

CHAPTER NO. 713

HOUSE BILL NO. 877

INTRODUCED BY KEEDY, SEIFERT, CONROY, SCULLY, FABREGA, GOULD,  
MAGONE, KANDUCH, NORDTVEDT, MARKS, FAGG, PORTER, C. SMITH,  
DONALDSON, FEDA, CURTISS, ELLISON, PISTORIA,  
STAIGMILLER, MANNING, K. ROBBINS, UNDERDAL,  
FRATES, SALES, PAVLOVICH, UHDE, DOZIER,  
BAETH, MANUEL, HEMSTAD, MEYER, EUDAILY,  
DAY, STOBIE, KVAALEN, HAYNE

IN THE HOUSE

February 19, 1979	Introduced and referred to Committee on Judiciary.
February 20, 1979	Committee recommend bill do pass. Report adopted.
February 22, 1979	Second reading, do pass.
February 23, 1979	Considered correctly engrossed.  Third reading, passed. Transmitted to second house.

IN THE SENATE

February 23, 1979	Introduced and referred to Committee on Judiciary.
March 22, 1979	Committee recommend bill be concurrent in as amended. Report adopted.
March 24, 1979	Motion pass consideration.
March 26, 1979	Second reading, concurred in as amended.
March 27, 1979	Third reading, concurred in as amended.  On motion taken from third reading and referred to second reading. Motion adopted.  Second reading, concurred in as amended.

March 27, 1979

On motion rules suspended.  
Bill placed on Calendar for  
third reading this day.

Third reading, concurred in  
as amended.

IN THE HOUSE

March 28, 1979

Returned from second house.  
Concurred in as amended.

March 31, 1979

Second reading, amendments  
rejected.

On motion Joint Conference  
Committee requested.

April 2, 1979

Joint Conference Committee  
appointed.

April 3, 1979

Joint Conference Committee  
dissolved.

On motion Joint Conference  
Committee requested and  
appointed.

April 9, 1979

Joint Conference Committee  
dissolved.

On motion Joint Conference  
Committee requested.

April 11, 1979

Joint Conference Committee  
appointed.

Joint Conference Committee  
dissolved.

On motion Joint Conference  
Committee requested.

April 12, 1979

Joint Conference Committee  
dissolved.

On motion Free Joint Con-  
ference Committee requested  
and appointed.

April 17, 1979

Free Joint Conference Committee  
reported.

Adopted by second house.

April 18, 1979

Second reading, adopted.

Third reading, adopted.

Sent to enrolling.

Reported correctly enrolled.

House BILL NO. 877

INTRODUCED BY *Kelley Seisat Conway* *John Selby*  
*Wendell Marks* *Fred Jones* *Donaldson* *Chick*

A BILL FOR AN ACT ENTITLED: "AN ACT TO ABOLISH THE DEFENSE  
OF MENTAL DISEASE OR DEFECT IN CRIMINAL ACTIONS; AMENDING  
SECTIONS 46-14-201 THROUGH 46-14-203, 46-14-212, 46-14-213,  
46-14-221, 46-14-222, 46-14-301, AND 46-15-301, MCA; AND

REPEALING SECTIONS 46-14-101 AND 46-14-211, MCA."

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

Section 1. Section 46-14-201, MCA, is amended to read:

~~"46-14-201. Affirmative defense requirement  
Requirement of notice -- form of verdict and judgment. (1)  
Mental-disease-or-defect-excluding-responsibility-is-an  
affirmative-defense-which-the-defendant-must-establish-by-a  
preponderance-of-the-evidence"~~

(1) Evidence of mental disease or defect excluding  
responsibility is not admissible in a trial on the merits  
unless the defendant, at the time of entering his plea of  
not guilty or within 10 days thereafter or at such later  
time as the court may for good cause permit, files a written  
notice of his purpose to rely on such defense

(2) The defendant shall give similar notice when in a  
trial on the merits, he intends to rely on a mental disease  
or defect to prove that he did not have a particular state

1 of mind which is an essential element of the offense  
2 charged. Otherwise, except on good cause shown, he shall not  
3 introduce in his case in chief expert testimony in support  
4 of that defense.

(1) When the defendant is acquitted on the ground  
of that due to a mental disease or defect excluding  
responsibility he could not have a particular state of mind  
that is an essential element of the offense charged, the  
verdict and the judgment shall so state."

Section 2. Section 46-14-202, MCA, is amended to read:

"46-14-202. Psychiatric examination of defendant. (1)  
When the defendant has filed a notice of intention to rely  
on the defense of mental disease or defect excluding  
responsibility or there is reason to doubt his the  
defendant's fitness to proceed or reason to believe that  
mental disease or defect of the defendant will otherwise  
become an issue in the cause, the court shall appoint at  
least one qualified psychiatrist or shall request the  
superintendent of Warm Springs state hospital to designate  
at least one qualified psychiatrist, which designation may  
be or include himself, to examine and report upon the mental  
condition of the defendant.

(2) The court may order the defendant to be committed  
to a hospital or other suitable facility for the purpose of  
the examination for a period of not exceeding 60 days or

*Wagoner*  
*Kandish*  
*Curtis*  
*Pastoria*  
*Robinson*  
*Walter*  
*Boyer*  
*Harrel*  
*John*

1 such longer period as the court determines to be necessary  
2 for the purpose and may direct that a qualified psychiatrist  
3 retained by the defendant be permitted to witness and  
4 participate in the examination.

5 (3) In the examination any method may be employed  
6 which is accepted by the medical profession for the  
7 examination of those alleged to be suffering from mental  
8 disease or defect."

9 Section 3. Section 46-14-203, MCA, is amended to read:

10 "46-14-203. Report of the examination. (1) The report  
11 of the examination shall include the following:

12 (a) a description of the nature of the examination;

13 (b) a diagnosis of the mental condition of the  
14 defendant;

15 (c) if the defendant suffers from a mental disease or  
16 defect, an opinion as to his capacity to understand the  
17 proceedings against him and to assist in his own defense;  
18 and

19 ~~(d) when a notice of intention to rely on the defense  
20 of irresponsibility has been filed, an opinion as to the  
21 ability of the defendant to appreciate the criminality of  
22 his conduct or to conform his conduct to the requirements of  
23 law at the time of the criminal conduct charged; and~~

24 (e) when directed by the court, an opinion as to  
25 the capacity of the defendant to have a particular state of

1 mind which is an element of the offense charged.

2 (2) If the examination cannot be conducted by reason  
3 of the unwillingness of the defendant to participate  
4 therein, the report shall so state and shall include, if  
5 possible, an opinion as to whether the unwillingness of the  
6 defendant was the result of mental disease or defect.

7 (3) The report of the examination shall be filed in  
8 triplicate with the clerk of court, who shall deliver copies  
9 to the county attorney and to counsel for the defendant."

10 Section 4. Section 46-14-212, MCA, is amended to read:

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

21 Section 5. Section 46-14-213, MCA, is amended to read:

22 "46-14-213. Psychiatric testimony upon trial. (1) Upon  
23 the trial, any psychiatrist who reported under 46-14-202 and  
24 46-14-203 may be called as a witness by the prosecution or  
25 by the defense. If the issue is being tried before a jury,

1 the jury may not be informed that the psychiatrist was  
 2 designated by the court or by the superintendent of Warm  
 3 Springs state hospital. Both the prosecution and the  
 4 defense may summon any other qualified psychiatrist or other  
 5 expert to testify, but no one who has not examined the  
 6 defendant is competent to testify to an expert opinion with  
 7 respect to the mental condition ~~or--responsibility~~ of the  
 8 defendant, as distinguished from the validity of the  
 9 procedure followed by or the general scientific propositions  
 10 stated by another witness.

11 (2) When a psychiatrist or other expert who has  
 12 examined the defendant testifies concerning the defendant's  
 13 mental condition, he may make a statement as to the nature  
 14 of his examination, his diagnosis of the mental condition of  
 15 the defendant at the time of the commission of the offense  
 16 charged, and his opinion as to the ability of the defendant  
 17 ~~to appreciate the criminality of his conduct, to conform his~~  
 18 ~~conduct--to-the-requirements-of-law, or to~~ have a particular  
 19 state of mind which is an element of the offense charged.  
 20 The expert may make any explanation reasonably serving to  
 21 clarify his diagnosis and opinion and may be cross-examined  
 22 as to any matter bearing on his competency or credibility or  
 23 the validity of his diagnosis or opinion."

24 Section 6. Section 46-14-221, MCA, is amended to read:  
 25 "46-14-221. Determination of fitness to proceed --

1 effect of finding of unfitness -- expenses. (1) The issue of  
 2 the defendant's fitness to proceed may only be raised by the  
 3 defendant with the advice of counsel. When the defendant's  
 4 ~~fitness--to--proceed~~ issue is drawn-in-question raised, the  
 5 ~~issue~~ it shall be determined by the court. If neither the  
 6 county attorney nor counsel for the defendant contests the  
 7 finding, of the report filed under 46-14-203, the court may  
 8 make the determination on the basis of the report. If the  
 9 finding is contested, the court shall hold a hearing on the  
 10 issue. If the report is received in evidence upon the  
 11 hearing, the parties have the right to summon and  
 12 cross-examine the psychiatrists who joined in the report and  
 13 to offer evidence upon the issue.

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

21 (3) If the court determines that the defendant lacks  
 22 fitness to proceed due to the fact that the person is  
 23 developmentally disabled, as defined by 53-20-102, the  
 24 proceeding against him shall be suspended, except as  
 25 provided in subsection (4) of this section, and the court

1 shall proceed to secure treatment as provided in chapter 20,  
2 part 1, or chapter 21, part 1, of Title 53.

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

7 (5) The expenses of sending the defendant to the  
8 custody of the director of the department of institutions to  
9 be placed in an appropriate institution of the state  
10 department of institutions, of keeping him there, and of  
11 bringing him back are in the first instance chargeable to  
12 the county in which the indictment was found or the  
13 information filed; but the county may recover them from the  
14 estate of the defendant, if he has any, or from a town,  
15 city, or county bound to provide for and maintain him  
16 elsewhere."

17 Section 7. Section 46-14-222, MCA, is amended to read:

18 "46-14-222. Proceedings if fitness regained. When the  
19 court, on its own motion or upon the application of the  
20 director of the department of institutions, the county  
21 attorney, or the defendant or his legal representative,  
22 determines, after a hearing if a hearing is requested, that  
23 the defendant has regained fitness to proceed, the  
24 proceeding shall be resumed. If, however, the court is of  
25 the view that so much time has elapsed since the commitment

1 of the defendant that it would be unjust to resume the  
2 criminal proceedings, the court may dismiss the charge and  
3 may order the defendant to be discharged or, subject to the  
4 law governing the civil commitment of persons suffering from  
5 ~~serious mental disease--or--defect illness,~~ order the  
6 defendant committed to an appropriate institution of the  
7 department of institutions."

8 Section 8. Section 46-14-301, MCA, is amended to read:

9 "46-14-301. Commitment upon acquittal on the ground of  
10 ~~irresponsibility lack of mental state~~ -- hearing to  
11 determine release or discharge. (1) When a defendant is  
12 acquitted on the ground of ~~that due to a~~ mental disease or  
13 ~~defect excluding--responsibility he could not have a~~  
14 ~~particular state of mind that is an essential element of the~~  
15 ~~offense charged,~~ the court shall order him committed to the  
16 custody of the superintendent of Warm Springs state hospital  
17 to be placed in an appropriate institution for custody,  
18 care, and treatment.

19 (2) A person so confined shall have a hearing, unless  
20 waived, within 50 days of his confinement to determine his  
21 present mental condition and whether he may be discharged or  
22 released without danger to others. The court shall cause  
23 notice of the hearing to be served upon the person, his  
24 counsel, and the prosecuting attorney. Such a hearing shall  
25 be deemed a civil proceeding, and the burden shall be upon

1 the defendant to prove by a preponderance of the evidence  
2 that he may be safely released.

3 (3) According to the determination of the court upon  
4 the hearing, the defendant shall be discharged or released  
5 on such conditions as the court determines to be necessary  
6 or shall be committed to the custody of the superintendent  
7 of the Warm Springs state hospital to be placed in an  
8 appropriate institution for custody, care, and treatment."

9 Section 9. Section 46-15-301, MCA, is amended to read:

10 "46-15-301. Discovery of witnesses, notice of certain  
11 defenses. In all criminal cases originally triable in  
12 district court the following rules apply:

13 (1) For the purpose of notice only and to prevent  
14 surprise, the prosecution shall furnish to the defendant and  
15 file with the clerk of the court at the time of arraignment  
16 a list of the witnesses the prosecution intends to call. The  
17 prosecution may, any time after arraignment, add to the list  
18 the names of any additional witnesses upon a showing of good  
19 cause. The list shall include the names and addresses of the  
20 witnesses. This subsection does not apply to rebuttal  
21 witnesses.

22 (2) (a) For purpose of notice only and to prevent  
23 surprise, the defendant shall furnish to the prosecution and  
24 file with the clerk of the court, at the time of entering  
25 his plea of not guilty or within 10 days thereafter or at

1 such later time as the court may for good cause permit, a  
2 statement of intention to interpose the defense of ~~mental~~  
3 ~~disease--or--defect~~ self-defense or alibi or the defense  
4 that the defendant did not have a particular state of mind  
5 that is an essential element of the offense charged.

6 (b) If the defendant intends to interpose any of these  
7 defenses, he shall also furnish to the prosecution and file  
8 with the clerk of the court the names and addresses of all  
9 witnesses to be called by the defense in support thereof.  
10 Prior to trial the defendant may, upon motion and showing of  
11 good cause, add to the list of witnesses the names of any  
12 additional witnesses. After the trial commences, no  
13 witnesses may be called by the defendant in support of these  
14 defenses unless the name of the witness is included on the  
15 list, except upon good cause shown."

16 Section 10. Repealer. Sections 46-14-101 and  
17 46-14-211, MCA, are repealed.

-End-

MB 877



*LaCombe  
Kambick  
Curtis  
Pratt  
Edwards  
Waters  
Zuer  
Cassell  
Holt*

*House* BILL NO. *877*

INTRODUCED BY *Kelly Seiser Conway July 23, 1977*  
*Wendell Marks Fred J. Donaldson*

BILL FOR AN ACT ENTITLED: "AN ACT TO ABOLISH THE DEFENSE  
OF MENTAL DISEASE OR DEFECT IN CRIMINAL ACTIONS; AMENDING  
SECTIONS 46-14-201 THROUGH 46-14-203, 46-14-212, ~~46-14-213,~~  
46-14-221, 46-14-222, 46-14-301, AND 46-15-301, MCA; AND

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

Section 1. Section 46-14-201, MCA, is amended to read:

~~"46-14-201. Affirmative defense requirement  
Requirement of notice -- form of verdict and judgment. (1)  
Mental disease or defect excluding responsibility is an  
affirmative defense which the defendant must establish by a  
preponderance of the evidence"~~

~~(2)(1) Evidence of mental disease or defect excluding  
responsibility is not admissible in a trial on the merits  
unless the defendant, at the time of entering his plea of  
not guilty or within 10 days thereafter or at such later  
time as the court may for good cause permit, files a written  
notice of his purpose to rely on such defense~~

~~(3) The defendant shall give similar notice when in a  
trial on the merits, he intends to rely on a mental disease  
or defect to prove that he did not have a particular state~~

1 of mind which is an essential element of the offense  
2 charged. Otherwise, except on good cause shown, he shall not  
3 introduce in his case in chief expert testimony in support  
4 of that defense.

5 ~~(4)(2) When the defendant is acquitted on the ground  
6 of that due to a mental disease or defect excluding  
7 responsibility he could not have a particular state of mind  
8 that is an essential element of the offense charged, the  
9 verdict and the judgment shall so state."~~

10 Section 2. Section 46-14-202, MCA, is amended to read:

11 "46-14-202. Psychiatric examination of defendant. (1)  
12 ~~When the defendant has filed a notice of intention to rely  
13 on the defense of mental disease or defect excluding  
14 responsibility or there is reason to doubt his the  
15 defendant's fitness to proceed or reason to believe that  
16 mental disease or defect of the defendant will otherwise  
17 become an issue in the cause, the court shall appoint at  
18 least one qualified psychiatrist or shall request the  
19 superintendent of Warm Springs state hospital to designate  
20 at least one qualified psychiatrist, which designation may  
21 be or include himself, to examine and report upon the mental  
22 condition of the defendant.~~

23 (2) The court may order the defendant to be committed  
24 to a hospital or other suitable facility for the purpose of  
25 the examination for a period of not exceeding 60 days or

1 such longer period as the court determines to be necessary  
 2 for the purpose and may direct that a qualified psychiatrist  
 3 retained by the defendant be permitted to witness and  
 4 participate in the examination.

5 (3) In the examination any method may be employed  
 6 which is accepted by the medical profession for the  
 7 examination of those alleged to be suffering from mental  
 8 disease or defect."

9 Section 3. Section 46-14-203, MCA, is amended to read:

10 "46-14-203. Report of the examination. (1) The report  
 11 of the examination shall include the following:

12 (a) a description of the nature of the examination;

13 (b) a diagnosis of the mental condition of the  
 14 defendant;

15 (c) if the defendant suffers from a mental disease or  
 16 defect, an opinion as to his capacity to understand the  
 17 proceedings against him and to assist in his own defense;  
 18 and

19 ~~(d) when a notice of intention to rely on the defense~~  
 20 ~~of irresponsibility has been filed, an opinion as to the~~  
 21 ~~ability of the defendant to appreciate the criminality of~~  
 22 ~~his conduct or to conform his conduct to the requirements of~~  
 23 ~~law at the time of the criminal conduct charged; and~~

24 (e)(d) when directed by the court, an opinion as to  
 25 the capacity of the defendant to have a particular state of

1 mind which is an element of the offense charged.

2 (2) If the examination cannot be conducted by reason  
 3 of the unwillingness of the defendant to participate  
 4 therein, the report shall so state and shall include, if  
 5 possible, an opinion as to whether the unwillingness of the  
 6 defendant was the result of mental disease or defect.

7 (3) The report of the examination shall be filed in  
 8 triplicate with the clerk of court, who shall deliver copies  
 9 to the county attorney and to counsel for the defendant."

10 Section 4. Section 46-14-212, MCA, is amended to read:

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

21 Section 5. Section 46-14-213, MCA, is amended to read:

22 "46-14-213. Psychiatric testimony upon trial. (1) Upon  
 23 the trial, any psychiatrist who reported under 46-14-202 and  
 24 46-14-203 may be called as a witness by the prosecution or  
 25 by the defense. If the issue is being tried before a jury,

1 the jury may not be informed that the psychiatrist was  
 2 designated by the court or by the superintendent of Warm  
 3 Springs state hospital. Both the prosecution and the  
 4 defense may summon any other qualified psychiatrist or other  
 5 expert to testify, but no one who has not examined the  
 6 defendant is competent to testify to an expert opinion with  
 7 respect to the mental condition ~~or responsibility~~ of the  
 8 defendant, as distinguished from the validity of the  
 9 procedure followed by or the general scientific propositions  
 10 stated by another witness.

11 (2) When a psychiatrist or other expert who has  
 12 examined the defendant testifies concerning the defendant's  
 13 mental condition, he may make a statement as to the nature  
 14 of his examination, his diagnosis of the mental condition of  
 15 the defendant at the time of the commission of the offense  
 16 charged, and his opinion as to the ability of the defendant  
 17 ~~to appreciate the criminality of his conduct, to conform his~~  
 18 ~~conduct to the requirements of law, or to~~ have a particular  
 19 state of mind which is an element of the offense charged.  
 20 The expert may make any explanation reasonably serving to  
 21 clarify his diagnosis and opinion and may be cross-examined  
 22 as to any matter bearing on his competency or credibility or  
 23 the validity of his diagnosis or opinion."

24 Section 6. Section 46-14-221, MCA, is amended to read:  
 25 "46-14-221. Determination of fitness to proceed --

1 effect of finding of unfitness -- expenses. (1) The issue of  
 2 the defendant's fitness to proceed may only be raised by the  
 3 defendant with the advice of counsel. When the defendant's  
 4 ~~fitness-to-proceed~~ issue is drawn-in-question raised, the  
 5 ~~issue~~ it shall be determined by the court. If neither the  
 6 county attorney nor counsel for the defendant contests the  
 7 finding of the report filed under 46-14-203, the court may  
 8 make the determination on the basis of the report. If the  
 9 finding is contested, the court shall hold a hearing on the  
 10 issue. If the report is received in evidence upon the  
 11 hearing, the parties have the right to summon and  
 12 cross-examine the psychiatrists who joined in the report and  
 13 to offer evidence upon the issue.

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

21 (3) If the court determines that the defendant lacks  
 22 fitness to proceed due to the fact that the person is  
 23 developmentally disabled, as defined by 53-20-102, the  
 24 proceeding against him shall be suspended, except as  
 25 provided in subsection (4) of this section, and the court

1 shall proceed to secure treatment as provided in chapter 20,  
2 part 1, or chapter 21, part 1, of Title 53.

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

7 (5) The expenses of sending the defendant to the  
8 custody of the director of the department of institutions to  
9 be placed in an appropriate institution of the state  
10 department of institutions, of keeping him there, and of  
11 bringing him back are in the first instance chargeable to  
12 the county in which the indictment was found or the  
13 information filed; but the county may recover them from the  
14 estate of the defendant, if he has any, or from a town,  
15 city, or county bound to provide for and maintain him  
16 elsewhere."

17 Section 7. Section 46-14-222, MCA, is amended to read:  
18 "46-14-222. Proceedings if fitness regained. When the  
19 court, on its own motion or upon the application of the  
20 director of the department of institutions, the county  
21 attorney, or the defendant or his legal representative,  
22 determines, after a hearing if a hearing is requested, that  
23 the defendant has regained fitness to proceed, the  
24 proceeding shall be resumed. If, however, the court is of  
25 the view that so much time has elapsed since the commitment

1 of the defendant that it would be unjust to resume the  
2 criminal proceedings, the court may dismiss the charge and  
3 may order the defendant to be discharged or, subject to the  
4 law governing the civil commitment of persons suffering from  
5 ~~serious mental disease--or--defect illness,~~ order the  
6 defendant committed to an appropriate institution of the  
7 department of institutions."

8 Section 8. Section 46-14-301, MCA, is amended to read:  
9 "46-14-301. Commitment upon acquittal on the ground of  
10 ~~irresponsibility lack of mental state~~ -- hearing to  
11 determine release or discharge. (1) When a defendant is  
12 acquitted on the ground of ~~that due to a~~ mental disease or  
13 defect ~~excluding--responsibility he could not have a~~  
14 ~~particular state of mind that is an essential element of the~~  
15 ~~offense charged,~~ the court shall order him committed to the  
16 custody of the superintendent of Warm Springs state hospital  
17 to be placed in an appropriate institution for custody,  
18 care, and treatment.

19 (2) A person so confined shall have a hearing, unless  
20 waived, within 50 days of his confinement to determine his  
21 present mental condition and whether he may be discharged or  
22 released without danger to others. The court shall cause  
23 notice of the hearing to be served upon the person, his  
24 counsel, and the prosecuting attorney. Such a hearing shall  
25 be deemed a civil proceeding, and the burden shall be upon

1 the defendant to prove by a preponderance of the evidence  
2 that he may be safely released.

3 (3) According to the determination of the court upon  
4 the hearing, the defendant shall be discharged or released  
5 on such conditions as the court determines to be necessary  
6 or shall be committed to the custody of the superintendent  
7 of the Warm Springs state hospital to be placed in an  
8 appropriate institution for custody, care, and treatment."

9 Section 9. Section 46-15-301, MCA, is amended to read:  
10 "46-15-301. Discovery of witnesses, notice of certain  
11 defenses. In all criminal cases originally triable in  
12 district court the following rules apply:

13 (1) For the purpose of notice only and to prevent  
14 surprise, the prosecution shall furnish to the defendant and  
15 file with the clerk of the court at the time of arraignment  
16 a list of the witnesses the prosecution intends to call. The  
17 prosecution may, any time after arraignment, add to the list  
18 the names of any additional witnesses upon a showing of good  
19 cause. The list shall include the names and addresses of the  
20 witnesses. This subsection does not apply to rebuttal  
21 witnesses.

22 (2) (a) For purpose of notice only and to prevent  
23 surprise, the defendant shall furnish to the prosecution and  
24 file with the clerk of the court, at the time of entering  
25 his plea of not guilty or within 10 days thereafter or at

1 such later time as the court may for good cause permit, a  
2 statement of intention to interpose the defense of ~~mental~~  
3 ~~disease--or--defect~~ self-defense, or alibi or the defense  
4 that the defendant did not have a particular state of mind  
5 that is an essential element of the offense charged.

6 (b) If the defendant intends to interpose any of these  
7 defenses, he shall also furnish to the prosecution and file  
8 with the clerk of the court the names and addresses of all  
9 witnesses to be called by the defense in support thereof.  
10 Prior to trial the defendant may, upon motion and showing of  
11 good cause, add to the list of witnesses the names of any  
12 additional witnesses. After the trial commences, no  
13 witnesses may be called by the defendant in support of these  
14 defenses unless the name of the witness is included on the  
15 list, except upon good cause shown."

16 Section 10. Repealer. Sections 46-14-101 and  
17 46-14-211, MCA, are repealed.

-End-

HB 877

HOUSE BILL NO. 877

INTRODUCED BY KEEDY, SEIFERT, CONROY, SCULLY, FABREGA, GOULD,  
MAGONE, KANDUCH, NORDTVEDT, MARKS, FAGG, PORTER, C. SMITH,  
DONALDSON, FEDA, CURTISS, ELLISON, PISTORIA,  
STAIGMILLER, MANNING, K. ROBBINS, UNDERDAL,  
FRATES, SALES, PAVLOVICH, UMDE, DOZIER,  
BAETH, MANUEL, HEMSTAD, MEYER, EUDAILY,  
DAY, STOBIE, KVAALEN, HAYNE

A BILL FOR AN ACT ENTITLED: "AN ACT TO ABOLISH THE DEFENSE  
OF MENTAL DISEASE OR DEFECT IN CRIMINAL ACTIONS AND TO  
PROVIDE AN ALTERNATIVE SENTENCING PROCEDURE TO BE FOLLOWED  
WHEN A CONVICTED DEFENDANT IS FOUND TO HAVE BEEN SUFFERING  
FROM A MENTAL DISEASE OR DEFECT AT THE TIME OF THE  
COMMISSION OF THE OFFENSE OF WHICH HE WAS CONVICTED;  
AMENDING SECTIONS ~~46-14-101~~, 46-14-201 THROUGH 46-14-203,  
46-14-212, 46-14-213, 46-14-221, 46-14-222, 46-14-301  
~~46-14-301~~ ~~46-14-301~~, AND 46-15-301, MCA; AND REPEALING  
SECTIONS ~~46-14-101~~ AND SECTION 46-14-211 AND ~~46-14-301~~  
~~THROUGH 46-14-301~~, MCA."

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

SECTION 1. SECTION 46-14-101, MCA, IS AMENDED TO READ:

"46-14-101. Mental disease or defect excluding  
responsibility. ~~(1) A person is not responsible for criminal~~

~~conduct if at the time of such conduct as a result of mental  
disease or defect he is unable either to appreciate the  
criminality of his conduct or to conform his conduct to the  
requirements of law~~

~~(2) As used in this chapter, the term "mental disease  
or defect" does not include an abnormality manifested only  
by repeated criminal or other antisocial conduct."~~

Section 2. Section 46-14-201, MCA, is amended to read:

~~"46-14-201. Affirmative defense requirement  
Requirement of notice -- form of verdict and judgment. (1)  
Mental disease or defect excluding responsibility is an  
affirmative defense which the defendant must establish by a  
preponderance of the evidence"~~

~~(2) All Evidence of mental disease or defect excluding  
responsibility is not admissible in a trial on the merits  
unless the defendant, at the time of entering his plea of  
not guilty or within 10 days thereafter or at such later  
time as the court may for good cause permit, files a written  
notice of his purpose to rely on such defense~~

~~(3) The defendant shall give similar notice when, in a  
trial on the merits, he intends to rely on a mental disease  
or defect to prove that he did not have a particular state  
of mind which is an essential element of the offense  
charged. Otherwise, except on good cause shown, he shall not  
introduce in his case in chief expert testimony in support~~

1 of that defense.

2 {4}(2) When the defendant is acquitted on the ground  
3 of ~~that due to a~~ mental disease or defect excluding  
4 ~~responsibility he could not have a particular state of mind~~  
5 ~~that is an essential element of the offense charged,~~ the  
6 verdict and the judgment shall so state."

7 Section 3. Section 46-14-202, MCA, is amended to read:

8 "46-14-202. Psychiatric examination of defendant. (1)  
9 ~~When the defendant has filed a notice of intention to rely~~  
10 ~~on the defense of mental disease or defect excluding~~  
11 ~~responsibility or there is reason to doubt his the~~  
12 ~~defendant's~~ fitness to proceed or reason to believe that  
13 mental disease or defect of the defendant will otherwise  
14 become an issue in the cause, the court shall appoint at  
15 least one qualified psychiatrist or shall request the  
16 superintendent of Warm Springs state hospital to designate  
17 at least one qualified psychiatrist, which designation may  
18 be or include himself, to examine and report upon the mental  
19 condition of the defendant.

20 (2) The court may order the defendant to be committed  
21 to a hospital or other suitable facility for the purpose of  
22 the examination for a period of not exceeding 60 days or  
23 such longer period as the court determines to be necessary  
24 for the purpose and may direct that a qualified psychiatrist  
25 retained by the defendant be permitted to witness and

1 participate in the examination.

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

6 Section 4. Section 46-14-203, MCA, is amended to read:

7 "46-14-203. Report of the examination. (1) The report  
8 of the examination shall include the following:

- 9 (a) a description of the nature of the examination;
- 10 (b) a diagnosis of the mental condition of the  
11 defendant;

12 (c) if the defendant suffers from a mental disease or  
13 defect, an opinion as to his capacity to understand the  
14 proceedings against him and to assist in his own defense;  
15 and

16 ~~(d) when a notice of intention to rely on the defense~~  
17 ~~of irresponsibility has been filed, an opinion as to the~~  
18 ~~ability of the defendant to appreciate the criminality of~~  
19 ~~his conduct or to conform his conduct to the requirements of~~  
20 ~~law at the time of the criminal conduct charged; and~~

21 {e}(d) when directed by the court, an opinion as to  
22 the capacity of the defendant to have a particular state of  
23 mind which is an element of the offense charged.

24 (2) If the examination cannot be conducted by reason  
25 of the unwillingness of the defendant to participate

1 therein, the report shall so state and shall include, if  
 2 possible, an opinion as to whether the unwillingness of the  
 3 defendant was the result of mental disease or defect.

4 (3) The report of the examination shall be filed in  
 5 triplicate with the clerk of court, who shall deliver copies  
 6 to the county attorney and to counsel for the defendant."

7 ~~Section 4. Section 46-14-212, MCA, is amended to read:~~

8 ~~"46-14-212. Examination by psychiatrist chosen by~~  
 9 ~~state or defendant, if either the defendant or the state~~  
 10 ~~wishes the defendant to be examined by a qualified~~  
 11 ~~psychiatrist or other expert selected by the one proposing~~  
 12 ~~the examination in order to determine the defendant's~~  
 13 ~~fitness to proceed or whether he had at the time the~~  
 14 ~~offense was committed a particular state of mind which is~~  
 15 ~~an essential element of the offense, the examiner shall be~~  
 16 ~~permitted to have reasonable access to the defendant for the~~  
 17 ~~purpose of the examination."~~

18 Section 5. Section 46-14-213, MCA, is amended to read:

19 "46-14-213. Psychiatric testimony upon trial. (1) Upon  
 20 the trial, any psychiatrist who reported under 46-14-202 and  
 21 46-14-203 may be called as a witness by the prosecution or  
 22 by the defense. If the issue is being tried before a jury,  
 23 the jury may not be informed that the psychiatrist was  
 24 designated by the court or by the superintendent of Warm  
 25 Springs state hospital. Both the prosecution and the

1 defense may summon any other qualified psychiatrist or other  
 2 expert to testify, but no one who has not examined the  
 3 defendant is competent to testify to an expert opinion with  
 4 respect to the mental condition or responsibility of the  
 5 defendant, as distinguished from the validity of the  
 6 procedure followed by or the general scientific propositions  
 7 stated by another witness.

8 (2) When a psychiatrist or other expert who has  
 9 examined the defendant testifies concerning the defendant's  
 10 mental condition, he may make a statement as to the nature  
 11 of his examination, his diagnosis of the mental condition of  
 12 the defendant at the time of the commission of the offense  
 13 charged, and his opinion as to the ability of the defendant  
 14 to appreciate the criminality of his conduct to conform his  
 15 conduct to the requirements of law or to have a particular  
 16 state of mind which is an element of the offense charged.  
 17 The expert may make any explanation reasonably serving to  
 18 clarify his diagnosis and opinion and may be cross-examined  
 19 as to any matter bearing on his competency or credibility or  
 20 the validity of his diagnosis or opinion."

21 Section 6. Section 46-14-221, MCA, is amended to read:

22 "46-14-221. Determination of fitness to proceed --  
 23 effect of finding of unfitness -- expenses. (1) The issue of  
 24 the defendant's fitness to proceed may only be raised by the  
 25 defendant with the advice of counsel. When the defendant's



1 fitness-to-proceed ~~issue~~ is drawn-in-question raised, the  
 2 ~~issue~~ it shall be determined by the court. If neither the  
 3 county attorney nor counsel for the defendant contests the  
 4 finding of the report filed under 46-14-203, the court may  
 5 make the determination on the basis of the report. If the  
 6 finding is contested, the court shall hold a hearing on the  
 7 issue. If the report is received in evidence upon the  
 8 hearing, the parties have the right to summon and  
 9 cross-examine the psychiatrists who joined in the report and  
 10 to offer evidence upon the issue.

11 (2) If the court determines that the defendant lacks  
 12 fitness to proceed, the proceeding against him shall be  
 13 suspended, except as provided in subsection (4) of this  
 14 section, and the court shall commit him to the custody of  
 15 the director of the department of institutions to be placed  
 16 in an appropriate institution of the department of  
 17 institutions for so long as the unfitness endures.

18 (3) If the court determines that the defendant lacks  
 19 fitness to proceed due to the fact that the person is  
 20 developmentally disabled, as defined by 53-20-102, the  
 21 proceeding against him shall be suspended, except as  
 22 provided in subsection (4) of this section, and the court  
 23 shall proceed to secure treatment as provided in chapter 20,  
 24 part 1, or chapter 21, part 1, of Title 53.

25 (4) The fact that the defendant is unfit to proceed

1 Does not preclude any legal objection to the prosecution  
 2 which is susceptible to fair determination prior to trial  
 3 and without the personal participation of the defendant.

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

14 Section 7. Section 46-14-222, MCA, is amended to read:

15 "46-14-222. Proceedings if fitness regained. When the  
 16 court, on its own motion or upon the application of the  
 17 director of the department of institutions, the county  
 18 attorney, or the defendant or his legal representative,  
 19 determines, after a hearing if a hearing is requested, that  
 20 the defendant has regained fitness to proceed, the  
 21 proceeding shall be resumed. If, however, the court is of  
 22 the view that so much time has elapsed since the commitment  
 23 of the defendant that it would be unjust to resume the  
 24 criminal proceedings, the court may dismiss the charge and  
 25 may order the defendant to be discharged or, subject to the

1 law governing the civil commitment of persons suffering from  
 2 serious mental disease--or--defect illness, order the  
 3 defendant committed to an appropriate institution of the  
 4 department of institutions."

5 Section 14--Section--46-14-301--MCA--is--amended--to  
 6 read:

7 "46-14-301--Commitment-upon-acquittal-on-the-ground-of  
 8 irresponsibility ~~lack--of--mental--state~~ -----hearing---to  
 9 determine--release--or--discharge---(1) When a defendant is  
 10 acquitted-on-the-ground-of ~~that--due--to--a~~ mental--disease--or  
 11 defect---excluding---responsibility ~~he--could--not--have--a~~  
 12 ~~particular-state-of-mind-that-is-an-essential-element-of-the~~  
 13 ~~offense-charged~~, the court shall order him committed to--the  
 14 custody-of-the-superintendent-of-Warm-Springs-state-hospital  
 15 to--be--placed--in--an--appropriate-institution-for-custody  
 16 care-and-treatment.

17 (2)--A-person-so-confined-shall-have-a-hearing--unless  
 18 waived--within--50-days-of-his-confinement-to-determine-his  
 19 present-mental-condition-and-whether-he-may-be-discharged-or  
 20 released-without-danger-to-others--The-court--shall--cause  
 21 notice--of--the--hearing--to--be-served-upon-the-person--his  
 22 counsel--and-the-prosecuting-attorneys--Such-a-hearing--shall  
 23 be--deemed--a-civil-proceeding--and-the-burden-shall-be-upon  
 24 the-defendant-to-prove-by-a-preponderance--of--the--evidence  
 25 that-he-may-be-safely-released.

1 (3)--According--to--the-determination-of-the-court-upon  
 2 the-hearing--the-defendant-shall-be-discharged--or--released  
 3 on--such--conditions-as-the-court-determines-to-be-necessary  
 4 or-shall-be-committed-to-the-custody-of--the--superintendent  
 5 of--the--Warm--Springs--state--hospital--to--be-placed-in-an  
 6 appropriate-institution-for-custody--care--and--treatment."

7 SECTION 8. SECTION 46-14-301, MCA, IS AMENDED TO READ:

8 "46-14-301. Commitment upon acquittal on the ground of  
 9 irresponsibility lack of mental state -- hearing to  
 10 determine release or discharge. (1) When a defendant is  
 11 acquitted on the ground of that due to a mental disease or  
 12 defect excluding responsibility he could not have a  
 13 particular state of mind that is an essential element of the  
 14 offense charged, the court shall order him committed to the  
 15 custody of the superintendent of Warm Springs state hospital  
 16 to be placed in an appropriate institution for custody,  
 17 care, and treatment.

18 (2) A person so confined shall have a hearing, unless  
 19 waived, within 50 days of his confinement to determine his  
 20 present mental condition and whether he may be discharged or  
 21 released without danger to others. The court shall cause  
 22 notice of the hearing to be served upon the person, his  
 23 counsel, and the prosecuting attorney. Such a hearing shall  
 24 be deemed a civil proceeding, and the burden shall be upon  
 25 the defendant to prove by a preponderance of the evidence

1 that he may be safely released.

2 (3) According to the determination of the court upon  
3 the hearing, the defendant shall be discharged or released  
4 on such conditions as the court determines to be necessary  
5 or shall be committed to the custody of the superintendent  
6 of the Warm Springs state hospital to be placed in an  
7 appropriate institution for custody, care, and treatment."

8 SECTION 9. THERE IS A NEW MCA SECTION THAT READS:

9 Consideration of mental disease or defect in  
10 sentencing. Whenever a defendant is convicted on a verdict  
11 or a plea of guilty and he claims that at the time of the  
12 commission of the offense of which he was convicted he was  
13 unable as a result of mental disease or defect either which  
14 rendered him unable to appreciate the criminality of his  
15 conduct or to conform his conduct to the requirements of  
16 law, the sentencing court shall consider evidence-obtained  
17 as--provided--in--46-14-202--and--46-14-203--and any other  
18 relevant evidence presented at the trial and shall require  
19 such additional evidence as it considers necessary for the  
20 determination of the issue, including examination of the  
21 defendant and a report thereof as provided in 46-14-202 and  
22 46-14-203.

23 SECTION 10. THERE IS A NEW MCA SECTION THAT READS:

24 Sentence to be imposed. (1) If the court finds that the  
25 defendant at the time of the commission of the offense of

1 which he was convicted did not suffer from a mental disease  
2 or defect as described in [section 8], it shall sentence him  
3 as provided in Title 46, chapter 18.

4 (2) If the court finds that the defendant at the time  
5 of the commission of the offense suffered from a mental  
6 disease or defect as described in [section 8], any mandatory  
7 minimum sentence prescribed by law for the offense does not  
8 not apply and the court shall sentence him to:

9 (a) be committed to the custody of the superintendent  
10 of-Warm-Springs-state-hospital director of the department of  
11 institutions to be placed in an appropriate institution for  
12 custody, care, and treatment for a definite period not to  
13 exceed the maximum term of imprisonment that could be  
14 imposed under subsection (1); or

15 (b) undergo for such a period any other appropriate  
16 course of treatment that is accepted by the medical  
17 profession and that will not present a danger to the public.

18 (3) if--the--court--sentences--the--defendant--under  
19 subsection-(2)-(a)-it--may--provide--that--the--professional  
20 person--in--charge-of-the-institution-in-which-the-defendant  
21 is-placed-may-release-the-defendant-on--condition--after--a  
22 specified--period--of--time--that-is-less-than-his-period-of  
23 commitment-if-the-professional-person-determines--that--the  
24 defendant--has--been--cured--of-the-mental-disease-or-defect  
25 found-by-the-court-and-is-no-longer-a-danger-to-himself--or

1 others--if--the--professional--person--releases--the--defendant  
 2 pursuant--to--this--subsection--he--shall--report--the--release--and  
 3 the--conditions--placed--on--it--to--the--court--

4 {4}{3} A defendant whose disposition or sentence--does  
 5 not--allow--for--conditional--release--by--the--professional--person  
 6 in--charge--of--the--institution--as--provided--in--subsection--{3}v  
 7 whose sentence has been imposed under [section 10(2)(a)],  
 8 may petition the sentencing court for review of the sentence  
 9 if the professional person certifies that the defendant has  
 10 been cured of the mental disease or defect. The sentencing  
 11 court may make any order not inconsistent with its original  
 12 sentencing authority except that the length of confinement  
 13 or supervision may not be increased must be equal to that of  
 14 the original sentence. The professional person shall review  
 15 the defendant's status each year.

16 ~~SECTION 10--THERE IS A NEW MCA SECTION THAT READS:~~

17 Recommitment--after--conditional--release--if--before--the  
 18 expiration--of--the--period--of--commitment--the--court--determines  
 19 after--hearing--evidence--that--a--defendant--who--has--been  
 20 released--under--[section--9{3}]-has--not--fulfilled--the  
 21 conditions--of--his--release--and--that--for--his--own--safety--or--the  
 22 safety--of--others--his--conditional--release--should--be--revoked,  
 23 the--court--shall--immediately--order--him--to--be--recommitted--to  
 24 the--custody--of--the--superintendent--of--Warm--Springs--state  
 25 hospital--to--be--placed--in--the--same--or--another--appropriate

1 institution--for--custody--care--and--treatmentv

2 SECTION 11. THERE IS A NEW MCA SECTION THAT READS:

3 Discharge of defendant from supervision. At the  
 4 expiration of the period of commitment or period of  
 5 treatment specified by the court under [section 910(2)], the  
 6 defendant must be discharged from custody and further  
 7 supervision, subject only to the law regarding the civil  
 8 commitment of persons suffering from serious mental illness.

9 SECTION 12. SECTION 46-14-401, MCA, IS AMENDED TO  
 10 READ:

11 "46-14-401. Admissibility of statements made during  
 12 examination or treatment. A statement made for the purposes  
 13 of psychiatric examination or treatment provided for in this  
 14 chapter by a person subjected to such examination or  
 15 treatment is not admissible in evidence against him in any  
 16 criminal proceedings, except a sentencing hearing conducted  
 17 under [section 8 9] or a hearing on recommitment conducted  
 18 under [section 10 11], on any issue other than that of his  
 19 mental condition. It is admissible on the issue of his  
 20 mental condition, whether or not it would otherwise be  
 21 considered a privileged communication, unless it constitutes  
 22 an admission of guilt of the crime charged. In a hearing  
 23 held under [section 8 9] or [section 10 11], the court may  
 24 hear and consider any such statement even if it constitutes  
 25 an admission of guilt."

1 Section 13. Section 46-15-301, MCA, is amended to  
2 read:

3 "46-15-301. Discovery of witnesses; notice of certain  
4 defenses. In all criminal cases originally triable in  
5 district court the following rules apply:

6 (1) For the purpose of notice only and to prevent  
7 surprise, the prosecution shall furnish to the defendant and  
8 file with the clerk of the court at the time of arraignment  
9 a list of the witnesses the prosecution intends to call. The  
10 prosecution may, any time after arraignment, add to the list  
11 the names of any additional witnesses upon a showing of good  
12 cause. The list shall include the names and addresses of the  
13 witnesses. This subsection does not apply to rebuttal  
14 witnesses.

15 (2) (a) For purpose of notice only and to prevent  
16 surprise, the defendant shall furnish to the prosecution and  
17 file with the clerk of the court, at the time of entering  
18 his plea of not guilty or within 10 days thereafter or at  
19 such later time as the court may for good cause permit, a  
20 statement of intention to interpose the defense of mental  
21 disease or defect, self-defense or alibi or the defense  
22 that the defendant did not have a particular state of mind  
23 that is an essential element of the offense charged.

24 (b) If the defendant intends to interpose any of these  
25 defenses, he shall also furnish to the prosecution and file

1 with the clerk of the court the names and addresses of all  
2 witnesses to be called by the defense in support thereof.  
3 Prior to trial the defendant may, upon motion and showing of  
4 good cause, add to the list of witnesses the names of any  
5 additional witnesses. After the trial commences, no  
6 witnesses may be called by the defendant in support of these  
7 defenses unless the name of the witness is included on the  
8 list, except upon good cause shown."

9 Section 14. Repealer. Sections 46-14-101 and 46-14-211  
10 ~~AND 46-14-301 THROUGH 46-14-304, MCA, are repeated SECTION~~  
11 ~~46-14-211, MCA, IS REPEALED. a~~

-End-

## HOUSE BILL NO. 877

INTRODUCED BY KEEDY, SEIFERT, CONROY, SCULLY, FABREGA, GOULD,  
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A BILL FOR AN ACT ENTITLED: "AN ACT TO ABOLISH THE DEFENSE  
OF MENTAL DISEASE OR DEFECT IN CRIMINAL ACTIONS AND TO  
PROVIDE AN ALTERNATIVE SENTENCING PROCEDURE TO BE FOLLOWED  
WHEN A CONVICTED DEFENDANT IS FOUND TO HAVE BEEN SUFFERING  
FROM A MENTAL DISEASE OR DEFECT AT THE TIME OF THE  
COMMISSION OF THE OFFENSE OF WHICH HE WAS CONVICTED;  
AMENDING SECTIONS ~~46-14-101~~, 46-14-201 THROUGH 46-14-203,  
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BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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"46-14-101. Mental disease or defect excluding  
responsibility. ~~{1} A person is not responsible for criminal~~

~~conduct if at the time of such conduct as a result of mental~~  
~~disease or defect he is unable either to appreciate the~~  
~~criminality of his conduct or to conform his conduct to the~~  
~~requirements of law~~

{2} As used in this chapter, the term "mental disease  
or defect" does not include an abnormality manifested only  
by repeated criminal or other antisocial conduct."

Section 2. Section 46-14-201, MCA, is amended to read:

"46-14-201. ~~Affirmative defense requirement~~  
~~Requirement~~ of notice -- form of verdict and judgment. ~~{1}~~  
~~Mental disease or defect excluding responsibility is an~~  
~~affirmative defense which the defendant must establish by a~~  
~~preponderance of the evidence~~

{2}{1} Evidence of mental disease or defect excluding  
responsibility is not admissible in a trial on the merits  
unless the defendant, at the time of entering his plea of  
not guilty or within 10 days thereafter or at such later  
time as the court may for good cause permit, files a written  
notice of his purpose to rely on such defense

{3} ~~The defendant shall give similar notice when, in a~~  
~~trial on the merits, he intends to rely on a mental disease~~  
~~or defect to prove that he did not have a particular state~~  
~~of mind which is an essential element of the offense~~  
~~charged. Otherwise, except on good cause shown, he shall not~~  
~~introduce in his case in chief expert testimony in support~~

1 of that defense.

2 ~~{4}{2}~~ When the defendant is acquitted on the ground  
 3 of ~~that due to~~ a mental disease or defect excluding  
 4 responsibility ~~he could not have a particular state of mind~~  
 5 ~~that is an essential element of the offense charged,~~ the  
 6 verdict and the judgment shall so state."

7 Section 3. Section 46-14-202, MCA, is amended to read:

8 "46-14-202. Psychiatric examination of defendant. (1)  
 9 ~~When the defendant has filed a notice of intention to retry~~  
 10 ~~on the defense of mental disease or defect excluding~~  
 11 ~~responsibility or there is reason to doubt his the~~  
 12 ~~defendant's~~ fitness to proceed or reason to believe that  
 13 mental disease or defect of the defendant will otherwise  
 14 become an issue in the cause, the court shall appoint at  
 15 least one qualified psychiatrist or shall request the  
 16 superintendent of Warm Springs state hospital to designate  
 17 at least one qualified psychiatrist, which designation may  
 18 be or include himself, to examine and report upon the mental  
 19 condition of the defendant.

20 (2) The court may order the defendant to be committed  
 21 to a hospital or other suitable facility for the purpose of  
 22 the examination for a period of not exceeding 60 days or  
 23 such longer period as the court determines to be necessary  
 24 for the purpose and may direct that a qualified psychiatrist  
 25 retained by the defendant be permitted to witness and

1 participate in the examination.

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

6 Section 4. Section 46-14-203, MCA, is amended to read:

7 "46-14-203. Report of the examination. (1) The report  
 8 of the examination shall include the following:

- 9 (a) a description of the nature of the examination;
- 10 (b) a diagnosis of the mental condition of the
- 11 defendant;
- 12 (c) if the defendant suffers from a mental disease or
- 13 defect, an opinion as to his capacity to understand the
- 14 proceedings against him and to assist in his own defense;
- 15 and

16 ~~{d} when a notice of intention to retry on the defense~~  
 17 ~~of responsibility has been filed, an opinion as to the~~  
 18 ~~ability of the defendant to appreciate the criminality of~~  
 19 ~~his conduct or to conform his conduct to the requirements of~~  
 20 ~~law at the time of the criminal conduct charged and~~

21 {e}{d} when directed by the court, an opinion as to  
 22 the capacity of the defendant to have a particular state of  
 23 mind which is an element of the offense charged.

24 (2) If the examination cannot be conducted by reason  
 25 of the unwillingness of the defendant to participate

1 therein, the report shall so state and shall include, if  
2 possible, an opinion as to whether the unwillingness of the  
3 defendant was the result of mental disease or defect.

4 (3) The report of the examination shall be filed in  
5 triplicate with the clerk of court, who shall deliver copies  
6 to the county attorney and to counsel for the defendant."

7 ~~Section 4. Section 46-14-212, MCA, is amended to read:~~

8 ~~"46-14-212. Examination by psychiatrist chosen by~~  
9 ~~state or defendant if either the defendant or the state~~  
10 ~~wishes the defendant to be examined by a qualified~~  
11 ~~psychiatrist or other expert selected by the one proposing~~  
12 ~~the examination in order to determine the defendant's~~  
13 ~~fitness to proceed or whether he had, at the time the~~  
14 ~~offense was committed, a particular state of mind which is~~  
15 ~~an essential element of the offense, the examiner shall be~~  
16 ~~permitted to have reasonable access to the defendant for the~~  
17 ~~purpose of the examination."~~

18 Section 5. Section 46-14-213, MCA, is amended to read:

19 "46-14-213. Psychiatric testimony upon trial. (1) Upon  
20 the trial, any psychiatrist who reported under 46-14-202 and  
21 46-14-203 may be called as a witness by the prosecution or  
22 by the defense. If the issue is being tried before a jury,  
23 the jury may not be informed that the psychiatrist was  
24 designated by the court or by the superintendent of Warm  
25 Springs state hospital. Both the prosecution and the

1 defense may summon any other qualified psychiatrist or other  
2 expert to testify, but no one who has not examined the  
3 defendant is competent to testify to an expert opinion with  
4 respect to the mental condition ~~or responsibility~~ of the  
5 defendant, as distinguished from the validity of the  
6 procedure followed by or the general scientific propositions  
7 stated by another witness.

8 (2) When a psychiatrist or other expert who has  
9 examined the defendant testifies concerning the defendant's  
10 mental condition, he may make a statement as to the nature  
11 of his examination, his diagnosis of the mental condition of  
12 the defendant at the time of the commission of the offense  
13 charged, and his opinion as to the ability of the defendant  
14 to ~~appreciate the criminality of his conduct to conform his~~  
15 ~~conduct to the requirements of law or to have a particular~~  
16 ~~state of mind which is an element of the offense charged.~~  
17 The expert may make any explanation reasonably serving to  
18 clarify his diagnosis and opinion and may be cross-examined  
19 as to any matter bearing on his competency or credibility or  
20 the validity of his diagnosis or opinion."

21 Section 6. Section 46-14-221, MCA, is amended to read:

22 "46-14-221. Determination of fitness to proceed --  
23 effect of finding of unfitness -- expenses. (1) The issue of  
24 the defendant's fitness to proceed may only be raised by the  
25 defendant with the advice of counsel. When the defendant's



1 ~~fitness-to-proceed issue~~ is drawn-in-question raised, the  
 2 ~~issue~~ it shall be determined by the court. If neither the  
 3 county attorney nor counsel for the defendant contests the  
 4 finding of the report filed under 46-14-203, the court may  
 5 make the determination on the basis of the report. If the  
 6 finding is contested, the court shall hold a hearing on the  
 7 issue. If the report is received in evidence upon the  
 8 hearing, the parties have the right to summon and  
 9 cross-examine the psychiatrists who joined in the report and  
 10 to offer evidence upon the issue.

11 (2) If the court determines that the defendant lacks  
 12 fitness to proceed, the proceeding against him shall be  
 13 suspended, except as provided in subsection (4) of this  
 14 section, and the court shall commit him to the custody of  
 15 the director of the department of institutions to be placed  
 16 in an appropriate institution of the department of  
 17 institutions for so long as the unfitness endures.

18 (3) If the court determines that the defendant lacks  
 19 fitness to proceed due to the fact that the person is  
 20 developmentally disabled, as defined by 53-20-102, the  
 21 proceeding against him shall be suspended, except as  
 22 provided in subsection (4) of this section, and the court  
 23 shall proceed to secure treatment as provided in chapter 20,  
 24 part 1, or chapter 21, part 1, of Title 53.

25 (4) The fact that the defendant is unfit to proceed

1 does not preclude any legal objection to the prosecution  
 2 which is susceptible to fair determination prior to trial  
 3 and without the personal participation of the defendant.

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

14 Section 7. Section 46-14-222, MCA, is amended to read:

15 "46-14-222. Proceedings if fitness regained. When the  
 16 court, on its own motion or upon the application of the  
 17 director of the department of institutions, the county  
 18 attorney, or the defendant or his legal representative,  
 19 determines, after a hearing if a hearing is requested, that  
 20 the defendant has regained fitness to proceed, the  
 21 proceeding shall be resumed. If, however, the court is of  
 22 the view that so much time has elapsed since the commitment  
 23 of the defendant that it would be unjust to resume the  
 24 criminal proceedings, the court may dismiss the charge and  
 25 may order the defendant to be discharged or, subject to the

1 law governing the civil commitment of persons suffering from  
 2 serious mental disease--or--defect illness, order the  
 3 defendant committed to an appropriate institution of the  
 4 department of institutions."

5 Section 14--Section--46-14-301--MCA,--is--amended--to  
 6 read:

7 "46-14-301--Commitment-upon-acquittal-on-the-ground-of  
 8 irresponsibility lack--of--mental--state ----hearing--to  
 9 determine--release--or--dischargev---(1) When a defendant is  
 10 acquitted on the ground of that due to a mental--disease--or  
 11 defect---excluding---responsibility he--could--not--have--a  
 12 particular state of mind that is an essential element of the  
 13 offense charged, the court shall order him committed to the  
 14 custody of the superintendent of Warm Springs state hospital  
 15 to--be--placed--in--an--appropriate institution for custody  
 16 care, and treatment.

17 (2) A person so confined shall have a hearing, unless  
 18 waived, within 50 days of his confinement to determine his  
 19 present mental condition and whether he may be discharged or  
 20 released without danger to others. The court shall cause  
 21 notice of the hearing to be served upon the person, his  
 22 counsel, and the prosecuting attorney. Such a hearing shall  
 23 be deemed a civil proceeding, and the burden shall be upon  
 24 the defendant to prove by a preponderance of the evidence  
 25 that he may be safely released.

1 (3) According to the determination of the court upon  
 2 the hearing, the defendant shall be discharged or released  
 3 on such conditions as the court determines to be necessary  
 4 or shall be committed to the custody of the superintendent  
 5 of the Warm Springs state hospital to be placed in an  
 6 appropriate institution for custody care, and treatment."

7 SECTION 8. SECTION 46-14-301, MCA, IS AMENDED TO READ:

8 "46-14-301. Commitment upon acquittal on the ground of  
 9 irresponsibility lack of mental state -- hearing to  
 10 determine release or discharge. (1) When a defendant is  
 11 acquitted on the ground of that due to a mental disease or  
 12 defect excluding responsibility he could not have a  
 13 particular state of mind that is an essential element of the  
 14 offense charged, the court shall order him committed to the  
 15 custody of the superintendent of Warm Springs state hospital  
 16 to be placed in an appropriate institution for custody,  
 17 care, and treatment.

18 (2) A person so confined shall have a hearing, unless  
 19 waived, within 50 days of his confinement to determine his  
 20 present mental condition and whether he may be discharged or  
 21 released without danger to others. The court shall cause  
 22 notice of the hearing to be served upon the person, his  
 23 counsel, and the prosecuting attorney. Such a hearing shall  
 24 be deemed a civil proceeding, and the burden shall be upon  
 25 the defendant to prove by a preponderance of the evidence

1 that he may be safely released.

2 (3) According to the determination of the court upon  
3 the hearing, the defendant shall be discharged or released  
4 on such conditions as the court determines to be necessary  
5 or shall be committed to the custody of the superintendent  
6 of the Warm Springs state hospital to be placed in an  
7 appropriate institution for custody, care, and treatment."

8 SECTION 9. THERE IS A NEW MCA SECTION THAT READS:

9 Consideration of mental disease or defect in  
10 sentencing. Whenever a defendant is convicted on a verdict  
11 or a plea of guilty and he claims that at the time of the  
12 commission of the offense of which he was convicted he was  
13 ~~unable-as-a-result-of~~ SUFFERING FROM a mental disease or  
14 defect ~~either which rendered him unable~~ to appreciate the  
15 criminality of his conduct or to conform his conduct to the  
16 requirements of law, the sentencing court shall consider  
17 ~~evidence-obtained-as-provided-in-46-14-202-and-46-14-203-and~~  
18 any other relevant evidence presented at the trial and shall  
19 require such additional evidence as it considers necessary  
20 for the determination of the issue, including examination of  
21 the defendant and a report thereof as provided in 46-14-202  
22 and 46-14-203.

23 SECTION 10. THERE IS A NEW MCA SECTION THAT READS:

24 Sentence to be imposed. (1) If the court finds that the  
25 defendant at the time of the commission of the offense of

1 which he was convicted did not suffer from a mental disease  
2 or defect as described in [section 8 2], it shall sentence  
3 him as provided in Title 46, chapter 18.

4 (2) If the court finds that the defendant at the time  
5 of the commission of the offense suffered from a mental  
6 disease or defect as described in [section 8 2], any  
7 mandatory minimum sentence prescribed by law for the offense  
8 does ~~need~~ not apply and the court shall sentence him to:

9 (a) be committed to the custody of the superintendent  
10 ~~of-Warm-Springs-state-hospital~~ director of the department of  
11 institutions to be placed in an appropriate institution for  
12 custody, care, and treatment for a definite period of time  
13 not to exceed the maximum term of imprisonment that could be  
14 imposed under subsection (1); or

15 (b) undergo for such a period any other appropriate  
16 course of treatment that is accepted by the medical  
17 profession and that will not present a danger to the public.

18 ~~{3}--if--the--court--sentences--the--defendant--under~~  
19 ~~subsection--(2)--it--may--provide--that--the--professional~~  
20 ~~person--in--charge--of--the--institution--in--which--the--defendant~~  
21 ~~is--placed--may--release--the--defendant--on--condition--after--a~~  
22 ~~specified--period--of--time--that--is--less--than--his--period--of~~  
23 ~~commitment--if--the--professional--person--determines--that--the~~  
24 ~~defendant--has--been--cured--of--the--mental--disease--or--defect~~  
25 ~~found--by--the--court--and--is--no--longer--a--danger--to--himself--or~~

1 others--if--the--professional-person-releases-the-defendant  
 2 pursuant-to-this-subsection,he-shall-report-the-release-and  
 3 the-conditions-placed-on-it-to-the-court--

4 (4)(3) A defendant whose-disposition-or-sentence--does  
 5 not-allow-for-conditional-release-by-the-professional-person  
 6 in-charge-of-the-institution,as-provided-in-subsection-(3),  
 7 whose-sentence-has-been-imposed-under-[section 10(2)(a)],  
 8 may petition the sentencing court for review of the sentence  
 9 if the professional person certifies that the defendant has  
 10 been cured of the mental disease or defect. The sentencing  
 11 court may make any order not inconsistent with its original  
 12 sentencing authority except that the length of confinement  
 13 or supervision may-not-be-increased must be equal to that of  
 14 the original sentence. The professional person shall review  
 15 the defendant's status each year.

16 ~~SECTION 10--THERE IS A NEW MCA SECTION THAT READS:~~  
 17 Recommitment--after-conditional-release--if-before-the  
 18 expiration-of-the-period-of-commitment-the-court--determines  
 19 after--hearing--evidence--that--a--defendant--who--has--been  
 20 released--under--[section--9(3)]--has--not--fulfilled--the  
 21 conditions-of-his-release-and-that-for-his-own-safety-or-the  
 22 safety--of-others-his-conditional-release-should-be-revoked,  
 23 the-court-shall-immediately-order-him-to-be--recommitted--to  
 24 the--custody--of--the--superintendent--of-Warm-Springs-state  
 25 hospital-to-be-placed-in-the-same-or--another--appropriate

1 institution-for-custody, care, and treatment.

2 SECTION 11. THERE IS A NEW MCA SECTION THAT READS:

3 Discharge of defendant from supervision. At the  
 4 expiration of the period of commitment or period of  
 5 treatment specified by the court under [section 9 10(2)],  
 6 the defendant must be discharged from custody and further  
 7 supervision, subject only to the law regarding the civil  
 8 commitment of persons suffering from serious mental illness.

9 SECTION 12. SECTION 46-14-401, MCA, IS AMENDED TO  
 10 READ:

11 "46-14-401. Admissibility of statements made during  
 12 examination or treatment. A statement made for the purposes  
 13 of psychiatric examination or treatment provided for in this  
 14 chapter by a person subjected to such examination or  
 15 treatment is not admissible in evidence against him in any  
 16 criminal proceeding, except a sentencing hearing conducted  
 17 under [section 8 9] or a hearing on recommitment conducted  
 18 under [section 10(3)], on any issue other than that of his  
 19 mental condition. It is admissible on the issue of his  
 20 mental condition, whether or not it would otherwise be  
 21 considered a privileged communication, unless it constitutes  
 22 an admission of guilt of the crime charged. In a hearing  
 23 held under [section 8 9] or [section 10(3)], the court may  
 24 bear and consider any such statement even if it constitutes  
 25 an admission of guilt."

1 Section 13. Section 46-15-301, MCA, is amended to  
2 read:

3 "46-15-301. Discovery of witnesses, notice of certain  
4 defenses. In all criminal cases originally triable in  
5 district court the following rules apply:

6 (1) For the purpose of notice only and to prevent  
7 surprise, the prosecution shall furnish to the defendant and  
8 file with the clerk of the court at the time of arraignment  
9 a list of the witnesses the prosecution intends to call. The  
10 prosecution may, any time after arraignment, add to the list  
11 the names of any additional witnesses upon a showing of good  
12 cause. The list shall include the names and addresses of the  
13 witnesses. This subsection does not apply to rebuttal  
14 witnesses.

15 (2) (a) For purpose of notice only and to prevent  
16 surprise, the defendant shall furnish to the prosecution and  
17 file with the clerk of the court, at the time of entering  
18 his plea of not guilty or within 10 days thereafter or at  
19 such later time as the court may for good cause permit, a  
20 statement of intention to interpose the defense of mental  
21 ~~disease or defect, self-defense or alibi~~ or the defense  
22 that the defendant did not have a particular state of mind  
23 that is an essential element of the offense charged.

24 (b) If the defendant intends to interpose any of these  
25 defenses, he shall also furnish to the prosecution and file

1 with the clerk of the court the names and addresses of all  
2 witnesses to be called by the defense in support thereof.  
3 Prior to trial the defendant may, upon motion and showing of  
4 good cause, add to the list of witnesses the names of any  
5 additional witnesses. After the trial commences, no  
6 witnesses may be called by the defendant in support of these  
7 defenses unless the name of the witness is included on the  
8 list, except upon good cause shown."

9 Section 14. Repealer. Sections ~~46-14-101 and 46-14-211~~  
10 ~~AND 46-14-301 THROUGH 46-15-301, MCA, are repealed~~ SECTION  
11 ~~46-14-211, MCA, IS REPEALED.~~

-End-

## HOUSE BILL NO. 877

INTRODUCED BY KEEDY, SEIFERT, CONROY, SCULLY, FABREGA, GOULD,  
 MAGONE, KANDUCH, NORDTVEDT, MARKS, FAGG, PORTER, C. SMITH,  
 DONALDSON, FEDA, CURTISS, ELLISON, PISTORIA,  
 STAIGMILLER, MANNING, K. ROBBINS, UNDERDAL,  
 FRATES, SALES, PAVLOVICH, UMDE, DOZIER,  
 BAETH, MANUEL, HEMSTAD, MEYER, EUDAILY,  
 DAY, STOBIE, KVAALEN, HAYNE

A BILL FOR AN ACT ENTITLED: "AN ACT TO ABOLISH THE DEFENSE  
 OF MENTAL DISEASE OR DEFECT IN CRIMINAL ACTIONS AND TO  
PROVIDE AN ALTERNATIVE SENTENCING PROCEDURE TO BE FOLLOWED  
WHEN A CONVICTED DEFENDANT IS FOUND TO HAVE BEEN SUFFERING  
FROM A MENTAL DISEASE OR DEFECT AT THE TIME OF THE  
COMMISSION OF THE OFFENSE OF WHICH HE WAS CONVICTED;  
 AMENDING SECTIONS ~~46-14-101~~, 46-14-201 THROUGH 46-14-203,  
 46-14-212, ~~46-14-212~~, 46-14-213, 46-14-221, 46-14-222,  
 46-14-301, ~~46-14-301~~, ~~46-14-401~~, AND 46-15-301, MCA; AND  
 REPEALING SECTIONS ~~46-14-101~~ AND SECTION 46-14-211 AND  
~~46-14-301 THROUGH 46-14-304~~, MCA."

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

SECTION 1. SECTION 46-14-101, MCA, IS AMENDED TO READ:  
 "46-14-101. Mental disease or defect ~~excluding~~  
 responsibility. ~~(1) A person is not responsible for criminal~~

~~conduct if at the time of such conduct as a result of mental~~  
~~disease or defect he is unable either to appreciate the~~  
~~criminality of his conduct or to conform his conduct to the~~  
~~requirements of law~~

(2) As used in this chapter, the term "mental disease  
 or defect" does not include an abnormality manifested only  
 by repeated criminal or other antisocial conduct."

Section 2. Section 46-14-201, MCA, is amended to read:

"46-14-201. ~~Affirmative defense requirement~~  
~~Requirement~~ of notice -- form of verdict and judgment. ~~(1)~~  
~~Mental disease or defect excluding responsibility is an~~  
~~affirmative defense which the defendant must establish by a~~  
~~preponderance of the evidence.~~

(2)(1) Evidence of mental disease or defect excluding  
 responsibility is not admissible in a trial on the merits  
 unless the defendant, at the time of entering his plea of  
 not guilty or within 10 days thereafter or at such later  
 time as the court may for good cause permit, files a written  
 notice of his purpose to rely on such defense.

~~(3) The defendant shall give similar notice when, in a~~  
~~trial on the merits, he intends to rely on a mental disease~~  
~~or defect to prove that he did not have a particular state~~  
~~of mind which is an essential element of the offense~~  
~~charged. Otherwise, except on good cause shown, he shall not~~  
~~introduce in his case in chief expert testimony in support~~

1 of that defense.

2 ~~(4)(2)~~ When the defendant is acquitted on the ground  
3 of ~~that due to a~~ mental disease or defect excluding  
4 ~~responsibility he could not have a particular state of mind~~  
5 ~~that is an essential element of the offense charged,~~ the  
6 verdict and the judgment shall so state."

7 Section 3. Section 46-14-202, MCA, is amended to read:

8 "46-14-202. Psychiatric examination of defendant. (1)  
9 ~~When the defendant has filed a notice of intention to rely~~  
10 ~~on the defense of mental disease or defect excluding~~  
11 ~~responsibility or there is reason to doubt his the~~  
12 ~~defendant's~~ fitness to proceed or reason to believe that  
13 mental disease or defect of the defendant will otherwise  
14 become an issue in the cause, the court shall appoint at  
15 least one qualified psychiatrist or shall request the  
16 superintendent of Warm Springs state hospital to designate  
17 at least one qualified psychiatrist, which designation may  
18 be or include himself, to examine and report upon the mental  
19 condition of the defendant.

20 (2) The court may order the defendant to be committed  
21 to a hospital or other suitable facility for the purpose of  
22 the examination for a period of not exceeding 60 days or  
23 such longer period as the court determines to be necessary  
24 for the purpose and may direct that a qualified psychiatrist  
25 retained by the defendant be permitted to witness and

1 participate in the examination.

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

6 Section 4. Section 46-14-203, MCA, is amended to read:

7 "46-14-203. Report of the examination. (1) The report  
8 of the examination shall include the following:

9 (a) a description of the nature of the examination;  
10 (b) a diagnosis of the mental condition of the  
11 defendant;

12 (c) if the defendant suffers from a mental disease or  
13 defect, an opinion as to his capacity to understand the  
14 proceedings against him and to assist in his own defense;  
15 and

16 ~~(d) when a notice of intention to rely on the defense~~  
17 ~~of irresponsibility has been filed, an opinion as to the~~  
18 ~~ability of the defendant to appreciate the criminality of~~  
19 ~~his conduct or to conform his conduct to the requirements of~~  
20 ~~law at the time of the criminal conduct charged; and~~

21 ~~(e)(d)~~ when directed by the court, an opinion as to  
22 the capacity of the defendant to have a particular state of  
23 mind which is an element of the offense charged.

24 (2) If the examination cannot be conducted by reason  
25 of the unwillingness of the defendant to participate

1 therein, the report shall so state and shall include, if  
 2 possible, an opinion as to whether the unwillingness of the  
 3 defendant was the result of mental disease or defect.

4 (3) The report of the examination shall be filed in  
 5 triplicate with the clerk of court, who shall deliver copies  
 6 to the county attorney and to counsel for the defendant."

7 ~~Section 4. Section 46-14-212, MCA, is amended to read:~~  
 8 ~~"46-14-212. Examination by psychiatrist chosen by~~  
 9 ~~state or defendant. If either the defendant or the state~~  
 10 ~~wishes the defendant to be examined by a qualified~~  
 11 ~~psychiatrist or other expert selected by the one proposing~~  
 12 ~~the examination in order to determine the defendant's~~  
 13 ~~fitness to proceed or whether he had, at the time the~~  
 14 ~~offense was committed, a particular state of mind which is~~  
 15 ~~an essential element of the offense, the examiner shall be~~  
 16 ~~permitted to have reasonable access to the defendant for the~~  
 17 ~~purpose of the examination."~~

18 SECTION 5. SECTION 46-14-212, MCA, IS AMENDED TO READ:

19 "46-14-212. Examination by psychiatrist chosen by  
 20 state or defendant. If either the defendant or the state  
 21 wishes the defendant to be examined by a qualified  
 22 psychiatrist or other expert selected by the one proposing  
 23 the examination in order to determine the defendant's  
 24 fitness to proceed or whether he had, at the time the  
 25 offense was committed, a particular state of mind which is

1 an essential element of the offense, the examiner shall be  
 2 permitted to have reasonable access to the defendant for the  
 3 purpose of the examination."

4 Section 6. Section 46-14-213, MCA, is amended to read:

5 "46-14-213. Psychiatric testimony upon trial. (1) Upon  
 6 the trial, any psychiatrist who reported under 46-14-202 and  
 7 46-14-203 may be called as a witness by the prosecution or  
 8 by the defense. If the issue is being tried before a jury,  
 9 the jury may not be informed that the psychiatrist was  
 10 designated by the court or by the superintendent of Warm  
 11 Springs state hospital. Both the prosecution and the  
 12 defense may summon any other qualified psychiatrist or other  
 13 expert to testify, but no one who has not examined the  
 14 defendant is competent to testify to an expert opinion with  
 15 respect to the mental condition ~~or responsibility~~ of the  
 16 defendant, as distinguished from the validity of the  
 17 procedure followed by or the general scientific propositions  
 18 stated by another witness.

19 (2) When a psychiatrist or other expert who has  
 20 examined the defendant testifies concerning the defendant's  
 21 mental condition, he may make a statement as to the nature  
 22 of his examination, his diagnosis of the mental condition of  
 23 the defendant at the time of the commission of the offense  
 24 charged, and his opinion as to the ability of the defendant  
 25 to ~~appreciate the criminality of his conduct, to conform his~~



1 ~~conduct to the requirements of law or to~~ have a particular  
2 state of mind which is an element of the offense charged.  
3 The expert may make any explanation reasonably serving to  
4 clarify his diagnosis and opinion and may be cross-examined  
5 as to any matter bearing on his competency or credibility or  
6 the validity of his diagnosis or opinion."

7 Section 7. Section 46-14-221, MCA, is amended to read:

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

22 (2) If the court determines that the defendant lacks  
23 fitness to proceed, the proceeding against him shall be  
24 suspended, except as provided in subsection (4) of this  
25 section, and the court shall commit him to the custody of

1 the director of the department of institutions to be placed  
2 in an appropriate institution of the department of  
3 institutions for so long as the unfitness endures.

4 (3) If the court determines that the defendant lacks  
5 fitness to proceed due to the fact that the person is  
6 developmentally disabled, as defined by 53-20-102, the  
7 proceeding against him shall be suspended, except as  
8 provided in subsection (4) of this section, and the court  
9 shall proceed to secure treatment as provided in chapter 20,  
10 part 1, or chapter 21, part 1, of Title 53.

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

15 (5) The expenses of sending the defendant to the  
16 custody of the director of the department of institutions to  
17 be placed in an appropriate institution of the state  
18 department of institutions, of keeping him there, and of  
19 bringing him back are in the first instance chargeable to  
20 the county in which the indictment was found or the  
21 information filed; but the county may recover them from the  
22 estate of the defendant, if he has any, or from a town,  
23 city, or county bound to provide for and maintain him  
24 elsewhere."

25 Section 8. Section 46-14-222, MCA, is amended to read:

1 "46-14-222. Proceedings if fitness regained. When the  
 2 court, on its own motion or upon the application of the  
 3 director of the department of institutions, the county  
 4 attorney, or the defendant or his legal representative,  
 5 determines, after a hearing if a hearing is requested, that  
 6 the defendant has regained fitness to proceed, the  
 7 proceeding shall be resumed. If, however, the court is of  
 8 the view that so much time has elapsed since the commitment  
 9 of the defendant that it would be unjust to resume the  
 10 criminal proceedings, the court may dismiss the charge and  
 11 may order the defendant to be discharged or, subject to the  
 12 law governing the civil commitment of persons suffering from  
 13 serious mental disease or defect illness, order the  
 14 defendant committed to an appropriate institution of the  
 15 department of institutions."

16 Section 8, Section 46-14-301, MCA, is amended to read:

17 "46-14-301. Commitment upon acquittal on the ground of  
 18 irresponsibility lack of mental state -- hearing to  
 19 determine release or discharge. (1) When a defendant is  
 20 acquitted on the ground of that due to a mental disease or  
 21 defect excluding responsibility he could not have a  
 22 particular state of mind that is an essential element of the  
 23 offense charged, the court shall order him committed to the  
 24 custody of the superintendent of Warm Springs state hospital  
 25 to be placed in an appropriate institution for custody

1 ~~care and treatment~~

2 ~~(2) A person so confined shall have a hearing, unless~~  
 3 ~~waived, within 58 days of his confinement to determine his~~  
 4 ~~present mental condition and whether he may be discharged or~~  
 5 ~~released without danger to others. The court shall cause~~  
 6 ~~notice of the hearing to be served upon the person, his~~  
 7 ~~counsel, and the prosecuting attorney. Such a hearing shall~~  
 8 ~~be deemed a civil proceeding, and the burden shall be upon~~  
 9 ~~the defendant to prove by a preponderance of the evidence~~  
 10 ~~that he may be safely released.~~

11 ~~(3) According to the determination of the court upon~~  
 12 ~~the hearing, the defendant shall be discharged or released~~  
 13 ~~on such conditions as the court determines to be necessary~~  
 14 ~~or shall be committed to the custody of the superintendent~~  
 15 ~~of the Warm Springs state hospital to be placed in an~~  
 16 ~~appropriate institution for custody, care, and treatment."~~

17 SECTION 9. SECTION 46-14-301, MCA, IS AMENDED TO READ:

18 "46-14-301. Commitment upon acquittal on the ground of  
 19 irresponsibility lack of mental state -- hearing to  
 20 determine release or discharge. (1) When a defendant is  
 21 acquitted on the ground of that due to a mental disease or  
 22 defect excluding responsibility he could not have a  
 23 particular state of mind that is an essential element of the  
 24 offense charged, the court shall order him committed to the  
 25 custody of the superintendent of Warm Springs state hospital

1 to be placed in an appropriate institution for custody,  
2 care, and treatment.

3 (2) A person so confined shall have a hearing, unless  
4 waived, within 50 days of his confinement to determine his  
5 present mental condition and whether he may be discharged or  
6 released without danger to others. The court shall cause  
7 notice of the hearing to be served upon the person, his  
8 counsel, and the prosecuting attorney. Such a hearing shall  
9 be deemed a civil proceeding, and the burden shall be upon  
10 the defendant to prove by a preponderance of the evidence  
11 that he may be safely released.

12 (3) According to the determination of the court upon  
13 the hearing, the defendant shall be discharged or released  
14 on such conditions as the court determines to be necessary  
15 or shall be committed to the custody of the superintendent  
16 of the Warm Springs state hospital to be placed in an  
17 appropriate institution for custody, care, and treatment."

18 SECTION 10. THERE IS A NEW MCA SECTION THAT READS:

19 Consideration of mental disease or defect in  
20 sentencing. Whenever a defendant is convicted on a verdict  
21 or a plea of guilty and he claims that at the time of the  
22 commission of the offense of which he was convicted he was  
23 ~~unable as a result of~~ SUFFERING FROM A mental disease or  
24 defect ~~either~~ WHICH RENDERED HIM UNABLE to appreciate the  
25 criminality of his conduct or to conform his conduct to the

1 requirements of law, the sentencing court shall consider  
2 ~~evidence obtained as provided in 46-14-202 and 46-14-203 and~~  
3 any other relevant evidence presented at the trial and shall  
4 require such additional evidence as it considers necessary  
5 for the determination of the issue, including examination of  
6 the defendant and a report thereof as provided in 46-14-202  
7 and 46-14-203.

8 SECTION 11. THERE IS A NEW MCA SECTION THAT READS:

9 Sentence to be imposed. (1) If the court finds that the  
10 defendant at the time of the commission of the offense of  
11 which he was convicted did not suffer from a mental disease  
12 or defect as described in [section 8 2], it shall sentence  
13 him as provided in Title 46, chapter 18.

14 (2) If the court finds that the defendant at the time  
15 of the commission of the offense suffered from a mental  
16 disease or defect as described in [section 8 2], any  
17 mandatory minimum sentence prescribed by law for the offense  
18 ~~does~~ NEED not apply and the court shall sentence him to+

19 ~~(a) be committed to the custody of the superintendent~~  
20 ~~of Warm Springs state hospital~~ DIRECTOR OF THE DEPARTMENT OF  
21 INSTITUTIONS to be placed in an appropriate institution for  
22 custody, care, and treatment for a DEFINITE period DE TIME  
23 not to exceed the maximum term of imprisonment that could be  
24 imposed under subsection (1) ~~or~~ a

25 (b) undergo for such a period any other appropriate

1 course of treatment that is accepted by the medical  
 2 profession and that will not present a danger to the public.  
 3 THE AUTHORITY OF THE COURT WITH REGARD TO SENTENCING IS THE  
 4 SAME AS AUTHORIZED IN TITLE 46, CHAPTER 18, PROVIDED THE  
 5 TREATMENT OF THE INDIVIDUAL AND THE PROTECTION OF THE PUBLIC  
 6 ARE PROVIDED FOR.

7 ~~{3} If the court sentences the defendant under~~  
 8 ~~subsection (2)(a), it may provide that the professional~~  
 9 ~~person in charge of the institution in which the defendant~~  
 10 ~~is placed may release the defendant on condition after a~~  
 11 ~~specified period of time that is less than his period of~~  
 12 ~~commitment if the professional person determines that the~~  
 13 ~~defendant has been cured of the mental disease or defect~~  
 14 ~~found by the court and is no longer a danger to himself or~~  
 15 ~~others; if the professional person releases the defendant~~  
 16 ~~pursuant to this subsection, he shall report the release and~~  
 17 ~~the conditions placed on it to the court.~~

18 ~~{4}(3) A defendant whose disposition or sentence does~~  
 19 ~~not allow for conditional release by the professional person~~  
 20 ~~in charge of the institution, as provided in subsection (3),~~  
 21 WHOSE SENTENCE HAS BEEN IMPOSED UNDER [SECTION 11(2)], may  
 22 petition the sentencing court for review of the sentence if  
 23 the professional person certifies that the defendant has  
 24 been cured of the mental disease or defect. The sentencing  
 25 court may make any order not inconsistent with its original

1 sentencing authority except that the length of confinement  
 2 or supervision ~~may not be increased~~ MUST BE EQUAL TO THAT OF  
 3 THE ORIGINAL SENTENCE. The professional person shall review  
 4 the defendant's status each year.

5 ~~SECTION 10. THERE IS A NEW MCA SECTION THAT READS:~~

6 ~~Recommitment after conditional release. If before the~~  
 7 ~~expiration of the period of commitment the court determines~~  
 8 ~~after hearing evidence that a defendant who has been~~  
 9 ~~released under [section 9(3)] has not fulfilled the~~  
 10 ~~conditions of his release and that for his own safety or the~~  
 11 ~~safety of others his conditional release should be revoked,~~  
 12 ~~the court shall immediately order him to be recommitted to~~  
 13 ~~the custody of the superintendent of Warm Springs state~~  
 14 ~~hospital to be placed in the same or another appropriate~~  
 15 ~~institution for custody, care, and treatment.~~

16 SECTION 12. THERE IS A NEW MCA SECTION THAT READS:

17 Discharge of defendant from supervision. At the  
 18 expiration of the period of commitment or period of  
 19 treatment specified by the court under [section 9 11(2)],  
 20 the defendant must be discharged from custody and further  
 21 supervision, subject only to the law regarding the civil  
 22 commitment of persons suffering from serious mental illness.

23 SECTION 13. SECTION 46-14-401, MCA, IS AMENDED TO  
 24 READ:

25 "46-14-401. Admissibility of statements made during

1 examination or treatment. A statement made for the purposes  
 2 of psychiatric examination or treatment provided for in this  
 3 chapter by a person subjected to such examination or  
 4 treatment is not admissible in evidence against him in any  
 5 criminal proceeding, except a sentencing hearing conducted  
 6 under [section 9] or a hearing on recidivism conducted  
 7 under [section 10-11], on any issue other than that of his  
 8 mental condition. It is admissible on the issue of his  
 9 mental condition, whether or not it would otherwise be  
 10 considered a privileged communication, unless it constitutes  
 11 an admission of guilt of the crime charged. In a hearing  
 12 held under [section 9] or [section 10-11], the court may  
 13 hear and consider any such statement even if it constitutes  
 14 an admission of guilt."

15 Section 14. Section 46-15-301, MCA, is amended to  
 16 read:

17 "46-15-301. Discovery of witnesses, notice of certain  
 18 defenses. In all criminal cases originally triable in  
 19 district court the following rules apply:

20 (1) For the purpose of notice only and to prevent  
 21 surprise, the prosecution shall furnish to the defendant and  
 22 file with the clerk of the court at the time of arraignment  
 23 a list of the witnesses the prosecution intends to call. The  
 24 prosecution may, any time after arraignment, add to the list  
 25 the names of any additional witnesses upon a showing of good

1 cause. The list shall include the names and addresses of the  
 2 witnesses. This subsection does not apply to rebuttal  
 3 witnesses.

4 (2) (a) For purpose of notice only and to prevent  
 5 surprise, the defendant shall furnish to the prosecution and  
 6 file with the clerk of the court, at the time of entering  
 7 his plea of not guilty or within 10 days thereafter or at  
 8 such later time as the court may for good cause permit, a  
 9 statement of intention to interpose the defense of mental  
 10 disease or defect, self-defense, or alibi or the defense  
 11 that the defendant did not have a particular state of mind  
 12 that is an essential element of the offense charged.

13 (b) If the defendant intends to interpose any of these  
 14 defenses, he shall also furnish to the prosecution and file  
 15 with the clerk of the court the names and addresses of all  
 16 witnesses to be called by the defense in support thereof.  
 17 Prior to trial the defendant may, upon motion and showing of  
 18 good cause, add to the list of witnesses the names of any  
 19 additional witnesses. After the trial commences, no  
 20 witnesses may be called by the defendant in support of these  
 21 defenses unless the name of the witness is included on the  
 22 list, except upon good cause shown."

23 Section 15. Repealer. ~~Sections 46-14-101 and 46-14-211~~  
 24 ~~AND 46-14-301 THROUGH 46-14-304, MCA, are repealed~~ SECTION  
 25 ~~46-14-211, MCA, IS REPEALED.~~

## HOUSE BILL NO. 877

INTRODUCED BY KEEDY, SEIFERT, CONROY, SCULLY, FABREGA, GOULD,  
MAGONE, KANDUCH, NORDTVEDT, MARKS, FAGG, PORTER, C. SMITH,  
DONALDSON, FEDA, CURTISS, ELLISON, PISTORIA,  
STAIGMILLER, MANNING, K. ROBBINS, UNDERDAL,  
FRATES, SALES, PAVLOVICH, UHDE, DOZIER,  
BAETH, MANUEL, HEMSTAD, MEYER, EUDAILY,  
DAY, STOBIE, KVAALEN, HAYNE

A BILL FOR AN ACT ENTITLED: "AN ACT TO ABOLISH THE DEFENSE  
OF MENTAL DISEASE OR DEFECT IN CRIMINAL ACTIONS ~~AND TO  
PROVIDE AN ALTERNATIVE SENTENCING PROCEDURE TO BE FOLLOWED  
WHEN A CONVICTED DEFENDANT IS FOUND TO HAVE BEEN SUFFERING  
FROM A MENTAL DISEASE OR DEFECT AT THE TIME OF THE  
COMMISSION OF THE OFFENSE OF WHICH HE WAS CONVICTED;~~  
AMENDING SECTIONS ~~46-14-101,~~ 46-14-201 THROUGH 46-14-203,  
~~46-14-212,~~ ~~46-14-212,~~ 46-14-213, 46-14-221, 46-14-222,  
46-14-301 ~~46-14-301,~~ ~~46-14-401,~~ AND 46-15-301, MCA; AND  
REPEALING SECTIONS ~~46-14-101~~ ~~AND~~ SECTION 46-14-211 ~~AND~~  
~~46-14-301 THROUGH 46-14-304,~~ MCA."

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

SECTION 1. SECTION 46-14-101, MCA, IS AMENDED TO READ:

"46-14-101. Mental disease or defect excluding  
responsibility. ~~{1} A person is not responsible for criminal~~

~~conduct if at the time of such conduct as a result of mental  
disease or defect he is unable either to appreciate the  
criminality of his conduct or to conform his conduct to the  
requirements of law~~

{2} As used in this chapter, the term "mental disease  
or defect" does not include an abnormality manifested only  
by repeated criminal or other antisocial conduct."

Section 2. Section 46-14-201, MCA, is amended to read:

"46-14-201. ~~Affirmative defense requirement~~  
Requirement of notice -- form of verdict and judgment. ~~{1}~~  
~~Mental disease or defect excluding responsibility is an~~  
~~affirmative defense which the defendant must establish by a~~  
~~preponderance of the evidence~~

{2}{1} Evidence of mental disease or defect excluding  
responsibility is not admissible in a trial on the merits  
unless the defendant, at the time of entering his plea of  
not guilty or within 10 days thereafter or at such later  
time as the court may for good cause permit, files a written  
notice of his purpose to rely on such defense

~~{3} The defendant shall give similar notice when, in a~~  
~~trial on the merits, he intends to rely on a mental disease~~  
~~or defect to prove that he did not have a particular state~~  
~~of mind which is an essential element of the offense~~  
~~charged. Otherwise, except on good cause shown, he shall not~~  
~~introduce in his case in chief expert testimony in support~~

1 of that defense.

2 ~~(1)~~ (2) When the defendant is acquitted on the ground  
 3 of that due to a mental disease or defect excluding  
 4 responsibility he could not have a particular state of mind  
 5 that is an essential element of the offense charged, the  
 6 verdict and the judgment shall so state."

7 Section 3. Section 46-14-202, MCA, is amended to read:

8 "46-14-202. Psychiatric examination of defendant. (1)  
 9 ~~When the defendant has filed a notice of intention to rely~~  
 10 ~~on the defense of mental disease or defect excluding~~  
 11 ~~responsibility or there is reason to doubt his~~ the  
 12 defendant's fitness to proceed or reason to believe that  
 13 mental disease or defect of the defendant will otherwise  
 14 become an issue in the cause, the court shall appoint at  
 15 least one qualified psychiatrist or shall request the  
 16 superintendent of Warm Springs state hospital to designate  
 17 at least one qualified psychiatrist, which designation may  
 18 be or include himself, to examine and report upon the mental  
 19 condition of the defendant.

20 (2) The court may order the defendant to be committed  
 21 to a hospital or other suitable facility for the purpose of  
 22 the examination for a period of not exceeding 60 days or  
 23 such longer period as the court determines to be necessary  
 24 for the purpose and may direct that a qualified psychiatrist  
 25 retained by the defendant be permitted to witness and

1 participate in the examination.

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

6 Section 4. Section 46-14-203, MCA, is amended to read:

7 "46-14-203. Report of the examination. (1) The report  
 8 of the examination shall include the following:

- 9 (a) a description of the nature of the examination;
- 10 (b) a diagnosis of the mental condition of the
- 11 defendant;
- 12 (c) if the defendant suffers from a mental disease or

13 defect, an opinion as to his capacity to understand the  
 14 proceedings against him and to assist in his own defense;  
 15 and

16 ~~(d) when a notice of intention to rely on the defense~~  
 17 ~~of irresponsibility has been filed, an opinion as to the~~  
 18 ~~ability of the defendant to appreciate the criminality of~~  
 19 ~~his conduct or to conform his conduct to the requirements of~~  
 20 ~~law at the time of the criminal conduct charged; and~~

21 ~~(e)~~ (d) when directed by the court, an opinion as to  
 22 the capacity of the defendant to have a particular state of  
 23 mind which is an element of the offense charged.

24 (2) If the examination cannot be conducted by reason  
 25 of the unwillingness of the defendant to participate

1 therein, the report shall so state and shall include, if  
2 possible, an opinion as to whether the unwillingness of the  
3 defendant was the result of mental disease or defect.

4 (3) The report of the examination shall be filed in  
5 triplicate with the clerk of court, who shall deliver copies  
6 to the county attorney and to counsel for the defendant."

7 ~~Section 46-14-212, MCA, is amended to read:~~  
8 ~~"46-14-212. Examination by psychiatrist chosen by~~  
9 ~~state or defendant. If either the defendant or the state~~  
10 ~~wishes the defendant to be examined by a qualified~~  
11 ~~psychiatrist or other expert selected by the one proposing~~  
12 ~~the examination in order to determine the defendant's~~  
13 ~~fitness to proceed or whether he had, at the time the~~  
14 ~~offense was committed, a particular state of mind which is~~  
15 ~~an essential element of the offense, the examiner shall be~~  
16 ~~permitted to have reasonable access to the defendant for the~~  
17 ~~purpose of the examination."~~

18 SECTION 5. SECTION 46-14-212, MCA, IS AMENDED TO READ:  
19 "46-14-212. Examination by psychiatrist chosen by  
20 state or defendant. If either the defendant or the state  
21 wishes the defendant to be examined by a qualified  
22 psychiatrist or other expert selected by the one proposing  
23 the examination in order to determine the defendant's  
24 fitness to proceed or whether he had, at the time the  
25 offense was committed, a particular state of mind which is

1 an essential element of the offense, the examiner shall be  
2 permitted to have reasonable access to the defendant for the  
3 purpose of the examination."

4 Section 6. Section 46-14-213, MCA, is amended to read:  
5 "46-14-213. Psychiatric testimony upon trial. (1) Upon  
6 the trial, any psychiatrist who reported under 46-14-202 and  
7 46-14-203 may be called as a witness by the prosecution or  
8 by the defense. If the issue is being tried before a jury,  
9 the jury may not be informed that the psychiatrist was  
10 designated by the court or by the superintendent of Warm  
11 Springs state hospital. Both the prosecution and the  
12 defense may summon any other qualified psychiatrist or other  
13 expert to testify, but no one who has not examined the  
14 defendant is competent to testify to an expert opinion with  
15 respect to the mental condition or responsibility of the  
16 defendant, as distinguished from the validity of the  
17 procedure followed by or the general scientific propositions  
18 stated by another witness.

19 (2) When a psychiatrist or other expert who has  
20 examined the defendant testifies concerning the defendant's  
21 mental condition, he may make a statement as to the nature  
22 of his examination, his diagnosis of the mental condition of  
23 the defendant at the time of the commission of the offense  
24 charged, and his opinion as to the ability of the defendant  
25 to appreciate the criminality of his conduct to conform his



1 ~~conduct-to-the-requirements-of-law-or-to~~ have a particular  
 2 state of mind which is an element of the offense charged.  
 3 The expert may make any explanation reasonably serving to  
 4 clarify his diagnosis and opinion and may be cross-examined  
 5 as to any matter bearing on his competency or credibility or  
 6 the validity of his diagnosis or opinion."

7 Section 7. Section 46-14-221, MCA, is amended to read:

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

22 (2) If the court determines that the defendant lacks  
 23 fitness to proceed, the proceeding against him shall be  
 24 suspended, except as provided in subsection (4) of this  
 25 section, and the court shall commit him to the custody of

1 the director of the department of institutions to be placed  
 2 in an appropriate institution of the department of  
 3 institutions for so long as the unfitness endures.

4 (3) If the court determines that the defendant lacks  
 5 fitness to proceed due to the fact that the person is  
 6 developmentally disabled, as defined by 53-20-102, the  
 7 proceeding against him shall be suspended, except as  
 8 provided in subsection (4) of this section, and the court  
 9 shall proceed to secure treatment as provided in chapter 20,  
 10 part 1, or chapter 21, part 1, of Title 53.

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

15 (5) The expenses of sending the defendant to the  
 16 custody of the director of the department of institutions to  
 17 be placed in an appropriate institution of the state  
 18 department of institutions, of keeping him there, and of  
 19 bringing him back are in the first instance chargeable to  
 20 the county in which the indictment was found or the  
 21 information filed; but the county may recover them from the  
 22 estate of the defendant, if he has any, or from a town,  
 23 city, or county bound to provide for and maintain him  
 24 elsewhere."

25 Section 8. Section 46-14-222, MCA, is amended to read:

1       "46-14-222. Proceedings if fitness regained. When the  
2 court, on its own motion or upon the application of the  
3 director of the department of institutions, the county  
4 attorney, or the defendant or his legal representative,  
5 determines, after a hearing if a hearing is requested, that  
6 the defendant has regained fitness to proceed, the  
7 proceeding shall be resumed. If, however, the court is of  
8 the view that so much time has elapsed since the commitment  
9 of the defendant that it would be unjust to resume the  
10 criminal proceedings, the court may dismiss the charge and  
11 may order the defendant to be discharged or, subject to the  
12 law governing the civil commitment of persons suffering from  
13 serious mental disease or defect illness, order the  
14 defendant committed to an appropriate institution of the  
15 department of institutions."

16       ~~Section 9. Section 46-14-301, MCA, is amended to read:~~

17       ~~"46-14-301. Commitment upon acquittal on the ground of~~  
18 ~~irresponsibility lack of mental state --- hearing to~~  
19 ~~determine release or discharge. (1) When a defendant is~~  
20 ~~acquitted on the ground of that due to a mental disease or~~  
21 ~~defect excluding responsibility he could not have a~~  
22 ~~particular state of mind that is an essential element of the~~  
23 ~~offense charged, the court shall order him committed to the~~  
24 ~~custody of the superintendent of Warm Springs state hospital~~  
25 ~~to be placed in an appropriate institution for custody~~

1       ~~care and treatment.~~

2       ~~(2) A person so confined shall have a hearing unless~~  
3 ~~waived, within 50 days of his confinement to determine his~~  
4 ~~present mental condition and whether he may be discharged or~~  
5 ~~released without danger to others. The court shall cause~~  
6 ~~notice of the hearing to be served upon the person, his~~  
7 ~~counsel, and the prosecuting attorneys. Such a hearing shall~~  
8 ~~be deemed a civil proceeding, and the burden shall be upon~~  
9 ~~the defendant to prove by a preponderance of the evidence~~  
10 ~~that he may be safely released.~~

11       ~~(3) According to the determination of the court upon~~  
12 ~~the hearing, the defendant shall be discharged or released~~  
13 ~~on such conditions as the court determines to be necessary~~  
14 ~~or shall be committed to the custody of the superintendent~~  
15 ~~of the Warm Springs state hospital to be placed in an~~  
16 ~~appropriate institution for custody, care and treatment."~~

17       ~~SECTION 9. SECTION 46-14-301, MCA, IS AMENDED TO READ:~~

18       ~~"46-14-301. Commitment upon acquittal on the ground of~~  
19 ~~irresponsibility lack of mental state -- hearing to~~  
20 ~~determine release or discharge. (1) When a defendant is~~  
21 ~~acquitted on the ground of that due to a mental disease or~~  
22 ~~defect excluding responsibility he could not have a~~  
23 ~~particular state of mind that is an essential element of the~~  
24 ~~offense charged, the court shall order him committed to the~~  
25 ~~custody of the superintendent of Warm Springs state hospital~~

1 to be placed in an appropriate institution for custody,  
2 care, and treatment.

3 (2) A person so confined shall have a hearing, unless  
4 waived, within 50 days of his confinement to determine his  
5 present mental condition and whether he may be discharged or  
6 released without danger to others. The court shall cause  
7 notice of the hearing to be served upon the person, his  
8 counsel, and the prosecuting attorney. Such a hearing shall  
9 be deemed a civil proceeding, and the burden shall be upon  
10 the defendant to prove by a preponderance of the evidence  
11 that he may be safely released.

12 (3) According to the determination of the court upon  
13 the hearing, the defendant shall be discharged or released  
14 on such conditions as the court determines to be necessary  
15 or shall be committed to the custody of the superintendent  
16 of the Warm Springs state hospital to be placed in an  
17 appropriate institution for custody, care, and treatment."

18 SECTION 10. THERE IS A NEW MCA SECTION THAT READS:

19 Consideration of mental disease or defect in  
20 sentencing. Whenever a defendant is convicted on a verdict  
21 or a plea of guilty and he claims that at the time of the  
22 commission of the offense of which he was convicted he was  
23 unable--as--a--result--of SUFFERING FROM A mental disease or  
24 defect either WHICH RENDERED HIM UNABLE to appreciate the  
25 criminality of his conduct or to conform his conduct to the

1 requirements of law, the sentencing court shall consider  
2 ~~evidence obtained as provided in 46-14-202 and 46-14-203 and~~  
3 any other relevant evidence presented at the trial and shall  
4 require such additional evidence as it considers necessary  
5 for the determination of the issue, including examination of  
6 the defendant and a report thereof as provided in 46-14-202  
7 and 46-14-203.

8 SECTION 11. THERE IS A NEW MCA SECTION THAT READS:

9 Sentence to be imposed. (1) If the court finds that the  
10 defendant at the time of the commission of the offense of  
11 which he was convicted did not suffer from a mental disease  
12 or defect as described in [section 8 2], it shall sentence  
13 him as provided in Title 46, chapter 18.

14 (2) If the court finds that the defendant at the time  
15 of the commission of the offense suffered from a mental  
16 disease or defect as described in [section 8 2], any  
17 mandatory minimum sentence prescribed by law for the offense  
18 does NEED not apply and the court shall sentence him to

19 {a} be committed to the custody of the superintendent  
20 of Warm Springs state hospital DIRECTOR OF THE DEPARTMENT OF  
21 INSTITUTIONS to be placed in an appropriate institution for  
22 custody, care, and treatment for a DEFINITE period OF TIME  
23 not to exceed the maximum term of imprisonment that could be  
24 imposed under subsection (1) or

25 {b} ~~undergo for such a period any other appropriate~~

1 course of treatment that is accepted by the medical  
 2 profession and that will not present a danger to the public  
 3 THE AUTHORITY OF THE COURT WITH REGARD TO SENTENCING IS THE  
 4 SAME AS AUTHORIZED IN TITLE 46, CHAPTER 18, PROVIDED THE  
 5 TREATMENT OF THE INDIVIDUAL AND THE PROTECTION OF THE PUBLIC  
 6 ARE PROVIDED FOR.

7 ~~{3}~~ If the court sentences the defendant under  
 8 subsection ~~{2}~~ ~~{a}~~, it may provide that the professional  
 9 person in charge of the institution in which the defendant  
 10 is placed may release the defendant on condition after a  
 11 specified period of time that is less than his period of  
 12 commitment if the professional person determines that the  
 13 defendant has been cured of the mental disease or defect  
 14 found by the court and is no longer a danger to himself or  
 15 others; if the professional person releases the defendant  
 16 pursuant to this subsection, he shall report the release and  
 17 the conditions placed on it to the court.

18 ~~{4}~~ {3} A defendant whose disposition or sentence does  
 19 not allow for conditional release by the professional person  
 20 in charge of the institution, as provided in subsection ~~{3}~~  
 21 WHOSE SENTENCE HAS BEEN IMPOSED UNDER [SECTION 11(2)], may  
 22 petition the sentencing court for review of the sentence if  
 23 the professional person certifies that the defendant has  
 24 been cured of the mental disease or defect. The sentencing  
 25 court may make any order not inconsistent with its original

1 sentencing authority except that the length of confinement  
 2 or supervision may not be increased MUST BE EQUAL TO THAT OF  
 3 THE ORIGINAL SENTENCE. The professional person shall review  
 4 the defendant's status each year.

5 ~~SECTION 10. THERE IS A NEW MCA SECTION THAT READS:~~

6 Recommitment after conditional release: If before the  
 7 expiration of the period of commitment the court determines  
 8 after hearing evidence that a defendant who has been  
 9 released under ~~[section 9(3)]~~ has not fulfilled the  
 10 conditions of his release and that for his own safety or the  
 11 safety of others his conditional release should be revoked,  
 12 the court shall immediately order him to be recommitted to  
 13 the custody of the superintendent of Warm Springs State  
 14 Hospital to be placed in the same or another appropriate  
 15 institution for custody, care, and treatment.

16 SECTION 12. THERE IS A NEW MCA SECTION THAT READS:

17 Discharge of defendant from supervision. At the  
 18 expiration of the period of commitment or period of  
 19 treatment specified by the court under [section 9 11(2)],  
 20 the defendant must be discharged from custody and further  
 21 supervision, subject only to the law regarding the civil  
 22 commitment of persons suffering from serious mental illness.

23 SECTION 13. SECTION 46-14-401, MCA, IS AMENDED TO  
 24 READ:

25 \*46-14-401. Admissibility of statements made during

1 examination or treatment. A statement made for the purposes  
 2 of psychiatric examination or treatment provided for in this  
 3 chapter by a person subjected to such examination or  
 4 treatment is not admissible in evidence against him in any  
 5 criminal proceeding, except a sentencing hearing conducted  
 6 under [section 9] or a hearing on recommitment conducted  
 7 under [section 10-11], on any issue other than that of his  
 8 mental condition. It is admissible on the issue of his  
 9 mental condition, whether or not it would otherwise be  
 10 considered a privileged communication, unless it constitutes  
 11 an admission of guilt of the crime charged. In a hearing  
 12 held under [section 9] or [section 10-11], the court may  
 13 hear and consider any such statement even if it constitutes  
 14 an admission of guilt."

15 Section 14. Section 46-15-301, MCA, is amended to  
 16 read:

17 "46-15-301. Discovery of witnesses, notice of certain  
 18 defenses. In all criminal cases originally triable in  
 19 district court the following rules apply:

20 (1) For the purpose of notice only and to prevent  
 21 surprise, the prosecution shall furnish to the defendant and  
 22 file with the clerk of the court at the time of arraignment  
 23 a list of the witnesses the prosecution intends to call. The  
 24 prosecution may, any time after arraignment, add to the list  
 25 the names of any additional witnesses upon a showing of good

1 cause. The list shall include the names and addresses of the  
 2 witnesses. This subsection does not apply to rebuttal  
 3 witnesses.

4 (2) (a) For purpose of notice only and to prevent  
 5 surprise, the defendant shall furnish to the prosecution and  
 6 file with the clerk of the court, at the time of entering  
 7 his plea of not guilty or within 10 days thereafter or at  
 8 such later time as the court may for good cause permit, a  
 9 statement of intention to interpose the defense of mental  
 10 ~~disease or defect~~, self-defense, or alibi or the defense  
 11 that the defendant did not have a particular state of mind  
 12 that is an essential element of the offense charged.

13 (b) If the defendant intends to interpose any of these  
 14 defenses, he shall also furnish to the prosecution and file  
 15 with the clerk of the court the names and addresses of all  
 16 witnesses to be called by the defense in support thereof.  
 17 Prior to trial the defendant may, upon motion and showing of  
 18 good cause, add to the list of witnesses the names of any  
 19 additional witnesses. After the trial commences, no  
 20 witnesses may be called by the defendant in support of these  
 21 defenses unless the name of the witness is included on the  
 22 list, except upon good cause shown."

23 Section 15. Repealer. ~~Sections 46-14-101 and 46-14-211~~  
 24 ~~AND 46-14-301 THROUGH 46-14-304, MCA, are repealed~~ SECTION  
 25 46-14-211, MCA, IS REPEALED.

March 22, 1979

SENATE STANDING COMMITTEE REPORT  
(Judiciary)

That House Bill No. 877, third reading bill, be amended as follows:

1. Title, line 5.

Following: "ACTIONS"

Insert: "AND TO PROVIDE AN ALTERNATIVE SENTENCING PROCEDURE TO BE FOLLOWED WHEN A CONVICTED DEFENDANT IS FOUND TO HAVE BEEN SUFFERING FROM A MENTAL DISEASE OR DEFECT AT THE TIME OF THE COMMISSION OF THE OFFENSE OF WHICH HE WAS CONVICTED"

2. Title, line 6.

Following: "SECTIONS"

Insert: "46-14-101,"

Following: "46-14-203,"

Strike: "46-14-212,"

3. Title, line 7.

Following: "46-14-222,"

Strike: "46-14-301"

Insert: "46-14-401"

4. Title, line 8.

Following: "SECTIONS"

Strike: "46-14-101 AND"

Following: "46-14-211"

Insert: "AND 46-14-301 THROUGH 46-14-304"

5. Page 1, line 11.

Following: line 10

Insert: "Section 1. Section 46-14-101, MCA, IS AMENDED TO READ:

"46-14-101. Mental disease or defect ~~excluding responsibility.~~

~~{1}--A person is not responsible for criminal conduct if at the~~

~~time of such conduct as a result of mental disease or defect~~

~~he is unable either to appreciate the criminality of his conduct~~

~~or to conform his conduct to the requirements of law.~~

{2} As used in this chapter, the term "mental disease or defect"

does not include an abnormality manifested only by repeated criminal

or other antisocial conduct."

Renumber: subsequent sections

6. Page 4, lines 10 through 20.

Strike: section 4 in its entirety

Renumber: subsequent sections

7. Page 8, line 8 through line 8 on page 9.

Strike: section 8 in its entirety

Renumber: subsequent sections

8. Page 9.

Following: line 8

Insert: "Section 8. THERE IS A NEW MCA SECTION THAT READS:

Consideration of mental disease or defect in sentencing. Whenever

a defendant is convicted on a verdict or a plea of guilty and he

claims that at the time of the commission of the offense of which

he was convicted he was unable as a result of mental disease or defect either to appreciate the criminality of his conduct or to conform his conduct to the requirements of law, the sentencing court shall consider evidence obtained as provided in 46-14-202 and 46-14-203 and any other relevant evidence presented at the trial and shall require such additional evidence as it considers necessary for the determination of the issue, including examination of the defendant and a report thereof as provided in 46-14-202 and 46-14-203.

Section 9. THERE IS A NEW MCA SECTION THAT READS:

Sentence to be imposed. (1) If the court finds that the defendant at the time of the commission of the offense of which he was convicted did not suffer from a mental disease or defect as described in [section 8], it shall sentence him as provided in Title 46, chapter 18

(2) If the court finds that the defendant at the time of the commission of the offense suffered from a mental disease or defect as described in [section 8], any mandatory minimum sentence prescribed by law for the offense does not apply and the court shall sentence him to:

(a) be committed to the custody of the superintendent of Warm Springs state hospital to be placed in an appropriate institution for custody, care, and treatment for a period not to exceed the maximum term of imprisonment that could be imposed under subsection (1); or

(b) undergo for such a period any other appropriate course of treatment that is accepted by the medical profession and that will not present a danger to the public.

(3) If the court sentences the defendant under subsection (2)(a), it may provide that the professional person in charge of the institution in which the defendant is placed may release the defendant on condition after a specified period of time that is less than his period of commitment if the professional person determines that the defendant has been cured of the mental disease or defect found by the court and is no longer a danger to himself or others. If the professional person releases the defendant pursuant to this subsection, he shall report the release and the conditions placed on it to the court.

(4) A defendant whose disposition or sentence does not allow for conditional release by the professional person in charge of the institution, as provided in subsection (3), may petition the sentencing court for review of the sentence if the professional person certifies that the defendant has been cured of the mental disease or defect. The sentencing court may make any order not inconsistent with its original sentencing authority except that the length of confinement or supervision may not be increased. -The professional person shall review the defendant's status each year.

Section 10. THERE IS A NEW MCA SECTION THAT READS:

Recommitment after conditional release. If before the expiration of the period of commitment the court determines after hearing evidence that a defendant who has been released under [section 9(3)] has not fulfilled the conditions of his release and that for his own safety or the safety of others his conditional release should be revoked, the court shall immediately order him to be recommitted to the custody of the superintendent of Warm Springs state hospital to be placed in the same or another appropriate institution for custody, care, and treatment.

Section 11. THERE IS A NEW MCA SECTION THAT READS:  
Discharge of defendant from supervision. At the expiration of the period of commitment or period of treatment specified by the court under [section 9(2)], the defendant must be discharged from custody and further supervision, subject only to the law regarding the civil commitment of persons suffering from serious mental illness.

Section 12. Section 46-14-401, MCA, IS AMENDED TO READ:  
"46-14-401. Admissibility of statements made during examination or treatment. A statement made for the purposes of psychiatric examination or treatment provided for in this chapter by a person subjected to such examination or treatment is not admissible in evidence against him in any criminal proceeding, except a sentencing hearing conducted under [section 8] or a hearing on recommitment conducted under [section 10], on any issue other than that of his mental condition. It is admissible on the issue of his mental condition, whether or not it would otherwise be considered a privileged communication, unless it constitutes an admission of guilt of the crime charged. In a hearing held under [section 8] or [section 10], the court may hear and consider any such statement even if it constitutes an admission of guilt."  
Renumber: all subsequent sections

9. Page 10, line 16.  
Strike: "46-14-101 and"

10. Page 10, line 17.  
Following: "46-14-211"  
Insert: "and 46-14-301 through 46-14-304"



March 26, 1979

SENATE COMMITTEE OF THE WHOLE

That House Bill No. 877, third reading bill, be amended as follows:

1. Amendment No. 3 is amended to read  
Title, line 7.

Following: "46-14-301"

Insert: "46-14-401"

2. Amendment No. 4 is amended to read  
Title, line 8.

Following: "REPEALING"

Strike: "SECTIONS 46-14-101 AND"

Insert: "SECTION"

3. Amendment No. 7 is stricken in its entirety  
Renumber: subsequent sections

4. Amendment No. 8 is amended to read  
Page 9.

Following: line 8

Insert: "Section 9. THERE IS A NEW MCA SECTION THAT READS:

Consideration of mental disease or defect in sentencing. Whenever a defendant is convicted on a verdict or a plea of guilty and he claims that at the time of the commission of the offense of which he was convicted he was unable as a result of mental disease or defect either which rendered him unable to appreciate the criminality of his conduct or to conform his conduct to the requirements of law, the sentencing court shall consider ~~evidence-obtained-as-provided-in-46-14-202-and 46-14-203-and~~ any other relevant evidence presented at the trial and shall require such additional evidence as it considers necessary for the determination of the issue, including examination of the defendant and a report thereof as provided in 46-14-202 and 46-14-203.

Section 10. THERE IS A NEW MCA SECTION THAT READS:

Sentence to be imposed. (1) If the court finds that the defendant at the time of the commission of the offense of which he was convicted did not suffer from a mental disease or defect as described in [section 8], it shall sentence him as provided in Title 46, chapter 18 (2) If the court finds that the defendant at the time of the commission of the offense suffered from a mental disease or defect as described in [section 8], any mandatory minimum sentence prescribed by law for the offense ~~does~~ need not apply and the court shall sentence him to: (a) be committed to the custody of the ~~superintendent-of-Warm-Springs-state-hospital~~ director of the department of institutions to be placed in an appropriate institution for custody, care, and treatment for a definite period of time not to exceed the maximum term of imprisonment that could be imposed under subsection (1); or (b) undergo for such a period any other appropriate course of treatment that is accepted by the medical profession and that will not present a danger to the public.

~~(3) -- If the court sentences the defendant under subsection (2) (a), it may provide that the professional person in charge of the institution in which the defendant is placed may release the defendant on condition after a specified period of time that is less than his period of com-~~

~~mitment-if-the-professional-person-determines-that-the-defendant-has been-cured-of-the-mental-disease-or-defect-found-by-the-court-and-is-no longer-a-danger-to-himself-or-others.--If-the-professional-person releases-the-defendant-pursuant-to-this-subsection,he-shall-report-the release-and-the-conditions-placed-on-it-to-the-court.~~

~~{4} (3) A defendant whose-disposition-or-sentence-does-not-allow-for conditional-release-by-the-professional-person-in-charge-of-the institution,as-provided-in-subsection-{3}, whose sentence has been imposed under [Section 10 (2)a], may petition the sentencing court for review of the sentence if the professional person certifies that the defendant has been cured of the mental disease or defect. The sentencing court may make any order not inconsistent with its original sentencing authority except that the length of confinement or supervision may-not-be-increased must be equal to that of the original sentence. The professional person shall review the defendant's status each year.~~

~~Section 10.--THERE-IS-A-NEW-MCA-SECTION-THAT-READS:  
Recommitment-after-conditional-release.--If-before-the-expiration of-the-period-of-commitment-the-court-determines-after-hearing evidence-that-a-defendant-who-has-been-released-under-{section-9-10-{3}} has-not-fulfilled-the-conditions-of-his-release-and-that-for-his-own safety-or-the-safety-of-others-his-conditional-release-should-be revoked, the-court-shall-immediately-order-him-to-be-recommitted-to-- the-custody-of-the-superintendent-of-Warm-Springs-state-hospital-to be-placed-in-the-same-or-another-appropriate-institution-for-custody, care, and-treatment.~~

Section 11. THERE IS A NEW MCA SECTION THAT READS:  
Discharge of defendant from supervision. At the expiration of the period of commitment or period of treatment specified by the court under [section 910 (2)], the defendant must be discharged from custody and further supervision, subject only to the law regarding the civil commitment of persons suffering from serious mental illness.

Section 12. Section 46-14-401, MCA, IS AMENDED TO READ:  
"46-14-401. Admissibility of statements made during examination or treatment. A statement made for the purposes of psychiatric examination or treatment provided for in this chapter by a person subjected to such examination or treatment is not admissible in evidence against him in any criminal proceeding, except a sentencing hearing conducted under [section 89] or a hearing on recommitment conducted under [section 10 11], on any issue other than that of his mental condition. It is admissible on the issue of his mental condition, whether or not it would otherwise be considered a privileged communication, unless it constitutes an admission of guilt of the crime charged. In a hearing held under [section 89] or [section 10 11], the court may hear and consider any such statement even if it constitutes an admission of guilt."

Renumber: all subsequent sections

5. Amendment No. 9 is amended to read  
Page 10, lines 16 and 17  
Strike: "Sections 46-14-101 and 46-14-211, MCA are repealed"  
Insert: "Section 46-14-211, MCA is repealed"

March 27, 1979

SENATE COMMITTEE OF THE WHOLE

That House Bill No. 877, third reading bill, be amended as follows:

1. Amendment No. 8 is amended to read  
Page 9.

Following: line 8

Insert: "Section 9. THERE IS A NEW MCA SECTION THAT READS:

Consideration of mental disease or defect in sentencing. Whenever a defendant is convicted on a verdict or a plea of guilty and he claims that at the time of the commission of the offense of which he was convicted he was ~~unable-as-a-result-of~~ suffering from a mental disease or defect ~~either~~ which rendered him unable to appreciate the criminality of his conduct or to conform his conduct to the requirements of law, the sentencing court shall consider ~~evidence-obtained-as-provided-in-46-14-202 and-46-14-203-and~~ any other relevant evidence presented at the trial and shall require such additional evidence as it considers necessary for the determination of the issue, including examination of the defendant and a report thereof as provided in 46-14-202 and 46-14-203."

Section 10. THERE IS A NEW MCA SECTION THAT READS:

Sentence to be imposed. (1) If the court finds that the defendant at the time of the commission of the offense of which he was convicted did not suffer from a mental disease or defect as described in [section 9], it shall sentence him as provided in Title 46, chapter 18 (2) If the court finds that the defendant at the time of the commission of the offense suffered from a mental disease or defect as described in [section 9], any mandatory minimum sentence prescribed by law for the offense ~~does~~ need not apply and the court shall sentence him to: (a) be committed to the custody of the ~~superintendent-of Warm-Springs-state-hospital~~ director of the department of institutions to be placed in an appropriate institution for custody, care, and treatment for a definite period of time not to exceed the maximum term of imprisonment that could be imposed under subsection (1); or (b) undergo for such a period any other appropriate course of treatment that is accepted by the medical profession and that will not present a danger to the public.

~~(3) -- If the court sentences the defendant under subsection (2) (a), it may provide that the professional person in charge of the institution in which the defendant is placed may release the defendant on condition after a specified period of time that is less than his period of commitment, if the professional person determines that the defendant has been cured of the mental disease or defect found by the court and is no longer a danger to himself or others. -- If the professional person releases the defendant pursuant to this subsection, he shall report the release and the conditions placed on it to the court.~~

~~(4) (3) A defendant whose disposition or sentence does not allow for conditional release by the professional person in charge of the institution, as provided in subsection (3), whose sentence has been imposed under [Section 10 (2)a], may petition the sentencing court for review of the sentence if the professional person certifies that the defendant has been cured of the mental disease or defect. The sentencing court may make any order not inconsistent with its original~~

sentencing authority except that the length of confinement or supervision ~~may not be increased~~ must be equal to that of the original sentence. The professional person shall review the defendant's status each year.

Section 10:--THERE IS A NEW MCA SECTION THAT READS:  
Recommitment after conditional release:--if before the expiration of the period of commitment the court determines after hearing evidence that a defendant who has been released under {section 9-10-(3)} has not fulfilled the conditions of his release and that for his own safety or the safety of others his conditional release should be revoked, the court shall immediately order him to be recommitted to the custody of the superintendent of Warm Springs state hospital to be placed in the same or another appropriate institution for custody, care and treatment.

Section 11. THERE IS A NEW MCA SECTION THAT READS:  
Discharge of defendant from supervision. At the expiration of the period of commitment or period of treatment specified by the court under [section 910 (2)], the defendant must be discharged from custody and further supervision, subject only to the law regarding the civil commitment of persons suffering from serious mental illness.

Section 12. Section 46-14-401, MCA, IS AMENDED TO READ:  
46-14-401. Admissibility of statements made during examination or treatment. A statement made for the purposes of psychiatric examination or treatment provided for in this chapter by a person subjected to such examination or treatment is not admissible in evidence against him in any criminal proceeding, except a sentencing hearing conducted under [section 89] or a hearing on recommitment conducted under {section 811}, on any issue other than that of his mental condition. It is admissible on the issue of his mental condition, whether or not it would otherwise be considered a privileged communication, unless it constitutes an admission of guilt of the crime charged. In a hearing held under [section 89] ~~or {section 811}~~, the court may hear and consider any such statement even if it constitutes an admission of guilt."  
Renumber: all subsequent sections