

1 House BILL NO. 84
 2 INTRODUCED BY Robert Stang

3 BY REQUEST OF THE DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES
 4

5 A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE AUTHORITY OF THE DIRECTOR OF THE
 6 DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES TO PLACE A DEFENDANT SUFFERING FROM
 7 A MENTAL DISEASE OR DEFECT; AND AMENDING SECTION 46-14-312, MCA."
 8

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 10

11 **Section 1.** Section 46-14-312, MCA, is amended to read:

12 **"46-14-312. Sentence to be imposed.** (1) If the court finds that the defendant at the time of the
 13 commission of the offense of which the defendant was convicted did not suffer from a mental disease or
 14 defect as described in 46-14-311, the court shall sentence the defendant as provided in Title 46, chapter
 15 18.

16 (2) If the court finds that the defendant at the time of the commission of the offense suffered from
 17 a mental disease or defect as described in 46-14-311, any mandatory minimum sentence prescribed by law
 18 for the offense need not apply and the court shall sentence the defendant to be committed to the custody
 19 of the director of the department of corrections and human services to be placed in an appropriate
 20 correctional or mental health institution for custody, care, and treatment for a definite period of time not
 21 to exceed the maximum term of imprisonment that could be imposed under subsection (1). The director
 22 may subsequently transfer the defendant to another correctional or mental health institution that will better
 23 serve the defendant's custody, care, and treatment needs. The authority of the court with regard to
 24 sentencing is the same as authorized in Title 46, chapter 18, if the treatment of the individual and the
 25 protection of the public are provided for.

26 (3) Either the director or a defendant whose sentence has been imposed under subsection (2) may
 27 petition the sentencing court for review of the sentence if the professional person certifies that:

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

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

1 law;

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

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

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

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

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

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

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19 of the director of the department of corrections and human services to be placed, AFTER CONSIDERATION
20 OF THE RECOMMENDATIONS OF THE PROFESSIONALS PROVIDING TREATMENT TO THE DEFENDANT,
21 in an appropriate correctional or mental health institution FACILITY for custody, care, and treatment for a
22 definite period of time not to exceed the maximum term of imprisonment that could be imposed under
23 subsection (1). The director may, AFTER CONSIDERING THE RECOMMENDATIONS OF THE
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(2) If the court finds that the defendant at the time of the commission of the offense suffered from a mental disease or defect as described in 46-14-311, any mandatory minimum sentence prescribed by law for the offense need not apply and the court shall sentence the defendant to be committed to the custody of the director of the department of corrections and human services to be placed, AFTER CONSIDERATION OF THE RECOMMENDATIONS OF THE PROFESSIONALS PROVIDING TREATMENT TO THE DEFENDANT, in an appropriate correctional or mental health institution FACILITY 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, subsequently transfer the defendant to another correctional or mental health institution FACILITY 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.

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