

# MSOTA

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# NEWSLETTER

## WELCOME

*This is the first issue of the Montana Sex Offender Treatment Association's (MSOTA) newsletter. We hope to use this newsletter as a means to help us accomplish a key component of our mission: promoting community safety & education. Hopefully, this newsletter serves as resource to you and those in your community.*

## LAYING THE GROUNDWORK

BARE BASICS OF A SEXUAL  
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EVALUATION?

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## THE BARE BASICS OF A SEXUAL OFFENSE

Explaining Montana law in relation to charging and convicting a person of a sexual offense is an extremely complex task. The varying degrees of sexual misconduct and how sexual behaviors are perceived by society makes the task even more difficult. For instance, while a charge of Indecent Exposure for someone's first arrest is a misdemeanor charge and may seem like a mere annoyance on the surface, it can cause great fear and harm to the victim of the offense. Furthermore, misdemeanor sexual offenses such as indecent exposure or "peeping" (a.k.a., Surreptitious Visual Observation, per MCA 45-5-223) can lead to more serious sexual crimes.

Under Title 45 Chapter 5 of Montana Code Annotated, one can find the various definitions of Montana law that define sexual misconduct. For the purpose of brevity and simplicity, this article breaks this topic into bare bones. First, there are two primary felonies in the state of Montana in regards to felony rape: Sexual Intercourse without Consent and Sexual Assault. The primary difference between the two offenses is that Sexual Assault involves a person knowingly making sexual contact (e.g., touching genitalia or intimate parts) without consent versus

sexual intercourse without consent, which entails more serious form of sexual contact that includes penetration however slightly.

Other crimes that constitutes sexual conduct that have not yet been identified and may lead to legal consequences include: Incest, Sexual Abuse of Children (i.e., manufacturing, producing, distributing and/or possessing media that constitutes child pornography; enticing or attempting to persuade a child to engage in sexual conduct, or transporting a child to engage in sexual conduct), Deviate Sexual Conduct (e.g, sexual contact with animals), Prostitution, and Human Trafficking/Sexual Servitude.

The most important aspect to know about any sexual offense is that the behavior or conduct is not consensual. Three factors contribute to the determination of consent: age (in Montana, the age of consent is 16 years-old), did the alleged victim have the capacity to give consent; and were both parties consenting to the sexual behavior.

If charged with a sexual offense, the Court may order that a psychosexual evaluation be conducted as part of the proceedings.

*This article was contributed by Brenda Erdelyi, LCSW, MSOTA Clinical Member. Brenda is the President of the Association and the Chair of the Public Education/Outreach Committee. She practices out of Missoula, Montana.*

## MSOTA'S MISSION STATEMENT

The mission of the Montana Sex Offender Treatment Association is the promotion of community safety and education by maintaining professional standards for the evaluation and effective treatment of sexual offenders, individuals with sexually abusive behaviors, and/or sexual behavior problems. MSOTA promotes education and training throughout the state and region. A number of MSOTA clinical members are recognized nationally for their work and expertise in the area of evaluation and treatment of sex offenders. The relatively small population of Montana has enabled the association to coordinate efforts and provide consistency of services throughout the state.

## WHAT IS A PSYCHOSEXUAL EVALUATION?

Upon the acceptance of a plea or a verdict or finding of guilty to a sexual offense or failure to register charge, a court orders a psychosexual evaluation to be conducted. According to Montana law (MCA 46-18-111), a psychosexual evaluation must be completed by a mental health professional who is a member of MSOTA or who can demonstrate comparable credentials acceptable to the Department of Labor and Industry. Required by statute, psychosexual evaluations inform the trier-of-fact (Court or jury) of two important determinants. First, the psychosexual evaluation is intended to inform the trier-of-fact on the risk the defendant poses to engage in sexually abusive behavior again (this assumes that the individual will be found guilty of the charges). The evaluator utilizes many sources of information during the course of an evaluation, and the evaluator chooses methods to explore pertinent factors associated with risk to sexually recidivate. The evaluator is guided by best practices, which are found in the MSOTA Standards of Evaluation and Practice (visit: [www.msota.org](http://www.msota.org) for more details). It is important to note that the information provided to the evaluator and the information the evaluator obtains from the offender collectively compares that offender to thousands of other offenders worldwide, per each risk assessment's research sample. The comparison of traits the offender possesses with those offenders studied in the research samples allows the MSOTA evaluator to make the determination of whether the offender presents as a Low, Moderate, or High risk to sexually recidivate. Low, Moderate or High refers to a grouping or a percentage of offenders similar to the offender the MSOTA evaluator is evaluating; it does not represent the heinousness of the crime(s).

Secondly, the evaluator is tasked with recommending a Level designation often influencing the designation that the Court sets in a criminal proceeding. Levels are

determined by the aforementioned risk. Level I equates to "low risk," and Level II equates to "moderate risk." Level III requires a "high risk" rating and other specific requirements as described by statute. Ultimately however this is a recommendation, and the court determines the Level designation.

In addition to the two requirements identified by statute, the evaluation also serves to inform the trier-of-fact on risk variables which will need to be addressed during the course of sex offense treatment to increase community safety and recommends the level of structure warranted for the offender to safely begin treatment.

At the end of its course, the psychosexual is then provided to the sex offense specific treatment provider and serves as a tool to discuss factors the treatment provider will need to address in treatment in order to help the offender reduce their risk to sexually reoffend. These factors vary from offender to offender, and individualized aspects of treatment are often required even in traditional group formats.

In conclusion, a psychosexual does not imply innocence or guilt. It does, though, speak to the probability of an offender engaging in a new sexual crime. A psychosexual does not imply an evaluator endorses a crime. Evaluators do work to objectively evaluate a person's risk to sexually recidivate regardless of the referral source.

*This article was contributed by Dr. Bowman Smelko. Dr. Smelko is a licensed psychologist and Clinical Member of MSOTA. He is also the Co-Chair of the Standards Committee. He practices out of Helena, Montana.*

## WHAT IS MSOTA?

MSOTA is an association of various professionals across the state who work with individuals, adults and/or adolescents, who commit sexual offenses or engage in sexually abusive behaviors. There are different levels of engagement in which individuals participate in MSOTA:

- Clinical Members
- Associate Members
- Board Members
- Students

Clinical members are mental health professionals who work directly in evaluating and/or treating offenders. These individuals work in a number of settings: institutions to private practice, and provide a range of services (for more information, visit: [www.msota.org](http://www.msota.org)) Associate members may not be qualified to evaluate or directly treat offenders. Some Associate Members are mental health professionals working to become qualified Clinical Members while others work in professions who closely collaborate with Clinical Members (e.g., probation & parole officers, case managers). Finally, there is the essential guidance offered by Board Members to the overall Association. A number of individuals from a variety of professions help comprise the Board (e.g., attorneys, judges, mental health professionals). Board members serve two year terms.



### Sexual Violent Offender Registry

First created in 1989 and then strengthened by legislation in 1995, the Montana's Sexual or Violent Offender Registration Act is designed to protect the public from sexual or violent offenders by requiring offenders to register with local law enforcement agencies in the jurisdiction where they reside. Information about these offenders is then made available to the public.