

## MINUTES

### MONTANA HOUSE OF REPRESENTATIVES 51st LEGISLATURE - REGULAR SESSION

#### COMMITTEE ON JUDICIARY

Call to Order: By Chairman Dave Brown, on April 13, 1989, at 10:05 a.m.

#### ROLL CALL

Members Present: All members were present with the following exceptions:

Members Excused: Rep. Boharski, Rep. Hannah

Members Absent: None.

Staff Present: Julie Emge, Secretary  
John MacMaster, Legislative Council

Announcements/Discussion: None.

#### HEARING ON HOUSE BILL 793

#### Presentation and Opening Statement by Sponsor:

Rep. Thomas Lee, House District 49 stated that the bill before the committee, is an attempt to close the loop-hole that currently exists in the mental fitness standard and the civil commitment standard. As it appeared to him, the bill seemed to be relatively easy to fix. It was then found that the fix was actually unconstitutional. The further they got with it the more unconstitutional problems they ran into. There are, however, a couple points that may be worth cleaning up in the existing language of the bill. Additionally, the state is looking at this entire section for a rewrite.

#### Testifying Proponents and Who They Represent:

Peter Funk, Assistant Attorney General, Dept. of Justice  
Nick Rotering, Department of Institutions

#### Proponent Testimony:

Peter Funk commented that on the bill itself, the first proposed change is reflected in section 1. It is an elimination of the county attorneys ability to raise the issue of fitness to proceed to trial. The reason the Dept. of Justice does not favor that type of a change is because there may be cases, and in fact, with some of the prosecutors that he has spoken with, they seem to feel that it is the norm rather than the exception. They are in the process of prosecuting

a defendant whom they have serious concerns as to whether they are fit to proceed to trial. That issue may or may not be raised by the defense counsel. As a prosecutor, you do not want to have your hands tied to the ability to raise this issue. It is worthless obtaining a conviction if you have a defendant who is in this position, and you have not addressed that issue prior to the prosecution. You must address the defendants fitness to proceed initially, before you obtain the conviction. If there is any question about the fitness to proceed, your conviction is in jeopardy at any later time. Mr. Funk continued, stating that the second proposed change eliminates the requirement for civil commitment when a defendant is found to be unfit to proceed and has no prognosis of recovery. There is a 1972 U.S. Supreme Court case which mandates that individuals in that position be handled through civil commitment proceedings. While this change might help with the existing problem, it is an unconstitutional change. Mr. Funk stated that because the Dept. was asked to look at the existing statute itself, they have identified a couple of changes that could be made in this particular section of the law which might help to straighten it out. They suggest that the language in the statute, which they have interlined on the copy (EXHIBIT 1), could be eliminated from the statute without a constitutional problem.

Nick Rotering stated that the bill in its present form would be unconstitutional. In the last three years at Warm Springs, they have had 50 admissions to the State Hospital under the category as unfit to proceed. They have not, however, had the time to take those 50 files and analyze them to see how long they would have remained in the unfit to proceed category and what the ultimate disposition was, as far as the criminal prosecution or being recommitted under the mental health act. There is a problem with this bill, but it seems to him that it is more with the definitions between mental disease and defect vs. serious mental illness and danger. This bill in its present form isn't going to change that problem.

Testifying Opponents and Who They Represent:

Michael Sherwood, Self

Opponent Testimony:

Michael Sherwood stated that there is one additional point that should be made from a defense stand-point. His opposition to the bill is taking out the county attorneys ability to bring about these actions. He is opposed to striking the language regarding the county attorneys option for bringing this to a hearing or alligation when the defendant is unfit to proceed.

Questions From Committee Members: None.

Closing by Sponsor: In closing, Rep. Lee stated that he would certainly be willing do the work on this bill to get the hearing into the Senate.

DISPOSITION OF HOUSE BILL 793

Motion: A motion was made by Rep. Daily to TABLE HB 793, motion was seconded by Rep. Wyatt.

Discussion: None.

Amendments, Discussion, and Votes: None.

Recommendation and Vote: A vote was taken on the TABLING motion and CARRIED with Rep.'s Addy and Strizich voting No.

ADJOURNMENT

Adjournment At: 10:25 a.m.

  
\_\_\_\_\_  
REP. DAVE BROWN, Chairman

DB/je

8308.min

## DAILY ROLL CALL

JUDICIARY

COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date April 13, 1989

NAME	PRESENT	ABSENT	EXCUSED
REP. KELLY ADDY, VICE-CHAIRMAN	X		
REP. OLE AAFEDT	X		
REP. WILLIAM BOHARSKI			X
REP. VIVIAN BROOKE	X		
REP. FRITZ DAILY	X		
REP. PAULA DARKO	X		
REP. RALPH EUDAILY	X		
REP. BUDD GOULD	X		
REP. TOM HANNAH			X
REP. ROGER KNAPP	X		
REP. MARY McDONOUGH	X		
REP. JOHN MERCER	X		
REP. LINDA NELSON	X		
REP. JIM RICE	X		
REP. JESSICA STICKNEY	X		
REP. BILL STRIZICH	X		
REP. DIANA WYATT	X		
REP. DAVE BROWN, CHAIRMAN	X		



*The Big Sky Country*

## MONTANA HOUSE OF REPRESENTATIVES

**REPRESENTATIVE DAVE BROWN**

HOUSE DISTRICT 72

HELENA ADDRESS:  
CAPITOL STATION  
HELENA, MONTANA 59620

HOME ADDRESS:  
3040 OTTAWA  
BUTTE, MONTANA 59701  
PHONE: (406) 782-3604

COMMITTEES:  
JUDICIARY, CHAIRMAN  
LOCAL GOVERNMENT  
RULES

TO: John Vincent, Speaker of the House  
FROM: Dave Brown, Chairman, House Judiciary Committee *je*  
DATE: April 13, 1989  
SUBJECT: House Bill 793

The House Judiciary Committee has TABLED HB 793  
on April 13, 1989.

ing of unfitness — expenses. (1) The issue of the defendant's fitness to proceed may be raised by the defendant or his counsel or by the county attorney. When the issue is raised, it shall be determined by the court. If neither the county attorney nor counsel for the defendant contests the finding of the report filed under 46-14-203, the court may make the determination on the basis of the report. If the finding is contested, the court shall hold a hearing on the issue. If the report is received in evidence upon the hearing, the parties have the right to summon and cross-examine the psychiatrists or licensed

clinical psychologists who joined in the report and to offer evidence upon the issue.

(2) If the court determines that the defendant lacks fitness to proceed, the proceeding against him shall be suspended, except as provided in subsection (4) of this section, and the court shall commit him to the custody of the director of the department of institutions to be placed in an appropriate institution of the department of institutions, ~~for so long as the unfitness endures.~~ The committing court shall, within 90 days of commitment, review the defendant's fitness to proceed. If the court finds that he is still unfit to proceed and that it does not appear that he will become fit to proceed within the reasonably foreseeable future, ~~the proceeding against him shall be dismissed, except as provided in subsection (4) of this section,~~ and the county attorney shall petition the court in the manner provided in chapter 20 or 21 of Title 53, whichever is appropriate, to determine the disposition of the defendant pursuant to those provisions.

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

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

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

History: En. 95-506 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 3, Ch. 513, L. 1973; amd. Sec. 89, Ch. 120, L. 1974; amd. Sec. 6, Ch. 568, L. 1977; R.C.M. 1947, 95-506(part); amd. Sec. 7, Ch. 713, L. 1979; amd. Sec. 2, Ch. 616, L. 1981; amd. Sec. 1, Ch. 352, L. 1983; amd. Sec. 14, Ch. 680, L. 1985; amd. Sec. 4, Ch. 127, L. 1987.

#### Compiler's Comments

1987 Amendment: In (1), in last sentence after "psychiatrists", inserted "or licensed clinical psychologists".

**46-14-222. Proceedings if fitness regained.** When the court, on its own motion or upon the application of the director of the department of institutions, the county attorney, or the defendant or his legal representative, determines, after a hearing if a hearing is requested, that the defendant has regained fitness to proceed, the proceeding shall be resumed. If, however, the court is of the view that so much time has elapsed since the commitment of the defendant that it would be unjust to resume the criminal proceedings, the court may dismiss the charge and may order the defendant to be discharged or, subject to the law governing the civil commitment of persons suffering from serious mental illness, order the defendant committed to an appropriate institution of the department of institutions.

History: En. 95-506 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 3, Ch. 513, L. 1973; amd. Sec. 89, Ch. 120, L. 1974; amd. Sec. 6, Ch. 568, L. 1977; R.C.M. 1947, 95-506(part); amd. Sec. 8, Ch. 713, L. 1979.

DATE 4-13-89  
HB 793-Rep. Lee

## VISITORS' REGISTER

JUDICIARY

COMMITTEE

BILL NO. HB 793DATE April 13, 1989SPONSOR Rep. LEE

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Thomas Lee	Buffalo	✓	
Peter Zumb	Dept of Justice		✓

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.