

# Montana Code Annotated 2017

TITLE 46. CRIMINAL PROCEDURE

CHAPTER 18. SENTENCE AND JUDGMENT

Part 1. Policy and Preliminary Procedure

## Presentence Investigation -- When Required -- Definition

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

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

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

(b) If the defendant was convicted of an offense under **45-5-502, 45-5-503, 45-5-504, 45-5-507, 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 was convicted under **46-23-507** and the offender was convicted of failure to register as a sexual offender pursuant to Title 46, chapter 23, part 5, the investigation must include a psychosexual evaluation of the defendant and a recommendation as to treatment of the defendant in the least restrictive environment, considering the risk the defendant presents to the community and the defendant's needs, unless the defendant was sentenced under **46-18-219**. The evaluation must be completed by a sexual offender evaluator who is a member of the Montana sex offender treatment association or has comparable credentials acceptable to the department of labor and industry. The psychosexual evaluation must be made available to the county attorney's office, the defense attorney, the probation and parole officer, and the sentencing judge. All costs related to the evaluation must be paid by the defendant. If the defendant is determined by the district court to be indigent, all costs related to the evaluation are the responsibility of the district court and must be paid by the county or the state, or both, under Title 3, chapter 5, part 9. The district court may order subsequent psychosexual evaluations at the request of the county attorney. The requestor of any subsequent psychosexual evaluations is responsible for the cost of the evaluation.

(c) If the defendant was convicted of an offense under **45-5-212(2)(b)** or (2)(c), the investigation may include a mental health evaluation of the defendant and a recommendation as to treatment of the defendant in the least restrictive environment, considering the risk the defendant presents to the community and the defendant's needs. The evaluation must be completed by a qualified psychiatrist, licensed clinical psychologist, advanced practice registered nurse, or other professional with comparable credentials acceptable to the department of labor and industry. The mental health evaluation must be made available to the county attorney's office, the defense attorney, the probation and parole officer, and the sentencing judge. All costs related to the evaluation must be paid by the defendant. If the defendant is determined by the district court to be indigent, all costs related to the evaluation are the responsibility of the district court and must be paid by the county or the state, or both, under Title 3, chapter 5, part 9.

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

(2) The court shall order a presentence investigation report unless the court makes a finding that a report is unnecessary. Unless the court makes that finding, a defendant convicted of any offense not enumerated in subsection (1) that may result in incarceration for 1 year or more may not be sentenced before a written presentence investigation report by a probation and parole officer is presented to and considered by the district court. The district court may order a presentence investigation for a defendant convicted of a misdemeanor only if the defendant was convicted of a misdemeanor that the state originally charged as a sexual or violent offense as defined in **46-23-502**.

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

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

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

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

**History:** En. 95-2203 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2203; amd. Sec. 1, Ch. 173, L. 1985; amd. Sec. 2, Ch. 192, L. 1991; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 218, Ch. 800, L. 1991; amd. Sec. 40, Ch. 262, L. 1993; amd. Secs. 1, 2, Ch. 347, L. 1993; amd. Sec. 12, Ch. 482, L. 1995; amd. Sec. 213, Ch. 546, L. 1995; amd. Sec. 4, Ch. 189, L. 1997; amd. Sec. 155, Ch. 483, L. 2001; amd. Sec. 1, Ch. 493, L. 2001; amd. Sec. 1, Ch. 517, L. 2005; amd. Sec. 12, Ch. 483, L. 2007; amd. Sec. 2, Ch. 268, L. 2009; amd. Sec. 8, Ch. 374, L. 2013; amd. Sec. 2, Ch. 378, L. 2013; amd. Sec. 1, Ch. 110, L. 2015; amd. Sec. 17, Ch. 285, L. 2015; amd. Sec. 1, Ch. 199, L. 2017.