in the evaluation and treatment of sexual offenders, at least 400 hours of which are face-to-face evaluations of sexual offenders or therapy sessions with sexual offenders. The provisions of this subsection (3)(b) do not apply when an evaluator is renewing the endorsement;

(c) has completed at least 2 sexual offender evaluations under supervision;

(d) is a full or clinical member of at least one relevant national professional organization that has ethics of practice for sexual offender assessment and treatment; and

(e) must renew the license endorsement concurrent with the evaluator's professional license.

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

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

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

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

(b) (i) If the defendant was convicted of an offense under 45-5-502, 45-5-503, 45-5-504, 45-5-507, 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 45-8-218 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 court shall order a psychosexual evaluation of the defendant ~~that includes unless the defendant is sentenced under 46-18-219.~~ The evaluation must include:

(A) 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;~~

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

(C) the defendant's needs.

(ii) Unless a psychosexual evaluation has been provided to the court prior to the plea or the verdict or finding of guilty, the evaluation must be completed by a sexual offender evaluator selected by the court and who has ~~credentials acceptable to the department of labor and industry and the court~~ a license endorsement as provided for in [section 1]. The psychosexual evaluation must be made available to the county attorney's office, the defense attorney, the probation and parole officer, and the sentencing judge.

(iii) All costs related to the evaluation, including an evaluation ordered by the court as allowed in

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

(c) (i) If the defendant was convicted of an offense under 45-5-212(2)(b) or (2)(c), the investigation may include a mental health 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.

(ii) The evaluation must be completed by a qualified psychiatrist, licensed clinical psychologist, advanced practice registered nurse, licensed clinical social worker, licensed clinical professional counselor, licensed marriage and family therapist, or other professional with comparable credentials acceptable to the department of labor and industry. The mental health evaluation must be made available to the county attorney's office, the defense attorney, the probation and parole officer, and the sentencing judge.

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

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

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

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

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

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

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

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

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

"46-23-509. Psychosexual evaluations and sexual offender designations --rulemaking authority. (1) ~~The department shall adopt rules for the qualification of sexual offender evaluators who conduct psychosexual evaluations of sexual offenders and sexually violent predators and for determinations by sexual offender evaluators of the risk of a repeat offense and the threat that an offender poses to the public safety.~~

~~(2)~~ Prior to sentencing of a person convicted of a sexual offense, ~~the department or a sexual offender evaluator~~ who has a license endorsement as provided for in [section 1] shall provide the court with a psychosexual evaluation report recommending one of the following levels of designation for the offender:

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

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

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

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

(a) review the psychosexual evaluation report, any statement by a victim, and any statement by the offender;

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

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

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

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

~~(6)~~(5) If an offense is covered by 46-23-502(9)(b), the offender registers under 46-23-504(1)(c), and the offender was given a risk level designation after conviction by another state or the federal government, the department of justice may give the offender the risk level designation assigned by the other state or the federal government. All offenders convicted in another state or by the federal government who are not currently under the supervision of the department or the youth court and were not given a risk level designation after conviction shall provide to the department of justice all prior risk assessments and psychosexual evaluations done to evaluate the offender's risk to reoffend. Any offender without a risk assessment or psychosexual evaluation shall, at the offender's expense, undergo a psychosexual evaluation with a sexual offender evaluator who ~~is a member of the Montana sex offender treatment association or has comparable credentials acceptable to the department of labor and industry~~ has a license endorsement as provided for in [section 1]. The results of the psychosexual evaluation may be requested by the attorney general or a county attorney for purposes of petitioning a district court to assign a risk level designation.

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

~~(8)~~(7) Upon obtaining information that indicates that a sexual offender who is required to register under this part does not have a level 1, 2, or 3 designation, the attorney general, the county attorney that

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

Section 4. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 37, chapter 1, part 1, and the provisions of Title 37, chapter 1, part 1, apply to [section 1].

Section 5. Effective date. [This act] is effective January 1, 2022.

- END -

I hereby certify that the within bill,
SB 39, originated in the Senate.

Secretary of the Senate

President of the Senate

Signed this _____ day
of _____, 2021.

Speaker of the House

Signed this _____ day
of _____, 2021.

SENATE BILL NO. 39

INTRODUCED BY K. REGIER

BY REQUEST OF THE LAW AND JUSTICE INTERIM COMMITTEE

AN ACT REVISING LAWS RELATED TO SEXUAL OFFENDER EVALUATIONS AND TREATMENT; 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 OF SEXUAL OFFENDERS; REVISING QUALIFICATIONS FOR SEXUAL OFFENDER EVALUATORS; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 46-18-111 AND 46-23-509, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.