



GOVERNOR'S OFFICE OF
BUDGET AND PROGRAM PLANNING

Fiscal Note 2017 Biennium

Bill # SB0316

Title: Generally revise laws re when certain individuals may be transferred to DOC

Primary Sponsor: Webb, Roger

Status: As Amended

- Significant Local Gov Impact
 Needs to be included in HB 2
 Technical Concerns
 Included in the Executive Budget
 Significant Long-Term Impacts
 Dedicated Revenue Form Attached

FISCAL SUMMARY

	<u>FY 2016 Difference</u>	<u>FY 2017 Difference</u>	<u>FY 2018 Difference</u>	<u>FY 2019 Difference</u>
Expenditures:				
General Fund	\$78,082	\$78,424	\$79,739	\$81,076
Revenue:				
General Fund	\$0	\$0	\$0	\$0
Net Impact-General Fund Balance:	<u>(\$78,082)</u>	<u>(\$78,424)</u>	<u>(\$79,739)</u>	<u>(\$81,076)</u>

Description of fiscal impact: This bill requires a pre-transfer evidentiary hearing by a hearing officer of Department of Public Health and Human Services (DPHHS) before the director can exercise his or her existing statutory authority to transfer a Guilty But Mentally Ill (GBMI) offender sentenced to the director's custody from a state institution. There are approximately 26 GBMI offenders in Department of Correction's facilities across Montana at any given time. Once transferred, except as provided in New Section (3)(1)(b), the bill requires a DPHHS professional person to meet with the offender every 6 months for the duration of their placement in a correctional facility. There is no projected fiscal impact to the Department of Corrections (DOC).

FISCAL ANALYSIS

Assumptions:

Department of Public Health and Human Services

Montana State Hospital

1. There is an average of 3 GBMI offenders transferred from the Montana State Hospital (MSH) to the Department of Corrections annually.
2. Each GBMI offender is assumed to spend an additional 30 days at the MSH while the hearing is arranged and completed.

- a) Incidental costs include items such as food, clothing, laundry, medical supplies and laboratory services. The average inflation rate for incidental costs at MSH is 4% based on appropriation subcommittee actions.

MSH Additional Cost Details	FY 2016	FY 2017	FY 2018	FY 2019
Daily Incidental Costs with 4% Inflation Rate	\$48.94	\$50.90	\$52.93	\$55.05
x # GBMI Offenders awaiting a hearing	3	3	3	3
x estimated days	30	30	30	30
Total Incidental Costs	\$4,405	\$4,581	\$4,764	\$4,955

- b) Additional one-on-one Psychiatric Technician staff time will be required for each person. It is assumed that the MSH will utilize its aggregate Psychiatric Technician position.

MSH Additional Psychiatric Technician Details	FY 2016	FY 2017	FY 2018	FY 2019
Hourly Psychiatric Technician Costs with 1.5% Inflation Rate	\$17.46	\$17.72	\$17.99	\$18.26
x # GBMI Offenders awaiting a hearing	3	3	3	3
x hours per day	24	24	24	24
x estimated days	30	30	30	30
Total Psychiatric Technician Costs	\$37,714	\$38,279	\$38,858	\$39,441

- c) Administrative costs of collecting and providing evidence prior to hearing would include 20 hours of Social Worker staff time per person per hearing.

MSH Administrative Cost Details	FY 2016	FY 2017	FY 2018	FY 2019
Hourly Hearing Preparation Costs with 1.5% Inflation Rate	\$26.87	\$27.27	\$27.68	\$28.10
x # GBMI Offenders awaiting a hearing	3	3	3	3
x estimated hours	20	20	20	20
Total Administrative Costs	\$1,612	\$1,636	\$1,661	\$1,686

- d) The Department of Public Health and Human Services will contract with a Licensed Clinical Social Worker (LCSW) to provide monthly post transfer clinical assessments for two GBMI offenders in DOC facilities.

Assessments Provided Monthly	FY 2016	FY 2017	FY 2018	FY 2019
Hourly Clinical Assessment Costs with a 2 % Provider Rate Increase	\$60.00	\$61.20	\$62.22	\$63.24
# GBMI Offenders in DOC facilities	2	2	2	2
x # meetings per year	12	12	12	12
x # hours per visit	3.5	3.5	3.5	3.5
Total Clinical Assessment Costs	\$5,040	\$5,141	\$5,226	\$5,312

- e) The Department of Public Health and Human Services will contract with the LCSW to provide post transfer clinical assessments to the remaining 24 GBMI offenders in DOC facilities semiannually.

Assessments Provided Every 6 Months	FY 2016	FY 2017	FY 2018	FY 2019
Hourly Clinical Assessment Costs with a 2 % Provider Rate Increase	\$60.00	\$61.20	\$62.22	\$63.24

# GMBI Offenders in DOC facilities	24	24	24	24
x # meetings per year	2	2	2	2
x # hours per visit	3.5	3.5	3.5	3.5
Total Clinical Assessment Costs	\$10,080	\$10,282	\$10,453	\$10,624

f) The total additional costs to MSH would be:

	FY 2016	FY 2017	FY 2018	FY 2019
Additional 30 days	\$43,731	\$44,496	\$45,278	\$46,077
Post Transfer Clinical Assessments	\$15,120	\$15,423	\$15,679	\$15,936
Total	\$58,851	\$59,919	\$60,957	\$62,013

Legal Proceedings for Hearings

- This bill requires an evidentiary hearing after 30 days in all cases. This hearing is not at the request of the offender, but is automatically set up prior to the transfer in all cases. This appears to meet the definition of Montana Administrative Procedures Act (MAPA) that states “a proceeding before an agency in which a determination of legal rights, duties, or privileges of a party is required by law to be made after an opportunity hearing” (MCA 2-4-102). Based on this assumption, all MAPA evidentiary and procedural rules would apply.
- Using the information provided by AMDD, it is assumed there would be three evidentiary MAPA hearings (hearings) per year.
- Private attorneys are assumed to also contract with the Office of Public Defenders (OPD) to represent the individuals at the hearings. The OPD pays contracting attorneys for these matters at the rate of \$62 per hour.

OPD	2016	2017	2018	2019
professional time	40.00	40.00	40.00	40.00
cost per hour	\$62	\$63	\$64	\$65
number of hearings	3	3	3	3
est. professional cost	\$7,440	\$7,560	\$7,680	\$7,800
miles per trip	200	200	200	200
mileage rate	\$0.50	\$0.51	\$0.52	\$0.52
per diem	\$13	\$13	\$13	\$14
number of trips	3	3	3	3
estimated travel cost	\$1,017	\$1,035	\$1,053	\$1,062
Total	\$8,457	\$8,595	\$8,733	\$8,862

- The bill requires a “non-DPHHS” professional person (PP) to examine the individual and provide testimony. The cost of a PP is estimated at \$123 per hour.

PP	2016	2017	2018	2019
professional time	20.00	20.00	20.00	20.00
cost per hour	\$123	\$125	\$127	\$129
number of hearings	3	3	3	3
est. professional cost	\$7,380	\$7,500	\$7,620	\$7,740

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(continued)

miles per trip	200	200	200	200
mileage rate	\$0.50	\$0.51	\$0.52	\$0.52
per diem	\$13	\$13	\$13	\$14
number of trips	3	3	3	3
estimated travel cost	\$1,017	\$1,032	\$1,053	\$1,062
Total	\$8,397	\$8,532	\$8,673	\$8,802

7. The department will be required to make changes to administrative rules. The Secretary of State’s office charges \$50 per page for the printing and publication of administrative rules and proposed notices. It is estimated that a minimum of 20 pages of proposed notices will need to be printed and published for the adoption of the rules.

Administrative Rules	2016	2017	2018	2019
number of pages	20	0	0	0
cost per page	\$50	\$50	\$50	\$50
Total	\$1,000	\$0	\$0	\$0

8. Department staff at the facilities will be required to administratively coordinate the hearings and notices; this is estimated to be four hours staff time per case. This cost will be absorbed within existing resources.

9. Department Office of Legal Affairs (OLA) staff will be required to represent the department at the hearings; this is estimated to be 40 hours staff time for attorneys and ten hours for legal counsel support per case. This cost will be absorbed within existing resources.

10. Department Office of Legal Affairs (OLA) staff will be required to travel to the hearings.

OLA	2016	2017	2018	2019
number of hearings	3	3	3	3
miles per trip	200	200	200	200
mileage rate	\$0.50	\$0.51	\$0.52	\$0.52
per diem	\$13	\$13	\$13	\$14
number of trips	1	1	1	1
Total	\$339	\$345	\$351	\$354

11. It is assumed these costs are 100% general funds.

Legal Proceedings Post Transfer (appeal)

12. It is assumed that all individuals transferred will appeal the transfer. Each appeal hearing is estimated to be four hours.

13. A professional transcriptionist will be required at each appeals hearing. It is estimated that the services of a professional transcriptionist costs \$30 per hour.

Transcription Services	2016	2017	2018	2019
professional time	4.00	4.00	4.00	4.00
cost per hour	\$30	\$30	\$31	\$31
number of hearings	3	3	3	3

est. professional cost	\$360	\$360	\$372	\$372
miles per trip	200	200	200	200
mileage rate	\$0.50	\$0.51	\$0.52	\$0.52
per diem	\$13	\$13	\$13	\$14
number of trips	1	1	1	1
estimated travel cost	\$339	\$344	\$351	\$354
Total	\$699	\$705	\$723	\$726

14. Department Office of Legal Affairs (OLA) staff will be required prepare briefs and oral arguments for the appeals and will be required to travel to various sentencing districts. This cost will be absorbed within existing resources.
15. Department Office of Legal Affairs (OLA) staff will be required to travel to the hearings.

OLA	2016	2017	2018	2019
number of hearings	3	3	3	3
miles per trip	200	200	200	200
mileage rate	\$0.50	\$0.51	\$0.52	\$0.52
per diem	\$13	\$13	\$13	\$14
number of trips	1	1	1	1
Total	\$339	\$344	\$351	\$354

16. It is assumed that these costs are 100% general funds.

Department of Corrections

17. Currently, the DPHHS Director can transfer a GBMI offender to a correctional facility or program if, after considering the recommendations of the professionals providing treatment to the offender and who have evaluated the offender, the Director determines the correctional facility will better serve the custody, care and treatment needs of the offender.
18. This bill will require the DPHHS Director to provide the offender with a hearing, with at least a 30-day notice of the hearing. The hearing must also provide the offender with an opportunity to be heard in person, to present witnesses, to confront and cross-examine adverse witnesses and, if the offender cannot afford an attorney, DPHHS must make legal counsel available to the offender. The change in process will not result in any additional costs to the DOC.
19. DPHHS will be allowed to transfer a GBMI offender to a correctional facility without a hearing under “exigent circumstances” for not more than 20 days.
20. If the placement is beyond 20 days, a hearing must be provided within 30 days of the placement.
21. In this circumstance, DPHHS would be responsible for paying the offender’s housing, medication and treatment costs.
22. It is unknown how many “exigent” cases will occur with the existing population; therefore, there is no impact on DOC.
23. As of February 2015, DOC currently houses 24 GBMI offenders in prison. A total of 4 offenders are located at the Montana Women’s Prison, and a total of 20 male offenders are housed in Montana State Prison (16) and Crossroads Correctional Center (4).
24. The cost of incarceration is \$34,175 per year per male inmate and \$38,515 per year per female inmate.
25. There will be additional staff time needed to escort the weekly visiting DPHHS staff into the prisons to meet with offenders. The additional time is projected to be absorbed by DOC.

26. Due to the process changes listed above, there may be a fiscal savings to DOC. The current GBMI population prison include transfers made as early as 10/3/2000 and as recently as 1/30/2015. It is unknown if this population would transfer back to DPHHS custody or remain in prison.
27. In addition, the process may slow the transfer of offenders into a DOC facility, but it is unknown if the outcome of the hearings would change the offenders' placements.
28. There is no projected fiscal impact to DOC.

	<u>FY 2016</u> <u>Difference</u>	<u>FY 2017</u> <u>Difference</u>	<u>FY 2018</u> <u>Difference</u>	<u>FY 2019</u> <u>Difference</u>
<u>Fiscal Impact:</u>				
<u>Expenditures:</u>				
Personal Services	\$39,326	\$39,916	\$40,514	\$41,122
Operating Expenses	<u>\$38,756</u>	<u>\$38,508</u>	<u>\$39,225</u>	<u>\$39,954</u>
TOTAL Expenditures	<u><u>\$78,082</u></u>	<u><u>\$78,424</u></u>	<u><u>\$79,739</u></u>	<u><u>\$81,076</u></u>
<u>Funding of Expenditures:</u>				
General Fund (01)	<u>\$78,082</u>	<u>\$78,424</u>	<u>\$79,739</u>	<u>\$81,076</u>
TOTAL Funding of Exp.	<u><u>\$78,082</u></u>	<u><u>\$78,424</u></u>	<u><u>\$79,739</u></u>	<u><u>\$81,076</u></u>
<u>Revenues:</u>				
General Fund (01)	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
TOTAL Revenues	<u><u>\$0</u></u>	<u><u>\$0</u></u>	<u><u>\$0</u></u>	<u><u>\$0</u></u>
<u>Net Impact to Fund Balance (Revenue minus Funding of Expenditures):</u>				
General Fund (01)	(\$78,082)	(\$78,424)	(\$79,739)	(\$81,076)

Technical Notes:

1. This bill requires the DPHHS to provide a hearing presided over by an administrative law judge employed by the Department. Having a person employed by the department preside over these hearings could create the appearance of impropriety and a conflict of interest since it is the Department Director, who ultimately makes the recommendation for transfer.

Sponsor's Initials

Date

Budget Director's Initials

Date