

HB 451 INTRODUCED BY BROWN, J.
PROFESSIONAL PERSONS IN MENTAL HEALTH TO DETERMINE
MENTAL DEFECT IN CRIMES

1/26 INTRODUCED
1/26 REFERRED TO HUMAN SERVICES & AGING
2/03 HEARING
2/03 TABLED IN COMMITTEE

1 House BILL NO. 451
2 INTRODUCED BY J. Brown

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4 A BILL FOR AN ACT ENTITLED: "AN ACT TO SUBSTITUTE
5 PROFESSIONAL PERSONS, WHO ARE DEFINED AS LICENSED HEALTH
6 CARE PRACTITIONERS, FOR PSYCHIATRISTS IN THE LAWS GOVERNING
7 THE EXAMINATION OF PERSONS RELYING ON MENTAL DISEASE OR
8 DEFECT AS AN ISSUE IN CRIMINAL ACTIONS; AND AMENDING
9 SECTIONS 46-14-202, 46-14-212, 46-14-213, 46-14-221, AND
10 46-14-302, MCA."

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

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

14 "46-14-202. Psychiatric examination of defendant. (1)
15 If the defendant or his counsel files a written notice of
16 his intent to rely on a mental disease or defect under
17 46-14-201 or raises the issue of his fitness to proceed, the
18 court shall appoint at least one qualified psychiatrist
19 professional person, as that person is defined in Title 53,
20 chapter 21, part 1, or shall request the superintendent of
21 the Montana state hospital to designate at least one
22 qualified psychiatrist professional person, which
23 designation may be or include himself, to examine and report
24 upon the mental condition of the defendant.

25 (2) The court may order the defendant to be committed

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

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

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

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

15 "46-14-212. Examination by psychiatrist professional
16 person chosen by state or defendant. If either the defendant
17 or the state wishes the defendant to be examined by a
18 qualified psychiatrist-or-other-expert professional person,
19 as that person is defined in Title 53, chapter 21, part 1,
20 selected by the one proposing the examination in order to
21 determine the defendant's fitness to proceed or whether he
22 had, at the time the offense was committed, a particular
23 state of mind which is an essential element of the offense,
24 the examiner shall be permitted to have reasonable access to
25 the defendant for the purpose of the examination."



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

2 "46-14-213. Psychiatric testimony upon trial. (1) Upon
3 the trial, any psychiatrist professional person, as that
4 person is defined in Title 53, chapter 21, part 1, who
5 reported under 46-14-202 and 46-14-203 may be called as a
6 witness by the prosecution or by the defense. If the issue
7 is being tried before a jury, the jury may not be informed
8 that the psychiatrist professional person was designated by
9 the court or by the superintendent of the Montana state
10 hospital. Both the prosecution and the defense may summon
11 any other qualified psychiatrist---or---other---expert
12 professional person to testify, but no one who has not
13 examined the defendant is competent to testify to an expert
14 opinion with respect to the mental condition of the
15 defendant, as distinguished from the validity of the
16 procedure followed by or the general scientific propositions
17 stated by another witness.

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

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

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

6 "46-14-221. Determination of fitness to proceed --
7 effect of finding of unfitness -- expenses. (1) The issue of
8 the defendant's fitness to proceed may be raised by the
9 defendant or his counsel or by the county attorney. When the
10 issue is raised, it shall be determined by the court. If
11 neither the county attorney nor counsel for the defendant
12 contests the finding of the report filed under 46-14-203,
13 the court may make the determination on the basis of the
14 report. If the finding is contested, the court shall hold a
15 hearing on the issue. If the report is received in evidence
16 upon the hearing, the parties have the right to summon and
17 cross-examine the psychiatrists professional persons who
18 joined in the report and to offer evidence 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 professional persons, as
 14 defined in Title 53, chapter 21, part 1, to examine the
 15 person and to report their opinion as to his mental
 16 condition within 60 days or a longer period which the court
 17 determines to be necessary for the purpose. To facilitate
 18 the examinations and the proceedings thereon, the court may
 19 have the person confined in any institution located near the
 20 place where the court sits which may hereafter be designated
 21 by the superintendent of the Montana state hospital as
 22 suitable for the temporary detention of irresponsible
 23 persons.

24 (3) If the court is satisfied by the report filed
 25 under subsection (1) of this section and the testimony of

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

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

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