

SENATE BILL NO. 328

Introduced: 01/31/83

Referred to Committee on Judiciary: 01/31/83

Hearing: 2/4/83

Report: 02/08/83, Do Not Pass, Report Adopted.
Bill Killed.

1 *Senate* BILL NO. *328*
2 INTRODUCED BY *For*

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4 A BILL FOR AN ACT ENTITLED: "AN ACT TO ALLOW CLINICAL
5 PSYCHOLOGISTS TO EXAMINE, MAKE REPORTS REGARDING, AND
6 TESTIFY TO THE MENTAL STATE OF PERSONS CHARGED WITH OR
7 CONVICTED OF CRIMES; AMENDING SECTIONS 46-14-202, 46-14-212,
8 46-14-213, 46-14-221, 46-14-302, AND 46-14-401, MCA."

9
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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

12 "46-14-202. Psychiatric Mental examination of
13 defendant. (1) If the defendant or his counsel files a
14 written notice of his intent to rely on a mental disease or
15 defect under 46-14-201 or raises the issue of his fitness to
16 proceed, the court shall appoint at least one qualified
17 psychiatrist or clinical psychologist or shall request the
18 superintendent of Warm Springs state hospital to designate
19 at least one qualified psychiatrist or clinical
20 psychologist, which designation may be or include himself,
21 to examine and report upon the mental condition of the
22 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 or clinical psychologist retained by the defendant be
4 permitted to witness and 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 2. Section 46-14-212, MCA, is amended to read:

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

21 Section 3. Section 46-14-213, MCA, is amended to read:

22 "46-14-213. Psychiatric Mental condition testimony
23 upon trial. (1) Upon the trial, any psychiatrist or clinical
24 psychologist who reported under 46-14-202 and 46-14-203 may
25 be called as a witness by the prosecution or by the defense.

INTRODUCED BILL

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

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

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

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

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

1 part 1, or chapter 21, part 1, of Title 53.

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

6 (5) The expenses of sending the defendant to the
7 custody of the director of the department of institutions to
8 be placed in an appropriate institution of the state
9 department of institutions, of keeping him there, and of
10 bringing him back are chargeable to the state but the state
11 may recover them from the estate of the defendant."

12 Section 5. Section 46-14-302, MCA, is amended to read:

13 "46-14-302. Discharge or release upon motion of
14 superintendent. (1) If the superintendent of Warm Springs
15 state hospital believes that a person committed to his
16 custody under 46-14-301 may be discharged or released on
17 condition without danger to himself or others, he shall make
18 application for the discharge or release of the person in a
19 report to the court by which the person was committed and
20 shall send a copy of the application and report to the
21 county attorney of the county from which the defendant was
22 committed.

23 (2) The court shall then appoint at least two
24 qualified psychiatrists, two clinical psychologists, or one
25 of each to examine the person and to report their opinion as

1 to his mental condition within 60 days or a longer period
2 which the court determines to be necessary for the purpose.
3 To facilitate the examinations and the proceedings thereon,
4 the court may have the person confined in any institution
5 located near the place where the court sits which may
6 hereafter be designated by the superintendent of Warm
7 Springs state hospital as suitable for the temporary
8 detention of irresponsible persons.

9 (3) If the court is satisfied by the report filed
10 under subsection (1) of this section and the testimony of
11 the reporting psychiatrists or psychologists which the court
12 considers necessary that the committed person may be
13 discharged or released on condition without danger to
14 himself or others, the court shall order his discharge or
15 his release on conditions which the court determines to be
16 necessary.

17 (4) If the court is not satisfied, it shall promptly
18 order a hearing to determine whether the person may safely
19 be discharged or released. A hearing is considered a civil
20 proceeding, and the burden is upon the committed person to
21 prove by a preponderance of the evidence that he may safely
22 be discharged or released. According to the determination
23 of the court upon the hearing, the committed person shall
24 then be discharged or released on conditions which the court
25 determines to be necessary or shall be recommitted to the

1 custody of the superintendent of Warm Springs state
2 hospital, subject to discharge or release only in accordance
3 with the procedures prescribed in this section and
4 46-14-303."

5 Section 6. Section 46-14-401, MCA, is amended to read:
6 "46-14-401. Admissibility of statements made during
7 examination or treatment. A statement made for the purposes
8 of psychiatric ~~mental condition~~ examination or treatment
9 provided for in this chapter by a person subjected to such
10 examination or treatment is not admissible in evidence
11 against him in any criminal proceeding, except a sentencing
12 hearing conducted under 46-14-311, on any issue other than
13 that of his mental condition. It is admissible on the issue
14 of his mental condition, whether or not it would otherwise
15 be considered a privileged communication, unless it
16 constitutes an admission of guilt of the crime charged. In a
17 hearing held under 46-14-311, the court may hear and
18 consider any such statement even if it constitutes an
19 admission of guilt."

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