



AN ACT PROVIDING THAT IF A PERSON WITH A DEVELOPMENTAL DISABILITY IS FOUND FIT TO PROCEED AND IS CONVICTED OF A CRIME, THE COURT MAY SENTENCE THE PERSON TO AN APPROPRIATE DEVELOPMENTAL DISABILITIES FACILITY; ALLOWING EVIDENCE OF DEVELOPMENTAL DISABILITY TO PROVE STATE OF MIND; PROVIDING THAT DEVELOPMENTAL DISABILITY MAY EXCLUDE FITNESS TO PROCEED; AND AMENDING SECTIONS 46-14-102, 46-14-103, 46-14-206, 46-14-221, 46-14-311, AND 46-14-312, MCA.

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

Section 1. Section 46-14-102, MCA, is amended to read:

"46-14-102. Evidence of mental disease or defect or developmental disability admissible to prove state of mind. Evidence that the defendant suffered from a mental disease or defect or developmental disability is admissible to prove that the defendant did or did not have a state of mind that is an element of the offense."

Section 2. Section 46-14-103, MCA, is amended to read:

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

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;
- (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."

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 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~~ 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 so long as the unfitness endures or until disposition of the defendant is made pursuant to this section, whichever occurs first.

(b) The ~~institution~~ 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 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.

~~(e)~~(3) (a) 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 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~~

(b) If the court determines that the defendant lacks fitness to proceed because the defendant has a mental disorder, the proceeding against the defendant must be dismissed 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)~~(c) If the court determines that the defendant lacks fitness to proceed because the defendant has a developmental disability as ~~provided~~ defined 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, to determine the disposition of the defendant pursuant to those provisions.

(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) 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."

Section 5. Section 46-14-311, MCA, is amended to read:

"46-14-311. Consideration of mental disease or defect or developmental disability in sentencing.

Whenever a defendant is convicted on a verdict of guilty or a plea of guilty or nolo contendere and claims that at the time of the commission of the offense of which convicted the defendant was suffering from a mental disease or defect or developmental disability that rendered the defendant unable to appreciate the criminality of the defendant's behavior or to conform the defendant's behavior to the requirements of law, the sentencing court shall consider any relevant evidence presented at the trial and shall require additional evidence ~~as~~ that it

considers necessary for the determination of the issue, including examination of the defendant and a report of the examination as provided in 46-14-202 and 46-14-206."

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 or developmental disability as described in 46-14-311, any mandatory minimum sentence prescribed by law for the offense need not apply ~~and the~~. The court shall sentence the defendant to be committed to the custody of the director of the department of public health and human services to be placed, after consideration of the recommendations of the professionals providing treatment to the defendant and recommendations of the professionals who have evaluated the defendant, in an appropriate ~~correctional or~~ correctional facility, mental health facility, as defined in 53-21-102, residential facility, as defined in 53-20-102, or developmental disabilities facility, as defined in 53-20-202, 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 director may, after considering the recommendations of the professionals providing treatment to the defendant and recommendations of the professionals who have evaluated the defendant, subsequently transfer the defendant to another ~~correctional or mental health~~ correctional, mental health, residential, or developmental disabilities facility that will better serve the defendant's custody, care, and treatment needs. 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 the defendant unable to appreciate the criminality of the defendant's conduct or to conform the defendant's conduct to the requirements of law;
- (c) the defendant suffers from a mental disease or defect or developmental disability but is not a danger to the defendant or others; or
- (d) the defendant suffers from a mental disease or defect that makes the defendant a danger to the

defendant or others, but:

- (i) there is no treatment available for the mental disease or defect;
- (ii) 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."

- END -

I hereby certify that the within bill,
SB 0035, originated in the Senate.

Secretary of the Senate

President of the Senate

Signed this _____ day
of _____, 2019.

Speaker of the House

Signed this _____ day
of _____, 2019.

SENATE BILL NO. 35

INTRODUCED BY GRIMES

BY REQUEST OF THE CHILDREN, FAMILIES, HEALTH, AND HUMAN SERVICES INTERIM COMMITTEE

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