

HOUSE BILL 793

Introduced by Lee, et al.

4/11	Introduced
4/11	Referred to Judiciary
4/11	Fiscal Note Requested
4/12	Fiscal Note Received
4/13	Hearing
4/13	Tabled in Committee
4/14	Fiscal Note Printed

1 *HOUSE* BILL NO. *793*
 2 INTRODUCED BY *Fre. H. Kelly, Sen. Mercer* *Adley*
 3 *MERCER*

4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LAW
 5 RELATING TO THE FITNESS OF A DEFENDANT TO PROCEED IN
 6 CRIMINAL PROCEEDINGS; REQUIRING THAT THE ISSUE OF FITNESS
 7 MAY BE RAISED ONLY BY THE DEFENDANT OR HIS COUNSEL;
 8 REQUIRING CONTINUING HEARINGS ON THE ISSUE OF FITNESS TO
 9 PROCEED; AMENDING SECTION 46-14-221, MCA; AND PROVIDING AN
 10 IMMEDIATE EFFECTIVE DATE."

11
 12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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

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

1 psychologists who joined in the report and to offer evidence
 2 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 defendant shall be returned to the
 15 appropriate institution of the department of institutions.
 16 The court shall hold a hearing on the defendant's fitness to
 17 proceed every 180 days for so long as the unfitness to
 18 proceed endures or until the proceeding against him shall-be
 19 is dismissed, except-as-provided-in-subsection-(4)-of-this
 20 section, and-the-county-attorney-shall-petition-the-court-in
 21 the-manner-provided-in-chapter--20-or-21-of-Title-53,
 22 whichever-is-appropriate, to-determine-the-disposition-of
 23 the-defendant-pursuant-to-those-provisions.

24 (3) If the court determines that the defendant lacks
 25 fitness to proceed because he is developmentally disabled as

LC 1819/01

1 provided in 53-20-102(4), the proceeding against him shall
2 be dismissed and the county attorney shall petition the
3 court in the manner provided in chapter 20 of Title 53.

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

8 (5) The expenses of sending the defendant to the
9 custody of the director of the department of institutions to
10 be placed in an appropriate institution of the state
11 department of institutions, of keeping him there, and of
12 bringing him back are chargeable to the state and payable
13 according to procedures established under 3-5-902(1)."

14 NEW SECTION. **Section 2.** Effective date. [This act] is
15 effective on passage and approval.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB793, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

A bill for an act entitled: "An act to revise the law relating to the fitness of a defendant to proceed in criminal proceedings; requiring that the issue of fitness may only be raised by the defendant or his counsel; requiring continuing hearings on the issue of fitness to proceed; amending Section 46-14-221, MCA; and providing an immediate effective date."

ASSUMPTIONS:

1. Revises the law relating to fitness of a defendant to proceed in criminal proceedings.
2. The issue of fitness may only be raised by the defendant or his counsel.
3. Requires continuing hearings every 180 days.

FISCAL IMPACT:

FY90: 0 FY91: 0



DATE

DAVE LEWIS, BUDGET DIRECTOR
OFFICE OF BUDGET AND PROGRAM PLANNING



DATE 12 Apr 89

THOMAS N. LEE, PRIMARY SPONSOR

Fiscal Note for HB793, as introduced

HB 793