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SENATE BILL NO. 89
INTRODUCED BY L. SMITH
BY REQUEST OF THE CRIMINAL JUSTICE OVERSIGHT COUNCIL

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO PRESENTENCE INVESTIGATION; ESTABLISHING THE SEXUAL AND VIOLENT OFFENDER PRESENTENCE INVESTIGATION AND REPORTING UNIT; AND AMENDING SECTIONS 46-18-111 AND 46-18-242, MCA."

WHEREAS, there is an increase in sexual and violent crime in the state; and

WHEREAS, state law directs the court to order a presentence investigation on a violent offense conviction and the court may order a presentence investigation for a conviction of one or more felonies; and

WHEREAS, except under certain circumstances, a presentence investigation report must be completed and returned to the court within 30 business days following the conviction; and

WHEREAS, a state probation and parole officer is required to complete a presentence investigation and report when directed to do so by the court; and

WHEREAS, the Criminal Justice Oversight Council studied the state's presentence investigation process as part of its 2023-2024 workplan and concluded that the workload of a probation and parole officer impacts the timeliness and quality of a presentence investigation report; and

WHEREAS, a presentence investigation report, when requested by the court, must be considered by the court prior to sentencing.

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

NEW SECTION. Section 1. Sexual and violent offender presentence investigation and reporting unit -- duties. (1) There is a sexual and violent offender presentence investigation and reporting unit in the department of corrections. The unit consists of probation and parole officers assigned by the department.

(2) In addition to other duties assigned to it by the department director or otherwise required by law, the unit shall make a presentence investigation and report as directed by the court in accordance with 46-

1 18-111 upon the acceptance of a plea or upon a verdict or finding of guilty to:

2 (a) a sexual offense as defined in 46-23-502; or

3 (b) a violent offense as defined in 46-23-502.

4 (3) For the purposes of this section, "probation and parole officers" has the meaning provided in
5 46-18-111.

6

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

8 **"46-18-111. Presentence investigation -- when required -- definition.** (1) (a) (i) Upon the
9 acceptance of a plea or upon a verdict or finding of guilty to one or more felony offenses, except as provided in
10 subsection (1)(d), the district court may request and direct the probation and parole officer to make a
11 presentence investigation and report unless an investigation and report has been provided to the court prior to
12 the plea or the verdict or finding of guilty.

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

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

18 (b) (i) If the defendant was convicted of an offense under 45-5-502, 45-5-503, 45-5-504, 45-5-507,
19 45-5-508, 45-5-601(3), 45-5-625, 45-5-627, 45-5-705, 45-5-706, 45-5-711, or 45-8-218 or if the defendant was
20 convicted under 46-23-507 and the offender was convicted of failure to register as a sexual offender pursuant
21 to Title 46, chapter 23, part 5, the court shall order a psychosexual evaluation of the defendant unless the
22 defendant is sentenced under 46-18-219. The evaluation must include:

23 (A) a recommendation as to treatment of the defendant in the least restrictive environment,
24 considering the risk the defendant presents to the community and the defendant's needs;

25 (B) an identification of the level of risk the defendant presents to the community using the
26 standards established in 37-1-139; and

27 (C) the defendant's needs.

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

1 or finding of guilty, the evaluation must be completed by a sexual offender evaluator selected by the court and
2 who has a license endorsement as provided for in 37-1-139. The psychosexual evaluation must be made
3 available to the county attorney's office, the defense attorney, the probation and parole officer, and the
4 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, licensed clinical social worker, licensed clinical professional counselor,
18 licensed marriage and family therapist, or other professional with comparable credentials acceptable to the
19 department of labor and industry. The mental health evaluation must be made available to the county attorney's
20 office, the defense attorney, the probation and parole officer, and the sentencing judge.

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

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

27 (e) When, pursuant to 46-14-311, the court has ordered a presentence investigation and a report
28 pursuant to this section, the mental evaluation must be attached to the presentence investigation report and

1 becomes part of the report. The report must be made available to persons and entities as provided in 46-18-
2 113.

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

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

9 (4) For the purposes of 46-18-112, 46-18-113, and this section, "probation and parole officer"
10 means:

11 (a) a probation and parole officer who is employed by the department of corrections pursuant to
12 46-23-1002; or

13 (b) an employee of the department of corrections who has received specific training or who
14 possesses specific expertise to make a presentence investigation and report but who is not required to be
15 licensed as a probation and parole officer by the public safety officer standards and training council created in
16 2-15-2029."
17

18 **Section 3.** Section 46-18-242, MCA, is amended to read:

19 **"46-18-242. Investigation and report of victim's loss.** (1) Whenever the court believes that a victim
20 may have sustained a pecuniary loss or whenever the prosecuting attorney requests, the court shall order the
21 probation and parole officer as defined in 46-18-111, the restitution officer, or ~~other-another~~ designated person
22 to include in the presentence investigation and report if requested pursuant to 46-18-111:

23 (a) a list of the offender's assets; and

24 (b) an affidavit that specifically describes the victim's pecuniary loss and the replacement value in
25 dollars of the loss, submitted by the victim.

26 (2) When a presentence report is not requested, the court shall accept evidence of the victim's loss
27 at the time of sentencing."
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