

## SENATE BILL NO. 125

INTRODUCED BY D. HARRINGTON

BY REQUEST OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE STATUTES ON MENTAL COMPETENCY OF THE ACCUSED; REVISING PROCEDURES FOR PSYCHOLOGICAL OR PSYCHIATRIC EXAMINATION AND TREATMENT OF CRIMINAL DEFENDANTS; PROVIDING RULEMAKING AUTHORITY FOR THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES REGARDING EXAMINATIONS; PROVIDING SENTENCING ALTERNATIVES; IMPLEMENTING PROCEDURES FOR INVOLUNTARY MEDICATION OF DEFENDANTS UNDER CERTAIN CIRCUMSTANCES; CLARIFYING THE PROCEDURES FOR TRANSFER OR CONDITIONAL RELEASE OF PERSONS COMMITTED TO THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; AND AMENDING SECTIONS 3-5-901, 46-14-202, 46-14-206, 46-14-221, 46-14-301, AND 46-14-312, 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 evaluation under 46-14-202, the cost of the examination and other associated

expenses, as provided in ~~46-14-202(4)(a)(i) and (4)(a)(iii)~~ 46-14-202(5)(a)(i) and (5)(a)(iii); and

(v) for a psychiatric evaluation under 46-14-221, the cost of the examination and other associated expenses, as provided in ~~46-14-221(5)(8)~~;

(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 46-14-202, MCA, is amended to read:

**"46-14-202. Examination of defendant.** (1) If the defendant or the defendant's counsel files a written motion requesting an examination or if the issue of the defendant's fitness to proceed is raised by the district court, prosecution, or defense counsel, the district court shall appoint at least one qualified psychiatrist, licensed clinical psychologist, or advanced practice registered nurse or shall request the superintendent of the Montana state hospital to designate at least one qualified psychiatrist, licensed clinical psychologist, or advanced practice registered nurse, who may be or include the superintendent, to examine and report upon the defendant's mental condition.

(2) The court may order the defendant to be committed to a hospital or other suitable facility for the purpose of the examination for a period not exceeding 60 days or a longer period that the court determines to be necessary for the purpose and may direct that a qualified psychiatrist, licensed clinical psychologist, or advanced practice registered nurse retained by the defendant be permitted to witness and participate in the examination.

(3) In the examination, any method may be employed that is accepted by the medical or psychological profession for the examination of those alleged to be suffering from mental disease or defect.

(4) The court may order the defendant to comply with involuntary medication if it finds that the defendant meets the civil commitment criteria of 53-21-126 and that involuntary medication is necessary to protect the defendant or others or to facilitate effective treatment. The provisions of 53-21-127(6) apply to an order under this subsection.

(5) (a) The costs incurred for an examination ordered under subsection (2) must be paid as follows:

(i) if the issue of the defendant's fitness to proceed was raised by the district court or the examination was requested by the prosecution, the cost of the examination and other associated expenses must be paid by the office of court administrator, as provided in 3-5-901;

(ii) if the defendant was represented by an attorney assigned pursuant to the Montana Public Defender Act, Title 47, chapter 1, and the examination was requested by the defendant or the defendant's counsel, the cost of the examination and other associated expenses must be paid by the office of state public defender;

(iii) if the defendant was represented by an attorney assigned pursuant to the Montana Public Defender Act, Title 47, chapter 1, and the examination was jointly requested by the prosecution and defense counsel or the need for the examination was jointly agreed to by the prosecution and defense, the cost of the examination and other associated expenses must be divided and paid equally by the office of court administrator and the office of state public defender.

(b) For purposes of this subsection ~~(4)~~ (5), "other associated expenses" means the following costs incurred in association with the commitment to a hospital or other suitable facility for the purpose of examination, regardless of whether the examination is done at the Montana state hospital or any other facility:

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

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

(iii) medical costs, including medical and dental care, ~~including~~ and costs of medication."

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

**"46-14-206. Report of examination -- rulemaking.** (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:

(i) suffers from a mental disease or defect or a developmental disability, as defined in 53-20-102;

(ii) 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; or

(iii) 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 at the time of the alleged offense 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 at the time of the alleged offense, 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;

(f) if the opinion of the psychiatrist, licensed clinical psychologist, or advanced practice registered nurse examining the defendant indicates that the defendant lacked capacity to appreciate the criminality of the defendant's behavior or to conform the defendant's behavior to the requirements of the law at the time of the alleged offense, an opinion as to the defendant's capacity to do so at the time of the examination; and

(g) if the report concludes that the defendant lacks capacity to understand the proceedings against the defendant and to assist in the defendant's own defense, an opinion as to whether the defendant is likely to regain fitness to proceed in the reasonably foreseeable future if provided with treatment. If the report concludes that the defendant is likely to regain fitness to proceed in the reasonably foreseeable future if provided with treatment, the report must propose an individualized treatment plan to regain fitness, which may include a physician's or advanced practice registered nurse's prescription of reasonable and appropriate medication that is consistent with accepted medical standards or a protocol for arriving at the appropriate medication and dosages.

(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) The department of public health and human services may adopt rules implementing the requirements in subsection (1), establishing a standardized format for the organization and elements of the report, and adopting nationally accepted standards for forensic examination and reporting that are consistent with this section."

**Section 4.** Section 46-14-221, MCA, is amended to read:

**"46-14-221. Determination of fitness to proceed -- effect of finding of unfitness -- involuntary administration of medication -- review -- 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 the issue.

(2) ~~(a)~~ If the court determines that the defendant 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 (7).

(3) If the court determines that the defendant lacks fitness to proceed and it appears the defendant will become fit to proceed within the reasonably foreseeable future if treated, the court shall suspend the proceeding against the defendant ~~must be suspended~~, except as provided in subsection ~~(4)~~ (7), 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 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.~~

(4) If the court orders commitment under subsection (3) and the report recommends medication, the court shall hold a hearing prior to commitment and determine whether the defendant:

(a) meets the criteria for civil commitment and involuntary medication under 53-21-126 and 53-21-127;  
or

(b) does not meet the criteria for civil commitment and involuntary medication and all of the following factors exist:

(i) the state has a strong interest in timely prosecution of a serious crime;  
(ii) medication is substantially likely to render the defendant competent to stand trial and substantially unlikely to have side effects that will interfere significantly with the defendant's ability to assist counsel in conducting a defense;

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

(iv) administering the medication is medically appropriate.

(5) (a) If the court determines that the elements of subsection (4)(a) or (4)(b) are present, the court may enter an order authorizing the chief medical officer of the facility to administer medication involuntarily using the process provided for in 53-21-127(6) if the defendant does not comply with prescribed medication. If the defendant refuses to comply, the chief medical officer or the chief medical officer's designee may administer appropriate medication involuntarily. Medication may not be involuntarily administered to a patient unless the chief medical officer of the facility or a physician designated by the court approves the administration prior to the beginning of the involuntary administration and unless a medication review committee reviews the administration prior to the beginning of the involuntary administration or, if prior review is not possible, within 5 working days after the beginning of the involuntary administration.

(b) The medication review committee must include at least one person who is not an employee of the facility. The patient and the patient's attorney or advocate, if the patient has one, must receive adequate written notice of the date, time, and place of the review and must be allowed to appear and give testimony and evidence. The involuntary administration of medication must be reviewed by the committee 14 days and 90 days after the beginning of the involuntary administration if medication is still being involuntarily administered.

(c) 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 involuntary administration is authorized, 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 on each element set forth in subsection (4).

~~(3)(6)~~ (a) ~~The~~ At the time of commitment under subsection (3), the committing court shall, ~~within 90 days of commitment, review~~ set a date for a hearing to be held within 90 days of commitment for the purpose of reviewing the defendant's fitness to proceed. If

(b) (i) At the review hearing, 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)~~ (7).

~~(b)(ii)~~ 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 21, to determine the disposition of the defendant pursuant to those provisions.

~~(e)(iii)~~ 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.

(c) At the review hearing, if the court finds that the defendant is still unfit to proceed but it appears that the defendant will become fit to proceed within the reasonably foreseeable future, the court may recommit the defendant for one additional period of no more than 90 days under the same procedure.

~~(4)~~(7) 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)~~(8) The expenses of ~~sending~~ 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 keeping the defendant there, and of ~~bringing~~ transporting the defendant back are payable by the office of court administrator as a district court expense as provided for in 3-5-901."

**Section 5.** Section 46-14-301, MCA, is amended to read:

**"46-14-301. Commitment upon finding of not guilty by reason of lack of mental state -- hearing to determine release or discharge -- limitation on confinement.** (1) When a defendant is found not guilty for the reason that due to a mental disease or defect the defendant could not have a particular state of mind that is an essential element of the offense charged, the court shall order a predisposition investigation in accordance with 46-18-112 and 46-18-113, which must include:

(a) an investigation of the present mental condition of the defendant;  
(b) an assessment of the current risk posed by the defendant to the defendant or others; and  
(c) an assessment of the current treatment needs of the defendant, including whether the defendant meets the civil commitment criteria of Title 53, chapter 20 or 21, and whether involuntary medication is necessary to protect the defendant or others or to facilitate effective treatment.

(2) If the trial was by jury, the court shall hold a hearing to determine the appropriate disposition of the defendant. If the trial was by the court, the court may hold a hearing to obtain any additional testimony it considers necessary to determine the appropriate disposition of the defendant. In either case, the testimony and evidence presented at the trial must be considered by the court in making its determination.

~~(2)~~(3) The court shall evaluate the nature of the offense with which the defendant was charged. If the offense charged:

(a) involved a substantial risk of serious bodily injury or death, actual bodily injury, or substantial property damage; and the court ~~may find~~ finds that the defendant suffers from a mental disease or defect that currently



renders the defendant a danger to the defendant or others. ~~If the court finds that the defendant presents a danger to the defendant or others,~~ the defendant may be committed to the custody of the director of the department of public health and human services to be placed in an appropriate mental health facility for custody, care, and treatment. However, if the court finds that the defendant is seriously developmentally disabled, as defined in 53-20-102, the prosecutor shall petition the court in the manner provided in Title 53, chapter 20.

(b) ~~charged~~ did not involve a substantial risk of serious bodily injury or death, actual bodily injury, or substantial property damage; or if the defendant does not currently present a danger to the defendant or others, the court shall release the defendant. The prosecutor may petition the court in the manner provided in Title 53, chapter 20 or 21.

~~(3)~~(4) A person committed to the custody of the director of the department of public health and human services must have a hearing within 180 days of confinement to determine the person's present mental condition and whether the person must be discharged or released or whether the commitment may be extended because the person continues to suffer from a mental disease or defect that renders the person a danger to the person or others. The hearing must be conducted by the court that ordered the commitment unless that court transfers jurisdiction to the district court in the district in which the person has been placed. The court shall cause notice of the hearing to be served upon the person, the person's counsel, the prosecutor, and the court that originally ordered the commitment. The hearing is a civil proceeding, and the burden is upon the state to prove by clear and convincing evidence that the person may not be safely released because the person continues to suffer from a mental disease or defect that causes the person to present a substantial risk of:

- (a) serious bodily injury or death to the person or others;
- (b) an imminent threat of physical injury to the person or others; or
- (c) substantial property damage.

~~(4)~~(5) According to the determination of the court upon the hearing, the person must be discharged or released on conditions the court determines to be necessary or must be committed to the custody of the director of the department of public health and human services to be placed in an appropriate mental health facility for custody, care, and treatment. The period of commitment may not exceed the maximum sentence determined under 46-14-214(2). At the time that the period of the maximum sentence expires, involuntary civil commitment proceedings may be instituted in the manner provided in Title 53, chapter 21.

(6) If defendant is sentenced to the custody of the director of the department of public health and human services, the court may enter an order authorizing the chief medical officer to administer involuntary medication using the process as provided in 53-21-127(6) if:

(a) the defendant does not comply with prescribed medication; and

(b) the court finds that:

(i) the defendant meets the civil commitment criteria provided in 53-21-126; and

(ii) involuntary medication is necessary to protect the defendant or others or to facilitate effective treatment.

~~(5)~~(7) A professional person shall review the status of the person each year. At the time of the annual review, the director of the department of public health and human services or the person or the representative of the person may petition for discharge or release of the person. Upon request for a hearing, a hearing must be held pursuant to the provisions of subsection ~~(3)~~ (4)."

**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. The court shall order a presentence investigation that includes, in addition to any of the elements required by 46-18-112, an assessment of:

(a) the defendant's current ability to appreciate the criminality of the defendant's conduct and to conform the defendant's conduct to the requirements of law;

(b) the current risk posed by the defendant to the defendant or others; and

(c) the current treatment needs of the defendant, including whether the defendant meets the civil commitment criteria of Title 53, chapter 20 or 21, and whether involuntary medication is necessary to protect the defendant or the public or to facilitate effective treatment.

(3) Upon receiving the presentence investigation report, the court shall:

(a) 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 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);:

(b) defer or suspend a sentence to the custody of the director of the department of public health and human services and place the defendant under the supervision of the department of corrections upon conditions of probation which may include, in addition to conditions permitted under 46-18-201(4), mental health treatment and medication, further evaluation, housing or residential restrictions, or other conditions that are supported by a professional person's opinion and that the court finds adequate for protection of the defendant and the public;  
or

(c) sentence the defendant to placement in a correctional facility for a definite period of time not to exceed the maximum term of imprisonment that could be imposed under subsection (1).

(4) If the defendant is sentenced to the custody of the director of the department of public health and human services, the court may authorize involuntary medication if it finds that the defendant meets the civil commitment criteria of 53-21-126 and that involuntary medication is necessary to protect the defendant or the public or to facilitate effective treatment. The provisions of 53-21-127(6) apply to an order under this subsection.

(5) If the defendant is sentenced to the custody of the director of the department of public health and human services, the 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, mental health, residential, or developmental disabilities facility. that A transfer may be made if the director finds that the defendant suffers from a mental disease or defect that makes the defendant a danger to the defendant or others and:

(a) there is no reasonable treatment available for the mental disease or defect;

(b) the defendant refuses to cooperate with treatment;

(c) the defendant will no longer benefit from active inpatient treatment for the mental disease or defect;

or

(d) another correctional, mental health, residential, or developmental disabilities facility 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)(6)~~ (3)(6) Either the director or a defendant whose sentence has been imposed under subsection ~~(2)~~ (3) may petition the sentencing court for review of the sentence if ~~the~~ a professional person certifies that:

(a) the defendant no longer suffers from a mental disease or defect;

(b) the defendant's mental disease or defect or developmental disability 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; or

(c) the defendant suffers from a mental disease or defect or developmental disability but ~~is not~~ would no longer be 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 in a less restrictive placement under the supervision of the department of corrections and if the professional person specifies conditions that may include probation, mental health treatment and medication, further evaluation, housing or residential restrictions, or other conditions that are supported by the professional person's opinion.~~

~~(4)(7) The~~ On a petition for review of the sentence, 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~~

(8) A defendant sentenced under subsection (3) who is placed in an institutional setting must be examined by a professional person shall review the defendant's status each year at least annually. The professional person shall prepare a report addressing the defendant's current status and whether any of the conditions in subsection (6) have been met and shall mail a copy of the report to the prosecutor and the defendant's attorney."

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