

SENATE BILL NO. 351

Introduced: 02/03/83

Referred to Committee on Judiciary: 02/03/83

Hearing: 2/9/83

Report: 2/16/83, Do Pass, As Amended

2nd Reading: 02/18/83

3rd Reading: 02/21/83

Transmitted to House: 02/21/83

Referred to Committee on Judiciary: 02/28/83

Hearing: 3/11/83

Report: 03/11/83, Be Not Concurred In. Report Adopted.

Bill Killed: 03/14/83

1 *Senate* BILL NO. 351
 2 INTRODUCED BY *Dallas G. Anderson*
 3 BY REQUEST OF THE DEPARTMENT OF JUSTICE
 4

5 A BILL FOR AN ACT ENTITLED: "AN ACT TO LIMIT OPINION
 6 TESTIMONY OF PSYCHIATRISTS AND OTHER MENTAL HEALTH
 7 PROFESSIONALS IN CRIMINAL PROCEEDINGS; AMENDING SECTIONS
 8 46-14-212 AND 46-14-213, MCA."
 9

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

11 Section 1. Section 46-14-212, MCA, is amended to read:

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

22 Section 2. Section 46-14-213, MCA, is amended to read:

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

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

12 (2) When a psychiatrist or other expert mental health
 13 professional 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, and his
 16 medical diagnosis of the mental condition of the defendant
 17 ~~at the time of the commission of the offense charged, and~~
 18 ~~his opinion as to the ability of the defendant to have a~~
 19 ~~particular state of mind which is an element of the offense~~
 20 ~~charged. The expert~~ he may make any explanation reasonably
 21 serving to clarify his medical diagnosis ~~and opinion~~ and may
 22 be cross-examined as to any matter bearing on his competency
 23 or credibility or the validity of his examination or medical
 24 diagnosis or opinion. A psychiatrist or other mental health
 25 professional may not offer an opinion to the trier of fact

INTRODUCED BILL

1 ~~on the ultimate issue of whether the defendant did or did~~
2 ~~not have a state of mind that is an element of the offense~~
3 ~~charged."~~

-End-

Approved by Committee
on Judiciary

SENATE BILL NO. 351

INTRODUCED BY HALLIGAN, GRAHAM

BY REQUEST OF THE DEPARTMENT OF JUSTICE

A BILL FOR AN ACT ENTITLED: "AN ACT TO LIMIT OPINION
TESTIMONY OF PSYCHIATRISTS AND OTHER MENTAL-HEALTH
PROFESSIONALS EXPERTS IN CRIMINAL PROCEEDINGS; AMENDING
SECTIONS 46-14-212 AND SECTION 46-14-213, MCA."

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

Section 1. Section 46-14-212, MCA, is amended to read:

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

Section 1. Section 46-14-213, MCA, is amended to read:

"46-14-213. Psychiatric testimony upon trial. (1) Upon
the trial, any psychiatrist who reported under 46-14-202 and
46-14-203 may be called as a witness by the prosecution or

by the defense. If the issue is being tried before a jury,
the jury may not be informed that the psychiatrist was
designated by the court or by the superintendent of Warm
Springs state hospital. Both the prosecution and the
defense may summon any other qualified psychiatrist or other
expert mental-health professional EXPERT to testify, but no
one who has not examined the defendant is competent to
testify to an expert opinion with respect to the mental
condition of the defendant, as distinguished from the
validity of the procedure followed by or the general
scientific propositions stated by another witness.

(2) When a psychiatrist or other expert mental-health
professional EXPERT who has examined the defendant testifies
concerning the defendant's mental condition, he may make a
statement as to the nature of his examination and his
medical diagnosis of the mental condition of the defendant
at the time of the commission of the offense charged, and
his opinion as to the ability of the defendant to have a
particular state of mind which is an element of the offense
charged. The expert or THE EXPERT may make any explanation
reasonably serving to clarify his medical diagnosis and
opinion and may be cross-examined as to any matter bearing
on his competency or credibility or the validity of his
examination or medical diagnosis or opinion. A psychiatrist
or other mental-health professional EXPERT may not offer an

1 opinion to the trier of fact on the ultimate issue of
2 whether the defendant did or did not have, AT THE TIME THE
3 OFFENSE WAS COMMITTED, a state of mind that is an element of
4 the offense charged."

-End-

SENATE BILL NO. 351

INTRODUCED BY HALLIGAN, GRAHAM

BY REQUEST OF THE DEPARTMENT OF JUSTICE

A BILL FOR AN ACT ENTITLED: "AN ACT TO LIMIT OPINION
TESTIMONY OF PSYCHIATRISTS AND OTHER MENTAL-HEALTH
PROFESSIONALS' EXPERTS IN CRIMINAL PROCEEDINGS; AMENDING
SECTIONS 46-14-212 AND SECTION 46-14-213, MCA."

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

Section 1. Section 46-14-212, MCA, is amended to read:

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

Section 1. Section 46-14-213, MCA, is amended to read:

"46-14-213. Psychiatric testimony upon trial. (1) Upon
the trial, any psychiatrist who reported under 46-14-202 and
46-14-203 may be called as a witness by the prosecution or

by the defense. If the issue is being tried before a jury,
the jury may not be informed that the psychiatrist was
designated by the court or by the superintendent of Warm
Springs state hospital. Both the prosecution and the
defense may summon any other qualified psychiatrist or other
expert mental-health-professional EXPERI to testify, but no
one who has not examined the defendant is competent to
testify to an expert opinion with respect to the mental
condition of the defendant, as distinguished from the
validity of the procedure followed by or the general
scientific propositions stated by another witness.

(2) When a psychiatrist or other expert mental-health
professional EXPERI who has examined the defendant testifies
concerning the defendant's mental condition, he may make a
statement as to the nature of his examination, and his
medical diagnosis of the mental condition of the defendant
at the time of the commission of the offense charged, and
his opinion as to the ability of the defendant to have a
particular state of mind which is an element of the offense
charged. The expert ~~He~~ THE EXPERI may make any explanation
reasonably serving to clarify his medical diagnosis and
opinion and may be cross-examined as to any matter bearing
on his competency or credibility or the validity of his
examination or medical diagnosis or opinion. A psychiatrist
or other mental-health-professional EXPERI may not offer an

1 opinion to the trier of fact on the ultimate issue of
2 whether the defendant did or did not have, AT THE TIME THE
3 DEFENSE WAS COMMITTED, a state of mind that is an element of
4 the offense charged."

-End-