

SENATE BILL NO. 60

INTRODUCED BY C. WOLKEN

BY REQUEST OF THE COMMISSION ON SENTENCING

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5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING CRIMINAL JUSTICE LAWS; REVISING
6 PRESENTENCE INVESTIGATION LAWS; REQUIRING A PRELIMINARY OR FINAL REPORT TO BE
7 PROVIDED TO THE COURT WITHIN 30 DAYS; REQUIRING A PROBATION AND PAROLE OFFICER TO USE
8 A VALIDATED RISK AND NEEDS ASSESSMENT AS PART OF THE INVESTIGATION AND REPORT;
9 ALLOWING THE DEPARTMENT OF CORRECTIONS TO USE EMPLOYEES WITH SPECIFIC TRAINING TO
10 PREPARE PRESENTENCE REPORTS; REQUIRING THE DEPARTMENT TO PROVIDE INITIAL AND
11 ONGOING TRAINING TO PROBATION AND PAROLE OFFICERS; REQUIRING THE DEPARTMENT TO USE
12 AND REGULARLY VALIDATE ITS RISK ASSESSMENT TOOL; AND AMENDING SECTIONS 46-18-111,
13 46-18-112, 46-23-1004, AND 53-1-203, MCA."

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15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
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17 **Section 1.** Section 46-18-111, MCA, is amended to read:

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

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

25 (iii) The district court shall consider the presentence investigation report prior to sentencing.

26 (b) If the defendant was convicted of an offense under 45-5-502, 45-5-503, 45-5-504, 45-5-507,
27 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
28 was convicted under 46-23-507 and the offender was convicted of failure to register as a sexual offender pursuant
29 to Title 46, chapter 23, part 5, the investigation must include a psychosexual evaluation of the defendant and a
30 recommendation as to treatment of the defendant in the least restrictive environment, considering the risk the

1 defendant presents to the community and the defendant's needs, unless the defendant was sentenced under
2 46-18-219. 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. All costs related to the evaluation must be
6 paid by the defendant. If the defendant is determined by the district court to be indigent, all costs related to the
7 evaluation are the responsibility of the district court and must be paid by the county or the state, or both, under
8 Title 3, chapter 5, part 9. The district court may order subsequent psychosexual evaluations at the request of the
9 county attorney. The requestor of any subsequent psychosexual evaluations is responsible for the cost of the
10 evaluation.

11 (c) 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. The evaluation must be completed by a qualified psychiatrist, licensed clinical psychologist,
15 advanced practice registered nurse, or other professional with comparable credentials acceptable to the
16 department of labor and industry. The mental health evaluation must be made available to the county attorney's
17 office, the defense attorney, the probation and parole officer, and the sentencing judge. All costs related to the
18 evaluation must be paid by the defendant. If the defendant is determined by the district court to be indigent, all
19 costs related to the evaluation are the responsibility of the district court and must be paid by the county or the
20 state, or both, under Title 3, chapter 5, part 9.

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

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

1 as defined in 46-23-502.

2 (3) The defendant shall pay to the department of corrections a \$50 fee at the time that the report is
3 completed, unless the court determines that the defendant is not able to pay the fee within a reasonable time.

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

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

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

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

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12 **Section 2.** Section 46-18-112, MCA, is amended to read:

13 **"46-18-112. Content of presentence investigation report.** (1) Whenever an investigation is required,
14 the probation and parole officer shall promptly inquire into and report upon:

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

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

18 (c) the circumstances of the offense;

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

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

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

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

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

30 (4) Upon sentencing, the court shall forward to the sheriff all information contained in the presentence

1 investigation report concerning the physical and mental health of the defendant, and the information must be
2 delivered with the defendant as required in 46-19-101."

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4 **Section 3.** Section 46-23-1004, MCA, is amended to read:

5 **"46-23-1004. Duties of department.** The department is responsible for any investigation and
6 supervision requested by the board or the courts for felony offenders. The department shall:

7 (1) divide the state into districts and assign probation and parole officers to serve in these districts and
8 courts;

9 (2) obtain any necessary office quarters for the staff in each district;

10 (3) assign the secretarial, bookkeeping, and accounting work to the clerical employees, including receipt
11 and disbursement of money;

12 (4) direct the work of the probation and parole officers and other employees;

13 (5) formulate methods of investigation, supervision, recordkeeping, and reports;

14 (6) conduct training courses for the staff, including initial training on risk assessment and
15 evidence-based practices for new probation and parole officers and regular training for all probation and parole
16 officers. Performance reviews of probation and parole officers must incorporate the requirements for training on
17 risk assessment and other evidence-based practices.

18 (7) cooperate with all agencies, public and private, that are concerned with the treatment or welfare of
19 persons on probation or parole;

20 (8) administer the Interstate Compact for Adult Offender Supervision; and

21 (9) notify the employer of a probationer or parolee if the probationer or parolee has been convicted of
22 an offense involving theft from an employer."

23

24 **Section 4.** Section 53-1-203, MCA, is amended to read:

25 **"53-1-203. Powers and duties of department of corrections.** (1) The department of corrections shall:

26 (a) subject to subsection (6), adopt rules necessary:

27 (i) to carry out the purposes of 41-5-125;

28 (ii) for the siting, establishment, and expansion of prerelease centers;

29 (iii) for the expansion of treatment facilities or programs previously established by contract through a
30 competitive procurement process;

1 (iv) for the establishment and maintenance of residential methamphetamine treatment programs; and
2 (v) for the admission, custody, transfer, and release of persons in department programs except as
3 otherwise provided by law;

4 (b) subject to the functions of the department of administration, lease or purchase lands for use by
5 correctional facilities and classify those lands to determine those that may be most profitably used for agricultural
6 purposes, taking into consideration the needs of all correctional facilities for the food products that can be grown
7 or produced on the lands and the relative value of agricultural programs in the treatment or rehabilitation of the
8 persons confined in correctional facilities;

9 (c) contract with private, nonprofit Montana corporations or, pursuant to the Montana Community
10 Corrections Act, with community corrections facilities or programs or local or tribal governments to establish and
11 maintain:

12 (i) prerelease centers for purposes of preparing inmates of a Montana prison who are approaching parole
13 eligibility or discharge for release into the community, providing an alternative placement for offenders who have
14 violated parole or probation, and providing a sentencing option for felony offenders pursuant to 46-18-201. The
15 centers shall provide a less restrictive environment than the prison while maintaining adequate security. The
16 centers must be operated in coordination with other department correctional programs. This subsection does not
17 affect the department's authority to operate and maintain prerelease centers.

18 (ii) residential methamphetamine treatment programs for the purpose of alternative sentencing as
19 provided for in 45-9-102, 46-18-201, 46-18-202, and any other sections relating to alternative sentences for
20 persons convicted of possession of methamphetamine. The department shall issue a request for proposals using
21 a competitive process and shall follow the applicable contract and procurement procedures in Title 18.

22 (d) use the staff and services of other state agencies and units of the Montana university system, within
23 their respective statutory functions, to carry out its functions under this title;

24 (e) propose programs to the legislature to meet the projected long-range needs of corrections, including
25 programs and facilities for the custody, supervision, treatment, parole, and skill development of persons placed
26 in correctional facilities or programs;

27 (f) encourage the establishment of programs at the local and state level for the rehabilitation and
28 education of felony offenders;

29 (g) administer all state and federal funds allocated to the department for delinquent youth, as defined
30 in 41-5-103;

- 1 (h) collect and disseminate information relating to youth who are committed to the department for
2 placement in a state youth correctional facility;
- 3 (i) maintain adequate data on placements that it funds in order to keep the legislature properly informed
4 of the specific information, by category, related to delinquent youth in out-of-home care facilities;
- 5 (j) provide funding for youth who are committed to the department for placement in a state youth
6 correctional facility;
- 7 (k) administer youth correctional facilities;
- 8 (l) provide supervision, care, and control of youth released from a state youth correctional facility; and
- 9 (m) use to maximum efficiency the resources of state government in a coordinated effort to:
- 10 (i) provide for delinquent youth committed to the department; and
- 11 (ii) coordinate and apply the principles of modern correctional administration to the facilities and programs
12 administered by the department.
- 13 (2) The department may contract with private, nonprofit or for-profit Montana corporations to establish
14 and maintain a residential sexual offender treatment program. If the department intends to contract for that
15 purpose, the department shall adopt rules for the establishment and maintenance of that program.
- 16 (3) The department and a private, nonprofit or for-profit Montana corporation may not enter into a
17 contract under subsection (1)(c) or (2) for a period that exceeds 20 years. The provisions of 18-4-313 that limit
18 the term of a contract do not apply to a contract authorized by subsection (1)(c) or (2). Prior to entering into a
19 contract for a period of 20 years, the department shall submit the proposed contract to the legislative audit
20 committee. The legislative audit division shall review the contract and make recommendations or comments to
21 the legislative audit committee. The committee may make recommendations or comments to the department. The
22 department shall respond to the committee, accepting or rejecting the committee recommendations or comments
23 prior to entering into the contract.
- 24 (4) The department of corrections may enter into contracts with nonprofit corporations or associations
25 or private organizations to provide substitute care for delinquent youth in state youth correctional facilities or on
26 juvenile parole supervision.
- 27 (5) The department may contract with Montana corporations to operate a day reporting program as an
28 alternate sentencing option as provided in 46-18-201 and 46-18-225 and as a sanction option under 46-23-1015.
29 The department shall adopt by rule the requirements for a day reporting program, including but not limited to
30 requirements for daily check-in, participation in programs to develop life skills, and the monitoring of compliance

1 with any conditions of probation, such as drug testing.

2 (6) Rules adopted by the department pursuant to subsection (1)(a) may not amend or alter the statutory
3 powers and duties of the state board of pardons and parole. The rules for the siting, establishment, and
4 expansion of prerelease centers must state that the siting is subject to any existing conditions, covenants,
5 restrictions of record, and zoning regulations. The rules must provide that a prerelease center may not be sited
6 at any location without community support. The prerelease siting, establishment, and expansion must be subject
7 to, and the rules must include, a reasonable mechanism for a determination of community support for or objection
8 to the siting of a prerelease center in the area determined to be impacted. The prerelease siting, establishment,
9 and expansion rules must provide for a public hearing conducted pursuant to Title 2, chapter 3.

10 (7) The department shall ensure that risk and needs assessments drive the department's supervision
11 and correctional practices, including integrating assessment results into supervision contact standards and case
12 management. The department shall regularly validate its risk assessment tool."

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