



October 2022

Law and Justice Interim Committee

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**STUDY SUMMARY FOR THE 68TH MONTANA
LEGISLATURE**

**HOUSE JOINT RESOLUTION 4
STUDY SUMMARY, 2021-2022**



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This summary of the work of the Law and Justice Interim Committee on the 2021-2022 House Joint Resolution No. 4 (HJ 4) study, requested by the 2021 Legislature, is an effort to highlight key information and public testimony received by the committee and the processes it followed in reaching any conclusions. To review additional information, including audio minutes and meeting exhibits, visit the 2021-2022 Law and Justice Interim Committee website: <https://leg.mt.gov/committees/interim/past-interim-committees/2021-2022/2021ljic/>

BACKGROUND

The so-called "insanity defense" allows a defendant to avoid conviction on the grounds that the defendant was suffering from a mental disorder that made the defendant unable to understand the criminal nature of the acts at issue or to conform to the requirements of law. The Montana Legislature eliminated the insanity defense in 1979, making Montana one of four states in the United States that does not allow a criminal defendant to raise that defense.

Instead, Montana uses medical legal categories for criminal defendants and offenders, including guilty but mentally ill, not guilty due to mental illness, and unfit to proceed to trial. If a judge determines that a person was guilty of a crime but suffered from a mental disorder at the time the crime was committed, the judge must sentence the person to the director of the Department of Health and Human Services (DPHHS) for placement in an appropriate facility. An increasing number of these adult commitments has placed pressure on the department and its facility, the Forensic Mental Health Facility at Galen. Since its creation in 2016, the Forensic Mental Health Facility at Galen, the Legislature has not closely examined its role in the mental health and criminal justice system.

The Law and Justice Interim Committee approved a [committee bill](#) that creates additional parameters around conditional release for certain individuals who have been involved in the criminal commitment process.

House Joint Resolution No. 4 (HJ 4), sponsored by Rep. Mary Caferro during the 2021 Legislature, asked the interim committee to:

- analyze the legal framework of the existing statutes for determining criminality of defendants with mental illness, including disposition, treatment, sentencing, conditional release, and monitoring of the defendants; and
- examine the use of the Forensic Mental Health Facility, including criteria for admission, costs of operation, transfers to the Montana State Prison or other correctional facilities, availability of the facility for people being held in local correctional facilities, and the optimal use of the facility in Montana's mental health and criminal justice systems.

The 2021-2022 Legislative Council assigned HJ 4 to the Law and Justice Interim Committee (LJIC) along with four other interim study resolutions and a study bill.

STUDY PROCESS

When selecting priorities for its interim work, the LJIC adopted a moderate level of involvement. That level of involvement included holding at least one panel discussion to review laws in Montana and other states, use of the Galen facility, and stakeholder perspectives of alternatives including prior legislation

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related to this topic. The committee also asked for a staff analysis of existing Montana laws, a recent U.S. Supreme Court ruling, and other states' processes.

The LJIC started the HJ 4 study in January 2022, hearing first from its legal staff on the requested legal overview of applicable statutes and case law. Then, several stakeholders in the criminal commitment process spoke to the LJIC about their experiences with the current Montana criminal commitment process and answered questions. The speakers included:

- Judge Mike Menahan of the 1st Judicial District in Lewis and Clark and Broadwater Counties;
- Dr. Bowman Smelko, PsyD;
- Dr. David Klajic, PhD;
- Mandi Gould, the Billings Managing Attorney for the Office of the State Public Defender;
- Josh Racki, the Cascade County Attorney;
- Chad Parker, Deputy Chief Counsel at the Montana Department of Public Health and Human Services (DPHHS); and
- Emily Lott, a medical social worker at the Montana State Hospital.

In addition to hearing from the panelists in January, the LJIC took public testimony on the study topics and suggestions for its next steps. Committee members requested additional information about other states' sentencing structures and options to speed up the evaluation process for defendants who require evaluations.

At the LJIC's March meeting, the committee members tackled these topics. Staff from the Council of State Governments Justice Center reviewed a recent report detailing strategies and best practices for competency to stand trial systems and evaluations. Dr. Smelko addressed how other states use an insanity defense, including how often it is used and is used successfully. The final speaker was Dr. Virginia Hill, a forensic psychiatrist who recently retired from DPHHS.

STUDY OUTCOMES

After additional public comment, the LJIC members asked staff to create a draft bill based on one section of HB 587 from the 2019 Legislature. HB 587 would have restored the insanity defense in Montana. The draft bill requested by the LJIC members for consideration only included provisions of the 2019 bill that created additional parameters around conditional release for individuals who had been involved in the criminal commitment process.

After taking public comment on the draft bill, the LJIC approved it in June 2022 as a [committee bill](#) to forward to the 2023 Legislature. Senator Jen Gross agreed to sponsor the legislation.

STUDY MATERIALS

- HJ 4 study web page: <https://leg.mt.gov/committees/interim/ljic/studies-topics/hj4-criminal-proceedings-commitment-mental-illness/>
 - Materials generated during the study are posted on this webpage and include staff reports and presentation items from the speakers.
- Draft bill language approved by the LJIC in August 2022: <https://leg.mt.gov/content/Committees/Interim/2021-2022/Law-and-Justice/Legislation/hj4-1-ljic-june-2022.pdf> (became [LC 282](#) in the 2023 Legislative Session)
- HJ 4 text: <https://leg.mt.gov/bills/2021/billhtml/HJ0004.htm>
- Staff memo: Legal overview of the criminal commitment process: <https://leg.mt.gov/content/Committees/Interim/2021-2022/Law-and-Justice/Studies/HJ-4/hj4-memo-statutory-review-ljic-january-2022.pdf>
 - A memo written by the LJIC's staff attorney that provides an in-depth review of Montana's statutory framework for the criminal commitment process and a review of jurisprudence related to the "insanity" defense.
- January 2022 panel discussion video: <http://sg001-harmony.sliq.net/00309/Harmony/en/PowerBrowser/PowerBrowserV2/20220125/-1/43806?startposition=20220119104107&viewMode=3&globalStreamId=4>
 - A recording of a panel discussion designed to add real world context to the legal memo from staff. Speakers included Montana attorneys and mental health professionals who interact with patients, defendants, and the criminal commitment statutes in their day-to-day work
- March 2022 panel discussion video: <https://sg001-harmony.sliq.net/00309/Harmony/en/PowerBrowser/PowerBrowserV2/20220321/-1/43808?startposition=20220321103023&viewMode=3&globalStreamId=4>
 - A recording of a panel discussion between experts with a national perspective on how other states are attempting to speed up the evaluation process used to establish a defendant's mental competency to stand trial in a criminal case and two Montana doctors with expertise in treating and evaluating individuals whose mental fitness has been at issue in court proceedings.

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APPENDIX A:

LAW AND JUSTICE INTERIM COMMITTEE MEMBERS

Before the close of each legislative session, the House and Senate leadership appoint lawmakers to interim committees. The members of the Law and Justice Interim Committee, like most other interim committees, serve one 20-month term. Members who are reelected to the Legislature, subject to overall term limits and if appointed, may serve again on an interim committee. This information is included in order to comply with 2-15-155, MCA.

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