

- 1 (i) a physician;
- 2 (ii) advanced practice registered nurse with a psychiatric specialty;
- 3 (iii) a clinical psychologist;
- 4 (iv) a licensed clinical social worker;
- 5 (v) a licensed clinical professional counselor; or
- 6 (vi) a licensed marriage and family therapist;
- 7 (b) has at least 40 hours of documented training in the specialty of sexual offender evaluation and
- 8 treatment; and
- 9 (c) 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 board shall maintain a list of credentialed 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 (4) The board shall adopt rules to implement [sections 2 and 3].

15

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

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

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

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

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

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

22 (c) level 3, the risk of a repeat sexual offense is high, there is a threat to public safety, and the sexual

23 offender evaluator believes that the offender is a sexually violent predator.

24 (2) review applications from individuals applying for or renewing a credential to provide sexual offender

25 treatment to offenders under the state's jurisdiction; and

26 (3) investigate complaints against approved providers and make recommendations to the department

27 regarding disposition of the complaints.

28

1 **Section 4.** Section 46-18-111, MCA, is amended to read:

2 **"46-18-111. Presentence investigation -- when required -- definition.** (1) (a) (i) Upon the
3 acceptance of a plea or upon a verdict or finding of guilty to one or more felony offenses, except as provided in
4 subsection (1)(d), the district court may request and direct the probation and parole officer to make a
5 presentence investigation and report unless an investigation and report has been provided to the court prior to
6 the plea or the verdict or finding of guilty.

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

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

12 (b) (i) If the defendant was convicted of an offense under 45-5-502, 45-5-503, 45-5-504, 45-5-507,
13 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-
14 218 or if the defendant was convicted under 46-23-507 and the offender was convicted of failure to register as a
15 sexual offender pursuant to Title 46, chapter 23, part 5, the court shall order a psychosexual evaluation of the
16 defendant ~~that includes unless the defendant is sentenced under 46-18-219. The evaluation must include:~~

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

19 (B) an identification of the level of risk the defendant presents to the community using the standards
20 established in [section 3]; and

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

22 (ii) Unless a psychosexual evaluation has been provided to the court prior to the plea or the verdict or
23 finding of guilty, the evaluation must be completed by a sexual offender evaluator selected by the court and
24 who has ~~credentials acceptable to the department of labor and industry and the court~~ a credential issued by the
25 board of sexual offender evaluators and treatment providers. The psychosexual evaluation must be made
26 available to the county attorney's office, the defense attorney, the probation and parole officer, and the
27 sentencing judge.

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

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

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

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

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

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

21 (e) When, pursuant to 46-14-311, the court has ordered a presentence investigation and a report
22 pursuant to this section, the mental evaluation must be attached to the presentence investigation report and
23 becomes part of the report. The report must be made available to persons and entities as provided in 46-18-
24 113.

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

28 (3) The defendant shall pay to the department of corrections a \$50 fee at the time that the report is

1 completed, unless the court determines that the defendant is not able to pay the fee within a reasonable time.

2 The fee may be retained by the department and used to finance contracts entered into under 53-1-203(5).

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

4 (a) a probation and parole officer who is employed by the department of corrections pursuant to 46-
5 23-1002; or

6 (b) an employee of the department of corrections who has received specific training or who
7 possesses specific expertise to make a presentence investigation and report but who is not required to be
8 licensed as a probation and parole officer by the public safety officer standards and training council created in
9 2-15-2029."

10

11 **Section 5.** Section 46-23-509, MCA, is amended to read:

12 **"46-23-509. Psychosexual evaluations and sexual offender designations—rulemaking**

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

16 (2) ~~Prior to sentencing of a person convicted of a sexual offense, the department or a sexual offender~~
17 ~~evaluator who has a credential issued by the board of sexual offender evaluators and treatment providers shall~~
18 provide the court with a psychosexual evaluation report recommending one of the following levels of
19 designation for the offender:

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

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

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

24 (3) Upon sentencing the offender, the court shall:

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

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

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

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

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

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

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

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

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

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

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

15
16 **NEW SECTION. Section 7. Codification instruction.** (1) [Section 1] is intended to be codified as
17 an integral part of Title 2, chapter 15, part 17, and the provisions of Title 2, chapter 15, part 17, apply to [section
18 1].

19 (2) [Sections 2 through 3] are intended to be codified as an integral part of Title 37, and the provisions
20 of Title 37 apply to [sections 2 through 3].

21
22 **NEW SECTION. Section 8. Effective date.** (1) Except as provided in subsection (2), [this act] is
23 effective immediately upon passage and approval.

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

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