

SENATE BILL NO. 382
INTRODUCED BY J. LASLOVICH

A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE CREATION OF MENTAL HEALTH TREATMENT COURTS FOR ~~MENTALLY ILL OFFENDERS~~ WITH A MENTAL DISORDER; PROVIDING FOR IMPLEMENTATION OF ACCOUNTABILITY AND TREATMENT PROGRAMS; CREATING PROCEDURAL GUIDELINES FOR DISTRICT COURT JUDGES; AMENDING ~~SECTIONS~~ SECTION 3-10-303 ~~AND 46-16-130~~, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

NEW SECTION. Section 1. Short title. [Sections 1 through 8] may be cited as the "~~Mentally Ill Offender Accountability and Treatment~~ "MENTAL HEALTH TREATMENT COURT Act"".

NEW SECTION. Section 2. Purpose. The purpose of [sections 1 through 8] is to recognize that state courts have a jurisdictional basis to implement mental health treatment courts to reduce recidivism and restore ~~mentally ill offenders~~ PERSONS WITH A MENTAL DISORDER WHO ARE CHARGED WITH A CRIMINAL OFFENSE to being productive, law-abiding, and taxpaying citizens.

NEW SECTION. Section 3. Definitions. As used in [sections 1 through 8], the following definitions apply:

(1) "Assessment" means a diagnostic evaluation to determine whether and to what extent a person is ~~a mentally ill~~ AN offender WITH A MENTAL DISORDER under [sections 1 through 8] and would benefit from the provisions of [sections 1 through 8].

(2) "Continuum of care" means a seamless and coordinated course of mental ~~illness~~ HEALTH counseling and treatment designed to meet the needs of ~~mentally ill offenders~~ PARTICIPANTS as they move through the criminal justice system and beyond, maximizing self-sufficiency.

(3) "Drug" has the meaning provided in 46-1-1103.

(4) "Memorandum of understanding" means a written document setting forth an agreed-upon procedure.

(5) "Mental health treatment court" means a court established by a court pursuant to [sections 1 through 8] implementing a program of incentives and sanctions intended to assist a participant, whose conduct has

resulted in a criminal violation, in receiving the needed treatment and life skills to prevent further criminal behavior associated with ~~A mental illness~~ DISORDER.

(6) "Mental health treatment court coordinator" means an individual who, under the direction of the mental health treatment court judge, is responsible for coordinating the establishment, staffing, operation, evaluation, and integrity of the mental health treatment court.

(7) "Mental health treatment court team" means a group of individuals appointed by the mental health treatment court that ~~may consist of:~~

(A) MUST INCLUDE the following members:

~~(a)(i)~~ (i) the judge, which may include a magistrate or other hearing officer;

~~(b)(ii)~~ (ii) the prosecutor;

~~(c)(iii)~~ (iii) the public defender or defense attorney;

(IV) THE PARTICIPANT; AND

(V) THE MENTAL HEALTH TREATMENT COURT COORDINATOR; AND

(B) MAY INCLUDE THE FOLLOWING ADDITIONAL MEMBERS:

~~(d)(i)~~ (i) a law enforcement officer;

~~(e) the mental health treatment court coordinator;~~

~~(f)(ii)~~ (ii) a probation and parole officer;

~~(g)(iii)~~ (iii) a mental health professional;

~~(h)(iv)~~ (iv) a substance abuse treatment provider;

~~(i)(v)~~ (v) a representative from the department of public health and human services; ~~and~~

(VI) A MENTAL HEALTH ADVOCATE; AND

~~(j)(vii)~~ (vii) any other person selected by the mental health treatment court.

(8) "Mental health treatment program" means a program designed by the mental health treatment court team to provide prevention, education, and therapy directed toward ending criminal behavior and preventing a return to a condition leading to criminal behavior. Mental health treatment programs may consist of but are not limited to housing assistance, job training, mental health counseling, and psychiatric treatment.

~~(9) "Mental illness" includes not lacking capacity but diagnosed with a mental illness.~~

~~(10)(9)~~ (9) "Mentally ill offender" "PARTICIPANT" means a person charged with a criminal offense or an offense in which ~~mental illness~~ A MENTAL DISORDER, AS DEFINED IN 53-21-102, is determined to have been a significant factor in the commission of ~~an~~ THE offense.

~~(11)(10)~~ (10) "Staff meeting" means the meeting before a ~~mentally ill offender's~~ PARTICIPANT'S appearance

in mental health treatment court in which the mental health treatment court team discusses a coordinated response to the ~~offender's~~ PARTICIPANT'S behavior.

~~(12)~~(11) "Substance abuse" means the illegal or improper consumption of a drug, BUT DOES NOT INCLUDE INADVERTENT ERROR IN THE USE OF MEDICATION.

~~(13)~~(12) "Substance abuse treatment" means a program designed to provide prevention, education, and therapy directed toward ending substance abuse and preventing a return to substance use.

NEW SECTION. Section 4. Mental health treatment court structure. (1) Each judicial district or court of limited jurisdiction may establish a mental health treatment court under which ~~mentally ill offenders~~ PERSONS WITH A MENTAL DISORDER WHO ARE CHARGED WITH A CRIMINAL OFFENSE may be processed to address an identified mental health problem as a condition of pretrial release, pretrial diversion under 46-16-130, probation, incarceration, parole, or other release from a detention or correctional facility.

(2) Participation in mental health treatment court is voluntary and is subject to the consent of the prosecutor, the defense attorney, and the court pursuant to a written agreement.

(3) A mental health treatment court may grant reasonable incentives under a written agreement ~~if the court finds that a mentally ill offender is performing satisfactorily in mental health treatment court, is benefiting from education, treatment, and rehabilitation, has not engaged in criminal conduct, and has not violated the terms and conditions of the agreement.~~ Reasonable incentives may include but are not limited to:

- (a) graduation certificates;
- (b) early graduation;
- (c) fee reduction or waiver of fees;
- (d) record expungement of the underlying case; or
- (e) reduced contact with a probation officer.

(4) ~~The court may impose reasonable sanctions under the agreement, including incarceration or rejection from the mental health treatment court, if the court finds that the mentally ill offender is not performing satisfactorily in mental health treatment court, is not benefiting from education, treatment, or rehabilitation, has engaged in conduct rendering the offender unsuitable for the program, has otherwise violated the terms and conditions of the agreement, or is for any reason unable to participate. Sanctions may include:~~

- ~~—— (a) a short-term jail sentence;~~
- ~~—— (b) fines;~~
- ~~—— (c) extension of time in the program;~~

~~(d) peer review;~~
~~(e) geographical restrictions;~~
~~(f) termination; or~~
~~(g) contempt of court.~~ FOR FAILURE TO COMPLY WITH THE AGREEMENT. PRIOR TO IMPOSITION OF A SANCTION, THE MENTAL HEALTH TREATMENT COURT TEAM SHALL REVIEW THE PARTICIPANT'S INDIVIDUAL TREATMENT PROGRAM AND THE PARTICIPANT'S CONDUCT. IF THE MENTAL HEALTH TREATMENT COURT TEAM DETERMINES THAT THE PARTICIPANT'S FAILURE TO COMPLY:

(A) WAS NOT WILLFUL, WAS A SYMPTOM OF A MENTAL DISORDER, OR WAS A RESULT OF AN INAPPROPRIATE TREATMENT PLAN, THE COURT MAY IMPOSE SANCTIONS, INCLUDING:

- (I) FINES;
- (II) EXTENSION OF TIME IN THE PROGRAM;
- (III) PEER REVIEW; OR
- (IV) GEOGRAPHICAL RESTRICTIONS; OR

(B) WAS WILLFUL, NOT A SYMPTOM OF A MENTAL DISORDER, AND NOT THE RESULT OF AN INAPPROPRIATE TREATMENT PLAN, THE COURT MAY IMPOSE SANCTIONS, INCLUDING:

- (I) A SHORT-TERM JAIL SENTENCE;
- (II) TERMINATION OF PARTICIPATION IN THE PROGRAM; OR
- (III) CONTEMPT OF COURT.

(5) Upon successful completion of mental health treatment court, a ~~mentally ill offender's~~ PARTICIPANT'S case must be disposed of by the judge in the manner prescribed by the agreement and by the applicable policies and procedures adopted by the mental health treatment court. This may include but is not limited to pretrial diversion under 46-16-130, dismissal of criminal charges, probation, deferred sentencing, suspended sentencing, or a reduced period of incarceration. A ~~mentally ill offender~~ PARTICIPANT who successfully completes the program ~~may~~ MUST be given credit for the time the ~~offender~~ PARTICIPANT served in the mental health treatment program by the judge upon disposition.

(6) Each local jurisdiction that intends to establish a mental health treatment court or to continue the operation of an existing mental health treatment court shall establish a local mental health treatment court team.

(7) The mental health treatment court team shall, when practicable, conduct a staff meeting prior to each mental health treatment court session to discuss and provide updated information regarding ~~mentally ill offenders~~ PARTICIPANTS. After determining the ~~offender's~~ PARTICIPANT'S progress or lack of progress, the mental health treatment court team shall agree on the appropriate incentive or sanction to be applied. If the mental health

treatment court team cannot agree on the appropriate action, the court shall make the decision based on information presented in the staff meeting. The provisions of [sections 1 through 8] apply only to ~~offenders~~ PERSONS WITH A MENTAL DISORDER WHO ARE CHARGED WITH A CRIMINAL OFFENSE who qualify for participation based on qualifications established by each mental health treatment court. The provisions of [sections 1 through 8] do not apply to ~~mentally ill offenders~~ PARTICIPANTS who have been convicted of a sexual or violent offense, as defined in 46-23-502. [Sections 1 through 8] do not confer a right or expectation of a right to participate in a mental health treatment court and does not obligate a mental health treatment court to accept any offender. The establishment of a mental health treatment court may not be construed as limiting the discretion of a prosecutor to act on any criminal case that the prosecutor considers advisable to prosecute. Each mental health treatment court judge may establish rules and may make special orders and necessary rules that do not conflict with rules adopted by the Montana supreme court.

(8) Each ~~mentally ill offender~~ PARTICIPANT shall contribute to the cost of treatment and the program in accordance with [section 6(2)]. A mental health treatment court coordinator is responsible for the general administration of a mental health treatment court under the direction of the mental health treatment court judge. The supervising agency shall timely forward information to the mental health treatment court concerning the ~~mentally ill offender's~~ PARTICIPANT'S progress and compliance with any court-imposed terms and conditions.

(9) A department of corrections probation and parole officer may participate in a mental health treatment court team if authorized by the department. The department may authorize participation if it determines, in its discretion, that the caseloads of local probation and parole officers permit participation. If necessitated by a change in caseloads, the department may withdraw authorization for participation by its probation and parole officers in a mental health treatment court. The department of corrections may not authorize its probation and parole officers to supervise a participant of a mental health treatment program who has not been convicted of a felony offense and committed to the supervision of the department.

NEW SECTION. Section 5. Treatment and support services. (1) As part of a diagnostic assessment, each jurisdiction shall establish a system to ensure that ~~mentally ill offenders~~ PARTICIPANTS are placed into a clinically approved mental health treatment program. To accomplish this, the program conducting the individual assessment shall make specific recommendations to the mental health treatment court team regarding the type of treatment program and duration necessary so that a ~~mentally ill offender's~~ PARTICIPANT'S individualized needs are addressed. The assessments and recommendations must be based upon ~~objective medical diagnostic criteria~~ EVIDENCE-BASED TREATMENT PRINCIPLES. Treatment recommendations accepted by the mental health treatment

court pursuant to [sections 1 through 8] must be considered to be reasonable and necessary.

(2) An adequate continuum of care for ~~mentally ill offenders~~ PARTICIPANTS must be established in response to [sections 1 through 8].

(3) The mental health treatment court shall, when practicable, ensure that one agency may not provide both assessment and treatment services for the mental health treatment court to avoid potential conflicts of interest or the appearance that a diagnostic assessment agency might benefit by determining that ~~an offender~~ A PARTICIPANT is in need of the particular form of treatment that the agency provides.

(4) A mental health treatment court making a referral for mental health services or substance abuse treatment shall refer the ~~mentally ill offender~~ PARTICIPANT to a program that is licensed, certified, or approved by the court.

(5) The court shall determine which treatment programs are authorized to provide the recommended treatment to ~~mentally ill offenders~~ PARTICIPANTS. The relationship between the treatment program and the court must be governed by a memorandum of understanding, which must include the timely reporting of the ~~mentally ill offender's~~ PARTICIPANT'S progress or lack of progress to the mental health treatment court.

~~(6) The length of stay in treatment must be determined by the mental health treatment court team based on individual needs and accepted practices.~~

NEW SECTION. Section 6. Funding. ~~(1) Federal or state government grants may be available for a mental health treatment court. THERE IS A MENTAL HEALTH TREATMENT COURT FEDERAL RESOURCES ACCOUNT IN THE FEDERAL SPECIAL REVENUE FUND THAT IS ADMINISTERED BY THE OFFICE OF COURT ADMINISTRATOR.~~ Any federal money received for funding mental health treatment courts must be deposited in the mental health treatment court federal resources account and may be used only for purposes of [sections 1 through 8]. The money in the fund may not be transferred at the end of each year but must remain deposited to the credit of the mental health treatment court federal resources account.

(2) A ~~mentally ill offender~~ PARTICIPANT shall pay the total cost or a reasonable portion of the cost to participate. The cost paid by a ~~mentally ill offender~~ PARTICIPANT may not exceed \$300 a month. The costs assessed must be compensatory and not punitive in nature and must take into account the ~~mentally ill offender's~~ PARTICIPANT'S ability to pay. Upon a showing of indigency, the mental health treatment court may reduce or waive costs under this subsection. Any fees received by the court from ~~an offender~~ A PARTICIPANT are not court costs, charges, or fines.

(3) All federal funds received from grants for purposes of funding mental health treatment courts must

be exhausted before money is spent from other appropriations for that purpose.

(4) [Sections 1 through 8] do not prohibit mental health treatment court teams from obtaining supplemental funds.

NEW SECTION. Section 7. Statutory construction -- combination with drug treatment court. (1)

The provisions of [sections 1 through 8] must be construed to effectuate its remedial purposes.

(2) A mental health treatment court may be combined with a drug treatment court authorized in Title 46, chapter 1, part 11, and a mental health treatment court may serve an individual with co-occurring disorders.

NEW SECTION. Section 8. Enforcement by removal to criminal court. Failure of the ~~mentally ill offender~~ PARTICIPANT to comply with the terms of the mental health treatment program will be referred upon the order of the mental health treatment court judge to the appropriate criminal court.

Section 9. Section 3-10-303, MCA, is amended to read:

"3-10-303. Criminal jurisdiction. (1) The justices' courts have jurisdiction of public offenses committed within the respective counties in which the courts are established as follows:

(a) except as provided in subsection (2), jurisdiction of all misdemeanors punishable by a fine not exceeding \$500 or imprisonment not exceeding 6 months, or both;

(b) jurisdiction of all misdemeanor violations of fish and game statutes punishable by a fine of not more than \$1,000 or imprisonment for not more than 6 months, or both;

(c) concurrent jurisdiction with district courts of all misdemeanors punishable by a fine exceeding \$500 or imprisonment exceeding 6 months, or both;

(d) concurrent jurisdiction with district courts of all misdemeanor violations of fish and game statutes punishable by a fine exceeding \$1,000 or imprisonment exceeding 6 months, or both;

(e) jurisdiction to act as examining and committing courts and for that purpose to conduct preliminary hearings;

(f) jurisdiction of all violations of Title 61, chapter 10; and

(g) all misdemeanor violations of Title 81, chapter 8, part 2.

(2) In any county that has established a drug treatment court or a mental health treatment court, the district court, with the consent of all judges of the courts of limited jurisdiction in the county, has concurrent jurisdiction of all misdemeanors punishable by a fine not exceeding \$500 or imprisonment not exceeding 6

months, or both."

~~Section 10.~~ Section 46-16-130, MCA, is amended to read:

~~"46-16-130. Pretrial diversion.~~ (1)(a) Prior to the filing of a charge, the prosecutor and a defendant who has counsel or who has voluntarily waived counsel may agree to the deferral of a prosecution for a specified period of time based on one or more of the following conditions:

~~(i) that the defendant may not commit any offense;~~

~~(ii) that the defendant may not engage in specified activities, conduct, and associations bearing a relationship to the conduct upon which the charge against the defendant is based;~~

~~(iii) that the defendant shall participate in a supervised rehabilitation program, which may include treatment, counseling, training, or education;~~

~~(iv) that the defendant shall make restitution in a specified manner for harm or loss caused by the offense;~~

or

~~(v) any other reasonable conditions.~~

~~(b) The agreement must be in writing, must be signed by the parties, and must state that the defendant waives the right to speedy trial for the period of deferral. The agreement may include stipulations concerning the admissibility of evidence, specified testimony, or dispositions if the deferral of the prosecution is terminated and there is a trial on the charge.~~

~~(c) The prosecution must be deferred for the period specified in the agreement unless there has been a violation of its terms.~~

~~(d) The agreement must be terminated and the prosecution automatically dismissed with prejudice upon expiration and compliance with the terms of the agreement.~~

~~(2) A condition of pretrial diversion may be for the court to refer a defendant for evaluation to determine the appropriateness of proceedings pursuant to Title 53, chapter 21.~~

~~(3) After a charge has been filed, a deferral of prosecution may be entered into only with the approval of the court.~~

~~(4) If the defendant participates in a mental health treatment court, as provided in [sections 1 through 8], with the approval of the judge presiding over the original offensive conduct, subsections (1) through (3) do not apply.~~

~~(4)(5) A prosecution for a violation of 61-8-401, 61-8-406, or 61-8-410 may not be deferred."~~

NEW SECTION. **Section 10. Codification instruction.** [Sections 1 through 8] are intended to be codified as an integral part of Title 46, chapter 1, and the provisions of Title 46, chapter 1, apply to [sections 1 through 8].

NEW SECTION. **Section 11. Effective date.** [This act] is effective July 1, 2007.

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