_____ BILL NO. _____

INTRODUCED BY _____

BY REQUEST OF THE DEPARTMENT OF CORRECTIONS

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO PRESENTENCE INVESTIGATION REPORTS; REMOVING THE REQUIREMENT THAT A PRESENTENCE INVESTIGATION REPORT INCLUDE A VALID RISK AND NEEDS ASSESSMENT; AUTHORIZING THE USE OF PRESENTENCE INVESTIGATION REPORTS FOR PENOLOGICAL AND REHABILITATIVE PURPOSES; REQUIRING INTERCOURT SHARING OF REPORTS; AUTHORIZING REQUESTS FOR UPDATED REPORTS WHEN A PRIOR REPORT EXISTS; REVISING LANGUAGE FOR CONSISTENCY; AND AMENDING SECTIONS 45-9-202, 46-14-301, 46-14-311, 46-18-111, 46-18-112, 46-18-113, 46-18-242, AND 46-18-261, MCA."

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

Section 1. Section 45-9-202, MCA, is amended to read:

"**45-9-202. Alternative sentencing authority.** (1) A person convicted of a dangerous drug felony offense under this chapter may, in lieu of imprisonment, be sentenced according to the alternatives provided in subsection (2).

(2) If the court determines, either from the face of the record or from a presentence investigation ~~and~~ report, that incarceration of the defendant is not appropriate, the court may, as a condition of a suspended or deferred sentence, impose one or more of the following alternatives:

(a) imposition of a fine not to exceed the maximum amount provided by statute for those offenses that specify a fine as part of the penalty or $1,000 for those offenses that do not specify a fine;

(b) commitment to a residential drug treatment facility licensed and approved by the state for rehabilitative treatment for not less than the minimum recommended time determined necessary by the facility and not more than 1 year;

(c) mandatory service of not more than 2,000 hours in a community-based drug treatment or drug

education program with compliance to be monitored by the probation and parole bureau of the department of corrections based upon information provided by the treatment or education program;

(d) if recommended by the probation and parole bureau, placement in a program of intensive probation that requires, at a minimum, that the defendant comply with all of the following conditions:

(i) maintain employment or full-time student status at an approved school, making progress satisfactory to the probation officer, or be involved in supervised job searches and community service work designated by the probation officer;

(ii) pay probation supervision fees through the department of corrections of not less than $50 a month to be deposited in the account established in 46-23-1031;

(iii) find a place to reside approved by the probation officer that may not be changed without the officer's approval;

(iv) remain at the residence at all times except to go to work, to attend school, or to perform community service or as otherwise specifically allowed by the probation officer;

(v) remain drug free and submit to drug and alcohol tests administered randomly not less than once each month by or under supervision of the probation officer;

(vi) perform not less than 10 hours of community service each month as approved by the probation officer, except that full-time students may be exempted or required to perform fewer hours of community service;

(vii) enroll or make satisfactory effort to seek enrollment in an approved drug rehabilitation program; and

(viii) comply with any other conditions imposed by the court to meet the needs of the community and the defendant;

(e) suspension or revocation of the defendant's driver's license issued under Title 61, chapter 5, subject to the following terms and conditions:

(i) upon the first conviction of an offense under this chapter, the driver's license must be suspended for 6 months;

(ii) upon the second conviction, the driver's license must be revoked for 1 year;

(iii) upon a third or subsequent conviction, the driver's license must be revoked for 3 years."

Section 2. Section 46-14-301, MCA, is amended to read:

"**46-14-301. Commitment upon finding of not guilty by reason of lack of mental state -- hearing to determine release or discharge -- limitation on confinement.** (1) When a defendant is found not guilty for the reason that due to a mental disease or disorder the defendant could not have a particular state of mind that is an essential element of the offense charged, the court shall order a ~~predisposition~~ presentence investigation report in accordance with 46-18-112 and 46-18-113, which must include an investigation of the present mental condition of the defendant. If the trial was by jury, the court shall hold a hearing to determine the appropriate disposition of the defendant. If the trial was by the court, the court may hold a hearing to obtain any additional testimony it considers necessary to determine the appropriate disposition of the defendant. In either case, the testimony and evidence presented at the trial must be considered by the court in making its determination.

(2) The court shall evaluate the nature of the offense with which the defendant was charged. If the offense:

(a) involved a substantial risk of serious bodily injury or death, actual bodily injury, or substantial property damage, the court may find that the defendant suffers from a mental disease or disorder that renders the defendant a danger to the defendant or others. If the court finds that the defendant presents a danger to the defendant or others, the defendant may be committed to the custody of the director of the department of public health and human services to be placed in an appropriate mental health facility for custody, care, and treatment. However, if the court finds that the defendant is seriously developmentally disabled, as defined in 53-20-102, the prosecutor shall petition the court in the manner provided in Title 53, chapter 20.

(b) charged did not involve a substantial risk of serious bodily injury or death, actual bodily injury, or substantial property damage, the court shall release the defendant. The prosecutor may petition the court in the manner provided in Title 53, chapter 20 or 21.

(3) A person committed to the custody of the director of the department of public health and human services must have a hearing within 180 days of confinement to determine the person's present mental condition and whether the person must be discharged or released or whether the commitment may be extended because the person continues to suffer from a mental disease or disorder that renders the person a danger to the person or others. The hearing must be conducted by the court that ordered the commitment

unless that court transfers jurisdiction to the district court in the district in which the person has been placed. The court shall cause notice of the hearing to be served upon the person, the person's counsel, the prosecutor, and the court that originally ordered the commitment. The hearing is a civil proceeding, and the burden is upon the state to prove by clear and convincing evidence that the person may not be safely released because the person continues to suffer from a mental disease or disorder that causes the person to present a substantial risk of:

(a) serious bodily injury or death to the person or others;

(b) an imminent threat of physical injury to the person or others; or

(c) substantial property damage.

(4) According to the determination of the court upon the hearing, the person must be discharged or released on conditions the court determines to be necessary or must be committed to the custody of the director of the department of public health and human services to be placed in an appropriate mental health facility for custody, care, and treatment. The period of commitment may not exceed the maximum sentence determined under 46-14-214(2). At the time that the period of the maximum sentence expires, involuntary civil commitment proceedings may be instituted in the manner provided in Title 53, chapter 21.

(5) A professional person shall review the status of the person each year. At the time of the annual review, the director of the department of public health and human services or the person or the representative of the person may petition for discharge or release of the person. Upon request for a hearing, a hearing must be held pursuant to the provisions of subsection (3)."

Section 3. Section 46-14-311, MCA, is amended to read:

"**46-14-311. Consideration of mental disease or disorder or developmental disability in sentencing.** (1) Whenever a defendant is convicted on a verdict of guilty or a plea of guilty or nolo contendere and claims at the time of the omnibus hearing held pursuant to 46-13-110 or, if no omnibus hearing is held, at the time of any change of plea by the defendant that at the time of the commission of the offense of which convicted the defendant was suffering from a mental disease or disorder or developmental disability that rendered the defendant unable to appreciate the criminality of the defendant's behavior or to conform the defendant's behavior to the requirements of law, the sentencing court shall consider any relevant evidence

presented at the trial and may also consider the results of the presentence investigation report requested pursuant to subsection (2).

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

Section 4. Section 46-18-111, MCA, is amended to read:

"**46-18-111. Presentence investigation report -- 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, except as provided in subsection (1)(d), the district court may request and direct the probation and parole officer to make a presentence investigation ~~and~~ report for initial sentencing, unless ~~an~~ a presentence investigation ~~and~~ report has been provided to ~~the~~ a court prior to the plea or the verdict or finding of guilty.

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

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

(iv) If a presentence investigation report has been completed previously by any court, the district court shall consider that presentence investigation report and may request and direct the probation and parole officer to update the content of the report and may order additional information required under subsection (1)(b), (1)(c), (1)(d), or (1)(e).

(b) (i) If the defendant was convicted of an offense under 45-5-502, 45-5-503, 45-5-504, 45-5-507, 45-5-508, 45-5-601(3), 45-5-625, 45-5-627, 45-5-705, 45-5-706, 45-5-711, 45-5-802(1), 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 court shall order a psychosexual evaluation of the defendant unless the defendant is sentenced under 46-18-219. The evaluation must include:

(A) 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;

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

(C) the defendant's needs.

(ii) Unless a psychosexual evaluation has been provided to the court prior to the plea or the verdict or finding of guilty, the evaluation must be completed by a sexual offender evaluator selected by the court and who has a license endorsement as provided for in 37-1-139. 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.

(iii) All costs related to the evaluation, including an evaluation ordered by the court as allowed in subsection (1)(b)(ii), must be paid by the defendant. If the defendant is determined by the district court to be indigent, all costs related to the evaluation, including an evaluation ordered by the court as allowed in subsection (1)(b)(ii), 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) (i) 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.

(ii) The evaluation must be completed by a qualified psychiatrist, licensed clinical psychologist, advanced practice registered nurse, licensed clinical social worker, licensed clinical professional counselor, licensed marriage and family therapist, 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.

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

(e) When, pursuant to 46-14-311, the court has ordered a presentence investigation ~~and a~~ report pursuant to this section, the mental evaluation 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 district court may order a presentence investigation report 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 presentence investigation 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."

Section 5. Section 46-18-112, MCA, is amended to read:

"**46-18-112. Content of presentence investigation report.** (1) Whenever an investigation is

requested by the court, the probation and parole officer shall promptly inquire into and report upon:

(a) the defendant's characteristics, circumstances, and needs affecting the defendant's behavior that may be helpful in imposing the sentence or in the correctional treatment of the defendant~~, and potentialities, as reflected in a validated risk and needs assessment~~;

(b) the defendant's criminal ~~record and social history~~ history, including any charges pending final disposition;

(c) the circumstances of the offense;

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

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

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

(2) The presentence investigation report may contain the following information ~~pertaining to the defendant may also be included or considered in the report~~ if directed by the district court:

~~(a) prior criminal history;~~

~~(b)~~ (a) probation or parole history;

~~(c) official version of the offense or offenses;~~

~~(d)~~ (b) custody status;

~~(e) pending cases or charges against the defendant;~~

~~(f)~~ (c) probation officer recommendations;

~~(g)~~ (d) gang affiliation;

~~(h)~~ (e) background and ties to the community;

~~(i)~~ (f) history of substance use disorder;

~~(j)~~ (g) physical and mental health;

~~(k)~~ (h) financial condition, including employment history and status;

~~(l)~~ (i) education history; and

~~(m)~~ (j) prescreening and placement options.

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

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

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

(6) The department of corrections may use any presentence investigation report prepared pursuant to this section for penological and rehabilitative purposes."

Section 6. Section 46-18-113, MCA, is amended to read:

"**46-18-113. Availability of presentence investigation report.** (1) All presentence investigation reports must be a part of the court record but may not be opened for public inspection. A copy of the presentence investigation report must be provided to the prosecution, the defendant and the defendant's attorney, the probation and parole officer, and the agency or institution to which the defendant is committed. The prosecutor may disclose the contents of the presentence investigation report to a victim of the offense.

(2) ~~The~~ A court having jurisdiction ~~of the~~ over a case in which a presentence investigation report was utilized for sentencing shall permit access to the report to other courts for sentencing purposes and may permit other access to the presentence investigation report as it considers necessary."

Section 7. Section 46-18-242, MCA, is amended to read:

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

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

(ii) an affidavit that specifically describes the victim's pecuniary loss and the replacement value in

dollars of the loss, submitted by the victim.

(b) If the court does not order the probation officer, restitution officer, or other designated person to include information about a victim's pecuniary loss or loss of property in a presentence investigation report, nothing precludes the victim from providing that information to the probation officer, restitution officer, or other designated person making the presentence investigation ~~and~~ report.

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

Section 8. Section 46-18-261, MCA, is amended to read:

"**46-18-261. Recovery of suppression and investigation expenses for fires caused by arson.** (1) A person convicted of arson, negligent arson, or solicitation of or conspiracy to commit arson or negligent arson may be ordered, as part of the sentence, to reimburse law enforcement agencies, governmental fire agencies organized under Title 7, chapter 33, and the state for the cost of suppressing and investigating a fire that occurred during the commission of the crime.

(2) The court may order a person doing a presentence investigation ~~and~~ report to include documentation of the costs of suppressing and investigating the fire and of the defendant's ability to pay and may receive evidence concerning the matters at the time of sentencing.

(3) The court shall specify the amount, method, and time of payment, which may include but is not limited to installment payments. The court may order a probation officer or other appropriate officer attached to or working closely with the court in the administration of justice to supervise payment and report any default to the court.

(4) Upon petition by the offender and after a hearing, the payment may be modified. Agencies receiving payment at that time must be notified of and allowed to participate in the hearing.

(5) This section does not limit the right of a law enforcement agency or governmental fire agency to recover from the offender in a civil action, but the findings in the sentencing hearing and the fact that payment of costs was part of the sentence are inadmissible in and have no legal effect on the merits of a civil action. Costs paid by the offender must be deducted from a recovery awarded in a civil action."

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