_____ BILL NO. _____

INTRODUCED BY _____
(Primary Sponsor)

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS REGARDING A CRIMINAL DEFENDANT'S FITNESS TO PROCEED; PROVIDING FOR OUTPATIENT TREATMENT TO RESTORE A CRIMINAL DEFENDANT'S FITNESS TO PROCEED; AUTHORIZING CIVIL COMMITMENT UNDER CERTAIN CIRCUMSTANCES WHEN A CRIMINAL DEFENDANT IS UNFIT TO PROCEED AND REQUIRES INPATIENT TREATMENT; PROVIDING FOR INDIVIDUALIZED TREATMENT PLANS; CLARIFYING THE PROCESS BY WHICH A COURT MAY ORDER INVOLUNTARY ADMINISTRATION OF MEDICATION FOR THE PURPOSE OF RESTORING FITNESS; AND AMENDING SECTIONS 3-5-901, 46-14-101, 46-14-206, AND 46-14-221, MCA."

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

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

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

(a) salaries and benefits for:

(i) district court judges;

(ii) law clerks;

(iii) court reporters, as provided in 3-5-601;

(iv) juvenile probation officers, youth division offices staff, and assessment officers of the youth court; and

(v) other employees of the district court;

(b) in criminal cases:

(i) fees for transcripts of proceedings, as provided in 3-5-604;

(ii) witness fees and necessary expenses, as provided in 46-15-116;

(iii) juror fees and necessary expenses;

(iv) for a psychiatric examination under 46-14-202, the cost of the examination and other associated expenses, as provided in 46-14-202(4); and

(v) for treatment or commitment under 46-14-221, the cost of a community-based treatment program or of transporting the defendant to the custody of the director of the department of public health and human services to be placed in an appropriate facility of the department of public health and human services and of transporting the defendant back for any proceedings, as provided in 46-14-221(5);

(c) except as provided in 47-1-201(5), the district court expenses in all postconviction proceedings held pursuant to Title 46, chapter 21, and in all habeas corpus proceedings held pursuant to Title 46, chapter 22, and appeals from those proceedings;

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

(i) transcript fees;

(ii) witness fees; and

(iii) expenses for psychiatric examinations;

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

(i) transcript fees;

(ii) witness fees;

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

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

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

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

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

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

(i) all other costs associated with the operation and maintenance of the district court, including contract

costs for court reporters who are independent contractors; and

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

(2) If a cost is not paid directly by the office of court administrator, the county shall pay the cost and the office of court administrator shall reimburse the county within 30 days of receipt of a claim.

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

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

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

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

Section 2. Section 46-14-101, MCA, is amended to read:

"46-14-101. Mental disease or defect -- purpose -- ~~definition~~ <u>definitions</u>. (1) The purpose of this section is to provide a legal standard of mental disease or defect under which the information gained from examination of the defendant, pursuant to part 2 of this chapter, regarding a defendant's mental condition is applied. The court shall apply this standard:

(a) in any determination regarding:

(i) a defendant's fitness to proceed and stand trial; <u>or</u>

(ii) whether the defendant had, at the time that the offense was committed, a particular state of mind that is an essential element of the offense; and

(b) at sentencing when a defendant has been convicted on a verdict of guilty or a plea of guilty or nolo contendere and claims that at the time of commission of the offense for which the defendant was convicted, the defendant was unable to appreciate the criminality of the defendant's behavior or to conform the defendant's behavior to the requirements of the law.

(2) ~~(a)~~ As used in this chapter, <u>the following definitions apply:</u>

<u>(a) "Community-based provider" means a licensed mental health center as defined in 53-21-1001, a behavioral health inpatient facility licensed pursuant to 53-21-194, a developmental disabilities facility as defined in 53-20-202 that is not owned or operated by the state, or a developmental disabilities professional as defined</u>

in 53-20-102 or a mental health professional as defined in 53-21-102 who is not employed by the state;

(b) (i) ~~"mental~~ "Mental disease or defect" means an organic, mental, or emotional disorder that is manifested by a substantial disturbance in behavior, feeling, thinking, or judgment to such an extent that the person requires care, treatment, and rehabilitation.

~~(b)~~(ii) The term "mental disease or defect" does not include but may co-occur with one or more of the following:

~~(i)~~(A) an abnormality manifested only by repeated criminal or other antisocial behavior;

~~(ii)~~(B) a developmental disability, as defined in 53-20-102;

~~(iii)~~(C) drug or alcohol intoxication; or

~~(iv)~~(D) drug or alcohol addiction."

Section 3. Section 46-14-206, MCA, is amended to read:

"46-14-206. Report of examination. (1) A report of the examination 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 suffers from a mental disorder, as defined in 53-21-102, and may require commitment or is seriously developmentally disabled, as defined in 53-20-102, and may require commitment;

(c) if the defendant suffers from a mental disease or defect or developmental disability, 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 or developmental disability, 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 the mental disease or defect or developmental disability.

(3) If the report concludes that the defendant lacks the capacity to understand the proceedings against the defendant and to assist in the defendant's own defense because of a mental disease or defect or

developmental disability, the report must include an opinion on:

(a) whether treatment is reasonably likely to help the defendant gain fitness to proceed; and

(b) if treatment is reasonably likely to help the defendant gain fitness to proceed, what treatment is appropriate and what is the least restrictive setting to safely and effectively deliver the treatment, including an opinion addressing whether:

(i) the defendant may be treated through outpatient treatment services from a community-based provider at the location where the defendant is detained or at an outpatient setting if the defendant is not detained; or

(ii) the defendant requires inpatient treatment in a mental health facility, as defined in 53-21-102, or a residential facility, as defined in 53-20-102, of the department of public health and human services."

Section 4. 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 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, or advanced practice registered nurses who joined in the report and to offer evidence ~~upon~~ on 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 (2)(d) or (4), and the court shall take one of the following actions:

(a) If the court finds that the defendant may reasonably be expected to gain fitness to proceed through treatment provided by a community-based provider at the location where the defendant is detained or at an outpatient setting if the defendant is not detained, the court shall order the defendant to participate in the treatment.

(b) If the court finds that the defendant may reasonably be expected to gain fitness to proceed only through inpatient treatment, the court shall make a finding regarding whether the defendant has a mental disorder, as defined in 53-21-102, and appears to meet the criteria in 53-21-126(4)(a), (4)(b), or (4)(c), justifying civil commitment to the Montana state hospital, or is seriously developmentally disabled, as defined in 53-20-102,

justifying commitment to a residential facility, as defined in 53-20-102. If the court finds that the defendant appears to meet the criteria in 53-21-126(4)(a), (4)(b), or (4)(c) or is seriously developmentally disabled, the court shall direct the prosecutor to file a petition for commitment as provided in 53-20-121 or 53-21-121.

(c) If the court finds that the defendant may not reasonably be expected to gain fitness to proceed through treatment as described in subsection (2)(a), the defendant does not appear to meet the criteria in 53-21-126(4)(a), (4)(b), or (4)(c) or to be seriously developmentally disabled, or a court has denied a petition for commitment filed under this section, ~~and~~ the court shall commit the defendant to the custody of the director of the department of public health and human services to be placed in an appropriate mental health facility, as defined in 53-21-102, or residential facility, as defined in 53-20-102, of the department of public health and human services for up to 90 days for treatment to help the defendant gain fitness to proceed.

(d) If the court finds that there is no treatment that is reasonably likely to help the defendant gain fitness to proceed, the court may dismiss the proceedings as provided in subsection (3) without ordering treatment. The prosecutor shall petition the court for commitment as provided in Title 53, chapter 21, or for involuntary treatment as provided in Title 53, chapter 20. ~~so long as the unfitness endures or until disposition of the defendant is made pursuant to this section, whichever occurs first.~~

~~(b) The facility 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 facility may petition the court for an order requiring compliance. The defendant has a right to a hearing on the petition. The court shall enter into the record a detailed statement of the facts upon which an order is made, and if compliance with the individualized treatment plan is ordered, the court shall also enter into the record specific findings that the state has proved an overriding justification for the order and that the treatment being ordered is medically appropriate.~~

(3) (a) The ~~committing~~ court shall~~,~~ set a hearing within 90 days of its order for treatment or commitment~~,~~ to review the defendant's fitness to proceed. If the court finds that the defendant is still unfit to proceed and that it does not appear that the defendant will become fit to proceed within the reasonably foreseeable future, the proceeding against the defendant must be dismissed, except as provided in subsection (4).

(b) If the court determines that the defendant lacks fitness to proceed because the defendant has a mental disorder as defined in 53-21-102, the proceeding against the defendant must be dismissed and the prosecutor shall petition the court in the manner provided in Title 53, chapter 21, to determine the disposition of

the defendant pursuant to those provisions.

(c) If the court determines that the defendant lacks fitness to proceed because the defendant has a developmental disability as defined in 53-20-102, the proceeding against the defendant must be dismissed and the prosecutor shall petition the court in the manner provided in Title 53, chapter 20, to determine the disposition of the defendant pursuant to those provisions.

(d) If the court determines that the defendant lacks fitness to proceed but that it appears the defendant will become fit to proceed within the reasonably foreseeable future, the court may extend its order for treatment or commitment for no more than 90 days at one time or may take any action authorized under this part, including amending the order to require another treatment option. The court shall set a hearing prior to the expiration of each 90-day extension to review the defendant's fitness and take appropriate action under this part.

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

(5) Except as provided in subsection (6), the expenses of a community-based treatment program or of transporting the defendant to the custody of the director of the department of public health and human services to be placed in an appropriate facility of the department of public health and human services, of the care, custody, and treatment of the defendant at the facility, and of transporting the defendant back are payable by the court or, in district court proceedings, by the office of court administrator.

(6) The cost of care, custody, and treatment at a facility for which the legislature has made a general fund appropriation to the department of public health and human services may not be charged to the office of court administrator.

(7) The expenses of civil commitment or involuntary treatment pursuant to subsection (2)(b) or (2)(d) are payable according to the applicable civil commitment or involuntary treatment laws."

NEW SECTION. **Section 5. Treatment plan -- procedure for noncompliance -- hearing -- findings.** (1) If the court orders the defendant to participate in treatment provided by a community-based provider or commits the defendant to the custody of the director of the department of public health and human services for treatment to gain fitness at a facility of the department, the provider or facility shall develop an individualized treatment plan to help the defendant 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.

(2) The court shall set a hearing date within 2 weeks after its order for treatment to review the defendant's treatment plan and participation in treatment. The hearing may be conducted by two-way electronic audio-video communication. If the court finds that the defendant has refused to comply with the treatment plan or refuses the prescribed medication, the prosecutor may immediately petition the court for an order requiring compliance or authorizing involuntary administration of the prescribed medication for the purpose of restoring fitness. The defendant has a right to an evidentiary hearing on the petition. The court shall enter into the record a detailed statement of the facts on which an order is made. If the court authorizes involuntary administration of medication, the court shall also enter into the record specific findings that:

(a) the state has a significant interest in restoring the defendant to fitness;

(b) involuntary administration of the prescribed medication will significantly further the state's interest in restoring the defendant to fitness;

(c) the proposed medication is substantially unlikely to have side effects that will interfere significantly with the defendant's ability to assist counsel in conducting a defense at trial;

(d) alternative, less intrusive treatments are unlikely to achieve substantially the same results; and

(e) the treatment being ordered is medically appropriate.

NEW SECTION. **Section 6. Codification instruction.** [Section 5] is intended to be codified as an integral part of Title 46, chapter 14, part 2, and the provisions of Title 46, chapter 14, part 2, apply to [section 5].

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