

Mental Health-Related Legislation

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For the HJ1 Subcommittee on Public Mental Health Services
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By request of HJ1 Subcommittee:

1. The Subcommittee requested information regarding statutory options available regarding the length of a commitment for those who are found not guilty but mentally ill and actions taken in other states.

In Montana, there is no limit on the length of confinement for a commitment based on a not guilty but mentally ill adjudication and the concern was raised that a person may reside at Montana State Hospital indefinitely, despite reaching maximum benefit of hospitalization, and longer than had they been convicted as guilty through the traditional criminal procedure. In the United States Supreme Court Case Jones v. United States (463 U.S. 354), the court held in 1983 that "when a criminal defendant established by a preponderance of the evidence that he was not guilty of a crime by reason of insanity, the due process clause permitted by the Government, in the basis of the insanity judgment, to confine him to a mental institution until such time as he had regained his sanity or was no longer a danger to himself or society, and *he could be confined to a mental hospital for a period longer than he could have been incarcerated had not been convicted.*" (emphasis added, 103 Supreme Court Reporter, p. 3043)

Although staff could not find a comprehensive listing of all states, in researching other state statutes, examples were found from the states of California, Illinois, South Carolina, and Utah that limited the period of confinement to a period similar to that if the person had been convicted. There were some exceptions and allowances for a reduced period also. Examples have been attached. Additional considerations include: who calculates the maximum period of time, due process concerns, victim's rights, extension or civil proceedings to follow expiration, and use of conditional release.

2. The Subcommittee requested that staff review the 90-day involuntary commitment to Montana State Hospital versus the 6-month involuntary community commitment. A discussion draft is enclosed (LC4001 - beige enclosure) that attempts to resolve this issue by reinserting a 3-month community commitment and allowing a 6-month community commitment if there had been a previous involuntary commitment involving hospitalization in a mental health facility. This inserts into law the rational basis for a more restrictive level of commitment as it is relevant evidence of the predictability of deterioration in a respondent's condition. It makes an internal reference to the section of code that provides for protection of a respondent from the use of a past evaluation or treatment against one if the court makes a determination that the information is relevant to the current commitment proceedings.

3. The Subcommittee requested that staff review options to include a definition of "mental disease or

defect". Enclosed is a draft (LC4002 - goldenrod enclosure) that defines mental disease or defect and retains the current exclusions and adds to them. In developing this definition, the case of State v. Wooster was referenced. In Wooster, the Montana Supreme Court found that the Montana statutes lacked an affirmative definition of mental disease or defect and held that:

"mental disease or defect, as set forth under §46-14-101, MCA, means an affliction with a mental disease or mental condition that is manifested by a disorder or a disturbance in behavior, feeling, thinking, or judgment to such an extent that the person afflicted requires care, treatment, and rehabilitation. We further hold that this affirmative definition of mental disease or defect complements but does not alter the exclusion, in 46-14-101, MCA, of "an abnormality manifested only by repeated criminal or other antisocial behavior.'" (293 Mont. 195, at 43)

Although the Supreme Court adopted a modified definition of the term "mental illness" from New York statutes (N.Y. Mental Hygiene Law 1.03(20)), LC4002 codifies a similar definition referencing the Montana's defined term of mental disorder, retained the current exclusion, and also excluded a developmental disability and an addiction to drugs or alcohol or drug or alcohol intoxication, as they are excluded in the Montana definition of mental disorder. A purpose for defining the term is also included. This is a legal definition, to be contrasted with a medical definition, such as that for mental disorder. Staff will provide a background and history for the committee at the meeting.

The exclusion of developmental disability is based on finding little information that indicated that it had been previously interpreted as being included and on the recent information developed for the Children and Families Interim Committee and their subsequent adoption of a bill draft request (LC9998). That packet of information is also enclosed. New York and other states include reference to mental retardation in their mental disability, disease, or defect statutes so it would not be improper to include it and the subcommittee may wish to discuss this element. The Children and Families Committee received only one comment (included) on the discussion draft and adopted it as a committee bill draft request (LC0443).

Department of Public Health and Human Services (DPHHS)

DPHHS has four bill drafts that have been submitted to and requested on the department's behalf by the Children and Families Interim Committee. A summary and one bill are enclosed (pink enclosure) of the four bills and the Department hopes to have bill drafts for the first three concepts by the meeting date. On the "Transfers of "Guilty but Mentally Ill" Individuals" draft, staff has participated in a working group on this issues with the DPHHS and the Department of Corrections. A draft bill (not yet approved by the Governor's Office of Budget and Program Planning (OBPP)) is enclosed on the "Multi-Agency Children's Initiative".

Department of Corrections (DOC)

The Department had proposed a concept that would allow transfer of persons committed to Montana State Hospital as guilty but mentally ill from a DPHHS commitment to a DOC commitment. This proposal is covered under the DPHHS proposal #2.

The DOC has also proposed to amend statutes to include mental health conditions in physical conditions that made an offender eligible for medical parole and to provide judges with an ability to change sentences based on medical conditions, including mental disease. These proposals resulted in one item of proposed legislation to the OBPP and to the Law and Justice Committee. The Department of Corrections is still formulating this proposal which may be altered to a form of medical or mental health furlough. Attached is the original proposal (yellow enclosure) to the OBPP and at the time of mailing no further information had been received. Staff will provide an update at the meeting.

**Examples of limits to periods of confinement
for those found not guilty by reason of insanity.**

California

"[T]he court shall state in the commitment order the maximum term of commitment, and the person may not be kept in actual custody longer than the maximum term of commitment, except as provided in this section. For the purposes of this section, "maximum term of commitment" shall mean the longest term of imprisonment which could have been imposed for the offense or offenses of which the person was convicted, including the upper term of the base sentence and any additional terms for enhancements and consecutive sentences which could have been imposed less any applicable credits." (Cal Pen Code §1026.5 (2001))

The Board of Prison Terms determines the terms and there is a process for an extended commitment of two years if the person has committed a felony and by reason of a mental disease, defect, or disorder, represents a substantial danger of physical harm to others.

Illinois

The initial order for admission of a defendant acquitted of a felony by reason of insanity shall be for an indefinite period of time. "Such period of confinement shall not exceed the maximum length of time that the defendant would have been required to serve, less credit for good behavior, before becoming eligible for release had he been convicted of and received the maximum period of commitment by an appropriate order." (730 ILCS 5/5-2-4 (2001))

South Carolina

"In no case shall a defendant found not guilty by reason of insanity be confined or be under supervision longer than the maximum sentence for the crime with which he was charged without full civil commitment proceedings being held." (S.C. Code Ann. §17-24-50 (2001))

Utah

"The period of commitment...may not exceed the period for which the defendant could be incarcerated had he been convicted and received the maximum sentence for the crime of which he was accused. At the time that period expires, involuntary civil commitment proceedings may be instituted...." (Utah Code Ann. §77-16a-302 (2002))

Utah also provides that "the court shall (1) determine on the record the offense of which the person otherwise would have been convicted and the maximum sentence he could have received; and (2) make specific findings regarding whether there is a victim of the crime for which the defendant has been found not guilty by reason of insanity and, if so, whether the victim wishes to be notified of any

conditional release, discharge, or escape of the defendant." (Utah Code Ann. §77-16a-303 (2002))