



**Montana Legislative Services Division**  
**Legal Services Office**

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TO: Law and Justice Interim Committee

FROM: David S. Niss, Staff Attorney

RE: No. 6 - Legislation and Administrative Issues Concerning Transfer of Mental Health Information and Medications Between MSP and Counties

DATE: June 13, 2008

I  
INTRODUCTION

At the Committee's April 11, 2008, meeting, the Committee discussed the Final Report to the Court, prepared by the Monitoring Committee created by Judge Neill upon remand of the case from the Supreme Court in Walker v. State, 2003 MT 134, 316 M 103, 68 P3d 872 (2003). At the suggestion of Sen. Jent, the Committee requested a bill draft to amend 46-18-112, MCA, to require certain information regarding the mental health of inmates transferred to the Montana State Prison (MSP). A discussion of the Final Report, the proposed legislation (attached), and other alternatives is provided below.

II  
DISCUSSION

a. Bill draft

The staff has prepared a bill draft (LCLJC1), attached, that amends 46-18-112, MCA, to require that in every case in which a presentence investigation is done, the investigation must include a report on the physical and mental health of the convicted individual. Note that this change does not increase the frequency with which presentence investigations are done, but only requires that if an investigation is done, it must include a physical and mental examination.

b. Remaining administrative issue

The Final Report to the Court of the Monitoring Committee, based upon testimony by three members of the MSP staff, estimated that in approximately 50% of the cases when a county inmate is transferred to the MSP, the mental health staff at MSP fails to receive existing mental health records or medications.<sup>1</sup> That same report stated that the MSP mental health staff spends much time placing telephone calls to find this information. At the April 11 meeting of the Committee, Sen. McGee referred to this as a

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<sup>1</sup> Final Report to the Court, Montana v. Walker, page 3.

"logistical disconnect". In the case of MSP inmates arriving from some counties, this figure may be lower than 50%, but may also include a disconnect for mental records or medications sent the other way, from the MSP to the counties.<sup>2</sup> For this reason, after more discussion about the subject with DOC staff, Committee staff may recommend that the bill draft also require that the presentence investigation and the results of the physical and mental health examination now required by LCLJC1 also be sent to the health care staff at the MSP and that any further physical or mental health diagnosis at the MSP, and any medications prescribed for the prisoner at the MSP, accompany the prisoner upon transfer to a county.

### III CONCLUSION

Committee staff has prepared and attached a bill draft to require that a physical and mental health examination be conducted on a prisoner whenever a presentence investigation is prepared on the prisoner. Because the Final Report to the Court of the Walker Monitoring Committee also indicates that even when a committing jurisdiction has physical or mental health information on a prisoner, that information does not reach the MSP mental health care staff and similar information and medications generated at the MSP may not be sent to a county when an MSP prisoner is transferred to a county, Committee staff may recommend further changes to LCLJC1.

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<sup>2</sup> April 16 and 17, 2008, e-mails from Mr. Terry Jesse, the Psychiatric Assessment Clinician at the Yellowstone County Detention Facility (YCDF), indicate that in about 25% of the cases in which a county inmate is transferred from the YCDF to the MSP with the inmate's mental health records or prescription medicines, the MSP staff telephones the medical unit at the YCDF requesting the same records or medications. The e-mails also note that in about 50% of cases in which an inmate is transferred from the MSP to the county, the county must telephone the MSP to obtain the medical records, prescriptions, or medications. E-mails on file in staff offices.

## **No. 6 - Transfer of Mental Health Information and Medications Executive Bullets**

- \* Committee staff has prepared and attached to this memorandum draft legislation requiring that whenever a presentence investigation is prepared on a prisoner, a physical and mental health examination be conducted on the prisoner if those examinations have not already been conducted.
- \* Because the Final Report to the Court of the Walker Monitoring Committee also indicates that when physical and mental health information is available at the committing jurisdiction it is not being transferred with or for a prisoner being transferred to the MSP, Committee staff may recommend that the draft legislation also include such a requirement.
- \* Contact with the Yellowstone County jail health staff also indicates that when an inmate is transferred from the MSP to a county, the county may not be receiving physical and mental health information and medical prescriptions generated at the MSP. For that reason, Committee staff may, after further discussion with the DOC staff, recommend addressing that issue in legislation as well.