

Unofficial Draft Copy--SJ19-1

As of: 2020/04/13 03:11:56

Drafter: Rachel Weiss, 406-444-5367

67th Legislature

PD 0003

1 **** BILL NO. ****
2 INTRODUCED BY ****
3 BY REQUEST OF THE ****
4

5 **SJ19-1: A BILL FOR AN ACT ENTITLED: "AN ACT REVISING QUALIFICATIONS FOR SEXUAL OFFENDER**
6 **EVALUATORS; AMENDING SECTIONS 46-18-111 AND 46-23-509, MCA."**

7
8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

9
10 **Section 1.** Section 46-18-111, MCA, is amended to read:

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

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

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

21 (b) (i) If the defendant was convicted of an offense under 45-5-502, 45-5-503, 45-5-504, 45-5-507,
22 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-
23 218 or if the defendant was convicted under 46-23-507 and the offender was convicted of failure to register as a
24 sexual offender pursuant to Title 46, chapter 23, part 5, the court shall order a psychosexual evaluation of the
25 defendant that includes a recommendation as to treatment of the defendant in the least restrictive environment,
26 considering the risk the defendant presents to the community and the defendant's needs, unless the defendant
27 was sentenced under 46-18-219.

28 (ii) Unless a psychosexual evaluation has been provided to the court prior to the plea or the verdict or

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1 finding of guilty, the evaluation must be completed by a sexual offender evaluator selected by the court and
2 who is a member of the Montana sexual offender treatment association or who has credentials acceptable to
3 the department of labor and industry and the court. The psychosexual evaluation must be made available to the
4 county attorney's office, the defense attorney, the probation and parole officer, and the sentencing judge.

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

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

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

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

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

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

Commented [WR1]: This is the first reference to qualifications for sexual offender evaluators. As amended by SJ19-1, it would reinsert membership in MSOTA as a qualification, but also allows credentials acceptable to the Department of Labor and Industry and the court.

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

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

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

9 (a) a probation and parole officer who is employed by the department of corrections pursuant to 46-
10 23-1002; or

11 (b) an employee of the department of corrections who has received specific training or who
12 possesses specific expertise to make a presentence investigation and report but who is not required to be
13 licensed as a probation and parole officer by the public safety officer standards and training council created in
14 2-15-2029."

15

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

17 **"46-23-509. Psychosexual evaluations and sexual offender designations -- rulemaking**

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

21 (2) Prior to sentencing of a person convicted of a sexual offense, the department or a sexual offender
22 evaluator shall provide the court with a psychosexual evaluation report recommending one of the following
23 levels of designation for the offender:

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

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

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

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

Commented [WR2]: This is the second reference to qualifications for sexual offender evaluators. The Department of Corrections must adopt rules to set those qualifications, which it has.

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- 1 (a) review the psychosexual evaluation report, any statement by a victim, and any statement by the
2 offender;
- 3 (b) designate the offender as level 1, 2, or 3; and
- 4 (c) designate a level 3 offender as a sexually violent predator.
- 5 (4) An offender designated as a level 2 offender or given a level designation by another state, the
6 federal government, or the department under subsection (6) that is determined by the court to be similar to level
7 2 may petition the sentencing court or the district court for the judicial district in which the offender resides to
8 change the offender's designation if the offender has enrolled in and successfully completed the treatment
9 phase of either the prison's sexual offender treatment program or of an equivalent program approved by the
10 department. After considering the petition, the court may change the offender's risk level designation if the court
11 finds by clear and convincing evidence that the offender's risk of committing a repeat sexual offense has
12 changed since the time sentence was imposed. The court shall impose one of the three risk levels specified in
13 this section.
- 14 (5) If, at the time of sentencing, the sentencing judge did not apply a level designation to a sexual
15 offender who is required to register under this part and who was sentenced prior to October 1, 1997, the
16 department shall designate the offender as level 1, 2, or 3 when the offender is released from confinement.
- 17 (6) If an offense is covered by 46-23-502(9)(b), the offender registers under 46-23-504(1)(c), and the
18 offender was given a risk level designation after conviction by another state or the federal government, the
19 department of justice may give the offender the risk level designation assigned by the other state or the federal
20 government. All offenders convicted in another state or by the federal government who are not currently under
21 the supervision of the department or the youth court and were not given a risk level designation after conviction
22 shall provide to the department of justice all prior risk assessments and psychosexual evaluations done to
23 evaluate the offender's risk to reoffend. Any offender without a risk assessment or psychosexual evaluation
24 shall, at the offender's expense, undergo a psychosexual evaluation with a sexual offender evaluator who is a
25 member of the Montana sex offender treatment association or has comparable credentials acceptable to the
26 department of labor and industry. The results of the psychosexual evaluation may be requested by the attorney
27 general or a county attorney for purposes of petitioning a district court to assign a risk level designation.
- 28 (7) The lack of a fixed residence is a factor that may be considered by the sentencing court or by the

Commented [WR3]: This is the third existing reference to qualifications for sexual offender evaluators. The qualifications include membership in MSOTA or comparable credentials acceptable to the Department of Labor and Industry. However, it does not include a reference to the court.

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1 department in determining the risk level to be assigned to an offender pursuant to this section.

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

10

11

- END -