2025 Proposed Legislation Concepts

Title: 6901-33-001 Forensic Mental Health Examination Statutes Update
Agency Name – Division: DPHHS/Health Care Facilities Practice
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1. **What is the purpose of the proposed legislation?**

   Amend three criminal procedure statutes in Title 46, Chapter 14, Part 2 that work together to regulate legal procedures for forensic mental health evaluations, reporting evaluations, and commitment of defendants to mental health facilities for possible restoration to fitness. The amendments would clarify the appropriate procedural sequencing for determining a defendant's fitness to proceed, disincentivize overutilization of increasingly strained DPHHS resources, and codify current and necessary commitment and facility admissions protocols. The ultimate goal of the proposed legislation is to repair processes that have created a backlog of, and waitlist for, defendants ordered to be admitted to the Forensic Mental Health Facility at Galen (FMHF), encourage more timely resolution of criminal matters where fitness to proceed is at issue, and eliminate time-consuming and expensive litigation and contempt proceedings that occur because of the current backlog.

2. **What is the background?**

   FMHF has insufficient bed-capacity, medical, and psychiatric staff to stabilize, evaluate, and treat the number of defendants ordered by courts across the State of Montana to be admitted to FMHF for fitness evaluations. This has resulted in an ongoing waitlist for forensic evaluations, serious delays in criminal proceedings and dismissal of charges, psychiatric decompensation of defendants in local jails, costly litigation, and time-consuming contempt proceedings for DPHHS. The forensic commitment statutes do not currently require any of the parties adjudicating the question of a defendant's fitness to proceed to trial to consider options outside of commitment to FMHF/MSH. This has caused numerous and serious logistical and clinical issues for both FMHF and the MSH Main Hospital, has created overwhelming and unnecessary costs

for the department and counties, and threatened significant legal exposure for DPHHS and the State.

3. **If possible, please list the MCA (Montana Code Annotated) sections that would need to be amended.**

Montana Code Annotated §§ 46-14-202, -206, 221, 3-5-901(3)(c)

Section 1 – Amend Mont. Code Ann. § 46-14-202 (Examination of defendant).

a. Amend subsections (1) and (2). Amendments to current subsections -202(1) and (2) clean up and clarify current statutory language. Amendments to be read in concert with subsection (6) and are intended to emphasize an appropriate order/hierarchy of choices for commitment of a defendant for stabilization, evaluation, and restoration; to a less-restrictive placement in a community hospital or another suitable facility prior to consideration of the Montana state hospital, which is arguably the most restrictive environment into which a defendant can be placed.

b. New subsections (3) and (4). New statutory language requires parties to a criminal proceeding (court, prosecution, and defense) to consider the necessary and most basic clinical and psychiatric protocols of a mental health facility, including the Montana state hospital, prior to admitting a defendant to a facility. These considerations are currently memorialized in statute and the Administrative Rules of Montana, but are frequently ignored. Those considerations are:

1. whether a bed is actually and physically available,
2. whether admission will cause the facility to exceed its licensed census, and
3. whether information and records requested and concerning the legal status, medical and psychiatric condition and needs of the defendant, and coordination between law enforcement and other facilities have been received by the admitting facility.

c. New subsection (5). New statutory language is aimed at eliminating the recurrence of frivolous, time-consuming, and costly contempt proceedings under very limited circumstances; i.e., when a failure to admit a defendant to a facility is based on impossibility of immediate compliance with a court order, would threaten the safety of facility staff, a defendant, and/or existing patients, or when compliance would jeopardize a facility's license.

d. New subsection (6). New statutory language that requires consideration of

community evaluator resources, first, prior to consideration of any psychiatrists, psychologists, and advanced practice registered nurses employed by Montana state hospital.

e. New subsection (7). New statutory language to be read in concert with subsection (6), and 46-14-206 and -221, aimed at reducing and eliminating the admissions waitlist for evaluation services at Montana state hospital by prohibiting the current "cart before the horse" practice of ordering all questions relevant to a defendant's mental state and guilt be answered outside of the appropriate stage of criminal proceedings;

Questions relevant to trial and sentencing should not be addressed prior to determining whether a defendant can legally be required to proceed to trial due to lack of fitness.

Requiring both fitness and "time of crime" mental state capacities be evaluated and treated *ab initio* extends stays at Montana state hospital, delays proceedings, and perpetuates the bed-space shortage that has created the waitlist.

f. Amend current/existing subsection (4). Newly renumbered as subsection (9), the proposed amendments to § 46-14-202(4)(a) encourage courts to order defendants be evaluated for fitness by community evaluators instead of directing defendants into the custody of the department by default for evaluation services. These amendments accomplish this by establishing responsibility for payment of costs incurred for examinations in one entity, the court administrator, regardless of which party to proceedings raises the issue of fitness.

Although current subsection -202(4) purports to spread this payment responsibility between the court administrator's office, the office of the public defender, and the department, subsection -202(4)(a)(iv) results in the department paying for the majority of costs associated with evaluations of defendants by default without the department having been provided sufficient funding to actually handle the number of commitments for stabilization, evaluation, and restoration that have been ordered by courts across the state.

Section 2 - Mont. Code Ann. § 46-14-206 (Report of Examination).

a. New subsection (2). New statutory language to be read in concert with 46-14-202(6), and -221. Directs very clearly that "time of crime" mental state questions relevant to guilt and sentencing, be restricted to the trial and sentencing phases of a criminal procedure.

Section 3 - Mont. Code Ann. § 46-14-221 (Procedure upon finding of unfitness, expenses).

a. Amend subsection (1). Revised for clarification of intent that 46-14-221 dictates court procedure for fitness hearing after a threshold fitness evaluation and after the procedures in 46-14-202 have been fulfilled.

b. Amend subsection (2). Amended to require the court to identify the appropriate mental health facility to which a defendant is committed for stabilization, evaluation, and restoration rather than requiring commitment to DPHHS. This permits commitment to a less-restrictive placement in a community hospital or another suitable facility prior to consideration of the Montana state hospital. See 46-14-202.

c. New subsection (3), (4), and (5). New statutory language for the same purpose as stated for 46-14-202(3), (4), and (5), to mirror amendments to § 46-14-202(3)-(5).

d. Amend subsection (3). Newly renumbered as subsection (6), amendments provide the a court alternatives to strict dismissal of a criminal proceeding after 90 days from the date of an ordered commitment for a defendant who has been found unfit, but not yet restored to fitness, including adjustment to the defendant's pretrial custodial or commitment status, involuntary administration of medication within strict procedural parameters, and/or dismissal of charges and requirement of civil commitment.

e. Amend subsubsection (5). Newly renumbered as subsection (8), amendments rephrase existing statutory language related to payment responsibilities related to transportation, care, custody, and treatment to be paid by the office of the court administrator. Added in responsibility for payment of evaluation.

4. **Please list anticipated fiscal impact by fund type.** *(Dollar amounts, funding source, and FTE if known)*

To be determined.

FTE: No anticipated change

5. Please list anticipated controversy or impact on other state agencies or special interest groups.

The current statutory framework acts to encourage commitment to FMHF/Galen for forensic fitness evaluations and treatment, and requires no consideration by

the criminal justice system of the availability of resources allocated to the Department, including availability of bed space and psychiatric and medical professionals at state-operated facilities who can perform court-ordered evaluation and treatment of defendants who may and do lack fitness to proceed.

Courts, county attorneys, and sheriffs are unlikely to respond positively to any change in these processes because they have grown accustomed to the current statutory landscape and stateside accepted practices that do not comply even with existing law.

Further, courts, county attorneys, and sheriffs are unlikely to respond positively to the necessary curtailment of their open-ended authority to detain, commit, transfer, and transport mentally ill defendants into the custody of the Department without consideration of the limitations on resources that the Department must navigate related to every defendant committed to its custody on a short or long-term basis.

The Office of the Court Administrator's position on the transfer of managing the costs associated with the examination, transport, detention, and housing of defendants and medical costs incurred by facilities is currently unknown.

6. **Has similar legislation been requested in the past, been introduced in another state, or provided as a model act? If so, please provide a citation, reference, or point of contact.**

   To the best of the Department's knowledge, there has not been a comprehensive effort to update the system for examination, treatment, and processing of defendants who may lack fitness to stand trial.