

HOUSE BILL NO. 654  
INTRODUCED BY J. JAYNE

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE LAW REGARDING A PERSON'S FITNESS TO PROCEED IN CRIMINAL PROCEDURE; AND AMENDING SECTIONS 46-14-103, 46-14-206, AND 46-14-221, MCA."

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

**Section 1.** Section 46-14-103, MCA, is amended to read:

**"46-14-103. Mental disease or defect excluding fitness to proceed.** A person who, as a result of mental disease or defect, is unable to understand the proceedings against the person or to assist in the person's own defense is considered to lack fitness to proceed and may not be tried, convicted, or sentenced for the commission of an offense so long as the ~~incapacity~~ inability to understand the proceedings or to assist in the person's own defense endures."

**Section 2.** 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 and may require commitment 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 for use in the court's determination of fitness to proceed as provided in 46-14-221;
  - (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 3.** 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~~ shall determine whether a defendant is able to understand the proceedings or to assist in the defense. 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 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 public health and human services to be placed in an appropriate institution of the department of public health and human services for so long as the ~~unfitness~~ inability to understand the proceedings or to assist in the defense 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. 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.

(c) The committing court shall, within 90 days of commitment, review the defendant's fitness to proceed. If the court finds that the defendant ~~is still unfit~~ lacks fitness 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), and the prosecutor shall petition the court in the manner provided in Title 53, chapter 20 or 21, whichever is appropriate, to determine the disposition of the defendant pursuant to those provisions.

(3) If the court determines that the defendant lacks fitness to proceed because the defendant has a developmental disability as provided in 53-20-102(5), the proceeding against the defendant must be dismissed and the prosecutor shall petition the court in the manner provided in Title 53, chapter 20.

(4) The fact that the defendant ~~is unfit~~ lacks fitness 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) The expenses of sending the defendant to the custody of the director of the department of public health and human services to be placed in an appropriate institution of the department of ~~corrections~~ public health and human services, of keeping the defendant there, and of bringing the defendant back are payable by the state as a district court expense."

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