

HOUSE BILL 666

Introduced by Barnhart, et al.

2/07	Introduced
2/07	Referred to Human Services & Aging
2/07	First Reading
2/18	Hearing
2/18	Tabled in Committee

1 *House* BILL NO. *666*
 2 INTRODUCED BY *B. Brunat* *R. Russell* *C. Cullinella*
 3 *E. de* *Hoffman* *Jacobson* *J. Brown*
 4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT AN
 5 EXAMINATION TO DETERMINE THE MENTAL CONDITION OF A PERSON
 6 ACCUSED OF A CRIME MAY BE CONDUCTED BY A LICENSED SOCIAL
 7 WORKER; AND AMENDING SECTIONS 46-14-202, 46-14-212,
 8 46-14-213, 46-14-221, AND 46-14-302, MCA."

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

10 **Section 1.** Section 46-14-212, MCA, is amended to read:

11 "46-14-212. Examination by expert chosen by state or
 12 defendant. If either the defendant or the state wishes the
 13 defendant to be examined by a qualified psychiatrist,
 14 licensed clinical psychologist, licensed social worker, or
 15 other expert selected by the one proposing the examination
 16 in order to determine the defendant's fitness to proceed or
 17 whether he had, at the time the offense was committed, a
 18 particular state of mind which is an essential element of
 19 the offense, the examiner shall be permitted to have
 20 reasonable access to the defendant for the purpose of the
 21 examination."

22 **Section 2.** Section 46-14-213, MCA, is amended to read:

23 "46-14-213. Psychiatric-testimony Testimony upon trial.

24 (1) Upon the trial, any psychiatrist or, licensed clinical
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1 psychologist, or licensed social worker who reported under
 2 46-14-202 and 46-14-203 may be called as a witness by the
 3 prosecution or by the defense. If the issue is being tried
 4 before a jury, the jury may not be informed that the
 5 psychiatrist or, licensed clinical psychologist, or licensed
 6 social worker was designated by the court or by the
 7 superintendent of the Montana state hospital. Both the
 8 prosecution and the defense may summon any other qualified
 9 psychiatrist, licensed clinical psychologist, licensed
 10 social worker, or other expert to testify, but no one who
 11 has not examined the defendant is competent to testify to an
 12 expert opinion with respect to the mental condition of the
 13 defendant, as distinguished from the validity of the
 14 procedure followed by or the general scientific propositions
 15 stated by another witness.

16 (2) When a psychiatrist, licensed clinical
 17 psychologist, licensed social worker, or other expert who
 18 has examined the defendant testifies concerning the
 19 defendant's mental condition, he may make a statement as to
 20 the nature of his examination, his diagnosis of the mental
 21 condition of the defendant at the time of the commission of
 22 the offense charged, and his opinion as to the ability of
 23 the defendant to have a particular state of mind which is an
 24 element of the offense charged. The expert may make any
 25 explanation reasonably serving to clarify his diagnosis and



1 opinion and may be cross-examined as to any matter bearing
2 on his competency or credibility or the validity of his
3 diagnosis or opinion."

4 **Section 3.** Section 46-14-221, MCA, is amended to read:

5 "46-14-221. Determination of fitness to proceed --
6 effect of finding of unfitness -- expenses. (1) The issue of
7 the defendant's fitness to proceed may be raised by the
8 defendant or his counsel or by the county attorney. When the
9 issue is raised, it shall be determined by the court. If
10 neither the county attorney nor counsel for the defendant
11 contests the finding of the report filed under 46-14-203,
12 the court may make the determination on the basis of the
13 report. If the finding is contested, the court shall hold a
14 hearing on the issue. If the report is received in evidence
15 upon the hearing, the parties have the right to summon and
16 cross-examine the psychiatrists or, licensed clinical
17 psychologists, or licensed social workers who joined in the
18 report and to offer evidence upon the issue.

19 (2) If the court determines that the defendant lacks
20 fitness to proceed, the proceeding against him shall be
21 suspended, except as provided in subsection (4) of this
22 section, and the court shall commit him to the custody of
23 the director of the department of institutions to be placed
24 in an appropriate institution of the department of
25 institutions for so long as the unfitness endures. The

1 committing court shall, within 90 days of commitment, review
2 the defendant's fitness to proceed. If the court finds that
3 he is still unfit to proceed and that it does not appear
4 that he will become fit to proceed within the reasonably
5 foreseeable future, the proceeding against him shall be
6 dismissed, except as provided in subsection (4) of this
7 section, and the county attorney shall petition the court in
8 the manner provided in chapter 20 or 21 of Title 53,
9 whichever is appropriate, to determine the disposition of
10 the defendant pursuant to those provisions.

11 (3) If the court determines that the defendant lacks
12 fitness to proceed because he is developmentally disabled as
13 provided in 53-20-102(4), the proceeding against him shall
14 be dismissed and the county attorney shall petition the
15 court in the manner provided in chapter 20 of Title 53.

16 (4) The fact that the defendant is unfit to proceed
17 does not preclude any legal objection to the prosecution
18 which is susceptible to fair determination prior to trial
19 and without the personal participation of the defendant.

20 (5) The expenses of sending the defendant to the
21 custody of the director of the department of institutions to
22 be placed in an appropriate institution of the state
23 department of institutions, of keeping him there, and of
24 bringing him back are chargeable to the state and payable
25 according to procedures established under 3-5-902(1)."

1 **Section 4.** Section 46-14-202, MCA, is amended to read:

2 "~~46-14-202. Psychiatric--examination~~ Examination of
3 mental condition of defendant. (1) If the defendant or his
4 counsel files a written notice of his intent to rely on a
5 mental disease or defect under 46-14-201 or raises the issue
6 of his fitness to proceed, the court shall appoint at least
7 one qualified psychiatrist ~~or,~~ licensed clinical
8 psychologist, or licensed social worker or shall request the
9 superintendent of the Montana state hospital to designate at
10 least one qualified psychiatrist ~~or,~~ licensed clinical
11 psychologist, or licensed social worker, which designation
12 may be or include himself, to examine and report upon the
13 mental condition of the defendant.

14 (2) The court may order the defendant to be committed
15 to a hospital or other suitable facility for the purpose of
16 the examination for a period of not exceeding 60 days or
17 such longer period as the court determines to be necessary
18 for the purpose and may direct that a qualified psychiatrist
19 ~~or,~~ licensed clinical psychologist, or licensed social
20 worker retained by the defendant be permitted to witness and
21 participate in the examination.

22 (3) In the examination any method may be employed which
23 is accepted by the medical profession for the examination of
24 those alleged to be suffering from mental disease or defect.

25 (4) The cost of the examination must be paid by the

1 county or the state, or both, according to procedures
2 established under 3-5-902(1)."

3 **Section 5.** Section 46-14-302, MCA, is amended to read:

4 "~~46-14-302. Discharge or release upon motion of~~
5 ~~superintendent.~~ (1) If the superintendent of the Montana
6 state hospital believes that a person committed to his
7 custody under 46-14-301 may be discharged or released on
8 condition without danger to himself or others, he shall make
9 application for the discharge or release of the person in a
10 report to the court by which the person was committed and
11 shall send a copy of the application and report to the
12 county attorney of the county from which the defendant was
13 committed.

14 (2) The court shall then appoint at least two persons
15 who are qualified psychiatrists ~~or,~~ licensed clinical
16 psychologists, or licensed social workers to examine the
17 person and to report their opinion as to his mental
18 condition within 60 days or a longer period which the court
19 determines to be necessary for the purpose. To facilitate
20 the examinations and the proceedings thereon, the court may
21 have the person confined in any institution located near the
22 place where the court sits which may hereafter be designated
23 by the superintendent of the Montana state hospital as
24 suitable for the temporary detention of irresponsible
25 persons.

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1 (3) If the court is satisfied by the report filed under
2 subsection (1) of this section and the testimony of the
3 reporting psychiatrists or licensed clinical psychologists,
4 or licensed social workers which the court considers
5 necessary that the committed person may be discharged or
6 released on condition without danger to himself or others,
7 the court shall order his discharge or his release on
8 conditions which the court determines to be necessary.

9 (4) If the court is not satisfied, it shall promptly
10 order a hearing to determine whether the person may safely
11 be discharged or released. A hearing is considered a civil
12 proceeding, and the burden is upon the committed person to
13 prove by a preponderance of the evidence that he may safely
14 be discharged or released. According to the determination of
15 the court upon the hearing, the committed person shall then
16 be discharged or released on conditions which the court
17 determines to be necessary or shall be recommitted to the
18 custody of the superintendent of the Montana state hospital,
19 subject to discharge or release only in accordance with the
20 procedures prescribed in this section and 46-14-303."

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