

## 1 HOUSE JOINT RESOLUTION NO. 4

2 INTRODUCED BY M. CAFERRO

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4 A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF  
5 MONTANA REQUESTING AN INTERIM STUDY OF THE CRIMINAL COMMITMENT PROCESS AND  
6 PLACEMENT OF INDIVIDUALS WITH MENTAL ILLNESS; AND REQUIRING THAT THE FINAL RESULTS OF  
7 THE STUDY BE REPORTED TO THE 68TH LEGISLATURE.

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9 WHEREAS, in 1979 the Montana Legislature eliminated a criminal defendant's right to raise the so-  
10 called "insanity defense" to avoid conviction on the grounds the defendant was suffering from a mental disorder  
11 that made the defendant unable to understand the criminal nature of the acts at issue or to conform to the  
12 requirements of the law; and

13 WHEREAS, Montana is one of only four states in the United States without the "insanity defense",  
14 using instead a nonstandard legal practice that has an unclear role in and impact on the safety of our  
15 communities, recidivism rates, and overall criminal justice costs; and

16 WHEREAS, state law now includes a variety of different medical legal categories for defendants and  
17 offenders in Montana's criminal justice system, including guilty but mentally ill, not guilty due to mental illness,  
18 and unfit to proceed to trial; and

19 WHEREAS, these medical legal categories help determine whether a defendant can be tried for a  
20 crime, whether the person acted purposely or knowingly when committing a crime, and whether the person was  
21 able to appreciate the criminality of the act or was able to act within the law; and

22 WHEREAS, state law now requires a court to determine whether a defendant is fit to proceed to trial,  
23 whether the person acted purposely or knowingly when committing a crime, and whether the person was able  
24 to appreciate the criminality of the act or was able to act within the law; and

25 WHEREAS, if a judge finds that the person was guilty of the crime but suffered from a mental disorder  
26 at the time the crime was committed, the judge is required to sentence the person to the director of the  
27 Department of Public Health and Human Services for placement in an appropriate facility; and

28 WHEREAS, the number of these criminal commitments has increased in recent years, putting pressure

1 on the Montana State Hospital to accommodate not only individuals placed at the facility through the civil  
2 commitment process but also those committed to the facility through the criminal justice system; and

3 WHEREAS, in 2016 the Department of Public Health and Human Services created a 54-bed Forensic  
4 Mental Health Facility at Galen for people who have been criminally committed to the department; and

5 WHEREAS, THE DEPARTMENT OF CORRECTIONS IS SEEING MORE OFFENDERS WITH COMPLEX MENTAL  
6 HEALTH ISSUES BECAUSE INDIVIDUALS FOUND GUILTY BUT MENTALLY ILL ARE BEING TRANSFERRED TO THE DEPARTMENT  
7 OF CORRECTIONS WHEN THEY ARE TOO AGGRESSIVE FOR DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES  
8 FACILITIES OR HAVE RECEIVED MAXIMUM THERAPEUTIC BENEFIT FROM THE TREATMENT BEING PROVIDED; AND

9 WHEREAS, INCREASING NUMBERS OF YOUTH WITH MENTAL ILLNESSES OR MENTAL HEALTH ISSUES ARE BEING  
10 COMMITTED TO DEPARTMENT OF CORRECTIONS YOUTH FACILITIES; AND

11 WHEREAS, the Legislature has not closely examined the Forensic Mental Health Facility's role in  
12 Montana's mental health and criminal justice system.

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14 NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF  
15 THE STATE OF MONTANA:

16 That the Legislative Council be requested to designate an appropriate interim committee or statutory  
17 committee, pursuant to section 5-5-217, MCA, or direct sufficient staff resources to:

18 (1) analyze the legal framework around the statutes involving the determination of criminality for  
19 defendants with mental illness and the criminal commitment and other processes involving trial disposition,  
20 treatment, sentencing, and conditional release and monitoring;

21 (2) examine the use of the Forensic Mental Health Facility, including criteria for admission to the  
22 facility, the number of people placed at the facility for pretrial evaluations, the number placed at the facility on  
23 sentencing, and the number transferred to the facility from the Montana State Prison or other correctional  
24 facilities;

25 (3) review the availability of the Forensic Mental Health Facility for people being held in local  
26 correctional facilities;

27 (4) the costs of operating the facility; and

28 (5) the optimal role of the facility in Montana's mental health and criminal justice systems.

1 BE IT FURTHER RESOLVED, that the study include input from appropriate stakeholders, including but  
2 not limited to county attorneys, district court judges, law enforcement organizations, mental health  
3 professionals, the Department of Public Health and Human Services, THE DEPARTMENT OF CORRECTIONS, FAMILY  
4 MEMBERS OF INDIVIDUALS IN THE CORRECTIONAL SYSTEM WITH MENTAL ILLNESS, INCLUDING FAMILY MEMBERS OF  
5 THOSE IN THE FORENSIC MENTAL HEALTH FACILITY, and representatives of organizations serving and advocating  
6 for people with mental illness.

7 BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review  
8 requirements, be concluded prior to September 15, 2022.

9 BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions,  
10 comments, or recommendations of the appropriate committee, be reported to the 68th Legislature.

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