

HOUSE BILL NO. 212
INTRODUCED BY KEEDY

IN THE HOUSE

January 14, 1981	Introduced and referred to Committee on Judiciary.
January 23, 1981	Committee recommend bill do pass. Report adopted.
January 24, 1981	Bill printed and placed on members' desks.
January 26, 1981	Second reading, do pass.
January 27, 1981	Considered correctly engrossed. Third reading, passed. Transmitted to Senate.

IN THE SENATE

January 28, 1981	Introduced and referred to Committee on Judiciary.
March 25, 1981	Committee recommend bill be concurred in. Report adopted.
March 26, 1981	Second reading, pass consideration.
March 27, 1981	Second reading, pass consideration
March 28, 1981	Second reading, be concurred in as amended.
March 30, 1981	Motion pass consideration.
March 31, 1981	On motion rules suspended. Bill allowed to be transmitted on 71st legislative day. Motion adopted. Third reading, concurred in as amended. Ayes, 48; Noes, 1.

IN THE HOUSE

April 1, 1981 Returned from Senate with amendments.

April 8, 1981 Second reading, amendments not concurred in.

 On motion Free Conference Committee requested and appointed.

April 14, 1981 Free Conference Committee reported and dissolved.

April 21, 1981 Free Conference Committee reported and dissolved.

April 22, 1981 Second reading. Free Conference Committee report adopted.

 On motion rules suspended and Free Conference Committee report placed on third reading this day.

 Third reading, Free Conference Committee report adopted. Ayes, 93; Noes, 2. Transmitted to Senate.

IN THE SENATE

April 23, 1981 Free Conference Committee report adopted.

IN THE HOUSE

April 23, 1981 Returned from Senate. Sent to enrolling.

 Reported correctly enrolled.

1 HOUSE BILL NO. 212
2 INTRODUCED BY Reedy
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4 A BILL FOR AN ACT ENTITLED: "AN ACT TO CLARIFY THE
5 PROCEDURE WHEN MENTAL COMPETENCY OF THE ACCUSED IS AT ISSUE
6 BY CHANGING REFERENCES TO ACQUITTAL SO AS TO REFLECT
7 FINDINGS OF NOT GUILTY, PROHIBITING WAIVER OF A HEARING TO
8 DETERMINE RELEASE OR DISCHARGE, AND REQUIRING SUCH HEARING
9 TO BE CONDUCTED BY THE COMMITTING COURT; AMENDING SECTIONS
10 46-14-201 AND 46-14-301, MCA."

11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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

14 "46-14-201. Requirement of notice -- form of verdict
15 and judgment. (1) Evidence of mental disease or defect is
16 not admissible in a trial on the merits unless the
17 defendant, at the time of entering his plea of not guilty or
18 within 10 days thereafter or at such later time as the court
19 may for good cause permit, files a written notice of his
20 purpose to rely on a mental disease or defect to prove that
21 he did not have a particular state of mind which is an
22 essential element of the offense charged. Otherwise, except
23 on good cause shown, he shall not introduce in his case in
24 chief expert testimony in support of that defense.

25 (2) When the defendant is acquitted--on-the-ground

1 ~~found not guilty of the charged offense or offenses or any~~
2 ~~lesser included offense for the reason~~ that due to a mental
3 disease or defect he could not have a particular state of
4 mind that is an essential element of the offense charged,
5 the verdict and the judgment shall so state."

6 Section 2. Section 46-14-301, MCA, is amended to read:

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

17 (2) A person so confined shall have a hearing ~~unless~~
18 ~~waived~~ within 50 ~~100~~ days of his confinement to determine
19 his present mental condition and whether he may be
20 discharged or released without danger to others. ~~The hearing~~
21 ~~shall be conducted by the court which ordered the commitment~~
22 ~~unless that court transfers jurisdiction to the third~~
23 ~~judicial district.~~ The court shall cause notice of the
24 hearing to be served upon the person, his counsel, and the
25 prosecuting attorney. Such a hearing shall be deemed a civil

1 proceeding, and the burden shall be upon the defendant to
2 prove by a preponderance of the evidence that he may be
3 safely released.

4 (3) According to the determination of the court upon
5 the hearing, the defendant shall be discharged or released
6 on such conditions as the court determines to be necessary
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-End-

Approved by Committee on Judiciary

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LC 1091/01

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13 is an essential element of the offense charged, the court
14 shall order him A PREDISPOSITION INVESTIGATION IN ACCORDANCE
15 WITH 46-18-112 AND 46-18-113, WHICH MUST INCLUDE AN
16 INVESTIGATION OF THE PRESENT MENTAL CONDITION OF THE
17 DEFENDANT. IF THE TRIAL WAS BY JURY, THE COURT SHALL HOLD A
18 HEARING TO DETERMINE THE APPROPRIATE DISPOSITION OF THE
19 DEFENDANT. IF THE TRIAL WAS BY THE COURT, THE COURT MAY HOLD
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21 NECESSARY TO DETERMINE THE APPROPRIATE DISPOSITION OF THE
22 DEFENDANT. IN EITHER CASE, THE TESTIMONY AND EVIDENCE
23 PRESENTED AT THE TRIAL SHALL BE CONSIDERED BY THE COURT IN
24 MAKING ITS DETERMINATION.

25 (2) THE COURT, UPON FINDING THAT THE DEFENDANT MAY NOT

1 BE DISCHARGED OR RELEASED WITHOUT DANGER TO OTHERS, SHALL
2 ORDER THE DEFENDANT committed to the custody of the
3 superintendent of Warm Springs state hospital to be placed
4 in an appropriate institution for custody, care, and
5 treatment.

6 ~~{2}~~{3} A person ~~so-confined~~ COMMITTED TO THE CUSTODY
7 OF THE SUPERINTENDENT shall have a hearing, ~~unless waived,~~
8 UNLESS WAIVED, within ~~50~~ 100 ~~days~~ 1 YEAR of his confinement
9 AND YEARLY THEREAFTER to determine his present mental
10 condition and whether he may be discharged or released
11 without danger to others. ~~The hearing shall be conducted by~~
12 ~~the court which ordered the commitment unless that court~~
13 ~~transfers jurisdiction to the third judicial district.~~ The
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 5 in an appropriate institution for custody, care, and
 6 treatment.

7 ~~{2}~~ {3} A person so-confined COMMITTED TO THE CUSTODY
 8 OF THE SUPERINTENDENT shall have a hearing, ~~unless waived~~
 9 ~~UNLESS WAIVED~~ within 50 ~~100 days~~ 1-YEAR 180 DAYS of his
 10 confinement ~~AND--YEARLY--THEREAFTER~~ to determine his present
 11 mental condition and whether he may be discharged or
 12 released without danger to others. ~~The hearing shall be~~
 13 ~~conducted by the court which ordered the commitment unless~~
 14 ~~that court transfers jurisdiction to the third judicial~~
 15 ~~district.~~ THE HEARING SHALL BE CONDUCTED BY THE COURT WHICH
 16 ORDERED THE COMMITMENT UNLESS THAT COURT TRANSFERS
 17 JURISDICTION TO THE THIRD JUDICIAL DISTRICT. The court shall
 18 cause notice of the hearing to be served upon the person,
 19 his counsel, and the prosecuting attorney. Such a hearing
 20 shall be deemed a civil proceeding, and the burden shall be
 21 upon the defendant to prove by a preponderance of the
 22 evidence that he may be safely released.

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 24 upon the hearing, the defendant shall be discharged or
 25 released on such conditions as the court determines to be

1 necessary or shall be committed to the custody of the
 2 superintendent of the Warm Springs state hospital to be
 3 placed in an appropriate institution for custody, care, and
 4 treatment."

-End-

April 20, 1981

JOINT CONFERENCE COMMITTEE
ON SENATE AMENDMENTS TO HOUSE BILL 212
(Report No. 1, April 20, 1981)

MR. PRESIDENT AND SPEAKER OF THE HOUSE:

We, your Joint Conference Committee on House Bill 212, met April 14, 1981, and considered:

Senate Committee of the Whole Amendments to the third reading copy, dated March 28, 1981, and recommend as follows:

That the House accede to Senate Committee of the Whole Amendments 2, 3, 4, 5 and 8;

That the Senate recede from Senate Committee of the Whole Amendments 1, 6 and 7;

That the reference copy of House Bill 212 read as specified in the CLERICAL INSTRUCTIONS;

And, that the Joint Conference Committee Report to House Bill 212 be adopted.

CLERICAL INSTRUCTIONS:

- 1. Title, line 8.
Following: "~~DISCHARGE,~~"
Insert: ", PROHIBITING WAIVER OF A HEARING TO DETERMINE RELEASE OR DISCHARGE,"
- 2. Page 3, lines 7, 8 and 9.
Following: "~~waived~~"
Strike: ", UNLESS WAIVED,"
Following: "~~days~~"
Strike: "1 YEAR"
Insert: "180 days"
Following: "~~confinement~~"
Strike: "AND YEARLY THEREAFTER"
- 3. Page 3, lines 11 through 13.
Following: "~~district-~~"
Insert: "The hearing shall be conducted by the court which ordered the commitment unless that court transfers jurisdiction to the third judicial district."

FOR THE HOUSE:

Hannah
Hannah, Chairman

Michael H. Keedy
Keedy

Thott
Thott

FOR THE SENATE:

B. Brown
B. Brown

Olson
Olson

Van Valkenburg Chairman.
Van Valkenburg

April 14, 19 81

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Amendments 2, 3, 4, 5, and 8;

That the Senate recede from Senate Committee of the Whole
Amendments 1, 6 and 7;

And, that the Joint Conference Committee Report to House
Bill 212 be adopted.

FOR THE HOUSE:

Hannah
Hannah, Chairman

Michael H. Keedy
Keedy

Thoft
Thoft

FOR THE SENATE:

B. Brown
B. Brown

Olson
Olson

Van Valkenburg
Van Valkenburg

March 28, 1981

SENATE COMMITTEE OF THE WHOLE

Proposed amendments to House Bill 212, third reading copy, as follows:

1. Title, lines 7 and 8.
Following: "GUILTY"
Strike: all language through "DISCHARGE," on line 8.
2. Title, line 8.
Following: "REQUIRING"
Strike: "SUCH"
Insert: "a"
3. Title, line 9.
Following: "TO"
Insert: "DETERMINE RELEASE OR DISCHARGE"
Following: "COURT"
Insert: "BEFORE DISPOSITION"
4. Page 2, line 13.
Following: "order"
Strike: "him"
Insert: "a predisposition investigation in accordance with 46-18-112 and 46-18-113, which must include an investigation of the present mental condition of the defendant. If the trial was by jury, the court shall hold a hearing to determine the appropriate disposition of the defendant. If the trial was by the court, the court may hold a hearing to obtain any additional testimony it considers necessary to determine the appropriate disposition of the defendant. In either case, the testimony and evidence presented at the trial shall be considered by the court in making its determination.

(2) The court, upon finding that the defendant may not be discharged or released without danger to others, shall order the defendant"
5. Page 2, line 17.
Strike: "(2)"
Insert: "(3)"
Following: "person"
Strike: "so confined"
Insert: "committed to the custody of the superintendent"

Proposed Senate Committee of the Whole
Amendments to House Bill 212
Page 2.

6. Page 2, line 18.
Following: "~~waived~~"
Insert: ", unless waived,"
Following: "50"
Strike: "180 days"
Insert: "1 year"
Following: "confinement"
Insert: "and yearly thereafter"
7. Page 2, lines 20 through 23.
Strike: all underlined language.
8. Page 3, line 4.
Strike: "(3)"
Insert: "(4)"