

SENATE BILL NO. 11

INTRODUCED BY M. CAFERRO

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4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING CRIMINAL JUSTICE SYSTEM LAWS
5 RELATED TO OFFENDERS WITH MENTAL ILLNESS; REVISING REQUIREMENTS FOR PAROLE AND
6 PROBATION OFFICERS AND MEMBERS OF THE BOARD OF PARDONS AND PAROLE; REVISING LAWS
7 RELATED TO CONDITIONS OF RELEASE, BAIL, SENTENCING AND COMMITMENT, AND PAROLE OF
8 OFFENDERS WITH MENTAL ILLNESS; REVISING THE DEFINITION OF "MENTAL DISEASE OR DEFECT";
9 AMENDING SECTIONS 2-15-2302, 46-9-108, 46-9-301, 46-14-101, 46-14-301, 46-14-302, 46-14-312,
10 46-23-201, AND 46-23-1003, MCA; AND PROVIDING AN APPLICABILITY DATE."

11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13
14 **Section 1.** Section 2-15-2302, MCA, is amended to read:

15 **"2-15-2302. Board of pardons and parole -- composition -- allocation -- quasi-judicial.** (1) There
16 is a board of pardons and parole.

17 (2) (a) The board consists of seven members, each of whom must have knowledge of American Indian
18 culture and problems gained through training as required by rules adopted by the board. One member must be
19 an enrolled member of a state-recognized or federally recognized Indian tribe located within the boundaries of
20 the state of Montana. The tribal member may not be required to hear and act on all American Indian applications
21 before the board.

22 (b) Board members must have knowledge of serious mental illness and recovery from serious mental
23 illness gained through training as required by rules adopted by the board. Two members must be providers of
24 mental health services.

25 (c) Members of the board Board members must possess academic training that has qualified them for
26 professional practice in a field such as criminology, education, psychiatry, psychology, law, social work, sociology,
27 or guidance and counseling. Related work experience in the areas listed may be substituted for these educational
28 requirements.

29 (3) The governor shall attempt to establish geographic balance among board members.

30 (4) Board members shall serve staggered 4-year terms. The governor shall appoint three members in

1 January of the first year of the governor's term, two members in January of the second year of the governor's
2 term, and two members in January of the third year of the governor's term. The provisions of 2-15-124(2) do not
3 apply to the board.

4 (5) The terms of board members run with the position, and if a vacancy occurs, the governor shall
5 appoint a person to fill the unexpired portion of the term.

6 (6) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.
7 However, the board may hire its own personnel, and 2-15-121(2)(d) does not apply.

8 (7) The board is designated as a quasi-judicial board for purposes of 2-15-124, except board members
9 must be compensated as provided by legislative appropriation and the terms of board members must be
10 staggered as provided in subsection (4).

11 (8) A favorable vote of at least a majority of the seven members of the board is required to implement
12 any policy, procedure, or administrative rule. A favorable vote of at least a majority of the members of a hearing
13 panel, as defined in 46-23-103, is required to make decisions regarding parole and executive clemency, and the
14 provisions of 2-15-124(8) do not apply."

15

16 **Section 2.** Section 46-9-108, MCA, is amended to read:

17 **"46-9-108. Conditions upon defendant's release -- notice to victim of stalker's release.** (1) The
18 court may impose any condition that will reasonably ensure the appearance of the defendant as required or that
19 will ensure the safety of any person or the community, including but not limited to the following conditions:

20 (a) the defendant may not commit an offense during the period of release;

21 (b) the defendant shall remain in the custody of a designated person who agrees to supervise the
22 defendant and report any violation of a release condition to the court, if the designated person is reasonably able
23 to assure the court that the defendant will appear as required and will not pose a danger to the safety of any
24 person or the community;

25 (c) the defendant shall maintain employment or, if unemployed, actively seek employment;

26 (d) the defendant shall abide by specified restrictions on the defendant's personal associations, place
27 of abode, and travel;

28 (e) the defendant shall avoid all contact with:

29 (i) an alleged victim of the crime, including in a case of partner or family member assault the restrictions
30 contained in a no contact order issued under 45-5-209; and

- 1 (ii) any potential witness who may testify concerning the offense;
- 2 (f) the defendant shall report on a regular basis to a designated agency or individual, pretrial services
- 3 agency, or other appropriate individual;
- 4 (g) the defendant shall comply with a specified curfew;
- 5 (h) the defendant may not possess a firearm, destructive device, or other dangerous weapon;
- 6 (i) the defendant may not use or possess alcohol or use or possess any dangerous drug or other
- 7 controlled substance without a legal prescription;
- 8 (j) if applicable, the defendant shall comply with either a mental health or chemical dependency treatment
- 9 program, or both;
- 10 ~~(j)~~(k) the defendant shall furnish bail in accordance with 46-9-401; or
- 11 ~~(k)~~(l) the defendant shall return to custody for specified hours following release from employment,
- 12 schooling, or other approved purposes.

13 (2) The court may not impose an unreasonable condition that results in pretrial detention of the defendant

14 and shall subject the defendant to the least restrictive condition or combination of conditions that will ensure the

15 defendant's appearance and provide for protection of any person or the community. At any time, the court may,

16 upon a reasonable basis, amend the order to impose additional or different conditions of release upon its own

17 motion or upon the motion of either party.

18 (3) Whenever a person accused of a violation of 45-5-206, 45-5-220, or 45-5-626 is admitted to bail, the

19 detention center shall, as soon as possible under the circumstances, make one and if necessary more reasonable

20 attempts, by means that include but are not limited to certified mail, to notify the alleged victim or, if the alleged

21 victim is a minor, the alleged victim's parent or guardian of the accused's release."

22

23 **Section 3.** Section 46-9-301, MCA, is amended to read:

24 **"46-9-301. Determining the amount of bail.** In all cases in which bail is determined to be necessary,

25 bail must be reasonable in amount and the amount must be:

- 26 (1) sufficient to ensure the presence of the defendant in a pending criminal proceeding;
- 27 (2) sufficient to ensure compliance with the conditions set forth in the bail;
- 28 (3) sufficient to protect any person from bodily injury;
- 29 (4) not oppressive;
- 30 (5) commensurate with the nature of the offense charged;

- 1 (6) considerate of the financial ability of the accused;
- 2 (7) considerate of the defendant's prior record;
- 3 (8) considerate of the length of time the defendant has resided in the community and of the defendant's
- 4 ties to the community;
- 5 (9) considerate of the defendant's family relationships and ties;
- 6 (10) considerate of the defendant's mental health status and of the defendant's participation in a mental
- 7 health treatment program;
- 8 ~~(10)~~(11) considerate of the defendant's employment status; and
- 9 ~~(11)~~(12) sufficient to include the charge imposed in 46-18-236."

10

11 **Section 4.** Section 46-14-101, MCA, is amended to read:

12 **"46-14-101. Mental disease or defect -- purpose -- definition.** (1) The purpose of this section is to

13 provide a legal standard of mental disease or defect under which the information gained from examination of the

14 defendant, pursuant to part 2 of this chapter, regarding a defendant's mental condition is applied. The court shall

15 apply this standard:

16 (a) in any determination regarding:

17 (i) a defendant's fitness to proceed and stand trial;

18 (ii) whether the defendant had, at the time that the offense was committed, a particular state of mind that

19 is an essential element of the offense; and

20 (b) at sentencing when a defendant has been convicted on a verdict of guilty or a plea of guilty or nolo

21 contendere and claims that at the time of commission of the offense for which the defendant was convicted, the

22 defendant was unable to appreciate the criminality of the defendant's behavior or to conform the defendant's

23 behavior to the requirements of the law.

24 (2) (a) As used in this chapter, "mental disease or defect" means an organic, mental, or emotional

25 disorder that is manifested by a substantial disturbance in behavior, feeling, thinking, or judgment to such an

26 extent that the person requires care, treatment, and rehabilitation.

27 (b) The term "mental disease or defect" does not include but may co-occur with one or more of the

28 following:

- 29 (i) an abnormality manifested only by repeated criminal or other antisocial behavior;
- 30 (ii) a developmental disability, as defined in 53-20-102;

1 (iii) drug or alcohol intoxication; or

2 (iv) drug or alcohol addiction."

3

4 **Section 5.** Section 46-14-301, MCA, is amended to read:

5 **"46-14-301. Commitment upon finding of not guilty by reason of lack of mental state -- hearing**

6 **to determine release or discharge -- limitation on confinement.** (1) When a defendant is found not guilty for

7 the reason that due to a mental disease or defect the defendant could not have a particular state of mind that is

8 an essential element of the offense charged, the court shall order a predisposition investigation in accordance

9 with 46-18-112 and 46-18-113, which must include an investigation of the present mental condition of the

10 defendant. If the trial was by jury, the court shall hold a hearing to determine the appropriate disposition of the

11 defendant. If the trial was by the court, the court may hold a hearing to obtain any additional testimony it considers

12 necessary to determine the appropriate disposition of the defendant. In either case, the testimony and evidence

13 presented at the trial must be considered by the court in making its determination.

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

16 (a) involved a substantial risk of serious bodily injury or death, actual bodily injury, or substantial property

17 damage, the court may find that the defendant suffers from a mental disease or defect that renders the defendant

18 a danger to the defendant or others. If the court finds that the defendant presents a danger to the defendant or

19 others, the defendant may be committed to the custody of the director of the department of public health and

20 human services to be placed in an appropriate mental health facility for custody, care, and treatment. However,

21 if the court finds that the defendant is seriously developmentally disabled, as defined in 53-20-102, the prosecutor

22 shall petition the court in the manner provided in Title 53, chapter 20.

23 (b) charged did not involve a substantial risk of serious bodily injury or death, actual bodily injury, or

24 substantial property damage, the court shall release the defendant. The prosecutor may petition the court in the

25 manner provided in Title 53, chapter 20 or 21.

26 (3) A person committed to the custody of the director of the department of public health and human

27 services must have a hearing within 180 days of confinement to determine the person's present mental condition

28 and whether the person must be discharged or released or whether the commitment may be extended because

29 the person continues to suffer from a mental disease or defect that renders the person a danger to the person

30 or others. The hearing must be conducted by the court that ordered the commitment unless that court transfers

1 jurisdiction to the district court in the district in which the person has been placed. The court shall cause notice
2 of the hearing to be served upon the person, the person's counsel, the prosecutor, and the court that originally
3 ordered the commitment. The hearing is a civil proceeding, and the burden is upon the state to prove by clear
4 and convincing evidence that the person may not be safely released because the person continues to suffer from
5 a mental disease or defect that causes the person to present a substantial risk of:

- 6 (a) serious bodily injury or death to the person or others;
7 (b) an imminent threat of physical injury to the person or others; or
8 (c) substantial property damage.

9 (4) According to the determination of the court upon the hearing, the person must be discharged or
10 released on conditions the court determines to be necessary or must be committed to the custody of the director
11 of the department of public health and human services to be placed in an appropriate mental health facility for
12 custody, care, and treatment. The period of commitment may not exceed the maximum sentence determined
13 under 46-14-214(2). At the time that the period of the maximum sentence expires, involuntary civil commitment
14 proceedings may be instituted in the manner provided in Title 53, chapter 21.

15 (5) A ~~professional person~~ psychiatrist, licensed clinical psychologist, or advanced practice registered
16 nurse shall review the status of the person each year. At the time of the annual review, the director of the
17 department of public health and human services or the person or the representative of the person may petition
18 for discharge or release of the person. Upon request for a hearing, a hearing must be held pursuant to the
19 provisions of subsection (3)."

20

21 **Section 6.** Section 46-14-302, MCA, is amended to read:

22 **"46-14-302. Discharge or release upon motion of director.** (1) If the director of the department of
23 public health and human services believes that a person committed to the director's custody under 46-14-301
24 may be discharged or released on condition without danger to the person or others because the person no longer
25 suffers from a mental disease or defect that causes the person to present a substantial risk of serious bodily injury
26 or death to the person or others, a substantial risk of an imminent threat of physical injury to the person or others,
27 or a substantial risk of substantial property damage, the director shall make application for the discharge or
28 release of the person in a report to the district court by which the person was committed unless that court
29 transfers jurisdiction to the court in the district in which the person has been placed and shall send a copy of the
30 application and report to the prosecutor of the county from which the person was committed.

1 (2) Either the director of the department of public health and human services or the person may also
2 make application to the court for discharge or release as part of the person's annual treatment review.

3 (3) The court shall then appoint at least one person who is a qualified psychiatrist, licensed clinical
4 psychologist, or advanced practice registered nurse to examine the person and to report as to the person's
5 mental condition within 60 days or a longer period that the court determines to be necessary for the purpose. To
6 facilitate the examinations and the proceedings on the examinations, the court may have the person confined in
7 any mental health facility located near the place where the court sits that may be designated by the director of
8 the department of public health and human services as suitable for the temporary detention of persons suffering
9 from mental disease or defect.

10 (4) The committed person or the person's attorney may secure a ~~professional person~~ psychiatrist,
11 licensed clinical psychologist, or advanced practice registered nurse of the committed person's choice to examine
12 the committed person and to testify at the hearing. If the person wishing to secure the testimony of a ~~professional~~
13 ~~person~~ psychiatrist, licensed clinical psychologist, or advanced practice registered nurse is unable to do so
14 because of financial reasons, the court shall appoint an additional ~~professional person~~ psychiatrist, licensed
15 clinical psychologist, or advanced practice registered nurse to perform the examination. Whenever possible, the
16 court shall allow the committed person or the person's attorney a reasonable choice of an available ~~professional~~
17 ~~person~~ psychiatrist, licensed clinical psychologist, or advanced practice registered nurse qualified to perform the
18 requested examination. The ~~professional person~~ psychiatrist, licensed clinical psychologist, or advanced practice
19 registered nurse must be compensated by the department of public health and human services.

20 (5) If the court is satisfied by the report filed under subsection (1) and the testimony of the reporting
21 psychiatrist, licensed clinical psychologist, or advanced practice registered nurse that the committed person may
22 be discharged or released on condition because the person no longer suffers from a mental disease or defect
23 that causes the person to present a substantial risk of serious bodily injury or death to the person or others, a
24 substantial risk of an imminent threat of physical injury to the person or others, or a substantial risk of substantial
25 property damage, the court shall order the person's discharge.

26 (6) (a) If the court is not satisfied, it shall promptly order a hearing to determine whether the person may
27 safely be discharged or released on the grounds that the person no longer suffers from a mental disease or defect
28 that causes the person to present a substantial risk of:

- 29 (i) serious bodily injury or death to the person or others;
30 (ii) an imminent threat of physical injury to the person or others; or

1 (iii) substantial property damage.

2 (b) A hearing is considered a civil proceeding, and the burden is upon the state to prove by clear and
3 convincing evidence that the person may not be safely discharged or released because the person continues to
4 suffer from a mental disease or defect that causes the person to present a substantial risk of:

5 (i) serious bodily injury or death to the person or others;

6 (ii) an imminent threat of physical injury to the person or others; or

7 (iii) substantial property damage.

8 (c) According to the determination of the court upon the hearing, the committed person must then be
9 discharged or released on conditions that the court determines to be necessary or must be recommitted to the
10 custody of the director of the department of public health and human services, subject to discharge or release
11 only in accordance with the procedures provided in 46-14-303 and this section."
12

13 **Section 7.** Section 46-14-312, MCA, is amended to read:

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

17 (2) If the court finds that the defendant at the time of the commission of the offense suffered from a
18 mental disease or defect or developmental disability as described in 46-14-311, any mandatory minimum
19 sentence prescribed by law for the offense need not apply. The court shall sentence the defendant to be
20 committed to the custody of the director of the department of public health and human services to be placed, after
21 consideration of the recommendations of the professionals providing treatment to the defendant and
22 recommendations of the ~~professionals~~ psychiatrist, licensed clinical psychologist, or advanced practice registered
23 nurse who ~~have~~ evaluated the defendant, in an appropriate correctional facility, mental health facility, as defined
24 in 53-21-102, residential facility, as defined in 53-20-102, or developmental disabilities facility, as defined in
25 53-20-202, for custody, care, and treatment for a definite period of time not to exceed the maximum term of
26 imprisonment that could be imposed under subsection (1). The director may, after considering the
27 recommendations of the professionals providing treatment to the defendant and recommendations of the
28 ~~professionals~~ psychiatrist, licensed clinical psychologist, or advanced practice registered nurse who ~~have~~
29 evaluated the defendant, subsequently transfer the defendant to another correctional, mental health, residential,
30 or developmental disabilities facility that will better serve the defendant's custody, care, and treatment needs. The

1 authority of the court with regard to sentencing is the same as authorized in Title 46, chapter 18, if the treatment
2 of the individual and the protection of the public are provided for.

3 (3) Either the director or a defendant whose sentence has been imposed under subsection (2) may
4 petition the sentencing court for review of the sentence if the ~~professional person~~ psychiatrist, licensed clinical
5 psychologist, or advanced practice registered nurse certifies that:

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

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

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

11 (d) the defendant suffers from a mental disease or defect but is willing to participate in a supervised
12 mental health treatment program to ensure that the defendant's mental disease or defect meets the requirements
13 of subsection (3)(b); or

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

16 (i) there is no treatment available, rather than a lack of resources, for the mental disease or defect under
17 current research and practice;

18 (ii) the defendant refuses to cooperate with treatment beyond the level of resistance that is expected of
19 the defendant's mental disease or defect; or

20 (iii) the defendant will no longer benefit from active inpatient treatment for the mental disease or defect,
21 taking into consideration the availability of alternative placements and potential detrimental effects on the
22 defendant's mental condition.

23 (4) The sentencing court may make any order not inconsistent with its original sentencing authority,
24 except that the length of confinement or supervision must be equal to that of the original sentence. The
25 ~~professional person~~ psychiatrist, licensed clinical psychologist, or advanced practice registered nurse shall review
26 the defendant's status each year, taking into consideration the setting in which the defendant is currently placed
27 and the setting in which the psychiatrist, licensed clinical psychologist, or advanced practice registered nurse
28 anticipates the defendant being placed."

29

30 **Section 8.** Section 46-23-201, MCA, is amended to read:

1 **"46-23-201. Prisoners eligible for nonmedical parole -- rulemaking.** (1) Subject to the restrictions
2 contained in subsections (2) through (5) and when in the board's opinion there is reasonable probability that a
3 prisoner can be released without detriment to the prisoner or to the community, the board may release on
4 nonmedical parole by appropriate order any person who is:

5 (a) confined in a state prison;
6 (b) sentenced to the state prison and confined in a prerelease center;
7 (c) sentenced to prison as an adult pursuant to 41-5-206 and confined in a youth correctional facility;
8 (d) sentenced to be committed to the custody of the director of the department of public health and
9 human services as provided in 46-14-312 and confined in the Montana state hospital, the Montana developmental
10 center, or the Montana mental health nursing care center.

11 (2) Persons under sentence of death, persons sentenced to the department who have been placed by
12 the department in a state prison temporarily for assessment or sanctioning, and persons serving sentences
13 imposed under 46-18-202(2) or 46-18-219 may not be granted a nonmedical parole.

14 (3) ~~A Except for a prisoner sentenced to be committed to the custody of the director of the department~~
15 ~~of public health and human services as provided in 46-14-312, a~~ prisoner serving a time sentence may not be
16 paroled under this section until the prisoner has served at least one-fourth of the prisoner's full term.

17 (4) A prisoner serving a life sentence may not be paroled under this section until the prisoner has served
18 30 years.

19 (5) A parole may be ordered under this section only for the best interests of society and not as an award
20 of clemency or a reduction of sentence or pardon. A prisoner may be placed on parole only when the board
21 believes that the prisoner is able and willing to fulfill the obligations of a law-abiding citizen.

22 (6) For a prisoner sentenced to be committed to the custody of the director of the department of public
23 health and human services as provided in 46-14-312:

24 (a) the standard for parole described in subsection (5) may be met through participation in a supervised
25 mental health treatment program to ensure that the prisoner continues to treat the prisoner's mental disorder; and

26 (b) parole may be revoked if a prisoner fails to comply with the terms of a supervised mental health
27 treatment program described in subsection (6)(a), in which case the prisoner must be recommitted to the custody
28 of the director of the department of public health and human services and confined in a mental health facility,
29 residential facility, or developmental disabilities facility pursuant to 46-14-312.

30 ~~(6)(7)~~ If a hearing panel denies parole, it may order that the prisoner serve up to 6 years before a hearing

1 panel conducts another hearing or review. The board shall adopt by administrative rule a process by which a
2 prisoner may request an earlier hearing or review."

3

4 **Section 9.** Section 46-23-1003, MCA, is amended to read:

5 **"46-23-1003. Qualifications of probation and parole officers.** (1) Probation and parole officers must
6 have at least a college degree and some formal training in behavioral sciences. Exceptions to this rule must be
7 approved by the department. Related work experience in the areas listed in 2-15-2302(2)(c) may be substituted
8 for educational requirements at the rate of 1 year of experience for 9 months formal education if approved by the
9 department. All present employees are exempt from this requirement but are encouraged to further their
10 education at the earliest opportunity.

11 (2) Each probation and parole officer shall, through a source approved by the officer's employer, obtain
12 16 hours a year of training in subjects relating to the powers and duties of probation officers, at least 1 hour of
13 which must include training on serious mental illness and recovery from serious mental illness. In addition, each
14 probation and parole officer must receive training in accordance with standards adopted by the Montana public
15 safety officer standards and training council established in 2-15-2029. The training must be at the Montana law
16 enforcement academy unless the council finds that training at some other place is more appropriate."

17

18 NEW SECTION. **Section 10. Applicability.** [Section 1] applies to appointments made on or after
19 January 1, 2014.

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- END -