

HJR 16: State-Operated Institutions ***Transfers Between MSH and MSP***

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November 2013

Background

Under 46-14-312, MCA, individuals convicted of a crime may be sentenced to the custody of the director of the Department of Public Health and Human Services (DPHHS) if they have been found to have "a mental disease or defect" that prevented them from appreciating the criminality of their conduct or from following the requirements of the law. The director determines a person's appropriate placement in a correctional, mental health, or developmental disabilities facility and may later transfer the person to another facility to better meet "custody, care, and treatment needs." Both the initial placement and any transfer must be based on recommendations made by professionals evaluating or treating the individual.

In addition, 53-21-130, MCA, allows DPHHS or the Department of Corrections to transfer a person in their custody to the Montana State Hospital (MSH) for up to 10 days if the person needs the intensive mental health treatment offered there.

After hearing about transfers made under these laws during visits to MSH and the Montana State Prison (MSP) in September, the Children, Families, Health, and Human Services Interim Committee asked for more detailed information on the number of transfers that have occurred between the two facilities and the frequency with which a person transferred to MSP is transferred back to the State Hospital because his mental illness has worsened.

This briefing paper summarizes information provided by the facilities in response to the request. The information covers the past five fiscal years, from July 1, 2008, through June 30, 2013.

Transfers from MSH to MSP

MSH may transfer to a correctional facility only those patients who have been convicted of a crime and found to be guilty but mentally ill (GBMI). MSH may not send to the prison any Forensic Unit patients who are undergoing pre-trial or pre-sentence evaluations or who are receiving treatment so they will be fit to proceed with a trial.

During the five-year period, MSH transferred 22 patients to the Montana State Prison and two patients to the Montana Women's Prison. MSH officials say these guilty but mentally ill (GBMI) patients are generally transferred because:

- their dangerous behaviors prevent them from being safely managed at MSH regardless of their mental status; or
- the symptoms of their mental illness are mild or in remission and they are not benefitting from the hospital level of care. In this case, an offender usually isn't participating in treatment activities or is disrupting the treatment of other MSH patients.

Although the DPHHS director ultimately determines whether to transfer a GBMI patient, most transfers are based on a recommendation by a treatment team. The recommendations are reviewed by the hospital's Forensic Review Board, the MSH administrator, and DPHHS legal counsel before the director authorizes a transfer. The treatment staff takes into account numerous clinical factors before recommending a transfer. The DPHHS director and the Department of Corrections director may approve an emergency transfer without prior review by the board if an emergency situation exists because of dangerous behavior.

Transfers from MSP to MSH

The prison may transfer to MSH any inmate who may need intensive mental health treatment, using the 10-day transfer process, an involuntary commitment process, or the authority of the DPHHS director to transfer GBMI offenders who were sentenced to the director's custody. A person admitted to MSH on a 10-day transfer may not remain longer unless he is voluntarily admitted or the state follows the procedures for an involuntary commitment.

In the past five fiscal years, the prison transferred eight inmates to MSH. Three transfers involved GBMI inmates who had been at MSH previously; two of the three had been at the prison for more than three years before they returned to MSH, while the third had been at the prison for nearly two-and-a-half years. The transfers break down as follows:

- Four non-GBMI inmates were transferred under the 10-day transfer law. Of those, two voluntarily agreed to remain at MSH for additional treatment, one was there for nine days, and one was there for 12 hours.
- One non-GBMI inmate was involuntarily committed in a proceeding initiated by the prison.
- One GBMI inmate was transferred under the 10-day transfer law and was then involuntarily committed in a proceeding initiated by MSH.
- Two GBMI inmates who had been at MSH previously were returned there by the DPHHS director following a Forensic Review Board recommendation.

According to information provided by the prison, the transfers occurred because the individuals were not responding to treatment or medication for their mental disorders, became psychotic and needed intensive treatment, or exhibited suicidal behavior.

Transferring Information Between Facilities

When the prison transfers an inmate from the Mental Health Treatment Unit to MSH, officials provide the hospital with the person's treatment plan. If the offender was in the general population, MSP provides the hospital with the person's mental health file. MSH continues providing services that are comparable to those offered in prison, when comparable services exist. When they don't, the hospital develops its own plan of care for the person.

When a GBMI patient is transferred from MSH to the prison, mental health professionals from the prison are included in the Forensic Review Board meeting to discuss the offender's care and review placement alternatives. The prison follows the treatment plan developed at this time but has the ability to adjust it as needed to benefit the patient.