

**** Bill No. ****

Introduced By *****

By Request of the Children, Families, Health, and Human Services
Interim Committee

A Bill for an Act entitled: "An Act authorizing the department of public health and human services to establish and operate transitional mental health group homes for certain individuals; providing rulemaking authority; providing an appropriation; amending sections 46-14-301, 46-14-312, 53-1-602, and 53-1-603, MCA; and providing an effective date."

Be it enacted by the Legislature of the State of Montana:

NEW SECTION. **Section 1. Department-operated transitional mental health group homes -- rulemaking authority.** (1) The department of public health and human services may operate transitional mental health group homes in the community for individuals committed to the custody of the director of the department pursuant to 46-14-301 or 46-14-312.

(2) An individual is eligible for placement in a transitional mental health group home operated by the department of public health and human services if:

(a) the individual has been released by the board of pardons and parole; or

(b) the director of the department has determined as allowed by law that the transitional mental health group home is the

appropriate placement for the individual.

(3) The department of public health and human services may build or lease facilities or may use existing state-owned buildings considered suitable for the purposes of transitional mental health group homes operated under this section. The department must select the most cost-effective option when opening a new group home.

(4) The department of public health and human services may contract for some or all of the mental health services provided to residents of a transitional mental health group home.

(5) The department of public health and human services shall adopt rules establishing licensure standards and other rules for transitional mental health group homes including but not limited to staffing levels and the mental health services that must be available to group home residents.

Section 2. Section 46-14-301, MCA, is amended to read:

"46-14-301. Commitment upon finding of not guilty by reason of lack of mental state -- hearing to determine release or discharge -- limitation on confinement. (1) When a defendant is found not guilty for the reason that due to a mental disease or defect the defendant could not have a particular state of mind that is an essential element of the offense charged, the court shall order a predisposition investigation in accordance with 46-18-112 and 46-18-113, which must include an investigation of the present mental condition of the defendant. If the trial was by jury, the court shall hold a hearing to determine the

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appropriate disposition of the defendant. If the trial was by the court, the court may hold a hearing to obtain any additional testimony it considers necessary to determine the appropriate disposition of the defendant. In either case, the testimony and evidence presented at the trial must be considered by the court in making its determination.

(2) The court shall evaluate the nature of the offense with which the defendant was charged. If the offense:

(a) involved a substantial risk of serious bodily injury or death, actual bodily injury, or substantial property damage, the court may find that the defendant suffers from a mental disease or defect that renders the defendant a danger to the defendant or others. If the court finds that the defendant presents a danger to the defendant or others, the defendant may be committed to the custody of the director of the department of public health and human services to be placed in an appropriate mental health facility or a transitional mental health group home provided for in [section 1] for custody, care, and treatment. However, if the court finds that the defendant is seriously developmentally disabled, as defined in 53-20-102, the prosecutor shall petition the court in the manner provided in Title 53, chapter 20.

(b) charged did not involve a substantial risk of serious bodily injury or death, actual bodily injury, or substantial property damage, the court shall release the defendant. The prosecutor may petition the court in the manner provided in Title 53, chapter 20 or 21.

(3) A person committed to the custody of the director of

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the department of public health and human services must have a hearing within 180 days of confinement to determine the person's present mental condition and whether the person must be discharged or released or whether the commitment may be extended because the person continues to suffer from a mental disease or defect that renders the person a danger to the person or others. The hearing must be conducted by the court that ordered the commitment unless that court transfers jurisdiction to the district court in the district in which the person has been placed. The court shall cause notice of the hearing to be served upon the person, the person's counsel, the prosecutor, and the court that originally ordered the commitment. The hearing is a civil proceeding, and the burden is upon the state to prove by clear and convincing evidence that the person may not be safely released because the person continues to suffer from a mental disease or defect that causes the person to present a substantial risk of:

(a) serious bodily injury or death to the person or others;
(b) an imminent threat of physical injury to the person or others; or

(c) substantial property damage.

(4) According to the determination of the court upon the hearing, the person must be discharged or released on conditions the court determines to be necessary or must be committed to the custody of the director of the department of public health and human services to be placed in an appropriate mental health facility or a transitional mental health group home provided for

in [section 1] for custody, care, and treatment. The period of commitment may not exceed the maximum sentence determined under 46-14-214(2). At the time that the period of the maximum sentence expires, involuntary civil commitment proceedings may be instituted in the manner provided in Title 53, chapter 21.

(5) The director may, after considering the recommendations of the professionals providing treatment to the person, subsequently transfer the person to another mental health facility or transitional mental health group home that will better serve the person's custody, care, and treatment needs.

~~(5)~~(6) A professional person shall review the status of the person each year. At the time of the annual review, the director of the department of public health and human services or the person or the representative of the person may petition for discharge or release of the person. Upon request for a hearing, a hearing must be held pursuant to the provisions of subsection (3)."

{*Internal References to 46-14-301:*
46-14-302x}

Section 3. Section 46-14-312, MCA, is amended to read:

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

(2) If the court finds that the defendant at the time of

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the commission of the offense suffered from a mental disease or defect or developmental disability as described in 46-14-311, any mandatory minimum sentence prescribed by law for the offense need not apply. The court shall sentence the defendant to be committed to the custody of the director of the department of public health and human services to be placed, after consideration of the recommendations of the professionals providing treatment to the defendant and recommendations of the professionals who have evaluated the defendant, in an appropriate correctional facility, mental health facility, as defined in 53-21-102, residential facility, as defined in 53-20-102, ~~or~~ developmental disabilities facility, as defined in 53-20-202, or transitional mental health group home provided for in [section 1] for custody, care, and treatment for a definite period of time not to exceed the maximum term of imprisonment that could be imposed under subsection (1). The director may, after considering the recommendations of the professionals providing treatment to the defendant and recommendations of the professionals who have evaluated the defendant, subsequently transfer the defendant to another correctional, mental health, residential, or developmental disabilities facility or transitional mental health group home that will better serve the defendant's custody, care, and treatment needs. The authority of the court with regard to sentencing is the same as authorized in Title 46, chapter 18, if the treatment of the individual and the protection of the public are provided for.

(3) Either the director or a defendant whose sentence has

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been imposed under subsection (2) may petition the sentencing court for review of the sentence if the professional person certifies that:

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

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

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

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

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

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

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

(4) The sentencing court may make any order not inconsistent with its original sentencing authority, except that the length of confinement or supervision must be equal to that of the original sentence. The professional person shall review the defendant's status each year."

{*Internal References to 46-14-312:*

46-14-313x 46-23-201x 46-23-201x 46-23-201x }

Section 4. Section 53-1-602, MCA, is amended to read:

"53-1-602. Department of public health and human services.

(1) The following components are in the department of public health and human services to carry out the purposes of the department:

(a) mental health services, consisting of the following institutional components for care and treatment of the mentally ill pursuant to Title 53, chapter 21:

(i) the Montana state hospital; and

(ii) the Montana mental health nursing care center;

(b) a community services component, consisting of:

(i) appropriate services for the care and treatment of the mentally ill pursuant to Title 53, chapter 21, part 10; and

(ii) transitional mental health group homes established and operated pursuant to [section 1];

(c) chemical dependency services, consisting of appropriate detoxification, inpatient, intensive outpatient, outpatient, prevention, education, and other necessary chemical dependency services pursuant to Title 53, chapter 24;

(d) an institutional and residential component of the developmental disabilities system for those persons with developmental disabilities who require institutional or residential care according to Title 53, chapter 20, which component consists of the Montana developmental center; and

(e) the veterans' nursing homes for the nursing home and domiciliary care of honorably discharged veterans as provided by

law, consisting of:

- (i) the Montana veterans' home;
- (ii) the eastern Montana veterans' home at Glendive; and
- (iii) the southwestern Montana veterans' home.

(2) A state institution may not be moved, discontinued, or abandoned without the consent of the legislature."

{*Internal References to 53-1-602: None.*}

Section 5. Section 53-1-603, MCA, is amended to read:

"53-1-603. Powers and duties of department of public health and human services. The department of public health and human services shall:

(1) adopt rules for the admission, custody, transfer, and release of persons in department programs except as otherwise provided by law. However, rules adopted by the department may not amend or alter the statutory powers and duties of the board of pardons and parole.

(2) subject to the functions of the department of administration, lease or purchase lands for use by institutions and classify those lands to determine those that may be most profitably used for agricultural purposes, taking into consideration the needs of all institutions for the food products that can be grown or produced on the lands and the relative value of agricultural programs in the treatment or rehabilitation of the persons confined in the institutions;

(3) use the staff and services of other state agencies and units of the Montana university system, within their respective

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statutory functions, to carry out its functions under this title;

(4) propose programs to the legislature to meet the projected long-range needs of institutions, including programs and facilities for the diagnosis, treatment, care, and aftercare of persons placed in institutions; ~~and~~

(5) encourage the establishment of programs at the local level for the prevention and rehabilitation of disabilities as they relate to mental illness and chemical dependency; and

(6) subject to available appropriations for the purposes of this subsection (6), operate transitional mental health group homes as provided in [section 1]."

{*Internal References to 53-1-603: None.*}

NEW SECTION. Section 6. Appropriation. (1) There is appropriated \$3 million from the general fund to the department of public health and human services for the biennium beginning July 1, 2015.

(2) The appropriation must be used to operate one or more mental health group homes in the community as provided in [section 1].

NEW SECTION. Section 7. {standard} Codification instruction. [Section 1] is intended to be codified as an integral part of Title 53, chapter 1, part 6, and the provisions of Title 53, chapter 1, part 6, apply to [section 1].

NEW SECTION. Section 8. {standard} Effective date. [This

act] is effective July 1, 2015.

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