

## 1 HOUSE BILL NO. 69

2 INTRODUCED BY M. MACDONALD

3 BY REQUEST OF THE LAW AND JUSTICE INTERIM COMMITTEE

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5 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE PREVENTION OF SUICIDES IN DETENTION  
6 CENTERS; REQUIRING THE ADOPTION OF ADMINISTRATIVE RULES BY THE BOARD OF CRIME  
7 CONTROL; INCREASING THE SURCHARGE ON CERTAIN CRIMINAL CONVICTIONS; PROVIDING FOR THE  
8 DISTRIBUTION OF FUNDS FOR SUICIDE PREVENTION TO DETENTION CENTERS; PROVIDING FOR A  
9 GENERAL FUND LOAN; AMENDING SECTIONS 3-1-318, 7-6-2541, AND 7-32-2224, MCA; AND PROVIDING  
10 AN EFFECTIVE DATE."  
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12 WHEREAS, the decisions of the federal courts clearly hold that the 5th and 8th Amendments to the  
13 United States Constitution require that entities that operate pretrial or posttrial detention centers have a duty to  
14 provide suicide protection to facility inmates; and

15 WHEREAS, the Montana Supreme Court held in the case of Walker v. State, 2003 MT 134, 316 Mont.  
16 103, 68 P.3d 872 (2003), that the Montana Constitution provides an even greater degree of protection against  
17 cruel and unusual punishment than the 8th Amendment to the U.S. Constitution; and

18 WHEREAS, there is an upward trend in inmate suicides in detention centers operated by local  
19 governments in Montana; and

20 WHEREAS, some of the detention centers operated by local governments in Montana are antiquated and  
21 have limited funding capabilities to engage in proactive programs to prevent inmate suicides; and

22 WHEREAS, the Legislature intends to provide for the partial funding of a program for the prevention of  
23 inmate suicide in local government detention centers as one means of reducing the likelihood that courts will  
24 preempt the Legislature and require suicide prevention programs in detention centers that can least afford them;  
25 and

26 WHEREAS, the Legislature therefore creates the program provided for in this bill in part in recognition  
27 of the constitutional obligation of local governments but also for the purpose of conserving human lives in a  
28 population that is sometimes overlooked in state efforts to improve the lives of its residents.

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

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2        **NEW SECTION. Section 1. Statement of legislative intent.** The legislature has recently taken  
3 important steps to reduce the incidents of suicide in the public at large through the diversion of persons with  
4 mental illness from criminal proceedings and strengthening the ability of local governments to coordinate suicide  
5 prevention services. However, the legislature also recognizes that judicial opinions, most of them from the federal  
6 courts decided pursuant to the 8th amendment to the United States constitution, create an affirmative obligation  
7 upon entities that operate detention centers to treat the medical conditions of prisoners and those courts have  
8 extended this obligation to the prevention of suicides by inmates in posttrial and, through the due process clause  
9 of the 5th amendment, pretrial confinement. It is the intent of the legislature to respond to that obligation and to  
10 affirm that every human life is of some value.

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12        **NEW SECTION. Section 2. Definitions.** As used in [sections 1 through 3 and 7 through 9], the following  
13 definitions apply:

14            (1) "Detention center" means a detention center, as defined in 7-32-2120, that is operated by a local  
15 government as defined in 7-32-2120.

16            (2) "Inmate" means an individual who is confined in or is in the custody of detention center personnel  
17 and may be confined in a detention center.

18            (3) "Management protocol" means the best management practices in the subject areas of housing,  
19 supervision, clothing, property, food, and psychological counseling for the prevention of suicide for an inmate at  
20 risk of suicide.

21            (4) "Mental health professional" has the meaning provided in 53-21-102.

22            (5) "Screening instrument" means one or more written or electronic series of questions designed to  
23 determine the degree of likelihood or risk that an inmate may commit suicide.

24            (6) "Secure mental health facility" means a facility that provides counseling for the purposes of suicide  
25 prevention in a secure setting by a mental health professional for suicidal tendencies and includes the Montana  
26 state hospital at Warm Springs.

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28        **NEW SECTION. Section 3. Suicide prevention training, protocols, and technical assistance -- no**  
29 **private right of action.** (1) The law enforcement academy shall develop or contract for the development of a  
30 suicide prevention training course for use in detention centers by detention center personnel and shall include

1 the course in at least the basic public safety officer course of instruction.

2 (2) The course must include the use of evidence-based screening instruments for use by detention center  
3 personnel and the mental health professionals available to the detention center to determine the risk of suicide  
4 for each inmate at the detention center and the use of appropriate management protocols for an inmate identified  
5 as a suicide risk. The suicide prevention officer appointed pursuant to 53-21-1101 shall provide assistance to the  
6 academy for the purposes of this section.

7 (3) If the use of the screening instruments or management protocols required by this section identify  
8 needs that cannot be met by the detention center but are necessary to provide a suicidal inmate with a  
9 reasonable degree of safety from suicide, the detention center shall transport the inmate to the nearest secure  
10 mental health facility and from that facility back to the detention center if the inmate may again be housed in the  
11 detention center with a reasonable degree of safety from suicide.

12 (4) Nothing in [sections 1 or 2] or this section creates a right of action against the state or a local  
13 government in any individual or other person to require by civil action the duties imposed by those sections, but  
14 nothing in those sections extinguishes or limits a right under other law.

15

16 **Section 4.** Section 3-1-318, MCA, is amended to read:

17 **"3-1-318. Surcharges upon certain criminal convictions -- exception.** (1) Except as provided in  
18 subsection (2), all courts of limited jurisdiction, except small claims courts, shall impose a ~~\$40~~ \$20 surcharge on  
19 a defendant who is convicted of criminal conduct under state statute or who forfeits bond.

20 (2) A court may not waive payment of the surcharge unless the court determines that the defendant is  
21 unable to pay the surcharge. Inability to pay must be supported by a sworn statement from the defendant  
22 demonstrating financial inability to pay without substantial hardship in providing for personal or family necessities.  
23 The statement is not admissible in the proceeding unless offered for impeachment purposes and is not admissible  
24 in a subsequent prosecution for perjury or false swearing.

25 (3) The surcharge imposed by this section is not a fee or a fine and must be imposed in addition to other  
26 taxable court costs, fees, or fines. The surcharge may not be used in determining the jurisdiction of any court.

27 (4) ~~The amounts~~ Of the amount collected under this section, \$10 must be forwarded to the department  
28 of revenue for deposit in the account created in 44-10-204 and \$10 must be forwarded to the board of crime  
29 control for deposit in the account created in [section 8]."

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1           **Section 5.** Section 7-6-2541, MCA, is amended to read:

2           **"7-6-2541. County detention center inmate medical costs.** The board of county commissioners shall  
3 budget and expend funds for inmate medical care, including but not limited to costs of providing direct medical  
4 care, medication, medical services to include suicide prevention to the extent required by 7-32-2224,  
5 hospitalization, insurance premiums, self-insured coverage, or contracted services for expenses that must be  
6 borne by the county for inmates confined in a county detention center as provided for in 7-32-2224."

7

8           **Section 6.** Section 7-32-2224, MCA, is amended to read:

9           **"7-32-2224. Payment of medical costs by entities other than inmate.** (1) The detention center  
10 administrator shall forward to the appropriate arresting agency all charges for medical treatment for which the  
11 agency is responsible, including the use of screening instruments and management protocols as defined in  
12 [section 2] for suicide prevention to the extent required by the fifth and eighth amendments to the United States  
13 constitution.

14           (2) When the inmate is in the custody of a county detention center and the detention center administrator  
15 determines that the inmate requires medical treatment, the county or the arresting agency is responsible for  
16 medical costs associated with:

17           (a) conditions that are not preexisting;

18           (b) injuries incurred by the inmate:

19           (i) while in the custody of the detention center if the injuries are the result of an accident, an assault by  
20 another inmate, or negligent or intentionally torturous acts committed by the detention center administrator or the  
21 administrator's staff;

22           (ii) during the arrest of the inmate by the sheriff or the sheriff's staff if the injuries were not incurred while  
23 unlawfully resisting arrest; or

24           (iii) while on a work program or while the inmate is performing duties assigned by the detention center  
25 administrator or the administrator's staff;

26           (c) infections or contagious or communicable diseases that the inmate contracts while in the custody of  
27 the detention center; or

28           (d) medical examinations that are required by law or court order unless the order provides otherwise.

29           (3) In order to determine which entity is responsible for medical charges that are not the responsibility  
30 of the inmate, the following applies:

1 (a) If the arresting agency is a law enforcement agency whose jurisdiction is limited to the county  
2 boundaries of the county or a municipality in the county where the detention center is located, then the county  
3 is responsible.

4 (b) If the arresting agency is a law enforcement agency with statewide jurisdiction or whose jurisdiction  
5 is a county or municipality in a county other than the county where the detention center is located, then the  
6 arresting agency is responsible.

7 (c) If a municipality commits a person to the detention center of the county in which the municipality is  
8 located for a reason other than detention pending trial for or detention for service of a sentence for violating an  
9 ordinance of that municipality, then the county in which the municipality is located is responsible.

10 (4) For the purposes of 7-32-2245 and this section, "preexisting condition" means an illness or condition  
11 that began or injuries that were sustained before a person was in the custody of county officers."  
12

13 **NEW SECTION. Section 7. Board of crime control to administer detention center suicide**  
14 **prevention account -- rulemaking required.** (1) The board of crime control shall administer money in the  
15 detention center suicide prevention account created in [section 8] that is appropriated to it by the legislature.

16 (2) Money in the account must be administered as a grant program with administrative expenses and  
17 grants distributed by the board as follows:

18 (a) up to 10% may be retained by the board for the purposes of administration of [sections 1 through 3  
19 and 7 through 9];

20 (b) 5% must be granted to the Montana law enforcement academy for the purposed of [section 3];

21 (c) 5% must be granted for use by the suicide prevention officer appointed pursuant to 53-21-1101 to  
22 be used for the purposes of assisting the Montana law enforcement academy as specified in [section 3]; and

23 (d) the balance must be granted to detention centers based upon each center's annual average  
24 proportion of all of the inmates held in all detention centers at the time the detention center makes application to  
25 the board.

26 (3) The percentages specified in subsection (2) must be based on the account balance as of July 1 of  
27 each year.

28 (4) Money distributed by the board pursuant to subsection (2)(d) may be made only upon application by  
29 a detention center to the board in accordance with rules adopted by the board. The rules must require a  
30 detention center to pay for 50% of the expenses for suicide prevention services to be funded by the distribution

1 applied for by the detention center. Costs of transportation for an inmate from a detention center to or from a  
2 secure mental health facility may not be reimbursed by the board.

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4 **NEW SECTION. Section 8. Detention center suicide prevention account.** (1) There is a detention  
5 center suicide prevention account in the special revenue fund created by 17-2-102.

6 (2) The following funds must be deposited into or retained in the account:

7 (a) all money paid to the account pursuant to 3-1-318(4)(b);

8 (b) all gifts, grants, bequests, donations, or transfers of other money; and

9 (c) all earnings on the account.

10 (3) All money in the account is subject to legislative appropriation only for the purposes provided in  
11 [sections 1 through 3 and 7 through 9].

12  
13 **NEW SECTION. Section 9. Loan from general fund.** If the legislature appropriates money in the  
14 account established in [section 8] to the board of crime control, but the money in the account as of July 1 in a year  
15 for which the board has been given the spending authority is insufficient to implement the provisions of [sections  
16 1 through 3 and 7 through 9], the board may apply for a general fund loan pursuant to 17-2-107 for the purposes  
17 of implementation.

18  
19 **NEW SECTION. Section 10. Codification instruction.** [Sections 1 through 3 and 7 through 9] are  
20 intended to be codified as an integral part of Title 44, chapter 4, part 3, and the provisions of Title 44, chapter 4,  
21 part 3, apply to [sections 1 through 3 and 7 through 9].

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23 **NEW SECTION. Section 11. Effective date.** [This act] is effective July 1, 2013.

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