

Unofficial Draft Copy

As of: September 13, 2002 (2:10pm)

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**** Bill No. ****

Introduced By *****

By Request of the *****

A Bill for an Act entitled: "An Act ."

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-14-312, MCA, is amended to read:

"46-14-312. Sentence to be imposed -- commitment to director of department of public health and human services subject to transfer to custody of director of department of corrections -- court review -- transfer -- conditions for court review or transfer. (1) If the court finds that the defendant at the time of the commission of the offense of which the defendant was convicted did not suffer from a mental disease or defect as described in 46-14-311, the court shall sentence the defendant as provided in Title 46, chapter 18.

(2) If the court finds that the defendant at the time of the commission of the offense suffered from a mental disease or defect as described in 46-14-311, any mandatory minimum sentence prescribed by law for the offense need not apply and the court shall sentence the defendant for a definite period of time not to exceed the maximum term of imprisonment that could be imposed under subsection (1) to commitment to the director of the deparment of public health and human services subject to transfer to the custody of the director of the

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department of corrections. The authority of the court with regard to sentencing is the same as authorized in Title 46, chapter 18, if the treatment of the individual and the protection of the public are provided for.

(3) The defendant must be committed first to the custody of the director of the department of public health and human services to be placed, after consideration of the recommendations of the professionals providing treatment to the defendant, in an appropriate ~~correctional or~~ mental health facility, as defined by 53-21-102(9), for custody, care, and treatment. ~~for a definite period of time not to exceed the maximum term of imprisonment that could be imposed under subsection (1)~~ The director may, after considering the recommendations of the professionals providing treatment to the defendant, ~~subsequently~~ transfer the defendant to ~~another~~ any ~~correctional or~~ mental health facility that will better serve the defendant's custody, care, and treatment needs, ~~without further court order.~~ ~~The authority of the court with regard to sentencing is the same as authorized in Title 46, chapter 18, if the treatment of the individual and the protection of the public are provided for.~~

(4) The professional person in charge of the defendant's care while committed to the custody of the director of the department of public health and human services shall review the defendant's status at least annually to determine if any of the conditions in subsection (7) exist. If the professional person finds that one of the conditions in

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subsection (7) exist, the professional person must inform the director of the department of public health and human services and the director of the department of corrections. The director of the department of public health and human services may, without further court order, transfer the defendant to the custody of the director of the department of corrections, who is authorized to place the defendant in an appropriate correctional facility or program, as described in 53-1-202, which must include supervision of the treatment of any continuing mental disease or defect, for the completion of the sentence.

(5) If a defendant who has been transferred to the custody of the director of the department of corrections fails to comply with recommended treatment for a mental disease or defect while in a community correctional facility or program, or while under intensive supervision or probation and parole, and the failure to comply has caused a serious deterioration in the defendant's mental condition, the director of the department of correctios may, after considering the recommendations of the professionals providing treatment to the defendant, without further court order, transfer the defendant to the custody of the director of the department of public health and human services for placement in an appropriate mental health facility, subject to the provisions of this section.

(3)(6) Either the director of the department of public health and human services, the director of the department of

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corrections, or a defendant whose sentence has been imposed under subsection (2) may petition the sentencing court for review of the sentence if the professional person in charge of the defendant's care certifies finds that the conditions in subsection (7) exist. The sentencing court may make any order not inconsistent with its original sentencing authority, except that the length of confinement or supervision must be equal to that of the original sentence.

(7) The conditions for transfer or review of a sentence are:

(a) the defendant no longer suffers from a mental disease or defect;

(b) the defendant's mental disease or defect no longer renders the defendant unable to appreciate the criminality of the defendant's conduct or to conform the defendant's conduct to the requirements of law;

(c) the defendant suffers from a mental disease or defect but is not a danger to the defendant or others; or

(d) the defendant suffers from a mental disease or defect that makes the defendant a danger to the defendant or others, but:

(i) there is no treatment available for the mental disease or defect;

(ii) the defendant refuses to cooperate with treatment;
or

(iii) the defendant will no longer benefit from active inpatient treatment for the mental disease or defect.

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~~(4) The sentencing court may make any order not inconsistent with its original sentencing authority, except that the length of confinement or supervision must be equal to that of the original sentence. The professional person shall review the defendant's status each year."~~

{ *Internal References to 46-14-312:*
46-14-313x }

- END -

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