

1 _____ BILL NO. _____

2 INTRODUCED BY _____
3 (Primary Sponsor)

4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR OUTPATIENT EXAMINATION OF CRIMINAL
5 DEFENDANTS TO DETERMINE FITNESS TO PROCEED; AND AMENDING SECTIONS 3-5-901, 46-14-202,
6 AND 46-14-204, MCA."

7
8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

9
10 **Section 1.** Section 3-5-901, MCA, is amended to read:

11 **"3-5-901. State assumption of district court expenses.** (1) There is a state-funded district court
12 program under the judicial branch. Under this program, the office of court administrator shall fund all district court
13 costs, except as provided in subsection (3). These costs include but are not limited to the following:

- 14 (a) salaries and benefits for:
 - 15 (i) district court judges;
 - 16 (ii) law clerks;
 - 17 (iii) court reporters, as provided in 3-5-601;
 - 18 (iv) juvenile probation officers, youth division offices staff, and assessment officers of the youth court; and
 - 19 (v) other employees of the district court;
- 20 (b) in criminal cases:
 - 21 (i) fees for transcripts of proceedings, as provided in 3-5-604;
 - 22 (ii) witness fees and necessary expenses, as provided in 46-15-116;
 - 23 (iii) juror fees and necessary expenses;
 - 24 (iv) for a psychiatric examination under 46-14-202, the cost of the examination and other associated
25 expenses, as provided in 46-14-202~~(4)~~(6); and
 - 26 (v) for commitment under 46-14-221, the cost of transporting the defendant to the custody of the director
27 of the department of public health and human services to be placed in an appropriate facility of the department
28 of public health and human services and of transporting the defendant back for any proceedings, as provided in
29 46-14-221(5);
 - 30 (c) except as provided in 47-1-201(5), the district court expenses in all postconviction proceedings held

1 pursuant to Title 46, chapter 21, and in all habeas corpus proceedings held pursuant to Title 46, chapter 22, and
2 appeals from those proceedings;

3 (d) except as provided in 47-1-201(5), the following expenses incurred by the state in federal habeas
4 corpus cases that challenge the validity of a conviction or of a sentence:

5 (i) transcript fees;

6 (ii) witness fees; and

7 (iii) expenses for psychiatric examinations;

8 (e) except as provided in 47-1-201(5), the following expenses incurred by the state in a proceeding held
9 pursuant to Title 41, chapter 3, part 4 or 6, that seeks temporary investigative authority of a youth, temporary legal
10 custody of a youth, or termination of the parent-child legal relationship and permanent custody:

11 (i) transcript fees;

12 (ii) witness fees;

13 (iii) expenses for medical and psychological evaluation of a youth or the youth's parent, guardian, or other
14 person having physical or legal custody of the youth except for expenses for services that a person is eligible to
15 receive under a public program that provides medical or psychological evaluation;

16 (iv) expenses associated with appointment of a guardian ad litem or child advocate for the youth; and

17 (v) expenses associated with court-ordered alternative dispute resolution;

18 (f) except as provided in 47-1-201(5), costs of juror and witness fees and witness expenses before a
19 grand jury;

20 (g) costs of the court-sanctioned educational program concerning the effects of dissolution of marriage
21 on children, as required in 40-4-226, and expenses of education when ordered for the investigation and
22 preparation of a report concerning parenting arrangements, as provided in 40-4-215(2)(a);

23 (h) except as provided in 47-1-201(5), all district court expenses associated with civil jury trials if similar
24 expenses were paid out of the district court fund or the county general fund in any previous year;

25 (i) all other costs associated with the operation and maintenance of the district court, including contract
26 costs for court reporters who are independent contractors; and

27 (j) costs associated with the operation and maintenance of the youth court and youth court division
28 operations pursuant to 41-5-111 and subsection (1)(a) of this section, except for those costs paid by other entities
29 identified in Title 41, chapter 5.

30 (2) If a cost is not paid directly by the office of court administrator, the county shall pay the cost and the

1 office of court administrator shall reimburse the county within 30 days of receipt of a claim.

2 (3) For the purposes of subsection (1), district court costs paid by the office of court administrator do not
3 include:

4 (a) costs for clerks of district court and employees and expenses of the offices of the clerks of district
5 court;

6 (b) costs of providing and maintaining district court office space; or

7 (c) charges incurred against a county by virtue of any provision of Title 7 or 46."
8

9 **Section 2.** Section 46-14-202, MCA, is amended to read:

10 **"46-14-202. Examination of defendant.** (1) (a) If the defendant or the defendant's counsel files a written
11 motion requesting an examination or if the issue of the defendant's fitness to proceed is raised by the court,
12 prosecution, or defense counsel, the court shall appoint at least one of the following qualified professionals to
13 examine and report on the defendant's mental condition:

14 (i) a psychiatrist;

15 (ii) a licensed clinical psychologist; or

16 (iii) an advanced practice registered nurse ~~or shall request the superintendent of the Montana state~~
17 ~~hospital to designate at least one qualified psychiatrist, licensed clinical psychologist, or advanced practice~~
18 ~~registered nurse, who may be or include the superintendent, to examine and report upon the defendant's mental~~
19 ~~condition.~~

20 (b) The person appointed pursuant to this subsection (1) may not be a state employee and shall examine
21 the defendant at the location where the defendant is detained or at an outpatient setting if the defendant is not
22 detained.

23 ~~(2) The~~ If the prosecutor or the defendant's counsel objects to the report of the examiner appointed under
24 subsection (1), the court, after a hearing, may order the defendant to be committed to the custody of the director
25 of the department of public health and human services for placement in a hospital or other suitable facility for the
26 purpose of the examination for a period not exceeding 60 days or a longer period that the court determines to
27 be necessary for the purpose. The director shall ensure that at least one qualified psychiatrist, licensed clinical
28 psychologist, or advanced practice registered nurse is appointed to examine and report on the defendant's mental
29 condition as provided in 46-14-206.

30 (3) The court ~~and~~ may direct that a qualified psychiatrist, licensed clinical psychologist, or advanced

1 practice registered nurse retained by the defendant be permitted to witness and participate in the examination.

2 ~~(3)~~(4) In the examination, any method may be employed that is accepted by the medical or psychological
3 profession for the examination of those alleged to be ~~suffering from~~ unfit to proceed due to a mental disease or
4 defect or developmental disability.

5 (5) The court may designate to whom and the manner in which a signed original of the examiner's report
6 must be provided. If no designation is made, the examiner shall mail duplicate signed originals of the report to
7 the prosecution and defendant's counsel. The examiner may not file the report with the court unless the court has
8 ordered the filing.

9 ~~(4)~~(6) (a) The costs incurred for an examination ordered under subsection (1) or (2) must be paid as
10 follows:

11 (i) if the issue of the defendant's fitness to proceed was raised by the court or the examination was
12 requested by the prosecution, the cost of the examination and other associated expenses must be paid by the
13 court or, in district court proceedings, by the office of court administrator, except as provided in subsection
14 ~~(4)(a)(iv)~~ (6)(a)(iv);

15 (ii) if the examination was requested by the defendant or the defendant's counsel, the cost of the
16 examination and other associated expenses must be paid by the defendant or, if the defendant was represented
17 by an attorney pursuant to the Montana Public Defender Act, Title 47, chapter 1, by the office of state public
18 defender, except as provided by subsection ~~(4)(a)(iv)~~ (6)(a)(iv);

19 (iii) if the examination was jointly requested by the prosecution and defense counsel or the need for the
20 examination was jointly agreed to by the prosecution and defense, the cost of the examination and other
21 associated expenses must be divided and paid equally by the court or, in district court proceedings, by the office
22 of court administrator, and the defendant or, if the defendant was represented by an attorney assigned pursuant
23 to the Montana Public Defender Act, Title 47, chapter 1, by the office of state public defender, except as provided
24 in subsection ~~(4)(a)(iv)~~ (6)(a)(iv);

25 (iv) any costs for an examination performed by an employee of the department of public health and
26 human services, any other associated expenses at a facility of the department of public health and human
27 services, and any other associated expenses for which the legislature has made a general fund appropriation to
28 the department of public health and human services may not be charged to the office of court administrator or
29 the office of state public defender.

30 (b) For purposes of this subsection ~~(4)~~ (6), "other associated expenses" means the following costs

1 incurred in association with the commitment to a hospital or other suitable facility for the purpose of examination,
2 regardless of whether the examination is done at the Montana state hospital or any other facility:

3 (i) the expenses of transporting the defendant from the place of detention to the place where the
4 examination is performed and returning the defendant to detention, including personnel costs of the law
5 enforcement agency by whom the defendant is detained;

6 (ii) housing expenses of the facility where the examination is performed; and

7 (iii) medical costs, including medical and dental care, including costs of medication."
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9 **Section 3.** Section 46-14-204, MCA, is amended to read:

10 **"46-14-204. Prosecution's right to examination.** (1) When the defense discloses the report of the
11 examination to the prosecution or files a notice of the intention to rely on a defense of mental disease or defect,
12 the prosecution on its own motion is entitled to have the defendant examined as provided in 46-14-202 by a
13 qualified psychiatrist, licensed clinical psychologist, or advanced practice registered nurse designated by the
14 prosecution.

15 (2) The report of the examination must be disclosed to the defense within 10 days of its receipt by the
16 prosecution."
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