

HOUSE BILL NO. 255

INTRODUCED BY ANDERSON
BY REQUEST OF THE DEPARTMENT OF CORRECTIONS
AND HUMAN SERVICES

IN THE HOUSE

JANUARY 20, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
FEBRUARY 8, 1993	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 9, 1993	PRINTING REPORT.
FEBRUARY 10, 1993	SECOND READING, DO PASS.
FEBRUARY 11, 1993	ENGROSSING REPORT.
FEBRUARY 13, 1993	THIRD READING, PASSED. AYES, 68; NOES, 30.
FEBRUARY 15, 1993	TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 16, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
MARCH 8, 1993	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 9, 1993	SECOND READING, CONCURRED IN.
MARCH 10, 1993	THIRD READING, CONCURRED IN. AYES, 46; NOES, 0.
	RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

MARCH 31, 1993	RECEIVED FROM SENATE.
	SECOND READING, AMENDMENTS CONCURRED IN.

APRIL 2, 1993

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 House BILL NO. 255
2 INTRODUCED BY Anderson
3 BY REQUEST OF THE DEPARTMENT OF CORRECTIONS
4 AND HUMAN SERVICES
5
6 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE CRITERIA
7 APPLICABLE TO THE CONDITIONAL RELEASE OR DISCHARGE OF A
8 PERSON WHO HAS RELIED UPON THE DEFENSE OF MENTAL DISEASE OR
9 DEFECT; PROVIDING FOR A DIAGNOSIS OF SERIOUSLY
10 DEVELOPMENTALLY DISABLED IN EXAMINATION REPORTS; REVISING
11 THE HEARING PROCEDURE; AMENDING SECTIONS 46-14-206,
12 46-14-301, 46-14-302, 46-14-303, 46-14-304, AND 46-14-312,
13 MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."
14
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
16 **Section 1.** Section 46-14-206, MCA, is amended to read:
17 "46-14-206. Report of examination. (1) A report of the
18 examination ~~may~~ must include the following:
19 (a) a description of the nature of the examination;
20 (b) a diagnosis of the mental condition of the
21 defendant, including an opinion as to whether the defendant
22 is seriously mentally ill, as defined in 53-21-102, or is
23 seriously developmentally disabled, as defined in 53-20-102;
24 (c) if the defendant suffers from a mental disease or
25 defect, an opinion as to the defendant's capacity to

1 understand the proceedings against the defendant and to
2 assist in the defendant's own defense;
3 (d) when directed by the court, an opinion as to the
4 capacity of the defendant to have a particular state of mind
5 that is an element of the offense charged; and
6 (e) when directed by the court, an opinion as to the
7 capacity of the defendant, because of a mental disease or
8 defect, to appreciate the criminality of the defendant's
9 behavior or to conform the defendant's behavior to the
10 requirement of the law.
11 (2) If the examination cannot be conducted by reason of
12 the unwillingness of the defendant to participate in the
13 examination, the report must state that fact and must
14 include, if possible, an opinion as to whether the
15 unwillingness of the defendant was the result of mental
16 disease or defect."
17 **Section 2.** Section 46-14-301, MCA, is amended to read:
18 "46-14-301. Commitment upon finding of not guilty by
19 reason of lack of mental state -- hearing to determine
20 release or discharge. (1) When a defendant is found not
21 guilty for the reason that due to a mental disease or defect
22 the defendant could not have a particular state of mind that
23 is an essential element of the offense charged, the court
24 shall order a predisposition investigation in accordance
25 with 46-18-112 and 46-18-113, which must include an

1 investigation of the present mental condition of the
2 defendant. If the trial was by jury, the court shall hold a
3 hearing to determine the appropriate disposition of the
4 defendant. If the trial was by the court, the court may hold
5 a hearing to obtain any additional testimony it considers
6 necessary to determine the appropriate disposition of the
7 defendant. In either case, the testimony and evidence
8 presented at the trial must be considered by the court in
9 making its determination.

10 ~~(2) The court, upon finding that the defendant may not~~
11 ~~be discharged or released without danger to others, shall~~
12 ~~order the defendant committed to the custody of the~~
13 ~~superintendent of the Montana state hospital to be placed in~~
14 ~~an appropriate institution for custody, care, and treatment.~~

15 (2) The court shall evaluate the nature of the offense
16 with which the defendant was charged. If the offense:

17 (a) involved a substantial risk of serious bodily
18 injury or death, actual bodily injury, or substantial
19 property damage, the court may find that the defendant
20 suffers from a mental disease or defect that renders the
21 defendant a danger to the defendant or others. If the court
22 finds that the defendant presents a danger to the defendant
23 or others, the defendant may be committed to the custody of
24 the director of the department of corrections and human
25 services to be placed in an appropriate mental health

1 facility for custody, care, and treatment. However, if the
2 court finds that the defendant is seriously developmentally
3 disabled, as defined in 53-20-102, the prosecutor shall
4 petition the court in the manner provided in Title 53,
5 chapter 20.

6 (b) charged did not involve a substantial risk of
7 serious bodily injury or death, actual bodily injury, or
8 substantial property damage, the court shall release the
9 defendant. The prosecutor may petition the court in the
10 manner provided in Title 53, chapter 20 or 21.

11 (3) A person committed to the custody of the
12 superintendent director of the department of corrections and
13 human services shall must have a hearing within 180 days of
14 confinement to determine the person's present mental
15 condition and whether the person may must be discharged or
16 released without danger to others or whether the commitment
17 may be extended because the person continues to suffer from
18 a mental disease or defect that renders the person a danger
19 to the person or others. The hearing must be conducted by
20 the court that ordered the commitment unless that court
21 transfers jurisdiction to the third judicial district court
22 in the district in which the person has been placed. The
23 court shall cause notice of the hearing to be served upon
24 the person, the person's counsel, and the prosecutor, and
25 the court that originally ordered the commitment. The

hearing is a civil proceeding, and the burden is upon the defendant department of corrections and human services to prove by a--preponderance--of--the clear and convincing evidence that the defendant person may not be safely released because the person continues to suffer from a mental disease or defect that causes the person to present a substantial risk of serious bodily injury or death to the person or others, of an imminent threat of physical injury to the person or others, or of substantial property damage.

(4) According to the determination of the court upon the hearing, the defendant person must be discharged or released on conditions the court determines to be necessary or must be committed to the custody of the superintendent-of-the-Montana-state-hospital director of the department of corrections and human services to be placed in an appropriate institution mental health facility for custody, care, and treatment.

(5) A professional person shall review the status of the person each year. At the time of the annual review, the director of the department of corrections and human services or the person or the representative of the person may petition for discharge or release of the person. Upon request for a hearing, a hearing must be held pursuant to the provisions of subsection (3)."

Section 3. Section 46-14-302, MCA, is amended to read:

"46-14-302. Discharge or release upon motion of superintendent director. (1) If the superintendent-of-the-Montana--state--hospital director of the department of corrections and human services believes that a person committed to the superintendent's director's custody under 46-14-301 may be discharged or released on condition without danger to the person or others because the person no longer suffers from a mental disease or defect that causes the person to present a substantial risk of serious bodily injury or death to the person or others, of an imminent threat of physical injury to the person or others, or of substantial property damage, the superintendent director shall make application for the discharge or release of the person in a report to the district court by-which-the-person was--committed in the district in which the person has been placed and shall send a copy of the application and report to the prosecutor of the county from which the defendant person was committed and to the court that originally committed the person.

(2) The county attorney and the judge who originally committed the person may transmit to the court statements of their reasons for requesting or granting the original commitment and shall transmit the statements within 7 days if requested to do so by the presiding court. The county attorney and the judge who originally committed the person

1 must be given the opportunity to request a hearing on the
 2 requested release of the person and to appear at the
 3 hearing.

4 (3) Either the director of the department of
 5 corrections and human services or the person may also make
 6 application to the court for discharge or release as part of
 7 the person's annual treatment review.

8 {2}(4) The court shall then appoint at least two
 9 persons one person who are is either a qualified
 10 psychiatrists psychiatrist or licensed clinical
 11 psychologists psychologist to examine the person and to
 12 report their-opinion as to the person's mental condition
 13 within 60 days or a longer period that the court determines
 14 to be necessary for the purpose. To facilitate the
 15 examinations and the proceedings on the examinations, the
 16 court may have the person confined in any institution mental
 17 health facility located near the place where the court sits
 18 that may be designated by the superintendent-of-the-Montana
 19 state-hospital director of the department of corrections and
 20 human services as suitable for the temporary detention of
 21 irresponsible persons suffering from mental disease or
 22 defect.

23 (5) The committed person or the person's attorney may
 24 secure a professional person of the committed person's
 25 choice to examine the committed person and to testify at the

1 hearing. If the person wishing to secure the testimony of a
 2 professional person is unable to do so because of financial
 3 reasons, the court shall appoint an additional professional
 4 person to perform the examination. Whenever possible, the
 5 court shall allow the committed person or the person's
 6 attorney a reasonable choice of an available professional
 7 person qualified to perform the requested examination. The
 8 professional person must be compensated by the department of
 9 corrections and human services.

10 {3}(6) If the court is satisfied by the report filed
 11 under subsection (1) and the testimony of the reporting
 12 psychiatrist or licensed clinical psychologist that the
 13 committed person may be discharged or released on condition
 14 without-danger-to-the-person-or-others because the person no
 15 longer suffers from a mental disease or defect that causes
 16 the person to present a substantial risk of serious bodily
 17 injury or death to the person or others, of an imminent
 18 threat of physical injury to the person or others, or of
 19 substantial property damage, the court shall order the
 20 person's discharge or release on conditions that the court
 21 determines to be necessary.

22 {4}(7) If the court is not satisfied, it shall promptly
 23 order a hearing to determine whether the person may safely
 24 be discharged or released on the grounds that the person no
 25 longer suffers from a mental disease or defect that causes

1 the person to present a substantial risk of serious bodily
 2 injury or death to the person or others, of an imminent
 3 threat of physical injury to the person or others, or of
 4 substantial property damage. A hearing is considered a civil
 5 proceeding, and the burden is upon the committed--person
 6 state to prove by a--preponderance--of--the clear and
 7 convincing evidence that the person may not be safely be
 8 discharged or released because the person continues to
 9 suffer from a mental disease or defect that causes the
 10 person to present a substantial risk of serious bodily
 11 injury or death to the person or others, of an imminent
 12 threat of physical injury to the person or others, or of
 13 substantial property damage. According to the determination
 14 of the court upon the hearing, the committed person must
 15 then be discharged or released on conditions that the court
 16 determines to be necessary or must be recommitted to the
 17 custody of the superintendent-of-the-Montana-state--hospital
 18 director of the department of corrections and human
 19 services, subject to discharge or release only in accordance
 20 with the procedures provided in this section and 46-14-303."

21 **Section 4.** Section 46-14-303, MCA, is amended to read:

22 "46-14-303. Application for discharge or release by
 23 committed person. A committed person may make application
 24 for discharge or release to in the district court by--which
 25 the--person--was--committed, in the district in which the

1 person has been placed, and the procedure to be followed
 2 upon the application is the same as that prescribed in
 3 46-14-302 in the case of an application by the
 4 superintendent-of-the-Montana-state-hospital director of the
 5 department of corrections and human services. However, an
 6 application by a committed person need not be considered
 7 until the person has been confined for a period of not less
 8 than 6 months from the date of the order of commitment, and
 9 if the determination of the court is adverse to the
 10 application, the person may not be permitted to file a
 11 further application until 1 year has elapsed from the date
 12 of any preceding hearing on an application for the person's
 13 release or discharge."

14 **Section 5.** Section 46-14-304, MCA, is amended to read:

15 "46-14-304. Recombitment----after Revocation of
 16 conditional release. (1) if--within--5--years--after--the
 17 conditional--release--of--a--committed--person The court may
 18 order revocation of a person's conditional release if the
 19 court determines after hearing evidence that:

20 (a) the conditions of release have not been fulfilled;
 21 and

22 (b) that-for-the-safety-of-the-person-or-for-the-safety
 23 of--others--the--person's--conditional--release--should---be
 24 revoked, based on the violations of the conditions and the
 25 person's past mental health history, there is a substantial

likelihood that the person continues to suffer from a mental disease or defect that causes the person to present a substantial risk of serious bodily injury or death to the person or others, of an imminent threat of physical injury to the person or others, or of substantial property damage.

(2) The court may retain jurisdiction to revoke a conditional release for no longer than 5 years.

(3) If the court finds that the conditional release should be revoked, the court shall immediately order the person to be recommitted to the custody of the superintendent-of-the-Montana-state-hospital director of the department of corrections and human services, subject to discharge or release only in accordance with the procedures provided in 46-14-302 and 46-14-303."

Section 6. Section 46-14-312, MCA, is amended to read:

"46-14-312. Sentence to be imposed. (1) If the court finds that the defendant at the time of the commission of the offense of which the defendant was convicted did not suffer from a mental disease or defect as described in 46-14-311, the court shall sentence the defendant as provided in Title 46, chapter 18.

(2) If the court finds that the defendant at the time of the commission of the offense suffered from a mental disease or defect as described in 46-14-311, any mandatory minimum sentence prescribed by law for the offense need not

apply and the court shall sentence the defendant to be committed to the custody of the director of the department of corrections and human services to be placed in an appropriate institution for custody, care, and treatment for a definite period of time not to exceed the maximum term of imprisonment that could be imposed under subsection (1). The authority of the court with regard to sentencing is the same as authorized in Title 46, chapter 18, if the treatment of the individual and the protection of the public are provided for.

(3) Either the director or a defendant whose sentence has been imposed under subsection (2) may petition the sentencing court for review of the sentence if the professional person certifies that:

(a) the defendant no longer suffers from a mental disease or defect;

(b) the defendant's mental disease or defect no longer renders him the defendant unable to appreciate the criminality of his the defendant's conduct or to conform his the defendant's conduct to the requirements of law; or

(c) the defendant suffers from a mental disease or defect but is not a danger to the defendant or others; or

(c)(d) the defendant suffers from a mental disease or defect that makes him the defendant a danger to himself the defendant or others, but either:

1 (i) there is no treatment available for his the mental
2 disease or defect;

3 (ii) or-he the defendant refuses to cooperate with
4 treatment; or

5 (iii) the defendant will no longer benefit from active
6 inpatient treatment for the mental disease or defect.

7 (4) The sentencing court may make any order not
8 inconsistent with its original sentencing authority except
9 that the length of confinement or supervision must be equal
10 to that of the original sentence. The professional person
11 shall review the defendant's status each year."

12 NEW SECTION. Section 7. Effective date. [This act] is
13 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 HB0255, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION: An act revising the criteria applicable to the conditional release or discharge of a person who has relied upon the defense of mental disease or defect; providing for a diagnosis of seriously developmentally disabled in examination reports; revising the hearing procedure; amending sections; and providing an immediate effective date.

ASSUMPTIONS:

1. Currently, 9 persons are committed to Montana State Hospital as not guilty by reason of mental disease.
2. Each person could request an examination annually at an estimated total cost of \$4,500 per year.
3. The estimated cost can be absorbed in the current budget.

FISCAL IMPACT: No fiscal impact.

David Lewis 1-25-93

DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Shiell W. Anderson 1-25-93

SHIELL ANDERSON, PRIMARY SPONSOR DATE

Fiscal Note for HB0255, as introduced

HB 255

APPROVED BY COMMITTEE
ON JUDICIARY

HOUSE BILL NO. 255

INTRODUCED BY ANDERSON

BY REQUEST OF THE DEPARTMENT OF CORRECTIONS

AND HUMAN SERVICES

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE CRITERIA APPLICABLE TO THE CONDITIONAL RELEASE OR DISCHARGE OF A PERSON WHO HAS RELIED UPON THE DEFENSE OF MENTAL DISEASE OR DEFECT; PROVIDING FOR A DIAGNOSIS OF SERIOUSLY DEVELOPMENTALLY DISABLED IN EXAMINATION REPORTS; REVISING THE HEARING PROCEDURE; AMENDING SECTIONS 46-14-206, 46-14-301, 46-14-302, 46-14-303, 46-14-304, AND 46-14-312, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 46-14-206, MCA, is amended to read:

"46-14-206. Report of examination. (1) A report of the examination may must include the following:

(a) a description of the nature of the examination;

(b) a diagnosis of the mental condition of the defendant, including an opinion as to whether the defendant is seriously mentally ill, as defined in 53-21-102, or is seriously developmentally disabled, as defined in 53-20-102;

(c) if the defendant suffers from a mental disease or defect, an opinion as to the defendant's capacity to

understand the proceedings against the defendant and to assist in the defendant's own defense;

(d) when directed by the court, an opinion as to the capacity of the defendant to have a particular state of mind that is an element of the offense charged; and

(e) when directed by the court, an opinion as to the capacity of the defendant, because of a mental disease or defect, to appreciate the criminality of the defendant's behavior or to conform the defendant's behavior to the requirement of the law.

(2) If the examination cannot be conducted by reason of the unwillingness of the defendant to participate in the examination, the report must state that fact and must include, if possible, an opinion as to whether the unwillingness of the defendant was the result of mental disease or defect."

Section 2. Section 46-14-301, MCA, is amended to read:

"46-14-301. Commitment upon finding of not guilty by reason of lack of mental state -- hearing to determine release or discharge. (1) When a defendant is found not guilty for the reason that due to a mental disease or defect the defendant could not have a particular state of mind that is an essential element of the offense charged, the court shall order a predisposition investigation in accordance with 46-18-112 and 46-18-113, which must include an

1 investigation of the present mental condition of the
 2 defendant. If the trial was by jury, the court shall hold a
 3 hearing to determine the appropriate disposition of the
 4 defendant. If the trial was by the court, the court may hold
 5 a hearing to obtain any additional testimony it considers
 6 necessary to determine the appropriate disposition of the
 7 defendant. In either case, the testimony and evidence
 8 presented at the trial must be considered by the court in
 9 making its determination.

10 ~~(2) The court, upon finding that the defendant may not~~
 11 ~~be discharged or released without danger to others, shall~~
 12 ~~order the defendant committed to the custody of the~~
 13 ~~superintendent of the Montana state hospital to be placed in~~
 14 ~~an appropriate institution for custody, care, and treatment.~~

15 (2) The court shall evaluate the nature of the offense
 16 with which the defendant was charged. If the offense:

17 (a) involved a substantial risk of serious bodily
 18 injury or death, actual bodily injury, or substantial
 19 property damage, the court may find that the defendant
 20 suffers from a mental disease or defect that renders the
 21 defendant a danger to the defendant or others. If the court
 22 finds that the defendant presents a danger to the defendant
 23 or others, the defendant may be committed to the custody of
 24 the director of the department of corrections and human
 25 services to be placed in an appropriate mental health

1 facility for custody, care, and treatment. However, if the
 2 court finds that the defendant is seriously developmentally
 3 disabled, as defined in 53-20-102, the prosecutor shall
 4 petition the court in the manner provided in Title 53,
 5 chapter 20.

6 (b) charged did not involve a substantial risk of
 7 serious bodily injury or death, actual bodily injury, or
 8 substantial property damage, the court shall release the
 9 defendant. The prosecutor may petition the court in the
 10 manner provided in Title 53, chapter 20 or 21.

11 (3) A person committed to the custody of the
 12 superintendent director of the department of corrections and
 13 human services shall must have a hearing within 180 days of
 14 confinement to determine the person's present mental
 15 condition and whether the person may must be discharged or
 16 released without danger to others or whether the commitment
 17 may be extended because the person continues to suffer from
 18 a mental disease or defect that renders the person a danger
 19 to the person or others. The hearing must be conducted by
 20 the court that ordered the commitment unless that court
 21 transfers jurisdiction to the third judicial COURT THAT
 22 ORDERED THE COMMITMENT UNLESS THAT COURT TRANSFERS
 23 JURISDICTION TO THE district court in the district in which
 24 the person has been placed. The court shall cause notice of
 25 the hearing to be served upon the person, the person's

1 counsel, and the prosecutor, and the court that originally
 2 ordered the commitment. The hearing is a civil proceeding,
 3 and the burden is upon the defendant department of
 4 corrections and human services to prove by a--preponderance
 5 of--the clear and convincing evidence that the defendant
 6 person may not be safely released because the person
 7 continues to suffer from a mental disease or defect that
 8 causes the person to present a substantial risk of serious
 9 bodily injury or death to the person or others, of an
 10 imminent threat of physical injury to the person or others,
 11 or of substantial property damage.

12 (4) According to the determination of the court upon
 13 the hearing, the defendant person must be discharged or
 14 released on conditions the court determines to be necessary
 15 or must be committed to the custody of the superintendent-of
 16 the--Montana--state--hospital director of the department of
 17 corrections and human services to be placed in an
 18 appropriate institution mental health facility for custody,
 19 care, and treatment.

20 (5) A professional person shall review the status of
 21 the person each year. At the time of the annual review, the
 22 director of the department of corrections and human services
 23 or the person or the representative of the person may
 24 petition for discharge or release of the person. Upon
 25 request for a hearing, a hearing must be held pursuant to

1 the provisions of subsection (3)."

2 **Section 3.** Section 46-14-302, MCA, is amended to read:

3 "46-14-302. Discharge or release upon motion of
 4 superintendent director. (1) If the superintendent--of--the
 5 Montana---state--hospital director of the department of
 6 corrections and human services believes that a person
 7 committed to the superintendent's director's custody under
 8 46-14-301 may be discharged or released on condition without
 9 danger to the person or others because the person no longer
 10 suffers from a mental disease or defect that causes the
 11 person to present a substantial risk of serious bodily
 12 injury or death to the person or others, of an imminent
 13 threat of physical injury to the person or others, or of
 14 substantial property damage, the superintendent director
 15 shall make application for the discharge or release of the
 16 person in a report to the district court by-which-the-person
 17 was-committed in the district in which the person has been
 18 placed and shall send a copy of the application and report
 19 to the prosecutor of the county from which the defendant
 20 person was committed and to the court that originally
 21 committed the person.

22 (2) The county attorney and the judge who originally
 23 committed the person may transmit to the court statements of
 24 their reasons for requesting or granting the original
 25 commitment and shall transmit the statements within 7 days

1 if requested to do so by the presiding court. The county
 2 attorney and the judge who originally committed the person
 3 must be given the opportunity to request a hearing on the
 4 requested release of the person and to appear at the
 5 hearing.

6 (3) Either the director of the department of
 7 corrections and human services or the person may also make
 8 application to the court for discharge or release as part of
 9 the person's annual treatment review.

10 (2)(4) The court shall then appoint at least two
 11 persons one person who are is either a qualified
 12 psychiatrists psychiatrist or licensed clinical
 13 psychologists psychologist to examine the person and to
 14 report their--opinion as to the person's mental condition
 15 within 60 days or a longer period that the court determines
 16 to be necessary for the purpose. To facilitate the
 17 examinations and the proceedings on the examinations, the
 18 court may have the person confined in any institution mental
 19 health facility located near the place where the court sits
 20 that may be designated by the superintendent-of-the--Montana
 21 state-hospital director of the department of corrections and
 22 human services as suitable for the temporary detention of
 23 irresponsible persons suffering from mental disease or
 24 defect.

25 (5) The committed person or the person's attorney may

1 secure a professional person of the committed person's
 2 choice to examine the committed person and to testify at the
 3 hearing. If the person wishing to secure the testimony of a
 4 professional person is unable to do so because of financial
 5 reasons, the court shall appoint an additional professional
 6 person to perform the examination. Whenever possible, the
 7 court shall allow the committed person or the person's
 8 attorney a reasonable choice of an available professional
 9 person qualified to perform the requested examination. The
 10 professional person must be compensated by the department of
 11 corrections and human services.

12 (3)(6) If the court is satisfied by the report filed
 13 under subsection (1) and the testimony of the reporting
 14 psychiatrist or licensed clinical psychologist that the
 15 committed person may be discharged or released on condition
 16 without-danger-to-the-person-or-others because the person no
 17 longer suffers from a mental disease or defect that causes
 18 the person to present a substantial risk of serious bodily
 19 injury or death to the person or others, of an imminent
 20 threat of physical injury to the person or others, or of
 21 substantial property damage, the court shall order the
 22 person's discharge or release on conditions that the court
 23 determines to be necessary.

24 (4)(7) If the court is not satisfied, it shall promptly
 25 order a hearing to determine whether the person may safely

be discharged or released on the grounds that the person no longer suffers from a mental disease or defect that causes the person to present a substantial risk of serious bodily injury or death to the person or others, of an imminent threat of physical injury to the person or others, or of substantial property damage. A hearing is considered a civil proceeding, and the burden is upon the committed-person state to prove by a--preponderance--of--the clear and convincing evidence that the person may not be safely be discharged or released because the person continues to suffer from a mental disease or defect that causes the person to present a substantial risk of serious bodily injury or death to the person or others, of an imminent threat of physical injury to the person or others, or of substantial property damage. According to the determination of the court upon the hearing, the committed person must then be discharged or released on conditions that the court determines to be necessary or must be recommitted to the custody of the superintendent-of-the-Montana-state-hospital director of the department of corrections and human services, subject to discharge or release only in accordance with the procedures provided in this section and 46-14-303."

Section 4. Section 46-14-303, MCA, is amended to read:

"46-14-303. Application for discharge or release by committed person. A committed person may make application

for discharge or release to in the district court by which the-person-was-committed, in the district in which the person has been placed, and the procedure to be followed upon the application is the same as that prescribed in 46-14-302 in the case of an application by the superintendent-of-the-Montana-state-hospital director of the department of corrections and human services. However, an application by a committed person need not be considered until the person has been confined for a period of not less than 6 months from the date of the order of commitment, and if the determination of the court is adverse to the application, the person may not be permitted to file a further application until 1 year has elapsed from the date of any preceding hearing on an application for the person's release or discharge."

Section 5. Section 46-14-304, MCA, is amended to read:

"46-14-304. Recommitment-----after Revocation of conditional release. (1) if--within--5--years--after--the conditional-release-of-a--committed--person The court may order revocation of a person's conditional release if the court determines after hearing evidence that:

(a) the conditions of release have not been fulfilled;

and

(b) that-for-the-safety-of-the-person-or-for-the-safety of---others--the--person's--conditional--release--should--be

1 revoked, based on the violations of the conditions and the
 2 person's past mental health history, there is a substantial
 3 likelihood that the person continues to suffer from a mental
 4 disease or defect that causes the person to present a
 5 substantial risk of serious bodily injury or death to the
 6 person or others, of an imminent threat of physical injury
 7 to the person or others, or of substantial property damage.

8 (2) The court may retain jurisdiction to revoke a
 9 conditional release for no longer than 5 years.

10 (3) If the court finds that the conditional release
 11 should be revoked, the court shall immediately order the
 12 person to be recommitted to the custody of the
 13 superintendent-of-the-Montana-state-hospital director of the
 14 department of corrections and human services, subject to
 15 discharge or release only in accordance with the procedures
 16 provided in 46-14-302 and 46-14-303."

17 **Section 6.** Section 46-14-312, MCA, is amended to read:

18 "46-14-312. Sentence to be imposed. (1) If the court
 19 finds that the defendant at the time of the commission of
 20 the offense of which the defendant was convicted did not
 21 suffer from a mental disease or defect as described in
 22 46-14-311, the court shall sentence the defendant as
 23 provided in Title 46, chapter 18.

24 (2) If the court finds that the defendant at the time
 25 of the commission of the offense suffered from a mental

1 disease or defect as described in 46-14-311, any mandatory
 2 minimum sentence prescribed by law for the offense need not
 3 apply and the court shall sentence the defendant to be
 4 committed to the custody of the director of the department
 5 of corrections and human services to be placed in an
 6 appropriate institution for custody, care, and treatment for
 7 a definite period of time not to exceed the maximum term of
 8 imprisonment that could be imposed under subsection (1). The
 9 authority of the court with regard to sentencing is the same
 10 as authorized in Title 46, chapter 18, if the treatment of
 11 the individual and the protection of the public are provided
 12 for.

13 (3) Either the director or a defendant whose sentence
 14 has been imposed under subsection (2) may petition the
 15 sentencing court for review of the sentence if the
 16 professional person certifies that:

17 (a) the defendant no longer suffers from a mental
 18 disease or defect;

19 (b) the defendant's mental disease or defect no longer
 20 renders him the defendant unable to appreciate the
 21 criminality of his the defendant's conduct or to conform his
 22 the defendant's conduct to the requirements of law; or

23 (c) the defendant suffers from a mental disease or
 24 defect but is not a danger to the defendant or others; or

25 (c)(d) the defendant suffers from a mental disease or

defect that makes him the defendant a danger to himself the
defendant or others, but either;

(i) there is no treatment available for his the mental
disease or defect;

(ii) or--he the defendant refuses to cooperate with
treatment; or

(iii) the defendant will no longer benefit from active
inpatient treatment for the mental disease or defect.

(4) The sentencing court may make any order not
inconsistent with its original sentencing authority except
that the length of confinement or supervision must be equal
to that of the original sentence. The professional person
shall review the defendant's status each year."

NEW SECTION. **Section 7.** Effective date. [This act] is
effective on passage and approval.

-End-

HOUSE BILL NO. 255

INTRODUCED BY ANDERSON

BY REQUEST OF THE DEPARTMENT OF CORRECTIONS

AND HUMAN SERVICES

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE CRITERIA APPLICABLE TO THE CONDITIONAL RELEASE OR DISCHARGE OF A PERSON WHO HAS RELIED UPON THE DEFENSE OF MENTAL DISEASE OR DEFECT; PROVIDING FOR A DIAGNOSIS OF SERIOUSLY DEVELOPMENTALLY DISABLED IN EXAMINATION REPORTS; REVISING THE HEARING PROCEDURE; AMENDING SECTIONS 46-14-206, 46-14-301, 46-14-302, 46-14-303, 46-14-304, AND 46-14-312, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 46-14-206, MCA, is amended to read:

"46-14-206. Report of examination. (1) A report of the examination may must include the following:

(a) a description of the nature of the examination;

(b) a diagnosis of the mental condition of the defendant, including an opinion as to whether the defendant is seriously mentally ill, as defined in 53-21-102, or is seriously developmentally disabled, as defined in 53-20-102;

(c) if the defendant suffers from a mental disease or defect, an opinion as to the defendant's capacity to

understand the proceedings against the defendant and to assist in the defendant's own defense;

(d) when directed by the court, an opinion as to the capacity of the defendant to have a particular state of mind that is an element of the offense charged; and

(e) when directed by the court, an opinion as to the capacity of the defendant, because of a mental disease or defect, to appreciate the criminality of the defendant's behavior or to conform the defendant's behavior to the requirement of the law.

(2) If the examination cannot be conducted by reason of the unwillingness of the defendant to participate in the examination, the report must state that fact and must include, if possible, an opinion as to whether the unwillingness of the defendant was the result of mental disease or defect."

Section 2. Section 46-14-301, MCA, is amended to read:

"46-14-301. Commitment upon finding of not guilty by reason of lack of mental state -- hearing to determine release or discharge. (1) When a defendant is found not guilty for the reason that due to a mental disease or defect the defendant could not have a particular state of mind that is an essential element of the offense charged, the court shall order a predisposition investigation in accordance with 46-18-112 and 46-18-113, which must include an

1 investigation of the present mental condition of the
2 defendant. If the trial was by jury, the court shall hold a
3 hearing to determine the appropriate disposition of the
4 defendant. If the trial was by the court, the court may hold
5 a hearing to obtain any additional testimony it considers
6 necessary to determine the appropriate disposition of the
7 defendant. In either case, the testimony and evidence
8 presented at the trial must be considered by the court in
9 making its determination.

10 ~~(2) The court, upon finding that the defendant may not~~
11 ~~be discharged or released without danger to others, shall~~
12 ~~order the defendant committed to the custody of the~~
13 ~~superintendent of the Montana state hospital to be placed in~~
14 ~~an appropriate institution for custody, care, and treatment.~~

15 (2) The court shall evaluate the nature of the offense
16 with which the defendant was charged. If the offense:

17 (a) involved a substantial risk of serious bodily
18 injury or death, actual bodily injury, or substantial
19 property damage, the court may find that the defendant
20 suffers from a mental disease or defect that renders the
21 defendant a danger to the defendant or others. If the court
22 finds that the defendant presents a danger to the defendant
23 or others, the defendant may be committed to the custody of
24 the director of the department of corrections and human
25 services to be placed in an appropriate mental health

1 facility for custody, care, and treatment. However, if the
2 court finds that the defendant is seriously developmentally
3 disabled, as defined in 53-20-102, the prosecutor shall
4 petition the court in the manner provided in Title 53,
5 chapter 20.

6 (b) charged did not involve a substantial risk of
7 serious bodily injury or death, actual bodily injury, or
8 substantial property damage, the court shall release the
9 defendant. The prosecutor may petition the court in the
10 manner provided in Title 53, chapter 20 or 21.

11 (3) A person committed to the custody of the
12 superintendent director of the department of corrections and
13 human services shall must have a hearing within 180 days of
14 confinement to determine the person's present mental
15 condition and whether the person may must be discharged or
16 released without danger to others or whether the commitment
17 may be extended because the person continues to suffer from
18 a mental disease or defect that renders the person a danger
19 to the person or others. The hearing must be conducted by
20 the court that ordered the commitment unless that court
21 transfers jurisdiction to the third judicial COURT THAT
22 ORDERED THE COMMITMENT UNLESS THAT COURT TRANSFERS
23 JURISDICTION TO THE district court in the district in which
24 the person has been placed. The court shall cause notice of
25 the hearing to be served upon the person, the person's

counsel, and the prosecutor, and the court that originally ordered the commitment. The hearing is a civil proceeding, and the burden is upon the defendant department of corrections and human services to prove by a--preponderance of--the clear and convincing evidence that the defendant person may not be safely released because the person continues to suffer from a mental disease or defect that causes the person to present a substantial risk of serious bodily injury or death to the person or others, of an imminent threat of physical injury to the person or others, or of substantial property damage.

(4) According to the determination of the court upon the hearing, the defendant person must be discharged or released on conditions the court determines to be necessary or must be committed to the custody of the superintendent-of the--Montana--state--hospital director of the department of corrections and human services to be placed in an appropriate institution mental health facility for custody, care, and treatment.

(5) A professional person shall review the status of the person each year. At the time of the annual review, the director of the department of corrections and human services or the person or the representative of the person may petition for discharge or release of the person. Upon request for a hearing, a hearing must be held pursuant to

the provisions of subsection (3)."

Section 3. Section 46-14-302, MCA, is amended to read:

"46-14-302. Discharge or release upon motion of superintendent director. (1) If the superintendent--of--the Montana---state--hospital director of the department of corrections and human services believes that a person committed to the superintendent's director's custody under 46-14-301 may be discharged or released on condition without danger to the person or others because the person no longer suffers from a mental disease or defect that causes the person to present a substantial risk of serious bodily injury or death to the person or others, of an imminent threat of physical injury to the person or others, or of substantial property damage, the superintendent director shall make application for the discharge or release of the person in a report to the district court by-which-the-person was-committed in the district in which the person has been placed and shall send a copy of the application and report to the prosecutor of the county from which the defendant person was committed and to the court that originally committed the person.

(2) The county attorney and the judge who originally committed the person may transmit to the court statements of their reasons for requesting or granting the original commitment and shall transmit the statements within 7 days

1 if requested to do so by the presiding court. The county
 2 attorney and the judge who originally committed the person
 3 must be given the opportunity to request a hearing on the
 4 requested release of the person and to appear at the
 5 hearing.

6 (3) Either the director of the department of
 7 corrections and human services or the person may also make
 8 application to the court for discharge or release as part of
 9 the person's annual treatment review.

10 †2†(4) The court shall then appoint at least two
 11 persons one person who are is either a qualified
 12 psychiatrists psychiatrist or licensed clinical
 13 psychologists psychologist to examine the person and to
 14 report their--opinion as to the person's mental condition
 15 within 60 days or a longer period that the court determines
 16 to be necessary for the purpose. To facilitate the
 17 examinations and the proceedings on the examinations, the
 18 court may have the person confined in any institution mental
 19 health facility located near the place where the court sits
 20 that may be designated by the superintendent-of-the--Montana
 21 state-hospital director of the department of corrections and
 22 human services as suitable for the temporary detention of
 23 irresponsible persons suffering from mental disease or
 24 defect.

25 (5) The committed person or the person's attorney may

1 secure a professional person of the committed person's
 2 choice to examine the committed person and to testify at the
 3 hearing. If the person wishing to secure the testimony of a
 4 professional person is unable to do so because of financial
 5 reasons, the court shall appoint an additional professional
 6 person to perform the examination. Whenever possible, the
 7 court shall allow the committed person or the person's
 8 attorney a reasonable choice of an available professional
 9 person qualified to perform the requested examination. The
 10 professional person must be compensated by the department of
 11 corrections and human services.

12 †3†(6) If the court is satisfied by the report filed
 13 under subsection (1) and the testimony of the reporting
 14 psychiatrist or licensed clinical psychologist that the
 15 committed person may be discharged or released on condition
 16 without-danger-to-the-person-or-others because the person no
 17 longer suffers from a mental disease or defect that causes
 18 the person to present a substantial risk of serious bodily
 19 injury or death to the person or others, of an imminent
 20 threat of physical injury to the person or others, or of
 21 substantial property damage, the court shall order the
 22 person's discharge or release on conditions that the court
 23 determines to be necessary.

24 †4†(7) If the court is not satisfied, it shall promptly
 25 order a hearing to determine whether the person may safely

be discharged or released on the grounds that the person no longer suffers from a mental disease or defect that causes the person to present a substantial risk of serious bodily injury or death to the person or others, of an imminent threat of physical injury to the person or others, or of substantial property damage. A hearing is considered a civil proceeding, and the burden is upon the committed-person state to prove by a--preponderance--of--the clear and convincing evidence that the person may not be safely be discharged or released because the person continues to suffer from a mental disease or defect that causes the person to present a substantial risk of serious bodily injury or death to the person or others, of an imminent threat of physical injury to the person or others, or of substantial property damage. According to the determination of the court upon the hearing, the committed person must then be discharged or released on conditions that the court determines to be necessary or must be recommitted to the custody of the superintendent-of-the-Montana-state-hospital director of the department of corrections and human services, subject to discharge or release only in accordance with the procedures provided in this section and 46-14-303."

Section 4. Section 46-14-303, MCA, is amended to read:

"46-14-303. Application for discharge or release by committed person. A committed person may make application

for discharge or release to in the district court by which the-person-was-committed, in the district in which the person has been placed, and the procedure to be followed upon the application is the same as that prescribed in 46-14-302 in the case of an application by the superintendent-of-the-Montana-state-hospital director of the department of corrections and human services. However, an application by a committed person need not be considered until the person has been confined for a period of not less than 6 months from the date of the order of commitment, and if the determination of the court is adverse to the application, the person may not be permitted to file a further application until 1 year has elapsed from the date of any preceding hearing on an application for the person's release or discharge."

Section 5. Section 46-14-304, MCA, is amended to read:

"46-14-304. Recombitment-----after Revocation of conditional release. (1) If--within--5--years--after--the conditional-release-of-a--committed--person The court may order revocation of a person's conditional release if the court determines after hearing evidence that:

(a) the conditions of release have not been fulfilled;

and

(b) that-for-the-safety-of-the-person-or-for-the-safety of--others--the-person's--conditional--release--should--be

1 revoked, based on the violations of the conditions and the
 2 person's past mental health history, there is a substantial
 3 likelihood that the person continues to suffer from a mental
 4 disease or defect that causes the person to present a
 5 substantial risk of serious bodily injury or death to the
 6 person or others, of an imminent threat of physical injury
 7 to the person or others, or of substantial property damage.

8 (2) The court may retain jurisdiction to revoke a
 9 conditional release for no longer than 5 years.

10 (3) If the court finds that the conditional release
 11 should be revoked, the court shall immediately order the
 12 person to be recommitted to the custody of the
 13 superintendent-of-the-Montana-state-hospital director of the
 14 department of corrections and human services, subject to
 15 discharge or release only in accordance with the procedures
 16 provided in 46-14-302 and 46-14-303."

17 **Section 6.** Section 46-14-312, MCA, is amended to read:

18 "46-14-312. Sentence to be imposed. (1) If the court
 19 finds that the defendant at the time of the commission of
 20 the offense of which the defendant was convicted did not
 21 suffer from a mental disease or defect as described in
 22 46-14-311, the court shall sentence the defendant as
 23 provided in Title 46, chapter 18.

24 (2) If the court finds that the defendant at the time
 25 of the commission of the offense suffered from a mental

1 disease or defect as described in 46-14-311, any mandatory
 2 minimum sentence prescribed by law for the offense need not
 3 apply and the court shall sentence the defendant to be
 4 committed to the custody of the director of the department
 5 of corrections and human services to be placed in an
 6 appropriate institution for custody, care, and treatment for
 7 a definite period of time not to exceed the maximum term of
 8 imprisonment that could be imposed under subsection (1). The
 9 authority of the court with regard to sentencing is the same
 10 as authorized in Title 46, chapter 18, if the treatment of
 11 the individual and the protection of the public are provided
 12 for.

13 (3) Either the director or a defendant whose sentence
 14 has been imposed under subsection (2) may petition the
 15 sentencing court for review of the sentence if the
 16 professional person certifies that:

17 (a) the defendant no longer suffers from a mental
 18 disease or defect;

19 (b) the defendant's mental disease or defect no longer
 20 renders him the defendant unable to appreciate the
 21 criminality of his the defendant's conduct or to conform his
 22 the defendant's conduct to the requirements of law; or

23 (c) the defendant suffers from a mental disease or
 24 defect but is not a danger to the defendant or others; or

25 ~~(c)~~(d) the defendant suffers from a mental disease or

defect that makes him the defendant a danger to himself the
defendant or others, but either:

(i) there is no treatment available for his the mental
disease or defect;

(ii) or--he the defendant refuses to cooperate with
treatment; or

(iii) the defendant will no longer benefit from active
inpatient treatment for the mental disease or defect.

(4) The sentencing court may make any order not
inconsistent with its original sentencing authority except
that the length of confinement or supervision must be equal
to that of the original sentence. The professional person
shall review the defendant's status each year."

NEW SECTION. Section 7. Effective date. [This act] is
effective on passage and approval.

-End-

SENATE STANDING COMMITTEE REPORT

Page 1 of 4
March 8, 1993

Page 2 of 4
March 8, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 255 (first reading copy -- blue), respectfully report that House Bill No. 255 be amended as follows and as so amended be concurred in.

Signed: W. Yellowtail
Senator William "Bill" Yellowtail, Chair

That such amendments read:

1. Page 5, lines 3 and 4.

Following: "defendant" on line 3

Strike: remainder of line 3 through "services" on line 4

Insert: "state"

2. Page 5, line 8.

Following: "risk of"

Insert: ":

(a)"

3. Page 5, line 9.

Strike: "of"

Insert: ";

(b)"

4. Page 5, line 10.

Following: "others"

Strike: "1"

Insert: ";

5. Page 5, line 11.

Strike: "of"

Insert: "(c)"

6. Page 6, line 12.

Following: "1"

Insert: "a substantial risk"

7. Page 6, line 13.

Following: "or"

Insert: "a substantial risk"

8. Page 6, line 17.

Following: "committed"

Insert: "by which the person was committed unless that court transfers jurisdiction to the court"

9. Page 6, lines 20 and 21.

Following: "committed" on line 20

Strike: remainder of line 20 through "person" on line 21

10. Page 6, line 22 through page 7, line 5.

Strike: subsection (2) in its entirety

Renumber: subsequent subsections

11. Page 8, line 19.

Following: "1"

Insert: "a substantial risk"

12. Page 8, line 20.

Following: "or"

Insert: "a substantial risk"

13. Page 8, lines 22 and 23.

Following: "discharge" on line 22

Strike: remainder of line 22 through "necessary" on line 23

14. Page 8, line 24.

Following: "(2)"

Insert: "(a)"

15. Page 9, line 3.

Following: "risk of"

Insert: ":

(i)"

16. Page 9, line 4.

Following: "others"

Strike: "1"

Insert: ";

(ii)"

17. Page 9, line 5.

Following: "others"

Strike: "1"

Insert: "1"

Following: "or"

Strike: "of"

Insert: "(iii)"

18. Page 9, line 6.

Following: "1"

Insert: "(b)"

19. Page 9, line 12.

Amd. Coord.
Sec. of Senate

San Juan
Senator Carrying Bill

521241SC.San

SENATE
HB 255
521241SC.San.

Following: "risk of"
Insert: ":"
(i)"

Strike: "of"
Insert: "(c)"

-END-

20. Page 9, line 13.
Following: "others"
Strike: "/ of"
Insert: ";"
(ii)"

21. Page 9, line 14.
Following: "others"
Strike: "/"
Insert: ";"
Following: "or"
Strike: "of"
Insert: "(iii)"

22. Page 9, line 15.
Following: "."
Insert: "(c)"

23. Page 10, line 1.
Following: "to"
Strike: "in"
Insert: "to"

24. Page 10, line 2.
Following: "committed,"
Insert: "by which the person was committed unless that court
transfers jurisdiction to the court"

25. Page 11, line 5.
Following: "risk of"
Insert: ":"
(a)"

26. Page 11, line 6.
Following: "others"
Strike: "/ of"
Insert: ";"
(b)"

27. Page 11, line 7.
Following: "others"
Strike: "/"
Insert: ";"
Following: "or"

1 HOUSE BILL NO. 255

2 INTRODUCED BY ANDERSON

3 BY REQUEST OF THE DEPARTMENT OF CORRECTIONS

4 AND HUMAN SERVICES

5
6 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE CRITERIA
7 APPLICABLE TO THE CONDITIONAL RELEASE OR DISCHARGE OF A
8 PERSON WHO HAS RELIED UPON THE DEFENSE OF MENTAL DISEASE OR
9 DEFECT; PROVIDING FOR A DIAGNOSIS OF SERIOUSLY
10 DEVELOPMENTALLY DISABLED IN EXAMINATION REPORTS; REVISING
11 THE HEARING PROCEDURE; AMENDING SECTIONS 46-14-206,
12 46-14-301, 46-14-302, 46-14-303, 46-14-304, AND 46-14-312,
13 MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."
14

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

16 Section 1. Section 46-14-206, MCA, is amended to read:

17 "46-14-206. Report of examination. (1) A report of the
18 examination may must include the following:

19 (a) a description of the nature of the examination;

20 (b) a diagnosis of the mental condition of the
21 defendant, including an opinion as to whether the defendant
22 is seriously mentally ill, as defined in 53-21-102, or is
23 seriously developmentally disabled, as defined in 53-20-102;

24 (c) if the defendant suffers from a mental disease or
25 defect, an opinion as to the defendant's capacity to

1 understand the proceedings against the defendant and to
2 assist in the defendant's own defense;

3 (d) when directed by the court, an opinion as to the
4 capacity of the defendant to have a particular state of mind
5 that is an element of the offense charged; and

6 (e) when directed by the court, an opinion as to the
7 capacity of the defendant, because of a mental disease or
8 defect, to appreciate the criminality of the defendant's
9 behavior or to conform the defendant's behavior to the
10 requirement of the law.

11 (2) If the examination cannot be conducted by reason of
12 the unwillingness of the defendant to participate in the
13 examination, the report must state that fact and must
14 include, if possible, an opinion as to whether the
15 unwillingness of the defendant was the result of mental
16 disease or defect."

17 Section 2. Section 46-14-301, MCA, is amended to read:

18 "46-14-301. Commitment upon finding of not guilty by
19 reason of lack of mental state -- hearing to determine
20 release or discharge. (1) When a defendant is found not
21 guilty for the reason that due to a mental disease or defect
22 the defendant could not have a particular state of mind that
23 is an essential element of the offense charged, the court
24 shall order a predisposition investigation in accordance
25 with 46-18-112 and 46-18-113, which must include an

investigation of the present mental condition of the defendant. If the trial was by jury, the court shall hold a hearing to determine the appropriate disposition of the defendant. If the trial was by the court, the court may hold a hearing to obtain any additional testimony it considers necessary to determine the appropriate disposition of the defendant. In either case, the testimony and evidence presented at the trial must be considered by the court in making its determination.

~~(2) The court, upon finding that the defendant may not be discharged or released without danger to others, shall order the defendant committed to the custody of the superintendent of the Montana state hospital to be placed in an appropriate institution for custody, care, and treatment.~~

(2) The court shall evaluate the nature of the offense with which the defendant was charged. If the offense:

(a) involved a substantial risk of serious bodily injury or death, actual bodily injury, or substantial property damage, the court may find that the defendant suffers from a mental disease or defect that renders the defendant a danger to the defendant or others. If the court finds that the defendant presents a danger to the defendant or others, the defendant may be committed to the custody of the director of the department of corrections and human services to be placed in an appropriate mental health

facility for custody, care, and treatment. However, if the court finds that the defendant is seriously developmentally disabled, as defined in 53-20-102, the prosecutor shall petition the court in the manner provided in Title 53, chapter 20.

(b) charged did not involve a substantial risk of serious bodily injury or death, actual bodily injury, or substantial property damage, the court shall release the defendant. The prosecutor may petition the court in the manner provided in Title 53, chapter 20 or 21.

(3) A person committed to the custody of the superintendent director of the department of corrections and human services shall must have a hearing within 180 days of confinement to determine the person's present mental condition and whether the person may must be discharged or released without danger to others or whether the commitment may be extended because the person continues to suffer from a mental disease or defect that renders the person a danger to the person or others. The hearing must be conducted by the court that ordered the commitment unless that court transfers jurisdiction to the third judicial COURT THAT ORDERED THE COMMITMENT UNLESS THAT COURT TRANSFERS JURISDICTION TO THE district court in the district in which the person has been placed. The court shall cause notice of the hearing to be served upon the person, the person's

1 counsel, and the prosecutor, and the court that originally
 2 ordered the commitment. The hearing is a civil proceeding,
 3 and the burden is upon the defendant department--of
 4 corrections--and--human--services STATE to prove by a
 5 preponderance--of-the clear and convincing evidence that the
 6 defendant person may not be safely released because the
 7 person continues to suffer from a mental disease or defect
 8 that causes the person to present a substantial risk of:

9 (A) serious bodily injury or death to the person or
 10 others; or of;

11 (B) an imminent threat of physical injury to the person
 12 or others; or of

13 (C) substantial property damage.

14 (4) According to the determination of the court upon
 15 the hearing, the defendant person must be discharged or
 16 released on conditions the court determines to be necessary
 17 or must be committed to the custody of the superintendent-of
 18 the-Montana-state-hospital director of the department of
 19 corrections and human services to be placed in an
 20 appropriate institution mental health facility for custody,
 21 care, and treatment.

22 (5) A professional person shall review the status of
 23 the person each year. At the time of the annual review, the
 24 director of the department of corrections and human services
 25 or the person or the representative of the person may

1 petition for discharge or release of the person. Upon
 2 request for a hearing, a hearing must be held pursuant to
 3 the provisions of subsection (3)."

4 **Section 3.** Section 46-14-302, MCA, is amended to read:

5 "46-14-302. Discharge or release upon motion of
 6 superintendent director. (1) If the superintendent-of-the
 7 Montana--state--hospital director of the department of
 8 corrections and human services believes that a person
 9 committed to the superintendent's director's custody under
 10 46-14-301 may be discharged or released on condition without
 11 danger to the person or others because the person no longer
 12 suffers from a mental disease or defect that causes the
 13 person to present a substantial risk of serious bodily
 14 injury or death to the person or others, A SUBSTANTIAL RISK
 15 of an imminent threat of physical injury to the person or
 16 others, or A SUBSTANTIAL RISK of substantial property
 17 damage, the superintendent director shall make application
 18 for the discharge or release of the person in a report to
 19 the district court by--which--the-person-was-committed BY
 20 WHICH THE PERSON WAS COMMITTED UNLESS THAT COURT TRANSFERS
 21 JURISDICTION TO THE COURT in the district in which the
 22 person has been placed and shall send a copy of the
 23 application and report to the prosecutor of the county from
 24 which the defendant person was committed and--to--the--court
 25 that-originally-committed-the-person.

~~{2}--The--county--attorney--and--the--judge--who--originally committed--the--person--may--transmit--to--the--court--statements--of their--reasons--for--requesting--or--granting--the--original commitment--and--shall--transmit--the--statements--within--7--days if--requested--to--do--so--by--the--presiding--court. The--county attorney--and--the--judge--who--originally--committed--the--person must--be--given--the--opportunity--to--request--a--hearing--on--the requested--release--of--the--person--and--to--appear--at--the hearing.~~

~~{3}{2}~~ Either the director of the department of corrections and human services or the person may also make application to the court for discharge or release as part of the person's annual treatment review.

~~{2}{4}{3}~~ The court shall then appoint at least two persons one person who are is either a qualified psychiatrist psychiatrist or licensed clinical psychologists psychologist to examine the person and to report ~~their--opinion~~ as to the person's mental condition within 60 days or a longer period that the court determines to be necessary for the purpose. To facilitate the examinations and the proceedings on the examinations, the court may have the person confined in any ~~institution~~ mental health facility located near the place where the court sits that may be designated by the ~~superintendent-of-the--Montana state-hospital~~ director of the department of corrections and

human services as suitable for the temporary detention of irresponsible persons suffering from mental disease or defect.

~~{5}{4}~~ The committed person or the person's attorney may secure a professional person of the committed person's choice to examine the committed person and to testify at the hearing. If the person wishing to secure the testimony of a professional person is unable to do so because of financial reasons, the court shall appoint an additional professional person to perform the examination. Whenever possible, the court shall allow the committed person or the person's attorney a reasonable choice of an available professional person qualified to perform the requested examination. The professional person must be compensated by the department of corrections and human services.

~~{3}{6}{5}~~ If the court is satisfied by the report filed under subsection (1) and the testimony of the reporting psychiatrist or licensed clinical psychologist that the committed person may be discharged or released on condition ~~without-danger-to-the-person-or-others~~ because the person no longer suffers from a mental disease or defect that causes the person to present a substantial risk of serious bodily injury or death to the person or others, A SUBSTANTIAL RISK of an imminent threat of physical injury to the person or others, or A SUBSTANTIAL RISK of substantial property

1 damage, the court shall order the person's discharge or
 2 release--on--conditions--that--the--court--determines--to-be
 3 necessary.

4 ~~(4)(7)(6)~~ (A) If the court is not satisfied, it shall
 5 promptly order a hearing to determine whether the person may
 6 safely be discharged or released on the grounds that the
 7 person no longer suffers from a mental disease or defect
 8 that causes the person to present a substantial risk of:

9 (I) serious bodily injury or death to the person or
 10 others; or;

11 (II) an imminent threat of physical injury to the person
 12 or others; or of

13 (III) substantial property damage.

14 (B) A hearing is considered a civil proceeding, and the
 15 burden is upon the committed-person state to prove by a
 16 preponderance--of-the clear and convincing evidence that the
 17 person may not be safely be discharged or released because
 18 the person continues to suffer from a mental disease or
 19 defect that causes the person to present a substantial risk
 20 of:

21 (I) serious bodily injury or death to the person or
 22 others; or;

23 (II) an imminent threat of physical injury to the person
 24 or others; or of

25 (III) substantial property damage.

1 (C) According to the determination of the court upon
 2 the hearing, the committed person must then be discharged or
 3 released on conditions that the court determines to be
 4 necessary or must be recommitted to the custody of the
 5 superintendent-of-the-Montana-state-hospital director of the
 6 department of corrections and human services, subject to
 7 discharge or release only in accordance with the procedures
 8 provided in this section and 46-14-303."

9 Section 4. Section 46-14-303, MCA, is amended to read:

10 "46-14-303. Application for discharge or release by
 11 committed person. A committed person may make application
 12 for discharge or release to in TO the district court by
 13 which--the--person--was--committed, BY WHICH THE PERSON WAS
 14 COMMITTED UNLESS THAT COURT TRANSFERS JURISDICTION TO THE
 15 COURT in the district in which the person has been placed,
 16 and the procedure to be followed upon the application is the
 17 same as that prescribed in 46-14-302 in the case of an
 18 application by the superintendent--of--the--Montana-state
 19 hospital director of the department of corrections and human
 20 services. However, an application by a committed person need
 21 not be considered until the person has been confined for a
 22 period of not less than 6 months from the date of the order
 23 of commitment, and if the determination of the court is
 24 adverse to the application, the person may not be permitted
 25 to file a further application until 1 year has elapsed from

the date of any preceding hearing on an application for the person's release or discharge."

Section 5. Section 46-14-304, MCA, is amended to read:

"46-14-304. Recommitment---after Revocation of conditional release. (1) if--within--5--years--after--the conditional--release--of--a--committed--person The court may order revocation of a person's conditional release if the court determines after hearing evidence that:

(a) the conditions of release have not been fulfilled; and

(b) that-for-the-safety-of-the-person-or-for-the-safety of--others--the--person's--conditional--release--should---be revoked, based on the violations of the conditions and the person's past mental health history, there is a substantial likelihood that the person continues to suffer from a mental disease or defect that causes the person to present a substantial risk of:

(I) serious bodily injury or death to the person or others; or;

(II) an imminent threat of physical injury to the person or others; or of

(III) substantial property damage.

(2) The court may retain jurisdiction to revoke a conditional release for no longer than 5 years.

(3) If the court finds that the conditional release

should be revoked, the court shall immediately order the person to be recommitted to the custody of the superintendent-of-the-Montana-state-hospital director of the department of corrections and human services, subject to discharge or release only in accordance with the procedures provided in 46-14-302 and 46-14-303."

Section 6. Section 46-14-312, MCA, is amended to read:

"46-14-312. Sentence to be imposed. (1) If the court finds that the defendant at the time of the commission of the offense of which the defendant was convicted did not suffer from a mental disease or defect as described in 46-14-311, the court shall sentence the defendant as provided in Title 46, chapter 18.

(2) If the court finds that the defendant at the time of the commission of the offense suffered from a mental disease or defect as described in 46-14-311, any mandatory minimum sentence prescribed by law for the offense need not apply and the court shall sentence the defendant to be committed to the custody of the director of the department of corrections and human services to be placed in an appropriate institution for custody, care, and treatment for a definite period of time not to exceed the maximum term of imprisonment that could be imposed under subsection (1). The authority of the court with regard to sentencing is the same as authorized in Title 46, chapter 18, if the treatment of

1 the individual and the protection of the public are provided
2 for.

3 (3) Either the director or a defendant whose sentence
4 has been imposed under subsection (2) may petition the
5 sentencing court for review of the sentence if the
6 professional person certifies that:

7 (a) the defendant no longer suffers from a mental
8 disease or defect;

9 (b) the defendant's mental disease or defect no longer
10 renders him the defendant unable to appreciate the
11 criminality of his the defendant's conduct or to conform his
12 the defendant's conduct to the requirements of law; or

13 (c) the defendant suffers from a mental disease or
14 defect but is not a danger to the defendant or others; or

15 ~~(c)~~ (d) the defendant suffers from a mental disease or
16 defect that makes him the defendant a danger to himself the
17 defendant or others, but either:

18 (i) there is no treatment available for his the mental
19 disease or defect;

20 (ii) or--he the defendant refuses to cooperate with
21 treatment; or

22 (iii) the defendant will no longer benefit from active
23 inpatient treatment for the mental disease or defect.

24 (4) The sentencing court may make any order not
25 inconsistent with its original sentencing authority except

1 that the length of confinement or supervision must be equal
2 to that of the original sentence. The professional person
3 shall review the defendant's status each year."

4 NEW SECTION. Section 7. Effective date. [This act] is
5 effective on passage and approval.

-End-