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House BILL NO. 117

INTRODUCED BY Anderson Smith VanValkenburg Sullivan

BY REQUEST OF THE DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING DEVELOPMENT OF A TREATMENT PLAN FOR REGAINING FITNESS OF A DEFENDANT WHO HAS BEEN FOUND UNFIT TO PROCEED IN A CRIMINAL PROCEEDING; PROVIDING FOR PETITION TO THE COMMITTING COURT FOR AN ORDER OF COMPLIANCE WITH THE TREATMENT PLAN; AND AMENDING SECTION 46-14-221, MCA."

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

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

"46-14-221. Determination of fitness to proceed -- effect of finding of unfitness -- expenses. (1)

The issue of the defendant's fitness to proceed may be raised by the court, by the defendant or the defendant's counsel, or by the prosecutor. When the issue is raised, it must be determined by the court. If neither the prosecutor nor the defendant's counsel ~~for the defendant~~ contests the finding of the report filed under 46-14-206, the court may make the determination on the basis of the report. If the finding is contested, the court shall hold a hearing on the issue. If the report is received in evidence upon the hearing, the parties have the right to subpoena and cross-examine the psychiatrists or licensed clinical psychologists who joined in the report and to offer evidence upon the issue.

(2) (a) If the court determines that the defendant lacks fitness to proceed, the proceeding against the defendant must be suspended, except as provided in subsection (4), and the court shall commit the defendant to the custody of the director of the department of corrections and human services to be placed in an appropriate institution of the department of corrections and human services for so long as the unfitness endures.

(b) The institution shall develop an individualized treatment plan to assist the defendant to gain fitness to proceed. The treatment plan may include a physician's prescription of reasonable and appropriate medication that is consistent with accepted medical standards. If the defendant refuses to comply with the treatment plan, the institution may petition the court for an order requiring compliance.

(c) The committing court shall, within 90 days of commitment, review the defendant's fitness to

1 proceed. If the court finds that the defendant is still unfit to proceed and that it does not appear that the
2 defendant will become fit to proceed within the reasonably foreseeable future, the proceeding against the
3 defendant must be dismissed, except as provided in subsection (4), and the prosecutor shall petition the
4 court in the manner provided in chapter 20 or 21 of Title 53, whichever is appropriate, to determine the
5 disposition of the defendant pursuant to those provisions.

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

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

12 (5) The expenses of sending the defendant to the custody of the director of the department of
13 corrections and human services to be placed in an appropriate institution of the department of corrections
14 and human services, of keeping the defendant there, and of bringing the defendant back are chargeable to
15 the state and payable according to procedures established under 3-5-902(1)."

16

-END-

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