

HOUSE BILL NO. 237

INTRODUCED BY J. REAVIS, M. YAKAWICH

A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING THE PLACEMENT OF SENTENCED DEFENDANTS IN THE STATE FORENSIC MENTAL HEALTH FACILITY AT GALEN EXCEPT IN CERTAIN CIRCUMSTANCES; AMENDING SECTION 46-14-312, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

**Section 1.** 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 disorder as described in 46-14-311, the court shall sentence the defendant as provided in Title 46, chapter 18.

(2) (a) If the court finds that the defendant at the time of the commission of the offense suffered from a mental disease or disorder 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, in a mental health facility, as defined in 53-21-102; but not the state forensic mental health facility at Galen unless deemed necessary by the director or the director's designee, in a residential facility, as defined in 53-20-102, or in a developmental disabilities facility, as defined in 53-20-202; 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).

(b) 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 that will better serve the defendant's custody, care, and treatment needs.

(c) 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 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 disorder;

(b) the defendant's mental disease or disorder 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 disorder or developmental disability but is not a danger to the defendant or others; or

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

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

(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 disorder.

(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."

**NEW SECTION. Section 2. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

**NEW SECTION. Section 3. Effective date.** [This act] is effective on passage and approval.

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