

HOUSE BILL NO. 58
INTRODUCED BY KEENAN

IN THE HOUSE

JANUARY 5, 1987 INTRODUCED AND REFERRED TO COMMITTEE
ON HUMAN SERVICES & AGING.

JANUARY 20, 1987 COMMITTEE RECOMMEND BILL
DO PASS. REPORT ADOPTED.

JANUARY 21, 1987 PRINTING REPORT.

JANUARY 22, 1987 ON MOTION, CONSIDERATION PASSED
FOR THE DAY.

JANUARY 23, 1987 SECOND READING, DO PASS AS AMENDED.

JANUARY 24, 1987 ENGROSSING REPORT.

JANUARY 26, 1987 THIRD READING, PASSED.
AYES, 100; NOES, 0.

TRANSMITTED TO SENATE.

IN THE SENATE

JANUARY 27, 1987 INTRODUCED AND REFERRED TO COMMITTEE
ON JUDICIARY.

MARCH 5, 1987 COMMITTEE RECOMMEND BILL BE
CONCURRED IN. REPORT ADOPTED.

MARCH 9, 1987 SECOND READING, CONCURRED IN.

MARCH 11, 1987 THIRD READING, CONCURRED IN.
AYES, 50; NOES, 0.

RETURNED TO HOUSE.

IN THE HOUSE

MARCH 12, 1987 RECEIVED FROM SENATE.
SENT TO ENROLLING.

1 HOUSE BILL NO. 58
2 INTRODUCED BY KEENAN

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO AUTHORIZE
5 PSYCHOLOGISTS TO HAVE THE SAME AUTHORITY AS PSYCHIATRISTS TO
6 EXAMINE PERSONS RELYING ON MENTAL DISEASE OR DEFECT AS AN
7 ISSUE IN CRIMINAL ACTIONS; AND AMENDING SECTIONS 46-14-202,
8 46-14-212, 46-14-213, 46-14-221, AND 46-14-302, 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 examination of defendant. (1)
13 If the defendant or his counsel files a written notice of
14 his intent to rely on a mental disease or defect under
15 46-14-201 or raises the issue of his fitness to proceed, the
16 court shall appoint at least one qualified psychiatrist or
17 psychologist or shall request the superintendent of the
18 Montana state hospital to designate at least one qualified
19 psychiatrist or psychologist, which designation may be or
20 include himself, to examine and report upon the mental
21 condition of the defendant.

22 (2) The court may order the defendant to be committed
23 to a hospital or other suitable facility for the purpose of
24 the examination for a period of not exceeding 60 days or
25 such longer period as the court determines to be necessary

1 for the purpose and may direct that a qualified psychiatrist
2 or psychologist retained by the defendant be permitted to
3 witness and participate in the examination.

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

8 (4) The cost of the examination must be paid by the
9 county or the state, or both, according to procedures
10 established under 3-5-902(1)."

11 Section 2. Section 46-14-212, MCA, is amended to read:

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

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

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



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

12 (2) When a psychiatrist, psychologist, or other expert
 13 who has examined the defendant testifies concerning the
 14 defendant's mental condition, he may make a statement as to
 15 the nature of his examination, his diagnosis of the mental
 16 condition of the defendant at the time of the commission of
 17 the offense charged, and his opinion as to the ability of
 18 the defendant to have a particular state of mind which is an
 19 element of the offense charged. The expert may make any
 20 explanation reasonably serving to clarify his diagnosis and
 21 opinion and may be cross-examined as to any matter bearing
 22 on his competency or credibility or the validity of his
 23 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 by the
 3 defendant or his counsel or by the county attorney. When the
 4 issue is raised, it shall be determined by the court. If
 5 neither the county attorney nor counsel for the defendant
 6 contests the finding of the report filed under 46-14-203,
 7 the court may make the determination on the basis of the
 8 report. If the finding is contested, the court shall hold a
 9 hearing on the issue. If the report is received in evidence
 10 upon the hearing, the parties have the right to summon and
 11 cross-examine the psychiatrists or psychologists who joined
 12 in the report and to offer 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. The
 20 committing court shall, within 90 days of commitment, review
 21 the defendant's fitness to proceed. If the court finds that
 22 he is still unfit to proceed and that it does not appear
 23 that he will become fit to proceed within the reasonably
 24 foreseeable future, the proceeding against him shall be
 25 dismissed, except as provided in subsection (4) of this

1 section, and the county attorney shall petition the court in
2 the manner provided in chapter 20 or 21 of Title 53,
3 whichever is appropriate, to determine the disposition of
4 the defendant pursuant to those provisions.

5 (3) If the court determines that the defendant lacks
6 fitness to proceed because he is developmentally disabled as
7 provided in 53-20-102(4), the proceeding against him shall
8 be dismissed and the county attorney shall petition the
9 court in the manner provided in chapter 20 of Title 53.

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

14 (5) The expenses of sending the defendant to the
15 custody of the director of the department of institutions to
16 be placed in an appropriate institution of the state
17 department of institutions, of keeping him there, and of
18 bringing him back are chargeable to the state and payable
19 according to procedures established under 3-5-902(1)."

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

21 "46-14-302. Discharge or release upon motion of
22 superintendent. (1) If the superintendent of the Montana
23 state hospital believes that a person committed to his
24 custody under 46-14-301 may be discharged or released on
25 condition without danger to himself or others, he shall make

1 application for the discharge or release of the person in a
2 report to the court by which the person was committed and
3 shall send a copy of the application and report to the
4 county attorney of the county from which the defendant was
5 committed.

6 (2) The court shall then appoint at least two persons
7 who are qualified psychiatrists or psychologists to examine
8 the person and to report their opinion as to his mental
9 condition within 60 days or a longer period which the court
10 determines to be necessary for the purpose. To facilitate
11 the examinations and the proceedings thereon, the court may
12 have the person confined in any institution located near the
13 place where the court sits which may hereafter be designated
14 by the superintendent of the Montana state hospital as
15 suitable for the temporary detention of irresponsible
16 persons.

17 (3) If the court is satisfied by the report filed
18 under subsection (1) of this section and the testimony of
19 the reporting psychiatrists or psychologists which the court
20 considers necessary that the committed person may be
21 discharged or released on condition without danger to
22 himself or others, the court shall order his discharge or
23 his release on conditions which the court determines to be
24 necessary.

25 (4) If the court is not satisfied, it shall promptly

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1 order a hearing to determine whether the person may safely
2 be discharged or released. A hearing is considered a civil
3 proceeding, and the burden is upon the committed person to
4 prove by a preponderance of the evidence that he may safely
5 be discharged or released. According to the determination
6 of the court upon the hearing, the committed person shall
7 then be discharged or released on conditions which the court
8 determines to be necessary or shall be recommitted to the
9 custody of the superintendent of the Montana state hospital,
10 subject to discharge or release only in accordance with the
11 procedures prescribed in this section and 46-14-303."

-End-

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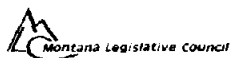
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17 defendant's fitness to proceed or whether he had, at the
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19 which is an essential element of the offense, the examiner
20 shall be permitted to have reasonable access to the
21 defendant for the purpose of the examination."

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23 "46-14-213. Psychiatric testimony upon trial. (1) Upon
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 2 tried before a jury, the jury may not be informed that the
 3 psychiatrist or psychologist was designated by the court or
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 6 qualified psychiatrist, psychologist, or other expert to
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12 (2) When a psychiatrist, psychologist, or other expert
 13 who has examined the defendant testifies concerning the
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 7 the court may make the determination on the basis of the
 8 report. If the finding is contested, the court shall hold a
 9 hearing on the issue. If the report is received in evidence
 10 upon the hearing, the parties have the right to summon and
 11 cross-examine the psychiatrists or psychologists who joined
 12 in the report and to offer 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. The
 20 committing court shall, within 90 days of commitment, review
 21 the defendant's fitness to proceed. If the court finds that
 22 he is still unfit to proceed and that it does not appear
 23 that he will become fit to proceed within the reasonably
 24 foreseeable future, the proceeding against him shall be
 25 dismissed, except as provided in subsection (4) of this

1 section, and the county attorney shall petition the court in
2 the manner provided in chapter 20 or 21 of Title 53,
3 whichever is appropriate, to determine the disposition of
4 the defendant pursuant to those provisions.

5 (3) If the court determines that the defendant lacks
6 fitness to proceed because he is developmentally disabled as
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8 be dismissed and the county attorney shall petition the
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11 does not preclude any legal objection to the prosecution
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9 custody of the superintendent of the Montana state hospital,
10 subject to discharge or release only in accordance with the
11 procedures prescribed in this section and 46-14-303."

-End-

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



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 3 psychologist who reported under 46-14-202 and 46-14-203 may
 4 be called as a witness by the prosecution or by the defense.
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 7 psychologist was designated by the court or by the
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 20 fitness to proceed, the proceeding against him shall be
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1 committing court shall, within 90 days of commitment, review
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 6 be informed that the psychiatrist or LICENSED CLINICAL
 7 psychologist was designated by the court or by the
 8 superintendent of the Montana state hospital. Both the
 9 prosecution and the defense may summon any other qualified
 10 psychiatrist, LICENSED CLINICAL psychologist, or other
 11 expert to testify, but no one who has not examined the
 12 defendant is competent to testify to an expert opinion with
 13 respect to the mental condition of the defendant, as
 14 distinguished from the validity of the procedure followed by
 15 or the general scientific propositions stated by another
 16 witness.

17 (2) When a psychiatrist, LICENSED CLINICAL
 18 psychologist, or other expert who has examined the defendant
 19 testifies concerning the defendant's mental condition, he
 20 may make a statement as to the nature of his examination,
 21 his diagnosis of the mental condition of the defendant at
 22 the time of the commission of the offense charged, and his
 23 opinion as to the ability of the defendant to have a
 24 particular state of mind which is an element of the offense
 25 charged. The expert may make any explanation reasonably

1 serving to clarify his diagnosis and opinion and may be
 2 cross-examined as to any matter bearing on his competency or
 3 credibility or the validity of his diagnosis or opinion."

4 Section 4. Section 46-14-221, MCA, is amended to read:

5 "46-14-221. Determination of fitness to proceed --
 6 effect of finding of unfitness -- expenses. (1) The issue of
 7 the defendant's fitness to proceed may be raised by the
 8 defendant or his counsel or by the county attorney. When the
 9 issue is raised, it shall be determined by the court. If
 10 neither the county attorney nor counsel for the defendant
 11 contests the finding of the report filed under 46-14-203,
 12 the court may make the determination on the basis of the
 13 report. If the finding is contested, the court shall hold a
 14 hearing on the issue. If the report is received in evidence
 15 upon the hearing, the parties have the right to summon and
 16 cross-examine the psychiatrists or LICENSED CLINICAL
 17 psychologists who joined in the report and to offer evidence
 18 upon the issue.

19 (2) If the court determines that the defendant lacks
 20 fitness to proceed, the proceeding against him shall be
 21 suspended, except as provided in subsection (4) of this
 22 section, and the court shall commit him to the custody of
 23 the director of the department of institutions to be placed
 24 in an appropriate institution of the department of
 25 institutions for so long as the unfitness endures. The

1 committing court shall, within 90 days of commitment, review
 2 the defendant's fitness to proceed. If the court finds that
 3 he is still unfit to proceed and that it does not appear
 4 that he will become fit to proceed within the reasonably
 5 foreseeable future, the proceeding against him shall be
 6 dismissed, except as provided in subsection (4) of this
 7 section, and the county attorney shall petition the court in
 8 the manner provided in chapter 20 or 21 of Title 53,
 9 whichever is appropriate, to determine the disposition of
 10 the defendant pursuant to those provisions.

11 (3) If the court determines that the defendant lacks
 12 fitness to proceed because he is developmentally disabled as
 13 provided in 53-20-102(4), the proceeding against him shall
 14 be dismissed and the county attorney shall petition the
 15 court in the manner provided in chapter 20 of Title 53.

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

20 (5) The expenses of sending the defendant to the
 21 custody of the director of the department of institutions to
 22 be placed in an appropriate institution of the state
 23 department of institutions, of keeping him there, and of
 24 bringing him back are chargeable to the state and payable
 25 according to procedures established under 3-5-902(1)."

1 Section 5. Section 46-14-302, MCA, is amended to read:
 2 "46-14-302. Discharge or release upon motion of
 3 superintendent. (1) If the superintendent of the Montana
 4 state hospital believes that a person committed to his
 5 custody under 46-14-301 may be discharged or released on
 6 condition without danger to himself or others, he shall make
 7 application for the discharge or release of the person in a
 8 report to the court by which the person was committed and
 9 shall send a copy of the application and report to the
 10 county attorney of the county from which the defendant was
 11 committed.

12 (2) The court shall then appoint at least two persons
 13 who are qualified psychiatrists or LICENSED CLINICAL
 14 psychologists to examine the person and to report their
 15 opinion as to his mental condition within 60 days or a
 16 longer period which the court determines to be necessary for
 17 the purpose. To facilitate the examinations and the
 18 proceedings thereon, the court may have the person confined
 19 in any institution located near the place where the court
 20 sits which may hereafter be designated by the superintendent
 21 of the Montana state hospital as suitable for the temporary
 22 detention of irresponsible persons.

23 (3) If the court is satisfied by the report filed
 24 under subsection (1) of this section and the testimony of
 25 the reporting psychiatrists or LICENSED CLINICAL

1 psychologists which the court considers necessary that the
2 committed person may be discharged or released on condition
3 without danger to himself or others, the court shall order
4 his discharge or his release on conditions which the court
5 determines to be necessary.

6 (4) If the court is not satisfied, it shall promptly
7 order a hearing to determine whether the person may safely
8 be discharged or released. A hearing is considered a civil
9 proceeding, and the burden is upon the committed person to
10 prove by a preponderance of the evidence that he may safely
11 be discharged or released. According to the determination
12 of the court upon the hearing, the committed person shall
13 then be discharged or released on conditions which the court
14 determines to be necessary or shall be recommitted to the
15 custody of the superintendent of the Montana state hospital,
16 subject to discharge or release only in accordance with the
17 procedures prescribed in this section and 46-14-303."

-End-