

1 218 or if the defendant was convicted under 46-23-507 and the offender was convicted of failure to register as a
 2 sexual offender pursuant to Title 46, chapter 23, part 5, the court shall order a psychosexual evaluation of the
 3 defendant ~~that includes unless the defendant is sentenced under 46-18-219. The evaluation must include:~~

4 (A) a recommendation as to treatment of the defendant in the least restrictive environment, considering
 5 the risk the defendant presents to the community;

6 (B) an identification of the level of risk the defendant presents to the community using the standards
 7 established in section 46-23-509(2); and

8 (C) the defendant's needs, ~~unless the defendant was sentenced under 46-18-219.~~

9 (ii) Unless a psychosexual evaluation has been provided to the court prior to the plea or the verdict or
 10 finding of guilty, the evaluation must be completed by a sexual offender evaluator selected by the court from the
 11 list maintained by the department of corrections pursuant to [section 3] and who ~~has credentials acceptable to~~
 12 the department of labor and industry and the court is licensed by the department of labor and industry. The
 13 psychosexual evaluation must be made available to the county attorney's office, the defense attorney, the
 14 probation and parole officer, and the sentencing judge.

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

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

26 (ii) The evaluation must be completed by a qualified psychiatrist, licensed clinical psychologist,
 27 advanced practice registered nurse, or other professional with comparable credentials acceptable to the
 28 department of labor and industry. The mental health evaluation must be made available to the county attorney's

1 office, the defense attorney, the probation and parole officer, and the sentencing judge.

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

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

8 (e) When, pursuant to 46-14-311, the court has ordered a presentence investigation and a report
9 pursuant to this section, the mental evaluation must be attached to the presentence investigation report and
10 becomes part of the report. The report must be made available to persons and entities as provided in 46-18-
11 113.

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

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

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

19 (a) a probation and parole officer who is employed by the department of corrections pursuant to 46-
20 23-1002; or

21 (b) an employee of the department of corrections who has received specific training or who
22 possesses specific expertise to make a presentence investigation and report but who is not required to be
23 licensed as a probation and parole officer by the public safety officer standards and training council created in
24 2-15-2029."

25

26 **Section 2.** Section 46-23-509, MCA, is amended to read:

27 **"46-23-509. Psychosexual evaluations and sexual offender designations—~~rulemaking~~**

28 **~~authority -- sexual offender treatment board.~~ (1) The department shall adopt rules for the qualification of**

1 ~~sexual-offender-evaluators who conduct psychosexual evaluations of sexual offenders and sexually violent~~
2 ~~predators and for determinations by sexual offender evaluators of the risk of a repeat offense and the threat~~
3 ~~that an offender poses to the public safety.~~

4 (1) The department shall establish and maintain a sexual offender treatment board to develop
5 standards and guidelines for evidence-based assessment, evaluation, treatment and behavioral monitoring of
6 sexual offenders. The board shall:

7 (a) develop a standards of care manual for use by treatment providers that are licensed by the
8 department of labor and industry and credentialed by the department;

9 (b) update the manual biennially;

10 (c) review applications from individuals applying for or renewing a credential to provide sexual offender
11 treatment to offenders under the department's jurisdiction;

12 (d) make recommendations to the department regarding the applications using the standards created in
13 [section 3]; and

14 (e) investigate complaints against approved providers and make recommendations to the department
15 regarding disposition of the complaints.

16 (2) The board members must include:

17 (a) the department employee with responsibility for oversight of the sexual offender treatment program
18 at the Montana state prison;

19 (b) one department employee representing the department's correctional facilities;

20 (c) two department employees representing the department's community corrections programs; and

21 (d) three public members from different judicial districts in the state who are licensed in a professional
22 field listed in [section 3] and who have experience in providing clinical services to sexual offenders.

23 (3) The director of the department shall appoint board members for 3-year terms and will designate the
24 board's presiding officer. A board member may not serve more than two consecutive 3-year appointments
25 without a break in service of at least 3 years. Board members are not entitled to compensation for their services
26 but are entitled to reimbursement for travel expenses as provided in 2-18-501 through 2-18-504.

27 ~~(2)(4)~~ Prior to sentencing of a person convicted of a sexual offense, the department ~~or a sexual~~
28 offender evaluator shall provide the court with a ~~psychosexual evaluation report recommending one of the~~

1 ~~following levels of designation for the offender; a list of approved sexual offender evaluation providers.~~

2 (5) ~~The manual established by the board must provide the following levels of risk designations for a~~
3 ~~sexual offender:~~

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

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

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

8 ~~(3)(6)~~ Upon sentencing the offender, the court shall:

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

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

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

13 ~~(4)(7)~~ An offender designated as a level 2 offender or given a level designation by another state, the
14 federal government, or the department under subsection ~~(6)(9)~~ that is determined by the court to be similar to
15 level 2 may petition the sentencing court or the district court for the judicial district in which the offender resides
16 to change the offender's designation if the offender has enrolled in and successfully completed the treatment
17 phase of either the prison's sexual offender treatment program or of an equivalent program approved by the
18 department. After considering the petition, the court may change the offender's risk level designation if the court
19 finds by clear and convincing evidence that the offender's risk of committing a repeat sexual offense has
20 changed since the time sentence was imposed. The court shall impose one of the three risk levels specified in
21 this section.

22 ~~(5)(8)~~ If, at the time of sentencing, the sentencing judge did not apply a level designation to a sexual
23 offender who is required to register under this part and who was sentenced prior to October 1, 1997, the
24 department shall designate the offender as level 1, 2, or 3 when the offender is released from confinement.

25 ~~(6)(9)~~ If an offense is covered by 46-23-502(9)(b), the offender registers under 46-23-504(1)(c), and
26 the offender was given a risk level designation after conviction by another state or the federal government, the
27 department of justice may give the offender the risk level designation assigned by the other state or the federal
28 government. All offenders convicted in another state or by the federal government who are not currently under

1 the supervision of the department or the youth court and were not given a risk level designation after conviction
2 shall provide to the department of justice all prior risk assessments and psychosexual evaluations done to
3 evaluate the offender's risk to reoffend. Any offender without a risk assessment or psychosexual evaluation
4 shall, at the offender's expense, undergo a psychosexual evaluation with a sexual offender evaluator who is a
5 ~~member of the Montana sex offender treatment association or has comparable credentials acceptable to the~~
6 ~~department of labor and industry licensed by the department of labor and industry and has credentials issued~~
7 ~~by the department as provided in [section 3].~~ The results of the psychosexual evaluation may be requested by
8 the attorney general or a county attorney for purposes of petitioning a district court to assign a risk level
9 designation.

10 ~~(7)(10)~~ The lack of a fixed residence is a factor that may be considered by the sentencing court or by
11 the department in determining the risk level to be assigned to an offender pursuant to this section.

12 ~~(8)(11)~~ Upon obtaining information that indicates that a sexual offender who is required to register
13 under this part does not have a level 1, 2, or 3 designation, the attorney general, the county attorney that
14 prosecuted the offender and obtained a conviction for a sexual offense, or the county attorney for the county in
15 which the offender resides may, at any time, petition the district court that sentenced the offender for a sexual
16 offense or the district court for the judicial district in which the offender resides to designate the offender as
17 level 1, 2, or 3. Upon the filing of the petition, the court may order a psychosexual evaluation report at the
18 petitioner's expense. The court shall provide the offender with an opportunity for a hearing prior to designating
19 the offender. The petitioner shall provide the offender with notice of the petition and notice of the hearing."
20

21 **NEW SECTION. Section 3. Sexual offender evaluator credential.** (1) The department shall issue a
22 sexual offender evaluator credential to an individual who applies to the department and meets the following
23 professional qualifications:

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

25 (i) a physician;

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

27 (iii) a clinical psychologist;

28 (iv) a licensed clinical social worker;

- 1 (v) a licensed clinical professional counselor; or
- 2 (vi) a licensed marriage and family therapist;
- 3 (b) has 2,000 documented hours of supervised experience in the evaluation and treatment of sexual
- 4 offenders in the previous 4 years. At least 400 of the hours must be face-to-face evaluations of sexual offender
- 5 or therapy sessions with sexual offenders.
- 6 (c) has completed at least 10 sexual offender evaluations under supervision in the previous 4 years;
- 7 (d) has at least 40 hours of documented training in the specialty of sexual offender evaluation and
- 8 treatment; and
- 9 (e) is a full or clinical member of at least one relevant national or state organization that has ethics of
- 10 practice to which the individual adheres.

11 (2) The department shall maintain a list of credential sexual offender evaluators and provide the list to a

12 district court sentencing a defendant as provided in 46-18-111.

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

14

15 **NEW SECTION. Section 4. Grandfather clause.** The department shall issue a sexual offender

16 evaluator credential to an individual who is licensed by the department of labor and industry and is a full or

17 clinical member of the Montana sex offender treatment association on [the effective date of this section]. The

18 individual is subject to the requirements of [section 3] after the expiration of that credential.

19

20 **NEW SECTION. Section 5. Effective dates.** (1) Except as provided in subsection (2), [this act] is

21 effective January 1, 2022.

22 (2) [Section 2(1) through (3) and (5)], [section 3] and [this section] are effective on passage and

23 approval.

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