

SENATE BILL NO. 248
INTRODUCED BY TOWE, ADDY

IN THE SENATE

January 21, 1983	Introduced and referred to Committee on Judiciary.
February 8, 1983	Committee recommend bill do pass as amended. Report adopted.
February 9, 1983	Bill printed and placed on members' desks.
February 10, 1983	Second reading, pass consideration.
February 11, 1983	Second reading, do pass as amended.
February 12, 1983	Correctly engrossed.
February 14, 1983	Third reading, passed. Ayes, 48; Noes, 1. Transmitted to House.

IN THE HOUSE

March 1, 1983	Introduced and referred to Committee on Judiciary.
March 21, 1983	Committee recommend bill be concurred in. Report adopted.
March 22, 1983	Second reading, concurred in.
March 23, 1983	Third reading, concurred in.

IN THE SENATE

March 24, 1983	Returned to Senate. Sent to enrolling. Reported correctly enrolled.
----------------	--

1 *Senate* BILL NO. *248*
2 INTRODUCED BY *Sen. Alden*
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
5 LAWS RELATING TO A CLAIM OF MENTAL DISEASE OR DEFECT IN
6 CRIMINAL PROCEEDINGS; PROVIDING FOR A VERDICT OF GUILTY BUT
7 SUFFERING FROM A MENTAL DISEASE OR DEFECT AT THE TIME OF THE
8 OFFENSE; AMENDING SECTIONS 46-14-201, 46-14-221, AND
9 46-14-312, MCA; AMENDING CHAPTER 713, SECTION 11, LAWS OF
10 1979; REPEALING SECTIONS 46-14-102 AND 46-14-301 THROUGH
11 46-14-304, MCA."

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

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

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

1 ~~(2) When the defendant is found not guilty of the~~
2 ~~charged offense or offenses or any lesser included offense~~
3 ~~for the reason that due to a mental disease or defect he~~
4 ~~could not have a particular state of mind that is an~~
5 ~~essential element of the offense charged, the verdict and~~
6 ~~the judgment shall so state. The jury may return a verdict~~
7 ~~of guilty but suffering from a mental disease or defect at~~
8 ~~the time of the offense."~~

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

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

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

1 section, and the court shall commit him to the custody of
 2 the director of the department of institutions to be placed
 3 in an appropriate institution of the department of
 4 institutions for so long as the unfitness endures. The
 5 committing court shall, within 90 days of commitment, review
 6 the defendant's fitness to proceed. If the court finds that
 7 he is still unfit to proceed and that it does not appear
 8 that he will become fit to proceed within the reasonably
 9 foreseeable future, the court shall order the defendant
 10 discharged. The order must state whether civil commitment is
 11 appropriate.

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

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

23 (5) The expenses of sending the defendant to the
 24 custody of the director of the department of institutions to
 25 be placed in an appropriate institution of the state

1 department of institutions, of keeping him there, and of
 2 bringing him back are chargeable to the state but the state
 3 may recover them from the estate of the defendant."

4 Section 3. Section 46-14-312, MCA, is amended to read:
 5 "46-14-312. Sentence to be imposed. (1) If the
 6 defendant was not convicted on a verdict of guilty but
 7 suffering from a mental disease or defect at the time of the
 8 offense and the court finds that the defendant at the time
 9 of the commission of the offense of which he was convicted
 10 did not suffer from a mental disease or defect as described
 11 in 46-14-311, it shall sentence him as provided in Title 46,
 12 chapter 18.

13 (2) If the court finds that the defendant at the time
 14 of the commission of the offense suffered from a mental
 15 disease or defect as described in 46-14-311 or if the
 16 defendant was convicted on a verdict of guilty but suffering
 17 from a mental disease or defect at the time of the offense,
 18 any mandatory minimum sentence prescribed by law for the
 19 offense need not apply and the court shall sentence him to
 20 be committed to the custody of the director of the
 21 department of institutions to be placed in an appropriate
 22 institution for custody, care, and treatment for a definite
 23 period of time not to exceed the maximum term of
 24 imprisonment that could be imposed under subsection (1).
 25 The authority of the court with regard to sentencing is the

1 same as authorized in Title 46, chapter 18, provided the
2 treatment of the individual and the protection of the public
3 are provided for.

4 (3) A defendant whose sentence has been imposed under
5 subsection (2) may petition the sentencing court for review
6 of the sentence if the professional person certifies that
7 the defendant has been cured of the mental disease or
8 defect. The sentencing court may make any order not
9 inconsistent with its original sentencing authority except
10 that the length of confinement or supervision must be equal
11 to that of the original sentence. The professional person
12 shall review the defendant's status each year."

13 Section 4. Chapter 713, section 11, Laws of 1979, is
14 amended to read:

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

20 (2) If the court finds that the defendant at the time
21 of the commission of the offense suffered from a mental
22 disease or defect as described in [section 9 10], any
23 mandatory minimum sentence prescribed by law for the offense
24 need not apply and the court shall sentence him to be
25 committed to the custody of the director of the department

1 of institutions to be placed in an appropriate institution
2 for custody, care, and treatment for a definite period of
3 time not to exceed the maximum term of imprisonment that
4 could be imposed under subsection (1). The authority of the
5 court with regard to sentencing is the same as authorized in
6 Title 46, chapter 18, provided the treatment of the
7 individual and the protection of the public are provided
8 for.

9 (3) A defendant whose sentence has been imposed under
10 [section 11(2)], may petition the sentencing court for
11 review of the sentence if the professional person certifies
12 that the defendant has been cured of the mental disease or
13 defect. The sentencing court may make any order not
14 inconsistent with its original sentencing authority except
15 that the length of confinement or supervision must be equal
16 to that of the original sentence. The professional person
17 shall review the defendant's status each year."

18 NEW SECTION. Section 5. Repealer. Sections 46-14-102
19 and 46-14-301 through 46-14-304, MCA, are repealed.

-End-

Approved by Committee
on Judiciary

SENATE BILL NO. 248

INTRODUCED BY TOME, ADDY

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE LAWS RELATING TO A CLAIM OF MENTAL DISEASE OR DEFECT IN CRIMINAL PROCEEDINGS; PROVIDING FOR A VERDICT OF GUILTY BUT SUFFERING FROM A MENTAL DISEASE OR DEFECT AT THE TIME OF THE OFFENSE; ALLOWING A COUNTY ATTORNEY TO RAISE THE ISSUE OF A CRIMINAL DEFENDANT'S LACK OF FITNESS TO PROCEED WITH TRIAL; PROVIDING FOR THE DISPOSITION OF THOSE DEFENDANTS FOUND UNFIT TO PROCEED; CORRECTING A REFERENCE IN PRIOR LEGISLATION DESCRIBING A MENTAL DISEASE OR DEFECT; AMENDING SECTIONS 46-14-201, SECTION 46-14-221, AND 46-14-312, MCA; AMENDING AND CHAPTER 713, SECTION 11, LAWS OF 1979; REPEALING SECTIONS 46-14-102 AND 46-14-301 THROUGH 46-14-304, MCA."

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

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

"46-14-201. Requirement of notice -- form of -- verdict

and judgments -- (1) Evidence of mental disease or defect is not admissible in a trial on the merits unless the defendant at the time of entering his plea of not guilty or within 18 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 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 of that defense

(2) When the defendant is found not guilty of the charged offense or offenses or any lesser included offense for the reason that due to a mental disease or defect 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. The jury may return a verdict of guilty but suffering from a mental disease or defect at the time of the offense"

Section 1. Section 46-14-221, MCA, is amended to read:

"46-14-221. Determination of fitness to proceed -- effect of finding of unfitness -- expenses. (1) The issue of the defendant's fitness to proceed may be raised only by the defendant or his counsel or by the county attorney. When the issue is raised, it shall be determined by the court. If neither the county attorney nor counsel for the defendant contests the finding of the report filed under 46-14-203, the court may make the determination on the basis of the report. If the finding is contested, the court shall hold a hearing on the issue. If the report is received in evidence upon the hearing, the parties have the right to summon and

1 cross-examine the psychiatrists who joined in the report and
2 to offer evidence upon the issue.

3 (2) If the court determines that the defendant lacks
4 fitness to proceed, the proceeding against him shall be
5 suspended, except as provided in subsection (4) of this
6 section, and the court shall commit him to the custody of
7 the director of the department of institutions to be placed
8 in an appropriate institution of the department of
9 institutions for so long as the unfitness endures. ~~The~~
10 ~~committing court shall, within 90 days of commitment, review~~
11 ~~the defendant's fitness to proceed. If the court finds that~~
12 ~~he is still unfit to proceed and that it does not appear~~
13 ~~that he will become fit to proceed within the reasonably~~
14 ~~foreseeable future, the court shall order the defendant~~
15 ~~discharged. The order must state whether civil commitment is~~
16 ~~appropriate.~~

17 ~~(3) If the court determines that the defendant lacks~~
18 ~~fitness to proceed due to the fact that the person is~~
19 ~~developmentally disabled, as defined by 53-20-102, the~~
20 ~~proceeding against him shall be suspended, except as~~
21 ~~provided in subsection (4) (3) of this section, and the~~
22 ~~court shall proceed to secure treatment as provided in~~
23 ~~chapter 20, part 1, or chapter 21, part 1, of Title 53~~
24 ~~COUNTY ATTORNEY SHALL PETITION THE COURT IN THE MANNER~~
25 ~~PROVIDED IN CHAPTER 20 OR 21 OF TITLE 53, WHICHEVER IS~~

1 APPROPRIATE TO DETERMINE THE DISPOSITION OF THE DEFENDANT
2 PURSUANT TO THOSE PROVISIONS.

3 (4)(3) 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)(4) 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 chargeable to the state but the state
12 may recover them from the estate of the defendant."

13 Section 3--Section 46-14-312-MCA-is amended to read:
14 "46-14-312--Sentence--to-be-imposed--(1)--If the
15 defendant was not convicted on a verdict of guilty but
16 suffering from a mental disease or defect at the time of the
17 offense and the court finds that the defendant at the time
18 of the commission of the offense of which he was convicted
19 did not suffer from a mental disease or defect as described
20 in 46-14-311, it shall sentence him as provided in Title 46,
21 chapter 10.

22 (2)--If the court finds that the defendant at the time
23 of the commission of the offense suffered from a mental
24 disease or defect as described in 46-14-311 or if the
25 defendant was convicted on a verdict of guilty but suffering

~~from a mental disease or defect at the time of the offense, any mandatory minimum sentence prescribed by law for the offense need not apply and the court shall sentence him to be committed to the custody of the 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). The authority of the court with regard to sentencing is the same as authorized in Title 46, chapter 18, provided the treatment of the individual and the protection of the public are provided for.~~

~~(3) A defendant whose sentence has been imposed under subsection (2) 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 must be equal to that of the original sentence. The professional person shall review the defendant's status each year."~~

Section 2. Chapter 713, section 11, Laws of 1979, is amended to read:

"Section 11. 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 10], 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 10], any mandatory minimum sentence prescribed by law for the offense need not apply and the court shall sentence him to be committed to the custody of the 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). The authority of the court with regard to sentencing is the same as authorized in Title 46, chapter 18, provided the treatment of the individual and the protection of the public are provided for.

(3) A defendant whose sentence has been imposed under [section 11(2)], 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 must be equal to that of the original sentence. The professional person

1 shall review the defendant's status each year."

2 ~~NEW SECTION--Section-5--Repeater--Sections-46-14-102~~

3 ~~and-46-14-381-through-46-14-384-MCA-are-repeated~~

-End-

SENATE BILL NO. 248

INTRODUCED BY TOME, ADDY

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE LAWS RELATING TO A CLAIM OF MENTAL DISEASE OR DEFECT IN CRIMINAL PROCEEDINGS; PROVIDING FOR A VERDICT OF GUILTY BUT SUFFERING FROM A MENTAL DISEASE OR DEFECT AT THE TIME OF THE OFFENSE; ALLOWING A COUNTY ATTORNEY TO RAISE THE ISSUE OF A CRIMINAL DEFENDANT'S LACK OF FITNESS TO PROCEED WITH TRIAL; PROVIDING FOR THE DISPOSITION OF THOSE DEFENDANTS FOUND UNFIT TO PROCEED; CORRECTING A REFERENCE IN PRIOR LEGISLATION DESCRIBING A MENTAL DISEASE OR DEFECT; AMENDING SECTION 46-14-201, SECTION 46-14-221, AND 46-14-312, MCA; AMENDING AND CHAPTER 713, SECTION 11, LAWS OF 1979; REPEATING SECTION 46-14-102 AND 46-14-301 THROUGH 46-14-304, MCA."

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

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

"46-14-201. Requirement of notice -- form of verdict and judgment. (1) Evidence of mental disease or defect 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 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 of that defense.

(2) When the defendant is found not guilty of the charged offense or offenses or any lesser included offense for the reason that due to a mental disease or defect 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. The jury may return a verdict of guilty but suffering from a mental disease or defect at the time of the offense."

Section 1. Section 46-14-221, MCA, is amended to read:

"46-14-221. Determination of fitness to proceed -- effect of finding of unfitness -- expenses. (1) The issue of the defendant's fitness to proceed may be raised only by the defendant or his counsel or by the county attorney. When the issue is raised, it shall be determined by the court. If neither the county attorney nor counsel for the defendant contests the finding of the report filed under 46-14-203, the court may make the determination on the basis of the report. If the finding is contested, the court shall hold a hearing on the issue. If the report is received in evidence upon the hearing, the parties have the right to summon and

1 cross-examine the psychiatrists who joined in the report and
2 to offer evidence upon the issue.

3 (2) IF the court determines that the defendant lacks
4 fitness to proceed, the proceeding against him shall be
5 suspended, except as provided in subsection (4) of this
6 section, and the court shall commit him to the custody of
7 the director of the department of institutions to be placed
8 in an appropriate institution of the department of
9 institutions for so long as the unfitness endures. ~~The~~
10 ~~committing court shall, within 90 days of commitment, review~~
11 ~~the defendant's fitness to proceed. If the court finds that~~
12 ~~he is still unfit to proceed and that it does not appear~~
13 ~~that he will become fit to proceed within the reasonably~~
14 ~~foreseeable future, the court shall order the defendant~~
15 ~~discharged. The order must state whether civil commitment is~~
16 ~~appropriate.~~

17 ~~(3) If the court determines that the defendant lacks~~
18 ~~fitness to proceed due to the fact that the person is~~
19 ~~developmentally disabled, as defined by 53-20-102, the~~
20 ~~proceeding against him shall be suspended DISMISSED, except~~
21 ~~as provided in subsection (4) (3) (4) of this section, and~~
22 ~~the court shall proceed to secure treatment as provided in~~
23 ~~chapter 20, part IV or chapter 21, part IV of title 53~~
24 COUNTY ATTORNEY SHALL PETITION THE COURT IN THE MANNER
25 PROVIDED IN CHAPTER 20 OR 21 OF TITLE 53, WHICHEVER IS

1 APPROPRIATE TO DETERMINE THE DISPOSITION OF THE DEFENDANT
2 PURSUANT TO THOSE PROVISIONS.

3 (3) IF THE COURT DETERMINES THAT THE DEFENDANT LACKS
4 FITNESS TO PROCEED BECAUSE HE IS DEVELOPMENTALLY DISABLED AS
5 PROVIDED IN 53-20-102(4), THE PROCEEDING AGAINST HIM SHALL
6 BE DISMISSED AND THE COUNTY ATTORNEY SHALL PETITION THE
7 COURT IN THE MANNER PROVIDED IN CHAPTER 20 OF TITLE 53.

8 ~~(4) (3) (4)~~ The fact that the defendant is unfit to
9 proceed does not preclude any legal objection to the
10 prosecution which is susceptible to fair determination prior
11 to trial and without the personal participation of the
12 defendant.

13 ~~(5) (4) (5)~~ The expenses of sending the defendant to the
14 custody of the director of the department of institutions to
15 be placed in an appropriate institution of the state
16 department of institutions, of keeping him there, and of
17 bringing him back are chargeable to the state but the state
18 may recover them from the estate of the defendant."

19 ~~Section 3, Section 46-14-312, MCA, is amended to read:~~
20 ~~"46-14-312. Sentence to be imposed. (1) If the~~
21 ~~defendant was not convicted on a verdict of guilty but~~
22 ~~suffering from a mental disease or defect at the time of the~~
23 ~~offense and the court finds that the defendant at the time~~
24 ~~of the commission of the offense of which he was convicted~~
25 ~~did not suffer from a mental disease or defect as described~~

in 46-14-311, 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 46-14-311 ~~or if the defendant was convicted on a verdict of guilty but suffering from a mental disease or defect at the time of the offense~~, any mandatory minimum sentence prescribed by law for the offense need not apply and the court shall sentence him to be committed to the custody of the 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). The authority of the court with regard to sentencing is the same as authorized in Title 46, chapter 18, provided the treatment of the individual and the protection of the public are provided for.

(3) A defendant whose sentence has been imposed under subsection (2) 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 must be equal

to that of the original sentence. The professional person shall review the defendant's status each year."

Section 2. Chapter 713, section 11, Laws of 1979, is amended to read:

"Section 11. 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 10], 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 10], any mandatory minimum sentence prescribed by law for the offense need not apply and the court shall sentence him to be committed to the custody of the 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). The authority of the court with regard to sentencing is the same as authorized in Title 46, chapter 18, provided the treatment of the individual and the protection of the public are provided for.

(3) A defendant whose sentence has been imposed under [section 11(2)], may petition the sentencing court for

1 review of the sentence if the professional person certifies
 2 that the defendant has been cured of the mental disease or
 3 defect. The sentencing court may make any order not
 4 inconsistent with its original sentencing authority except
 5 that the length of confinement or supervision must be equal
 6 to that of the original sentence. The professional person
 7 shall review the defendant's status each year."

8 ~~YEH-SECTION--Section-5--Repealer--Sections-46-14-102~~
 9 ~~and-46-14-301-through-46-14-304--NEA--are-repealed~~

-End-

SENATE BILL NO. 248

INTRODUCED BY TOWE, ADDY

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE LAWS RELATING TO A CLAIM OF MENTAL DISEASE OR DEFECT IN CRIMINAL PROCEEDINGS; PROVIDING FOR A VERDICT OF GUILTY BUT SUFFERING FROM A MENTAL DISEASE OR DEFECT AT THE TIME OF THE OFFENSE; ALLOWING A COUNTY ATTORNEY TO RAISE THE ISSUE OF A CRIMINAL DEFENDANT'S LACK OF FITNESS TO PROCEED WITH TRIAL; PROVIDING FOR THE DISPOSITION OF THOSE DEFENDANTS FOUND UNFIT TO PROCEED; CORRECTING A REFERENCE IN PRIOR LEGISLATION DESCRIBING A MENTAL DISEASE OR DEFECT; AMENDING SECTIONS ~~46-14-201~~, SECTION 46-14-221, AND ~~46-14-312~~, MCA; AMENDING AND CHAPTER 713, SECTION 11, LAWS OF 1979; REPEATING ~~SECTIONS 46-14-102 AND 46-14-303~~ THROUGH 46-14-304, MCA."

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

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

"~~46-14-201~~ - Requirement of notice ~~and form of verdict~~ and ~~judgment~~ ~~that~~ Evidence of mental disease or defect 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 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 of that defense.

(2) When the defendant is found not guilty of the charged offense or offenses or any lesser included offense for the reason that due to a mental disease or defect 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. ~~The jury may return a verdict of guilty but suffering from a mental disease or defect at the time of the offense.~~

Section 1. Section 46-14-221, MCA, is amended to read:

"46-14-221. Determination of fitness to proceed -- effect of finding of unfitness -- expenses. (1) The issue of the defendant's fitness to proceed may be raised only by the defendant or his counsel or by the county attorney. When the issue is raised, it shall be determined by the court. If neither the county attorney nor counsel for the defendant contests the finding of the report filed under 46-14-203, the court may make the determination on the basis of the report. If the finding is contested, the court shall hold a hearing on the issue. If the report is received in evidence upon the hearing, the parties have the right to summon and

1 cross-examine the psychiatrists who joined in the report and
2 to offer evidence upon the issue.

3 (2) If the court determines that the defendant lacks
4 fitness to proceed, the proceeding against him shall be
5 suspended, except as provided in subsection (4) of this
6 section, and the court shall commit him to the custody of
7 the director of the department of institutions to be placed
8 in an appropriate institution of the department of
9 institutions for so long as the unfitness endures. ~~The~~
10 ~~committing court shall, within 90 days of commitment, review~~
11 ~~the defendant's fitness to proceed. If the court finds that~~
12 ~~he is still unfit to proceed and that it does not appear~~
13 ~~that he will become fit to proceed within the reasonably~~
14 ~~foreseeable future, the court shall order the defendant~~
15 ~~discharged. The order must state whether civil commitment is~~
16 ~~appropriate.~~

17 ~~(3) If the court determines that the defendant lacks~~
18 ~~fitness to proceed due to the fact that the person is~~
19 ~~developmentally disabled, as defined by 53-28-102, the~~
20 ~~proceeding against him shall be suspended DISMISSED, except~~
21 ~~as provided in subsection (4) (3) (4) of this section, and~~
22 ~~the court shall proceed to secure treatment as provided in~~
23 ~~chapter 20, part 1, or chapter 21, part 1, of title 53~~
24 COUNTY ATTORNEY SHALL PETITION THE COURT IN THE MANNER
25 PROVIDED IN CHAPTER 20 OR 21 OF TITLE 53, WHICHEVER IS

1 APPROPRIATE TO DETERMINE THE DISPOSITION OF THE DEFENDANT
2 PURSUANT TO THOSE PROVISIONS.

3 (3) IF THE COURT DETERMINES THAT THE DEFENDANT LACKS
4 FITNESS TO PROCEED BECAUSE HE IS DEVELOPMENTALLY DISABLED AS
5 PROVIDED IN 53-20-102(4), THE PROCEEDING AGAINST HIM SHALL
6 BE DISMISSED AND THE COUNTY ATTORNEY SHALL PETITION THE
7 COURT IN THE MANNER PROVIDED IN CHAPTER 20 OF TITLE 53.

8 ~~(4) (3) (4)~~ The fact that the defendant is unfit to
9 proceed does not preclude any legal objection to the
10 prosecution which is susceptible to fair determination prior
11 to trial and without the personal participation of the
12 defendant.

13 ~~(5) (4) (5)~~ The expenses of sending the defendant to the
14 custody of the director of the department of institutions to
15 be placed in an appropriate institution of the state
16 department of institutions, of keeping him there, and of
17 bringing him back are chargeable to the state but the state
18 may recover them from the estate of the defendant."

19 ~~Section 3, Section 46-14-312, MCA, is amended to read:~~
20 ~~"46-14-312. Sentence to be imposed. (1) If the~~
21 ~~defendant was not convicted on a verdict of guilty but~~
22 ~~suffering from a mental disease or defect at the time of the~~
23 ~~offense and the court finds that the defendant at the time~~
24 ~~of the commission of the offense of which he was convicted~~
25 ~~did not suffer from a mental disease or defect as described~~

1 in 46-14-311 it shall sentence him as provided in title 46,
2 chapter 18.

3 (2) If the court finds that the defendant at the time
4 of the commission of the offense suffered from a mental
5 disease or defect as described in 46-14-311 ~~or if the~~
6 ~~defendant was convicted on a verdict of guilty but suffering~~
7 ~~from a mental disease or defect at the time of the offense~~
8 ~~any mandatory minimum sentence prescribed by law for the~~
9 ~~offense need not apply and the court shall sentence him to~~
10 ~~be committed to the custody of the director of the~~
11 ~~department of institutions to be placed in an appropriate~~
12 ~~institution for custody, care, and treatment for a definite~~
13 ~~period of time not to exceed the maximum term of~~
14 ~~imprisonment that could be imposed under subsection (1).~~
15 ~~The authority of the court with regard to sentencing is the~~
16 ~~same as authorized in title 46, chapter 18, provided the~~
17 ~~treatment of the individual and the protection of the public~~
18 ~~are provided for.~~

19 (3) A defendant whose sentence has been imposed under
20 subsection (2) may petition the sentencing court for review
21 of the sentence if the professional person certifies that
22 the defendant has been cured of the mental disease or
23 defect. The sentencing court may make any order not
24 inconsistent with its original sentencing authority except
25 that the length of confinement or supervision must be equal

1 to that of the original sentence. The professional person
2 shall review the defendant's status each year."

3 Section 2. Chapter 713, section 11, Laws of 1979, is
4 amended to read:

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

10 (2) If the court finds that the defendant at the time
11 of the commission of the offense suffered from a mental
12 disease or defect as described in [section 9 10], any
13 mandatory minimum sentence prescribed by law for the offense
14 need not apply and the court shall sentence him to be
15 committed to the custody of the director of the department
16 of institutions to be placed in an appropriate institution
17 for custody, care, and treatment for a definite period of
18 time not to exceed the maximum term of imprisonment that
19 could be imposed under subsection (1). The authority of the
20 court with regard to sentencing is the same as authorized in
21 Title 46, chapter 18, provided the treatment of the
22 individual and the protection of the public are provided
23 for.

24 (3) A defendant whose sentence has been imposed under
25 [section 11(2)], may petition the sentencing court for

1 review of the sentence if the professional person certifies
 2 that the defendant has been cured of the mental disease or
 3 defect. The sentencing court may make any order not
 4 inconsistent with its original sentencing authority except
 5 that the length of confinement or supervision must be equal
 6 to that of the original sentence. The professional person
 7 shall review the defendant's status each year."

8 ~~NEW SECTION--Section-5--Repeater--Sections-46-14-102~~
 9 ~~and-46-14-301-through-46-14-304-MCA-are-repealed.~~

-End-