

1 HOUSE BILL NO. 236

2 INTRODUCED BY J. REAVIS, M. YAKAWICH

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4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR EVALUATIONS IN DETENTION CENTERS OR  
5 STATE PRISONS OF DEFENDANTS IN CRIMINAL PROCEEDINGS WHEN MENTAL DISEASE OR  
6 DISORDER IS AN ISSUE; PROVIDING RULEMAKING AUTHORITY; AMENDING ~~SECTIONS 7-32-2222 AND~~  
7 ~~SECTION~~ 46-14-202, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

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11 NEW SECTION. **Section 1. Examinations conducted at detention center or state prison --**

12 exemption -- rulemaking authority. (1) Except as provided in subsection (2), an examination to determine

13 a defendant's fitness to proceed as provided in 46-14-202 may be conducted at a detention center or state

14 prison that meets the requirements of [section 2].

15 (2) An examination to determine a defendant's fitness to proceed may not be conducted at a  
16 detention center if the court has ordered the defendant to be committed to a hospital or other suitable facility for  
17 the purpose of the examination, pursuant to 46-14-202(2).

18 (3) The department of public health and human services shall adopt rules to implement this  
19 section, including rules for how a psychiatrist, licensed clinical psychologist, or advanced practice registered  
20 nurse should conduct an examination at a detention center. The rules must include:

21 (a) guidelines that factor in the role of the detention center environment when conducting the  
22 examination;

23 (b) standards for the use of two-way electronic audio and video communication to conduct remote  
24 examinations:

25 (c) standards to determine if a follow-up examination is needed at the Montana state hospital; and

26 (d) when to implement the qualification determination required by 46-14-202(1).

1       **authority.** (1) The department of public health and human services shall adopt rules to implement [section 1]  
2       for a detention center or state prison to follow that reasonably adhere to a suitable facility to conduct an  
3       examination to report on a defendant's mental condition. The rules must take into account:  
4           (a) whether and how the defendant is to be segregated from or integrated with the general  
5       population;  
6           (b) whether the examination can be conducted at a behavioral health inpatient facility, and  
7       providing rules for transport;  
8           (c) what kind of food, clothing, schedule, and care is to be provided to the defendant;  
9           (d) what kind of security and schedule is to be given to accommodate the mental health  
10      professional conducting the examination;  
11           (e) standards for the use of two-way electronic audio-video communication to conduct  
12      examinations remotely; and  
13           (f) standards to determine if a follow-up examination is needed at the state hospital.  
14       (2) The department of public health and human services shall adopt rules to implement the  
15      qualification determination required by 46-14-202(1).

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17       **Section 3.** Section 7-32-2222, MCA, is amended to read:

18       **"7-32-2222. Health and safety of inmates.** (1) Each detention center shall comply with state and  
19      local fire codes for correctional occupancy and with sanitation, safety, and health codes.

20           (2) Designated exits must permit prompt evacuation of inmates and detention center staff in an  
21      emergency.

22           (3) When there is good reason to believe that the inmates may be injured or endangered, the  
23      detention center administrator shall remove them to a safe and convenient place and confine them there as  
24      long as necessary to avoid the danger.

25           (4) Each detention center shall adopt a policy to allow for the evaluations provided for in [section  
26      1]. The policy must not conflict with the rules adopted by the department of public health and human services  
27      pursuant to [section 2]."

1           **Section 2.** Section 46-14-202, MCA, is amended to read:

2           **"46-14-202. Examination of defendant -- qualification determination.** (1) (a) If the defendant or the  
3 defendant's counsel files a written motion requesting an examination or if the issue of the defendant's fitness to  
4 proceed is raised by the court, prosecution, or defense counsel, the court shall appoint at least one qualified  
5 psychiatrist, licensed clinical psychologist, or advanced practice registered nurse or shall request the  
6 superintendent of the Montana state hospital to designate at least one qualified psychiatrist, licensed clinical  
7 psychologist, or advanced practice registered nurse, who may be or include the superintendent, to examine and  
8 report uponon the defendant's mental condition.

9           (b) Whether a psychiatrist, licensed clinical psychologist, or advanced practice registered nurse is  
10 qualified to examine and report on the defendant's mental condition must be determined by the department of  
11 public health and human services. A determination does not limit the prosecution's or defense counsel's choice  
12 of examiner if choosing to also hire an independent qualified examiner as provided in 46-14-204, 46-14-205,  
13 and this section.

14           (2) The court may order the defendant to be committed to a hospital or other suitable facility, which  
15 may include a detention center or state prison satisfying the requirements of [section 2], for the purpose of the  
16 examination for a period not exceeding 60 days or a longer period that the court determines to be necessary for  
17 the purpose and may direct that a qualified psychiatrist, licensed clinical psychologist, or advanced practice  
18 registered nurse retained by the defendant be permitted to witness and participate in the examination.

19           (3) In the examination, any method may be employed that is accepted by the medical or  
20 psychological profession for the examination of those alleged to be suffering from mental disease or disorder.

21           (4) (a) The costs incurred for an examination ordered under subsection (2) must be paid as  
22 follows:

23           (i) if the issue of the defendant's fitness to proceed was raised by the court or the examination  
24 was requested by the prosecution, the cost of the examination and other associated expenses must be paid by  
25 the court or, in district court proceedings, by the office of court administrator, except as provided in subsection  
26 (4)(a)(iv);

27           (ii) if the examination was requested by the defendant or the defendant's counsel, the cost of the  
28 examination and other associated expenses must be paid by the defendant or, if the defendant was

1       represented by an attorney pursuant to the Montana Public Defender Act, Title 47, chapter 1, by the office of  
2       state public defender, except as provided by subsection (4)(a)(iv);

3               (iii)       if the examination was jointly requested by the prosecution and defense counsel or the need  
4       for the examination was jointly agreed to by the prosecution and defense, the cost of the examination and other  
5       associated expenses must be divided and paid equally by the court or, in district court proceedings, by the  
6       office of court administrator, and the defendant or, if the defendant was represented by an attorney assigned  
7       pursuant to the Montana Public Defender Act, Title 47, chapter 1, by the office of state public defender, except  
8       as provided in subsection (4)(a)(iv);

9               (iv)       any costs for an examination performed by an employee of the department of public health and  
10       human services, any other associated expenses at a facility of the department of public health and human  
11       services, and any other associated expenses for which the legislature has made a general fund appropriation to  
12       the department of public health and human services may not be charged to the office of court administrator or  
13       the office of state public defender.

14               (b)       For the purposes of this subsection (4), "other associated expenses" means the following costs  
15       incurred in association with the commitment to a hospital or other suitable facility for the purpose of  
16       examination, regardless of whether the examination is done at the Montana state hospital or any other facility:

17               (i)       the expenses of transporting the defendant from the place of detention to the place where the  
18       examination is performed and returning the defendant to detention, including personnel costs of the law  
19       enforcement agency by whom the defendant is detained;

20               (ii)       housing expenses of the facility where the examination is performed; and

21               (iii)       medical costs, including medical and dental care, including costs of medication."

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23       **NEW SECTION. Section 3. Codification instruction.** [Sections 1 and 2-Section 1] are intended to  
24       be codified as an integral part of Title 46, chapter 14, part 2, and the provisions of Title 46, chapter 14, part 2,  
25       apply to [sections 1 and 2-section 1].

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27       **NEW SECTION. Section 4. Effective date.** [This act] is effective October 1, 2025.

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