

1 *Senate* BILL NO. *9153*
 2 INTRODUCED BY *Hayllor* *Leidt*

3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE THAT THE
 5 EXPENSES OF SENDING A CRIMINAL DEFENDANT WHOSE MENTAL
 6 FITNESS IS AN ISSUE TO THE CUSTODY OF THE SUPERINTENDENT OF
 7 WARM SPRINGS STATE HOSPITAL, OF KEEPING HIM IN AN
 8 INSTITUTION, AND OF BRINGING HIM BACK ARE TO BE BORNE BY THE
 9 DEPARTMENT OF INSTITUTIONS IN THE FIRST INSTANCE; AMENDING
 10 SECTION 95-506, R.C.M. 1947."

11
 12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 13 Section 1. Section 95-506, R.C.M. 1947, is amended to
 14 read as follows:

15 *95-506. Determination of fitness to proceed -- effect
 16 of finding of unfitness -- proceedings if fitness is
 17 regained -- ~~expenses~~. (1) When the defendant's fitness to
 18 proceed is drawn in question, the issue shall be determined
 19 by the court. If neither the county attorney nor counsel for
 20 the defendant contests the finding of the report filed under
 21 ~~section~~ 95-505, the court may make the determination on the
 22 basis of the report. If the finding is contested, the court
 23 shall hold a hearing on the issue. If the report is received
 24 in evidence upon the hearing, the parties have the right to
 25 summon and cross-examine the psychiatrists who joined in the

1 report and to offer evidence upon the issue.

2 (2) If the court determines that the defendant lacks
 3 fitness to proceed, the proceeding against him shall be
 4 suspended, except as provided in subsection (3) of this
 5 section, and the court shall commit him to the custody of
 6 the superintendent of Warm Springs state hospital, to be
 7 placed in an appropriate institution of the department of
 8 institutions for so long as the unfitness endures. When the
 9 court, on its own motion or upon the application of the
 10 superintendent of Warm Springs state hospital, or the county
 11 attorney, or the defendant or his legal representative,
 12 determines, after a hearing if a hearing is requested, that
 13 the defendant has regained fitness to proceed, the
 14 proceeding shall be resumed. If, however, the court is of
 15 the view that so much time has elapsed since the commitment
 16 of the defendant that it would be unjust to resume the
 17 criminal proceedings, the court may dismiss the charge and
 18 may order the defendant to be discharged, or, subject to the
 19 law governing the civil commitment of persons suffering from
 20 mental disease or defect, order the defendant committed to
 21 an appropriate institution of the department of
 22 institutions.

23 (3) The fact that the defendant is unfit to proceed
 24 does not preclude any legal objection to the prosecution
 25 which is susceptible to fair determination prior to trial

1 and without the personal participation of the defendant.

2 (4) The expenses of sending the defendant to the
3 custody of the superintendent of ~~the Montana~~ Warm Springs
4 state hospital, to be placed in an appropriate institution
5 of the state department of institutions, of keeping him
6 there, and of bringing him back, are ~~in the first instance~~
7 chargeable to the ~~county in which the indictment was found,~~
8 ~~or the information filed,~~ department of institutions, but
9 the county department may recover them from the estate of
10 the defendant, if he has any, ~~or from a town, city or county~~
11 ~~bound to provide for and maintain him elsewhere."~~

-End-

STATE OF MONTANA

REQUEST NO. 349-77

FISCAL NOTE

Form BD-15

In compliance with a written request received January 21, 19 77, there is hereby submitted a Fiscal Note for ~~HB 153~~ SB 153 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly.

Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION:

An act to provide that the expenses of sending a criminal defendant whose mental fitness is an issue to the custody of the Superintendent of Warm Springs State Hospital, of keeping him in an institution, and of bringing him back are to be borne by the Department of Institutions in the first instance.

ASSUMPTIONS:

1. Based on FY76 data 150 evaluations at \$750 per evaluation will be ordered.
2. The state would be required to pay mileage at 15 cents per mile, meals, and lodging when necessary. The salary of the persons transporting the patient would be paid by their respective counties.
3. Based on FY76 data, 100,000 miles round trip transportation would be required.

FISCAL IMPACT:

	<u>FY78</u>	<u>FY79</u>
Cost of evaluations	\$112,500	\$112,500
Cost of transportation		
Mileage	15,000	15,000
Meals	2,444	2,444
Lodging	768	768
Total additional cost of proposed legislation	<u>\$130,712</u>	<u>\$130,712</u>

Richard L. Deary for

BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2-3-77