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As of: April 13, 2012 (10:34am)

LC1j03

**** Bill No. ****

Introduced By *****

By Request of the Law and Justice Interim Committee

A Bill for an Act entitled: "An Act providing for the prevention of suicides in detention centers; requiring the adoption of administrative rules by the board of crime control; providing for the distribution of funds for suicide prevention to detention centers; amending sections 3-1-318, 7-6-2541, and 7-32-2224, MCA; and providing effective dates."

WHEREAS, the decisions of the federal courts clearly hold that the Eighth and Fifth Amendments to the United States Constitution requires that entities that operate pre-trial or post-trial detention centers have a duty to provide suicide protection to facility inmates; and

WHEREAS, the Montana Supreme Court held in the case of Walker v. State, 2003 MT 134, 316 Mont. 103, 68 P.3d 872 (2003) that the Montana Constitution provides an even greater degree of protection against cruel and unusual punishment than the Eight Amendment to the U.S. Constitution; and

WHEREAS, the recent trend in inmate suicides in detention centers operated by local governments in Montana is an upward trend; and

WHEREAS, some of the detention centers operated by local governments in Montana are antiquated but have limited funding capabilities to engage in proactive programs to prevent inmate

suicides; and

WHEREAS, the Legislature intends to provide for the partial funding of a program for the prevention of inmate suicide in local government detention centers as one means of reducing the likelihood that courts will preempt the Legislature and require suicide prevention programs in detention centers that can least afford them; and

WHEREAS, the Legislature therefore creates the program provided for in [this act] in part in recognition of the constitutional obligation of local governments but also for the purpose of conserving human lives in a population that is sometimes overlooked in state efforts to improve the lives of its residents.

Be it enacted by the Legislature of the State of Montana:

NEW SECTION. **Section 1. Statement of legislative intent.**

The legislature has recently taken important steps to reduce the incidents of suicide in the public at large through the diversion of persons with mental illness from criminal proceedings and strengthening the ability of state local governments to coordinate suicide prevention services. However, the Legislature also recognizes that beginning in 1976 with the opinion in *Estelle v. Gamble*, 429 U.S. 97 (1976), judicial opinions, most of them from the federal courts decided pursuant to the Eighth Amendment to the United States Constitution, create an affirmative obligation upon entities that operate detention

centers to treat the medical conditions of prisoners and that those courts have extended this obligation to the prevention of suicides by inmates in post-trial, and, through the Due Process Clause of the Fifth Amendment, pretrial confinement. It is the intent of the Legislature to respond to that obligation and to affirm that every human life is of some value.

NEW SECTION. **Section 2. Definitions.** As used in [sections 1 and 3] and this section, the following definitions apply:

(1) "Detention center" means a detention center, as defined in 7-32-2120, that is operated by a local government as defined in 7-32-2120.

(2) "Inmate" means an individual who is confined in, or is in the custody of detention center personnel and may be confined in, a detention center.

(3) "Management protocol" means the best management practices in the subject areas of housing, supervision, clothing, property, food, and psychological counseling for the prevention of suicide for an inmate at risk of suicide.

(4) "Mental health professional" has the meaning provided in 53-21-102.

(5) "Screening instrument" means one or more written or electronic series of questions designed to determine the degree of likelihood or risk that an inmate may commit suicide.

(6) "Secure mental health facility" means a facility that provides counseling for the purposes of suicide prevention, in a secure setting by a mental health professional, for suicidal

tendencies, including the Montana state hospital at Warm Springs.

NEW SECTION. **Section 3. Suicide prevention training, protocols, and technical assistance - no private right of action.**

(1) The law enforcement academy shall develop or contract for the development of, and include in at least the basic public safety officer course of instruction, a suicide prevention training course for use in detention centers by detention center personnel.

(2) The course must include the use of evidence-based screening instruments for use by detention center personnel and the mental health professionals available to the detention center to determine the risk of suicide for each inmate at the detention center and the use of appropriate management protocols for an inmate identified as a suicide risk. The suicide prevention officer appointed pursuant to 53-21-1101 shall provide assistance to the academy for the purposes of this section.

(3) If the use of the suicide screening tools or management protocols required by this section identify needs that cannot be met by the detention center but are necessary to provide a suicidal inmate a reasonable degree of safety from suicide, the detention center shall transport the inmate to the nearest secure mental health facility, and from that facility to the detention center if the inmate may again be housed in the detention center with a reasonable degree of safety from suicide.

(4) Nothing in [sections 1 or 2] or this section creates a right of action against the state or a local government in any

individual or other person to require by civil action the duties imposed by those sections but nothing in those sections extinguishes or limits a right under other law.

Section 4. Section 3-1-318, MCA, is amended to read:

"3-1-318. Surcharges upon certain criminal convictions -- exception. (1) Except as provided in subsection (2), all courts of limited jurisdiction, except small claims courts, shall impose a ~~\$10~~ \$ surcharge on a defendant who is convicted of criminal conduct under state statute or who forfeits bond.

(2) A court may not waive payment of the surcharge unless the court determines that the defendant is unable to pay the surcharge. Inability to pay must be supported by a sworn statement from the defendant demonstrating financial inability to pay without substantial hardship in providing for personal or family necessities. The statement is not admissible in the proceeding unless offered for impeachment purposes and is not admissible in a subsequent prosecution for perjury or false swearing.

(3) The surcharge imposed by this section is not a fee or a fine and must be imposed in addition to other taxable court costs, fees, or fines. The surcharge may not be used in determining the jurisdiction of any court.

(4) (a) ~~The amounts \$10 of the amount~~ collected under this section must be forwarded to the department of revenue for deposit in the account created in 44-10-204.

(b) The remainder must be forwarded to the board of crime

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control for deposit in the account created in [section 8]."

{Internal References to 3-1-318:

7-1-4150X 61-8-460X 61-8-460X }

Section 5. Section 7-6-2541, MCA, is amended to read:

"7-6-2541. County detention center inmate medical costs.

The board of county commissioners shall budget and expend funds for inmate medical care, including but not limited to costs of providing direct medical care, medication, medical services, including suicide prevention to the extent required by 7-32-224, hospitalization, insurance premiums, self-insured coverage, or contracted services for expenses that must be borne by the county for inmates confined in a county detention center as provided for in 7-32-2224."

{Internal References to 7-6-2541: None.}

Section 6. Section 7-32-2224, MCA, is amended to read:

"7-32-2224. Payment of medical costs by entities other than inmate. (1) The detention center administrator shall forward to the appropriate arresting agency all charges for medical treatment for which the agency is responsible, including suicide prevention to the extent required by the Eighth and Fifth Amendments to the U.S. Constitution, including the use of screening instruments and management protocols as defined in [section 2].

(2) When the inmate is in the custody of a county detention center and the detention center administrator determines that the

inmate requires medical treatment, the county or the arresting agency is responsible for medical costs associated with:

(a) conditions that are not preexisting;

(b) injuries incurred by the inmate:

(i) while in the custody of the detention center if the injuries are the result of an accident, an assault by another inmate, or negligent or intentionally torturous acts committed by the detention center administrator or the administrator's staff;

(ii) during the arrest of the inmate by the sheriff or the sheriff's staff if the injuries were not incurred while unlawfully resisting arrest; or

(iii) while on a work program or while the inmate is performing duties assigned by the detention center administrator or the administrator's staff;

(c) infections or contagious or communicable diseases that the inmate contracts while in the custody of the detention center; or

(d) medical examinations that are required by law or court order unless the order provides otherwise.

(3) In order to determine which entity is responsible for medical charges that are not the responsibility of the inmate, the following applies:

(a) If the arresting agency is a law enforcement agency whose jurisdiction is limited to the county boundaries of the county or a municipality in the county where the detention center is located, then the county is responsible.

(b) If the arresting agency is a law enforcement agency

with statewide jurisdiction or whose jurisdiction is a county or municipality in a county other than the county where the detention center is located, then the arresting agency is responsible.

(c) If a municipality commits a person to the detention center of the county in which the municipality is located for a reason other than detention pending trial for or detention for service of a sentence for violating an ordinance of that municipality, then the county in which the municipality is located is responsible.

(4) For the purposes of 7-32-2245 and this section, "preexisting condition" means an illness or condition that began or injuries that were sustained before a person was in the custody of county officers."

{Internal References to 7-32-2224:
7-6-2541A 7-32-2245X }

NEW SECTION. Section 7. Board of crime control to administer detention center suicide prevention account - rulemaking required. (1) The board of crime control shall administer money in the detention center suicide prevention account created in [section 8] that are appropriated to it by the legislature.

(2) Money in the account must be distributed by the board as follows:

(a) 10% to the board for the purposes of administration of [sections 1 through 3, 8 and 9] and this section];

(b) 5% to the Montana law enforcement academy;

(C) 5% to the suicide prevention officer appointed pursuant to 53-21-1101; and

(d) 80% to detention centers based upon a center's annual average proportion of all of the inmates held in all detention centers at the time the detention center makes application to the board.

(3) Money distributed by the board pursuant to subsection (2) (d) may be made only upon application by a detention center to the board in accordance with rules that must be adopted by the board. The rules adopted by the board must require a detention center pay for 50% of the expenses of the purpose for which the distribution is applied for. Costs of transportation for an inmate from a detention center to or from a secure mental health treatment facility may not be reimbursed by the board.

NEW SECTION. **Section 8. Detention center Suicide**

prevention account. (1) There is a detention center suicide prevention account in the special revenue fund created by 17-2-102.

(2) The following funds must be deposited into or retained in the account:

(a) all money paid to the account pursuant to 3-1-318(4) (b);

(b) all, gifts, grants, bequests, donations or transfers of other money; and

(C) all earnings on the account.

(3) All money in the account is subject to legislative

appropriation only for the purposes provided in [sections 1 through 3, 8 and 9] and this section.

NEW SECTION. **Section 9. Interest free loan from general fund.** For the purposes of distributions made by the board of crime control from the detention center suicide prevention account to an entity eligible under [section 7] for a distribution before the surcharge upon certain criminal convictions under 3-1-318(4)(b) is sufficient for the purposes of a distribution and an appropriation of those funds may be made by the Legislature, the board of crime control may apply for and receive a general fund loan pursuant to 17-2-107. A general fund loan made pursuant to this section must be repaid within 2 years and must be made free of any interest change.

NEW SECTION. **Section 10. {standard} Codification instruction.** [Sections 1 through 3 and 6 through 9] are intended to be codified as an integral part of Title 44, chapter 4, part 3, and the provisions of Title 44, chapter 4, part 3, apply to [sections 1 through 3 and 6 through 9].

NEW SECTION. **Section 11. {standard} Effective dates.** (1) Except as provided in subsection (2), [this act] is effective October 1, 2013.

(2) This section and [section 4] are effective July 1, 2013.

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