

HOUSE BILL NO. 684

INTRODUCED BY M. REGIER

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4 A BILL FOR AN ACT ENTITLED: "AN ACT IMPLEMENTING THE PROVISIONS OF THE GENERAL
5 APPROPRIATIONS ACT; GENERALLY REVISING LAWS RELATED TO THE JUSTICE SYSTEM; CREATING
6 STATE SPECIAL REVENUE ACCOUNTS; PROVIDING THAT PRESENTENCE INVESTIGATIONS AND
7 REPORTS ARE AT THE DISCRETION OF THE COURT; REVISING LAWS RELATED TO THE PUBLIC
8 SAFETY OFFICER STANDARDS AND TRAINING COUNCIL; CREATING A PUBLIC SAFETY OFFICER
9 STANDARDS AND TRAINING BUREAU IN THE DEPARTMENT OF JUSTICE; REMOVING THE COUNCIL'S
10 ADMINISTRATIVE ATTACHMENT TO THE DEPARTMENT OF JUSTICE; PROVIDING FOR REPORTING TO
11 THE LAW AND JUSTICE INTERIM COMMITTEE; MAKING REVISIONS RELATED TO THE WORKING
12 INTERDISCIPLINARY NETWORK OF GUARDIANSHIP STAKEHOLDERS; MAKING THE CHILD ABUSE
13 COURT DIVERSION PROGRAM PERMANENT; AMENDING SECTIONS 2-15-2029, 46-12-211, 46-14-311,
14 46-18-111, 46-18-112, 46-18-242, AND 53-6-1312, MCA; AMENDING SECTION 8, CHAPTER 241, LAWS OF
15 2017; AMENDING SECTION 28, CHAPTER 368, LAWS OF 2015; AND PROVIDING EFFECTIVE DATES."

16
17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

18
19 **NEW SECTION. Section 1. Pretrial diversion program state special revenue account.** (1) There
20 is an account in the state special revenue fund established in 17-2-102 to the credit of the judicial branch to be
21 known as the pretrial diversion program account.

22 (2) The purpose of the account is to fund a pilot project in five counties to analyze the costs and benefits
23 of the following:

- 24 (a) the risk associated with an offender being released into the community prior to the offender's trial date;
- 25 and
- 26 (b) the potential or actual savings in jail costs for not having the offender incarcerated during that time.

27
28 **NEW SECTION. Section 2. Legislative committees and activities state special revenue account.**
29 (1) There is an account in the state special revenue fund established in 17-2-102 to the credit of the legislative
30 services division to be known as the legislative committees and activities account.



1 (2) The purpose of the account is to provide funding for legislative committees and activities.

2 (3) Expenditures from the account must be approved by the majority and minority leaders of both houses.

3
4 NEW SECTION. Section 3. Public safety officer standards and training bureau. There is a bureau
5 within the department of justice called the public safety officer standards and training bureau. The purpose of the
6 bureau is to provide staff support to the public safety officer standards and training council established in
7 2-15-2029.

8
9 **Section 4.** Section 2-15-2029, MCA, is amended to read:

10 **"2-15-2029. Montana public safety officer standards and training council -- ~~administrative~~**
11 **~~attachment-- rulemaking -- report to law and justice interim committee.~~** (1) (a) There is a Montana public
12 safety officer standards and training council. The council is a quasi-judicial board, as provided for in 2-15-124,
13 and is allocated to the department of justice, established in 2-15-2001, ~~for administrative purposes only as~~
14 ~~provided in 2-15-121, except as provided in subsection (1)(b) of this section~~ except as provided in subsections
15 (1)(b) and (1)(c) of this section.

16 (b) ~~The council may hire its own personnel and independently administer the conduct of its business,~~
17 ~~and 2-15-121(2)(a), (2)(d), and (3)(a) do not apply.~~ The council shall coordinate with the department of justice
18 to hire the bureau chief of the public safety officer standards and training bureau.

19 (c) The council maintains its independent and quasi-judicial authority and duties provided for in 44-4-403.

20 (2) The council may adopt rules to implement the provisions of Title 44, chapter 4, part 4. Rules must
21 be adopted pursuant to the Montana Administrative Procedure Act.

22 (3) The department of justice and the public safety officer standards and training council shall report to
23 the law and justice interim committee."

24
25 **Section 5.** Section 46-12-211, MCA, is amended to read:

26 **"46-12-211. Plea agreement procedure -- use of two-way electronic audio-video communication.**

27 (1) The prosecutor and the attorney for the defendant, or the defendant when acting pro se, may engage in
28 discussions with a view toward reaching an agreement that, upon the entering of a plea of guilty or nolo
29 contendere to a charged offense or to a lesser or related offense, the prosecutor will do any of the following:

30 (a) move for dismissal of other charges;

1 (b) agree that a specific sentence is the appropriate disposition of the case; or
2 (c) make a recommendation, or agree not to oppose the defendant's request, for a particular sentence,
3 with the understanding that the recommendation or request may not be binding upon the court.

4 (2) Subject to the provisions of subsection (5), if a plea agreement has been reached by the parties, the
5 court shall, on the record, require a disclosure of the agreement in open court or, on a showing of good cause
6 in camera, at the time that the plea is offered. If the agreement is of the type specified in subsection (1)(a) or
7 (1)(b), the court may accept or reject the agreement or may defer its decision as to the acceptance or rejection
8 until there has been an opportunity to consider ~~the~~ a presentence report, if requested by the court pursuant to
9 46-18-111. If the agreement is of the type specified in subsection (1)(c), the court shall advise the defendant that,
10 if the court does not accept the recommendation or request, the defendant nevertheless has no right to withdraw
11 the plea.

12 (3) If the court accepts a plea agreement, the court shall inform the defendant that it will embody in the
13 judgment and sentence the disposition provided for in the plea agreement.

14 (4) If the court rejects a plea agreement of the type specified in subsection (1)(a) or (1)(b), the court shall,
15 on the record, inform the parties of this fact and advise the defendant that the court is not bound by the plea
16 agreement, afford the defendant an opportunity to withdraw the plea, and advise the defendant that if the
17 defendant persists in the guilty or nolo contendere plea, the disposition of the case may be less favorable to the
18 defendant than that contemplated by the plea agreement.

19 (5) For purposes of this section, a disclosure of the agreement through the use of two-way electronic
20 audio-video communication, allowing all of the participants to be heard in the courtroom by all present and
21 allowing the party speaking to be seen, is considered to be a disclosure in open court. Audio-video
22 communication may be used if neither party objects and the court agrees to its use and has informed the
23 defendant that the defendant has the right to object to its use. The audio-video communication must operate as
24 provided in 46-12-201."
25

26 **Section 6.** Section 46-14-311, MCA, is amended to read:

27 **"46-14-311. Consideration of mental disease or disorder or developmental disability in**
28 **sentencing.** (1) Whenever a defendant is convicted on a verdict of guilty or a plea of guilty or nolo contendere
29 and claims at the time of the omnibus hearing held pursuant to 46-13-110 or, if no omnibus hearing is held, at
30 the time of any change of plea by the defendant that at the time of the commission of the offense of which

1 convicted the defendant was suffering from a mental disease or disorder or developmental disability that rendered
 2 the defendant unable to appreciate the criminality of the defendant's behavior or to conform the defendant's
 3 behavior to the requirements of law, the sentencing court shall consider any relevant evidence presented at the
 4 trial and ~~shall~~ may also consider the results of the presentence investigation ~~required~~ requested pursuant to
 5 subsection (2).

6 (2) Under the circumstances referred to in subsection (1), the sentencing court ~~shall~~ may order a
 7 presentence investigation and a report on the investigation pursuant to 46-18-111. ~~The~~ If requested, the
 8 investigation must include a mental evaluation by a person appointed by the director of the department of public
 9 health and human services or the director's designee. The evaluation must include an opinion as to whether the
 10 defendant suffered from a mental disease or disorder or developmental disability with the effect as described in
 11 subsection (1). If the opinion concludes that the defendant did suffer from a mental disease or disorder or
 12 developmental disability with the effect as described in subsection (1), the evaluation must also include a
 13 recommendation as to the care, custody, and treatment needs of the defendant."
 14

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

16 **"46-18-111. Presentence investigation -- when required -- definition.** (1) (a) (i) Upon the acceptance
 17 of a plea or upon a verdict or finding of guilty to one or more felony offenses, the district court ~~shall~~ may request
 18 and direct the probation and parole officer to make a presentence investigation and report unless an investigation
 19 and report has been provided to the court prior to the plea or the verdict or finding of guilty.

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

23 (iii) ~~The~~ If requested, the district court shall consider the presentence investigation report prior to
 24 sentencing.

25 (b) (i) If the defendant was convicted of an offense under 45-5-502, 45-5-503, 45-5-504, 45-5-507,
 26 45-5-601(3), 45-5-602(3), 45-5-603(2)(b), 45-5-625, 45-5-627, 45-5-704, 45-5-705, or 45-8-218 or if the defendant
 27 was convicted under 46-23-507 and the offender was convicted of failure to register as a sexual offender pursuant
 28 to Title 46, chapter 23, part 5, the ~~investigation must include~~ court shall order a psychosexual evaluation of the
 29 defendant ~~and~~ that includes a recommendation as to treatment of the defendant in the least restrictive
 30 environment, considering the risk the defendant presents to the community and the defendant's needs, unless

1 the defendant was sentenced under 46-18-219.

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

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

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

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

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

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

26 (2) ~~The court shall order a presentence investigation report unless the court makes a finding that a report~~
27 ~~is unnecessary. Unless the court makes that finding, a defendant convicted of any offense not enumerated in~~
28 ~~subsection (1) that may result in incarceration for 1 year or more may not be sentenced before a written~~
29 ~~presentence investigation report by a probation and parole officer is presented to and considered by the district~~
30 ~~court.~~ The district court may order a presentence investigation for a defendant convicted of a misdemeanor only

1 if the defendant was convicted of a misdemeanor that the state originally charged as a sexual or violent offense
2 as defined in 46-23-502.

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

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

7 (a) a probation and parole officer who is employed by the department of corrections pursuant to
8 46-23-1002; or

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

13 **Section 8.** Section 46-18-112, MCA, is amended to read:

14 **"46-18-112. Content of presentence investigation report.** (1) Whenever an investigation is ~~required~~
15 requested by the court, the probation and parole officer shall promptly inquire into and report upon:

16 (a) the defendant's characteristics, circumstances, needs, and potentialities, as reflected in a validated
17 risk and needs assessment;

18 (b) the defendant's criminal record and social history;

19 (c) the circumstances of the offense;

20 (d) the time of the defendant's detention for the offenses charged;

21 (e) the harm caused, as a result of the offense, to the victim, the victim's immediate family, and the
22 community; and

23 (f) the victim's pecuniary loss, if any. The officer shall make a reasonable effort to confer with the victim
24 to ascertain whether the victim has sustained a pecuniary loss. If the victim is not available or declines to confer,
25 the officer shall record that information in the report.

26 (2) All local and state mental and correctional institutions, courts, and law enforcement agencies shall
27 furnish, upon request of the officer preparing a presentence investigation, the defendant's criminal record and
28 other relevant information.

29 (3) The court may, in its discretion, require that the presentence investigation report include a physical
30 and mental examination of the defendant.

1 (4) Upon sentencing, the court shall forward to the sheriff all information contained in the presentence
2 investigation report concerning the physical and mental health of the defendant, and the information must be
3 delivered with the defendant as required in 46-19-101."
4

5 **Section 9.** Section 46-18-242, MCA, is amended to read:

6 **"46-18-242. Investigation and report of victim's loss.** (1) Whenever the court believes that a victim
7 may have sustained a pecuniary loss or whenever the prosecuting attorney requests, the court shall order the
8 probation officer, restitution officer, or other designated person to include in the presentence investigation and
9 report if requested pursuant to 46-18-111:

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

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

13 (2) When a presentence report is not ~~authorized or~~ requested, the court shall accept evidence of the
14 victim's loss at the time of sentencing."
15

16 **Section 10.** Section 53-6-1312, MCA, is amended to read:

17 **"53-6-1312. (Temporary) Health care services payment schedules.** (1) The department of corrections
18 and the department of public health and human services shall reimburse health care service for individuals
19 identified in subsection (2) at the rates adopted by the department for the medicaid program under Title 53,
20 chapter 6, part 1, if the health care services are not otherwise covered by medicaid, medicare, a health insurer,
21 or another private or governmental program that pays for health care costs.

22 (2) This section applies to individuals:

23 (a) in the custody of the department of corrections; or

24 (b) who are residents, by commitment or otherwise, of the Montana state hospital, the Montana mental
25 health nursing care center, the Montana chemical dependency center, the state facility at Galen, or the Montana
26 developmental center. (~~Terminates June 30, 2019--sec. 28, Ch. 368, L. 2015.~~)
27

28 **Section 11.** Section 8, Chapter 241, Laws of 2017, is amended to read:

29 **"Section 8. Termination.** [Sections 1 through 3] terminate June 30, ~~2023~~ 2019."
30

1 **Section 12.** Section 28, Chapter 368, Laws of 2015, is amended to read:

2 **"Section 28. Termination.** (1) [This act], except [section 9], terminates June 30, 2019.

3 (2) The department may reapply for the same waiver received to implement the Montana Health and
4 Economic Livelihood Partnership Act program if the waiver expires before June 30, 2019."

5

6 NEW SECTION. **Section 13. Fund transfers.** By June 30, 2019, the state treasurer shall make the
7 following transfers from the account established in 30-14-143:

8 (1) \$1,553,000 to the pretrial diversion program state special revenue account established in [section
9 1]; and

10 (2) \$300,000 to the legislative committees and activities state special revenue account established in
11 [section 2].

12

13 NEW SECTION. **Section 14. Codification instruction.** (1) [Section 1] is intended to be codified as
14 an integral part of Title 46, and the provisions of Title 46 apply to [section 1].

15 (2) [Section 3] is intended to be codified as an integral part of Title 2, chapter 15, part 20, and the
16 provisions of Title 2, chapter 15, part 20, apply to [section 3].

17

18 NEW SECTION. **Section 15. Effective dates.** (1) Except as provided in subsection (2), [this act] is
19 effective July 1, 2019.

20 (2) [Sections 11 through 15] are effective on passage and approval.

21

- END -