

HOUSE BILL NO. 403

INTRODUCED BY KEEDY

IN THE HOUSE

January 21, 1981	Introduced and referred to Committee on Judiciary.
February 2, 1981	Committee recommend bill do pass as amended. Report adopted.
February 3, 1981	Bill printed and placed on members' desks.
February 5, 1981	Second reading, do pass.
February 6, 1981	Correctly engrossed.
February 7, 1981	Third reading, passed. Transmitted to Senate.

IN THE SENATE

February 9, 1981	Introduced and referred to Committee on Judiciary.
March 25, 1981	Committee recommend bill be concurred in as amended. Report adopted.
March 26, 1981	Second reading, concurred in.
March 28, 1981	Third reading, concurred in as amended. Ayes, 38; Noes, 12.

IN THE HOUSE

March 28, 1981	Returned from Senate with amendments.
April 8, 1981	Second reading, amendments concurred in.

April 9, 1981		Third reading, amendments concurred. Ayes, 96; Noes, 1. Sent to enrolling.
April 11, 1981		Correctly enrolled. Signed by Speaker.
April 13, 1981		Signed by President.
	Governor	
April 13, 1981		Delivered to Governor.
	In The House	
April 20, 1981		Returned from Governor with recommended amendments.
April 22, 1981		Second reading, Governor's amendments not concurred. Transmitted to Senate.
	In The Senate	
April 22, 1981		Received from House.
April 23, 1981		Second reading Governor's amendments not concurred.
	Governor	
April 23, 1981		Delivered to Governor.
May 18, 1981		Signed by Governor.

1 HOUSE BILL NO. 403
2 INTRODUCED BY Keady

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE THAT ONLY
5 THE DEFENDANT IN A CRIMINAL ACTION MAY RAISE HIS LACK OF
6 CAPACITY BY REASON OF MENTAL DISEASE OR DEFECT AND TO MAKE
7 THE STATE LIABLE FOR THE COSTS OF COMMITMENT IN PLACE OF
8 TRIAL AND IMPRISONMENT; AMENDING SECTIONS 46-14-202 AND
9 46-14-221, MCA."

10
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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

13 "46-14-202. Psychiatric examination of defendant. (1)
14 ~~When there is reason to doubt the defendant's fitness to~~
15 ~~proceed or reason to believe that mental disease or defect~~
16 ~~of the defendant will otherwise become an issue in the cause~~
17 If the defendant files a written notice of his intent to
18 rely on a mental disease or defect under 46-14-201, the
19 court shall appoint at least one qualified psychiatrist or
20 shall request the superintendent of Warm Springs state
21 hospital to designate at least one qualified psychiatrist,
22 which designation may be or include himself, to examine and
23 report upon the mental condition of the defendant.

24 (2) The court may order the defendant to be committed
25 to a hospital or other suitable facility for the purpose of

1 the examination for a period of not exceeding 60 days or
2 such longer period as the court determines to be necessary
3 for the purpose and may direct that a qualified psychiatrist
4 retained by the defendant be permitted to witness and
5 participate in the examination.

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

10 Section 2. Section 46-14-221, MCA, is amended to read:

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

24 (2) If the court determines that the defendant lacks
25 fitness to proceed, the proceeding against him shall be

-2- INTRODUCED BILL
HB 403

1 suspended, except as provided in subsection (4) of this
 2 section, and the court shall commit him to the custody of
 3 the director of the department of institutions to be placed
 4 in an appropriate institution of the department of
 5 institutions for so long as the unfitness endures.

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

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

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

1 ~~maintain-him-elsewhere."~~

-End-

Approved by Committee
on Judiciary

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22 the county--in--which--the--indictment--was--found--or--the
23 information--filed state; but the county state may recover
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 23 information--filed state; but the county state may recover
 24 them from the estate of the defendant--if--he--has--any--or
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19 46-14-201 OR RAISES THE ISSUE OF HIS FITNESS TO PROCEED, the
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22 hospital to designate at least one qualified psychiatrist,
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 25 them from the estate of the defendant, ~~if-he-has-any-or~~

1 ~~from-a-town-city--or--county--bound--to--provide--for--and~~
 2 ~~maintain-him-elsewhere."~~

-End-

March 25, 1981

SENATE STANDING COMMITTEE REPORT
(Judiciary)

That House Bill No. 403 be amended as follows:

1. Page 1, line 17.

Following: "defendant"

Insert: "or his counsel"

2. Line 18, page 1.

Following: "46-14-201"

Insert: "or raises the issue of his fitness to proceed"

3. Page 2, line 14.

Following: "defendant"

Insert: "or his counsel"

April 17, 1981

PROPOSED GOVERNOR'S AMENDMENTS TO HOUSE BILL 403;
REFERENCE COPY, AS FOLLOWS:

1. Title: Page 1, Line 7
Following: "PROCEED"
Delete: "TO MAKE THE STATE LIABLE
FOR THE COSTS OF COMMITMENT
IN PLACE OF TRIAL AND IM-
PRISONMENT"
2. Page 3, Line 22
Following: "instance"
Insert: "in the first instance"
3. Page 3, Line 23
Following: "the"
Insert: "county in which the indictment was found
or the"
4. Page 3, Line 24
Following: Line 23
Insert: "information filed"
5. Page 3, Line 24
Following: "filed"
Delete: "state"
6. Page 3, Line 24
Following: "county"
Delete: "state"
Insert: "county"
7. Page 3, Line 25
Following: "defendant"
Insert: ", if he has any, or"
8. Page 4, Lines 1 and 2
Following: Line 25
Insert: "from a town, city, or county bound
to provide for and maintain him elsewhere."



State of Montana
Office of the Governor
Helena 59620

TED SCHWINDEN
GOVERNOR

April 18, 1981

The Honorable Jean A. Turnage
President of the Senate
State Capitol
Helena, Montana 59620

The Honorable Robert L. Marks
Speaker of the House
State Capitol
Helena, Montana 59620

Dear Senator Turnage and Representative Marks:

In accordance with the power vested in me as Governor by the Constitution and the laws of the State of Montana, I hereby return House Bill No. 403, "AN ACT TO PROVIDE THAT ONLY THE DEFENDANT IN A CRIMINAL ACTION MAY RAISE HIS LACK OF FITNESS TO PROCEED AND TO MAKE THE STATE LIABLE FOR THE COSTS OF COMMITMENT IN PLACE OF TRIAL AND IMPRISONMENT; AMENDING SECTIONS 46-14-202 AND 46-14-221, MCA," without my signature and recommend the attached amendments for the following reasons.

House Bill No. 403 as passed, requires in pertinent part, that the cost of transporting and keeping patients committed under the provision of Section 46-14-221, MCA, be the obligation of the state. This is currently a fiscal obligation of the county. H.B. 403 would cause a loss of revenue to the state general fund in excess of \$110,000 a year. In addition, the cost to Warm Springs State Hospital for the transportation of such patients would be an undeterminable amount of money for which no budget provisions have been made.

~~I am proposing amendments which return Section 46-14-221(5), MCA, to its existing statutory form, and which change the title accordingly. My amendments do not propose any changes to H.B. 403 pertaining to who may raise the defendant's lack of fitness in a criminal action.~~

Senator Turnage and Representative Marks

April 18, 1981

Page Two

In as much as funding has not been provided in the appropriation bill to cover the costs that would be incurred by the Department, I urge your concurrence in these amendments.

Sincerely,



TED SCHWINDEN
Governor

amendments which return Section 14-14
existing statutory term, and which
amendments do not pro-
H.R. 403 pertaining to who may raise
of fitness in a criminal action.