

SENATE BILL NO. 316

INTRODUCED BY R. WEBB

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4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS GOVERNING WHEN CERTAIN
5 INDIVIDUALS MAY BE TRANSFERRED TO A CORRECTIONAL FACILITY; ESTABLISHING A REVIEW AND
6 HEARING PROCESS THAT MUST BE COMPLETED BEFORE A PERSON SENTENCED TO THE CUSTODY
7 OF THE DIRECTOR OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES MAY BE
8 TRANSFERRED FROM A MENTAL HEALTH, RESIDENTIAL, OR DEVELOPMENTAL DISABILITIES FACILITY
9 TO A CORRECTIONAL FACILITY; ALLOWING A PERSON WHO IS TRANSFERRED TO A CORRECTIONAL
10 FACILITY AFTER A REVIEW AND HEARING PROCESS TO APPEAL THE DECISION TO A DISTRICT COURT
11 JUDGE; REQUIRING THAT CERTAIN MENTAL HEALTH TREATMENT BE PROVIDED TO A PERSON
12 TRANSFERRED TO A CORRECTIONAL FACILITY; REQUIRING THE DEPARTMENT OF PUBLIC HEALTH
13 AND HUMAN SERVICES TO TRANSFER A PERSON BACK TO A MENTAL HEALTH, RESIDENTIAL, OR
14 DEVELOPMENTAL DISABILITIES FACILITY IF CERTAIN PROFESSIONALS DETERMINE THAT THE
15 PERSON'S PLACEMENT IN A CORRECTIONAL FACILITY IS NOT BEST MEETING THE PERSON'S
16 CUSTODY, CARE, AND TREATMENT NEEDS; AND AMENDING SECTION 46-14-312, MCA."

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

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

21 **"46-14-312. Sentence to be imposed.** (1) If the court finds that the defendant at the time of the
22 commission of the offense of which the defendant was convicted did not suffer from a mental disease or defect
23 or developmental disability as described in 46-14-311, the court shall sentence the defendant as provided in Title
24 46, chapter 18.

25 (2) If the court finds that the defendant at the time of the commission of the offense suffered from a
26 mental disease or defect or developmental disability as described in 46-14-311, any mandatory minimum
27 sentence prescribed by law for the offense need not apply. The court shall sentence the defendant to be
28 committed to the custody of the director of the department of public health and human services to be placed,
29 subject to [section 2] and after consideration of the recommendations of the professionals providing treatment
30 to the defendant and recommendations of the professionals who have evaluated the defendant, in an appropriate

1 correctional facility, mental health facility, as defined in 53-21-102, residential facility, as defined in 53-20-102,
 2 or developmental disabilities facility, as defined in 53-20-202, for custody, care, and treatment for a definite period
 3 of time not to exceed the maximum term of imprisonment that could be imposed under subsection (1). The
 4 director may, subject to [section 2] and after considering the recommendations of the professionals providing
 5 treatment to the defendant and recommendations of the professionals who have evaluated the defendant,
 6 subsequently transfer the defendant to another correctional, mental health, residential, or developmental
 7 disabilities facility that ~~will~~ would better serve the defendant's custody, care, and treatment needs. The authority
 8 of the court with regard to sentencing is the same as authorized in Title 46, chapter 18, if the treatment of the
 9 individual and the protection of the public are provided for.

10 (3) Either the director or a defendant whose sentence has been imposed under subsection (2) may
 11 petition the sentencing court for review of the sentence if ~~the~~ a professional person certifies that:

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

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

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

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

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

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

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

23 (4) Upon an appeal pursuant to [section 2] by a defendant whose sentence has been imposed under
 24 subsection (2), the sentencing court shall consider:

25 (a) whether the department's decision to transfer the defendant to a correctional facility followed the
 26 process described in [section 2]; and

27 (b) whether the defendant's placement in a correctional facility best serves the defendant's custody, care,
 28 and treatment needs.

29 ~~(4)~~(5) The sentencing court may make any order not inconsistent with its original sentencing authority,
 30 except that the length of confinement or supervision must be equal to that of the original sentence. ~~The~~ A

1 professional person shall review the defendant's status each year."

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3 **NEW SECTION. Section 2. Process to transfer person from mental health, residential, or**
 4 **developmental disabilities facility to correctional facility.** (1) Except as provided in subsection (4), before
 5 transferring a person sentenced to the custody of the director of the department pursuant to 46-14-312(2) to a
 6 correctional facility or program as defined in 50-46-302, the department shall:

7 (a) provide the person with at least 30 days' notice of the date, time, and location of a hearing regarding
 8 the proposed transfer and all evidence relied on to establish that a correctional facility would better serve the
 9 person's custody, care, and treatment needs;

10 (b) provide the person with an opportunity to be heard in person, to present testimony of witnesses, and
 11 to confront and cross-examine witnesses, unless good cause is shown by the department for prohibiting the
 12 presentation, confrontation, or cross-examination;

13 (c) ~~contract with an independent examiner who is not employed by the department or the board or~~
 14 ~~involved in the proposed transfer other than to preside over the hearing and~~ PROVIDE THE PERSON WITH A HEARING
 15 PRESIDED OVER BY AN ADMINISTRATIVE LAW JUDGE EMPLOYED BY THE DEPARTMENT to determine whether the
 16 department has proven that a correctional facility would better serve the person's custody, care, and treatment
 17 needs;

18 (d) if the person is financially unable to furnish legal counsel, make legal counsel available to the person.
 19 The counsel may not be an advocate from the board.

20 (e) provide the person with a written statement from the independent examiner containing the examiner's
 21 recommendation and rationale for the recommendation as well as any evidence relied on to establish the
 22 recommendation; and

23 (f) provide the person with a written statement documenting the department director's acceptance or
 24 denial of the independent examiner's recommendation, including the rationale for the director's decision.

25 (2) If available, the professional person who determined during the sentencing phase of the underlying
 26 conviction that the person sentenced to the custody of the director of the department pursuant to 46-14-312(2)
 27 suffered from a mental disease or defect or developmental disability as described in 46-14-311 shall testify at the
 28 hearing. If the professional person is unavailable, another professional person designated by the department may
 29 be substituted provided that the designated professional person is not an employee of the department. A
 30 professional person who testifies at the hearing shall meet with the person sentenced to the custody of the

1 director to conduct an in-person evaluation prior to the hearing.

2 (3) A person sentenced to the custody of the director of the department pursuant to 46-14-312(2) may
 3 appeal a decision made by the director to transfer the person to a correctional facility PURSUANT TO THE APPEAL
 4 PROCEDURES CURRENTLY IN PLACE FOR APPEALS FROM HEARING DECISIONS BY ADMINISTRATIVE LAW JUDGES EMPLOYED
 5 BY THE DEPARTMENT. ~~The appeal must be made within 30 days of receiving the written notice required under~~
 6 ~~subsection (1)(f). The appeal must be made to the district court judge who sentenced the person to the custody~~
 7 ~~of the director. If the sentencing judge is unavailable, the person may appeal the decision to a district court judge~~
 8 ~~in the same district or a district court judge for the district in which the person is currently housed.~~

9 (4) (a) If exigent circumstances require the immediate transfer of a person sentenced to the custody of
 10 the director of the department pursuant to 46-14-312(2) to a correctional facility, the department may transfer the
 11 person without first following the process established in subsection (1). The transfer is an interim placement and
 12 may not last longer than 20 days.

13 (b) If a transfer made pursuant to subsection (4)(a) lasts longer than 20 days, the department shall
 14 provide the person with a hearing under the provisions of subsection (1) within 30 days after the transfer.

15 (c) During an interim placement in a correctional facility, professional persons employed by the
 16 department shall provide the person with continuity of care, including medications, housing, and a minimum of
 17 one in-person interview each week.

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 19 **NEW SECTION. Section 3. Mental health treatment for person transferred to correctional facility**
 20 **-- procedures for return to mental health, residential, or developmental disabilities facility.** (1) (A) ~~IF EXCEPT~~
 21 ~~AS PROVIDED IN SUBSECTION (1)(B),~~ IF a person sentenced to the custody of the director of the department of public
 22 health and human services pursuant to 46-14-312(2) is transferred to a correctional facility under the provisions
 23 of [section 2], a professional person employed by the department of public health and human services shall meet
 24 with the person ~~at least monthly.~~ EVERY 6 MONTHS.

25 (B) IF A PERSON IS HOUSED IN LOCKED HOUSING OR THE INFIRMARY OF A CORRECTIONAL FACILITY, THE
 26 PROFESSIONAL PERSON SHALL MEET WITH THE PERSON ON A MONTHLY BASIS.

27 (C) The department of corrections shall inform the professional person of any changes to the person's
 28 diagnosis, medications, or housing.

29 (2) (a) If a professional person employed by the department of public health and human services
 30 determines that the placement in a correctional facility of a person sentenced to the custody of the director of the

1 department of public health and human services pursuant to 46-14-312(2) is not best meeting the person's
 2 custody, care, and treatment needs, the department of public health and human services shall transfer the person
 3 back to a mental health, residential, or developmental disabilities facility within 10 days after receiving written
 4 notice of the determination.

5 (b) (i) If a mental health professional employed by the department of corrections or a correctional officer
 6 employed by the department of corrections determines that the placement in a correctional facility of a person
 7 sentenced to the custody of the director of the department of public health and human services pursuant to
 8 46-14-312(2) is not best meeting the person's custody, care, and treatment needs, THE INDIVIDUAL SHALL NOTIFY
 9 THE WARDEN AND THE SUPERINTENDENT OF THE MONTANA STATE HOSPITAL. THE WARDEN AND THE SUPERINTENDENT
 10 SHALL REVIEW THE REASONS FOR THE RECOMMENDATION BY THE MENTAL HEALTH PROFESSIONAL OR CORRECTIONAL
 11 OFFICER AND DETERMINE WITHIN 20 DAYS WHETHER A TRANSFER IS WARRANTED.

12 (ii) THE WARDEN AND THE SUPERINTENDENT SHALL PROVIDE THE DIRECTOR OF THE DEPARTMENT OF PUBLIC
 13 HEALTH AND HUMAN SERVICES AND THE PERSON SENTENCED TO THE DIRECTOR'S CUSTODY WITH A WRITTEN NOTIFICATION
 14 OF THEIR DETERMINATION AND THE REASONS FOR THE DETERMINATION.

15 (iii) IF THE WARDEN AND THE SUPERINTENDENT RECOMMEND A TRANSFER FROM THE CORRECTIONAL FACILITY,
 16 the department of public health and human services shall transfer the person back to a mental health, residential,
 17 or developmental disabilities facility within 10 days after receiving written notice from the ~~department of~~
 18 ~~corrections~~ WARDEN AND THE SUPERINTENDENT of the determination.

19 (3) IF EXIGENT CIRCUMSTANCES REQUIRE THE IMMEDIATE TRANSFER OF A PERSON SENTENCED TO THE CUSTODY
 20 OF THE DIRECTOR OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES FROM A CORRECTIONAL FACILITY TO
 21 THE MONTANA STATE HOSPITAL, THE DEPARTMENT OF CORRECTIONS MAY TRANSFER THE PERSON WITHOUT FIRST
 22 FOLLOWING THE PROCESS ESTABLISHED IN SUBSECTION (2)(B). THE TRANSFER IS AN INTERIM PLACEMENT AND MAY LAST
 23 NO LONGER THAN 20 DAYS UNLESS THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES DETERMINES THAT THE
 24 PERSON'S CUSTODY, CARE, AND TREATMENT NEEDS ARE BEST SERVED AT THE MONTANA STATE HOSPITAL.

25 (3)(4) A person sentenced to the custody of the director of the department of public health and human
 26 services pursuant to 46-14-312(2) remains under the authority of the director of the department of public health
 27 and human services regardless of the type of facility in which the person is placed.

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 29 **NEW SECTION. Section 4. Codification instruction.** [Sections 2 and 3] are intended to be codified
 30 as an integral part of Title 53, chapter 21, part 1, and the provisions of Title 53, chapter 21, part 1, apply to

1 [sections 2 and 3].

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