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HOUSE BILL NO. 587

INTRODUCED BY M. CAFERRO

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATING TO THE MENTAL COMPETENCY OF A PERSON ACCUSED OF A CRIME; PROVIDING FOR THE AFFIRMATIVE DEFENSE OF INSANITY; REVISING THE BURDEN OF PROOF FOR RELEASE AND DISCHARGE OF A PERSON FROM COMMITMENT; REVISING LAWS RELATING TO CONDITIONAL RELEASE; AMENDING SECTIONS 45-7-306, 46-14-101, 46-14-202, 46-14-204, 46-14-205, 46-14-206, 46-14-213, 46-14-214, 46-14-217, 46-14-301, 46-14-302, 46-14-304, 46-15-322, 46-15-323, 46-18-111, 46-23-201, AND 46-23-208, MCA; AND REPEALING SECTIONS 46-14-311, 46-14-312, AND 46-14-313, MCA."

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

NEW SECTION. **Section 1. Insanity.** (1) It is an affirmative defense that, at the time of the commission of the acts constituting the offense, the defendant as a result of a mental disease or disorder was unable to appreciate the nature and quality or the wrongfulness of the defendant's acts or conform the defendant's actions to the requirements of the law.

(2) The defendant shall prove the defense of insanity by a preponderance of the evidence.

Section 2. Section 45-7-306, MCA, is amended to read:

"45-7-306. Escape. (1) (a) "Official detention" means placement of a person in the legal custody of a municipality, a county, or the state as a result of:

(i) a conviction for an offense or of having been charged with an offense;

(ii) the actual or constructive restraint or custody of a person by a peace officer pursuant to arrest, transport, or court order;

(iii) detention for extradition or deportation;

(iv) placement in a community corrections facility or program;

(v) supervision while under a supervised release program;

(vi) participation in a county jail work program under 7-32-2225 through 7-32-2227; ~~or~~

(vii) any lawful detention for the purpose of the protection of the welfare of the person detained or for the

protection of society; or

(viii) a condition of release pursuant to 46-14-304.

(b) Official detention does not include supervision of a person on probation or parole, constraint incidental to release on bail, or an unlawful arrest unless the person arrested employed physical force, a threat of physical force, or a weapon to escape.

(2) A person subject to official detention commits the offense of escape if the person knowingly or purposely eludes official detention or fails to return to official detention following temporary leave granted for a specific purpose or limited time. A person also commits the offense of escape if the person is participating in a county jail work program under 7-32-2225 through 7-32-2227 and knowingly or purposely fails to appear for work at a time and place scheduled for participation in the program.

(3) A person convicted of the offense of escape shall be:

(a) imprisoned in the state prison for a term not to exceed 20 years if the person escapes by the use or threat of force, physical violence, a weapon, or a simulated weapon;

(b) imprisoned in the state prison for a term not to exceed 10 years if the person escapes after having been charged with or convicted of a felony; or

(c) fined an amount not to exceed $500 or imprisoned in the county jail for a term not to exceed 6 months, or both, if the person escapes under circumstances other than those described in subsections (3)(a) and (3)(b)."

Section 3. Section 46-14-101, MCA, is amended to read:

"46-14-101. Mental disease or disorder -- purpose -- definition. (1) The purpose of this section is to provide a legal standard of mental disease or disorder 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)~~ This standard applies in any determination regarding:

~~(i)~~(a) a defendant's fitness to proceed and stand trial;

~~(ii)~~(b) 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)~~(c) ~~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~~ whether, at the time of the commission of the acts constituting the offense, the defendant as a result of a mental disease or disorder was unable to appreciate the nature and quality or the wrongfulness of the defendant's acts or conform the defendant's actions to the requirements of the law.

(2) (a) As used in this chapter, "mental disease or disorder" 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) The term "mental disease or disorder" does not include but may co-occur with one or more of the following:

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

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

(iii) drug or alcohol intoxication; or

(iv) drug or alcohol addiction."

Section 4. 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 court, prosecution, or defense counsel, the~~ The 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 if:

(a) the defendant or the defendant's counsel files a written motion requesting an examination;

(b) the issue of the defendant's fitness to proceed is raised by the court, prosecution, or defense counsel; or

(c) the defendant has filed notice of the intention to rely on the defense of insanity.

(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

1 examination.

2 (3) 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 mental disease or disorder.

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

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

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

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

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

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

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

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

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

Section 5. Section 46-14-204, MCA, is amended to read:

"46-14-204. Prosecution's right to examination. (1) When the defense discloses the report of the examination to the prosecution or files a notice of the intention to rely on the defense of insanity or a defense of mental disease or disorder, the prosecution is entitled to have the defendant examined by a qualified psychiatrist, licensed clinical psychologist, or advanced practice registered nurse.

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

Section 6. Section 46-14-205, MCA, is amended to read:

"46-14-205. Access to defendant for examination. If either the defendant or the prosecution wishes the defendant to be examined by a qualified psychiatrist, licensed clinical psychologist, or advanced practice registered nurse selected by the one proposing the examination in order to determine the defendant's fitness to proceed, the capacity of the defendant at the time of the commission of the acts constituting the offense to appreciate the nature and quality or the wrongfulness of the defendant's acts or conform the defendant's actions to the requirements of the law, or whether the defendant had, at the time the offense was committed, a particular state of mind that is an essential element of the offense, the examiner must be permitted to have reasonable access to the defendant for the purpose of the examination."

Section 7. 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 disease or 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 disorder 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 notice of the intention to rely on the defense of insanity has been given or when directed by the court, an opinion as to the capacity of the defendant, because of a mental disease or disorder or developmental disability, to appreciate the ~~criminality of the defendant's behavior or to conform the defendant's behavior to the requirement~~ nature and quality or the wrongfulness of the defendant's acts or to conform the defendant's actions to the requirements 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 disorder or developmental disability."

Section 8. Section 46-14-213, MCA, is amended to read:

"46-14-213. Psychiatric or psychological testimony upon trial. (1) Upon trial, any psychiatrist, licensed clinical psychologist, or advanced practice registered nurse who reported under 46-14-202 or 46-14-206 may be called as a witness by the prosecutor or by the defense. Both the prosecution and the defense may summon any other qualified psychiatrist, licensed clinical psychologist, or advanced practice registered nurse to testify, but only a person who has examined the defendant is competent to testify to an expert opinion with respect to the mental condition of the defendant, as distinguished from the validity of the procedure followed by or the general scientific propositions stated by another witness.

(2) When a psychiatrist, licensed clinical psychologist, or advanced practice registered nurse who has examined the defendant testifies concerning the defendant's mental condition, the psychiatrist, licensed clinical psychologist, or advanced practice registered nurse may make a statement as to the nature of the examination and the medical or psychological diagnosis of the mental condition of the defendant. The expert may make any explanation reasonably serving to clarify the expert's examination and diagnosis, and the expert may be cross-examined as to any matter bearing on the expert's competency or credibility or the validity of the expert's examination or medical or psychological diagnosis. A psychiatrist, licensed clinical psychologist, or advanced practice registered nurse may ~~not~~ offer an opinion to the jury on the ~~ultimate~~ issue of whether the defendant was able to appreciate the nature and quality or the wrongfulness of the defendant's acts or to conform the defendant's actions to the requirements of the law but may not offer an opinion to the jury on the ultimate issue of whether the defendant was insane at the time of the alleged offense or whether the defendant did or did not have a particular state of mind that is an element of the offense charged."

Section 9. Section 46-14-214, MCA, is amended to read:

"46-14-214. Form of verdict and judgment ~~-- determination of maximum period of confinement~~ -- victim findings. (1) When the defendant is found not guilty of the charged offense or offenses or any lesser included offense for the reason that due to a mental disease or disorder the defendant did not have a particular state of mind that is an essential element of the offense charged or for the reason that due to a mental disease or disorder the defendant was unable to appreciate the nature and quality or the wrongfulness of the defendant's acts or to conform the defendant's actions to the requirements of the law, the verdict and the judgment must state that reason.

~~(2) The court shall determine on the record the charged offense or offenses or any lesser included offense for which the person otherwise may have been convicted and the maximum sentence that the defendant may have received. If there is more than one offense charged, the maximum sentence is limited to the longest single sentence from all charged offenses.~~

~~(3)~~(2) The court shall make specific findings regarding whether there is a victim of the crime for which the defendant is found not guilty and, if so, whether the victim wishes to be notified of any conditional release, discharge, or escape of the defendant."

Section 10. Section 46-14-217, MCA, is amended to read:

"46-14-217. Admissibility of statements made during examination or treatment. A statement made for the purposes of psychiatric or psychological examination or treatment provided for in this section by a person subjected to examination or treatment is not admissible in evidence against the person at trial on any issue other than that of the person's mental condition. It is admissible on the issue of the person's mental condition, whether or not it would otherwise be considered a privileged communication, only when and after the defendant presents evidence that due to a mental disease or disorder:

(1) the defendant did not have a particular state of mind that is an element of the offense charged; or

(2) the defendant was unable to appreciate the nature and quality or the wrongfulness of the defendant's acts or to conform the defendant's actions to the requirements of the law."

Section 11. 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 disorder the defendant was unable to appreciate the nature and quality or the wrongfulness of the defendant's acts or to conform the defendant's actions to the requirements of the law or for the reason that due to a mental disease or disorder 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 an investigation of the present mental condition of the defendant. 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) The court shall evaluate the nature of the offense with which the defendant was charged. If the offense:

(a) involved a substantial risk of serious bodily injury or death, actual bodily injury, or substantial property damage, the court may find that the defendant suffers from a mental disease or disorder that renders the defendant a danger to the defendant or others. If the court finds that the defendant presents a foreseeable 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, the court shall release the defendant. The prosecutor may petition the court in the manner provided in Title 53, chapter 20 or 21.

(3) 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 disorder that renders the person a foreseeable 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~~ on the ~~state to~~

~~prove by clear and convincing evidence~~ person to prove by a preponderance of the evidence that the person may ~~not~~ be safely released because the person no longer continues to suffer from a mental disease or disorder that causes the person to present a foreseeable substantial risk of:

(a) serious bodily injury or death to the person or others;

(b) ~~an imminent~~ a threat of physical injury to the person or others; or

(c) substantial property damage.

(4) 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.~~

(5) A ~~professional person~~ licensed psychiatrist, licensed clinical psychologist, or advanced practice registered nurse 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)."

Section 12. Section 46-14-302, MCA, is amended to read:

"46-14-302. Discharge or release upon motion of director. (1) If the director of the department of public health and human services believes that a person committed to the director's custody under 46-14-301 may be discharged or released on condition without danger to the person or others because the person no longer suffers from a mental disease or disorder that causes the person to present a foreseeable substantial risk of serious bodily injury or death to the person or others, a foreseeable substantial risk of ~~an imminent~~ a threat of physical injury to the person or others, or a foreseeable substantial risk of substantial property damage, the director shall make application for the discharge or release of the person in a report to the district court by which the person was committed unless that court transfers jurisdiction to the court in the district in which the person has been placed and shall send a copy of the application and report to the prosecutor of the county from which the person was committed.

(2) Either the director of the department of public health and human services or the person may also

make application to the court for discharge or release as part of the person's annual treatment review.

(3) The court shall then appoint at least one person who is a qualified psychiatrist, licensed clinical psychologist, or advanced practice registered nurse to examine the person and to report as to the person's mental condition within 60 days or a longer period that the court determines to be necessary for the purpose. To facilitate the examinations and the proceedings on the examinations, the court may have the person confined in any mental health facility located near the place where the court sits that may be designated by the director of the department of public health and human services as suitable for the temporary detention of persons suffering from mental disease or disorder.

(4) The committed person or the person's attorney may secure a ~~professional person~~ licensed psychiatrist, licensed clinical psychologist, or advanced practice registered nurse of the committed person's choice to examine the committed person and to testify at the hearing. If the person wishing to secure the testimony of a ~~professional person~~ licensed psychiatrist, licensed clinical psychologist, or advanced practice registered nurse is unable to do so because of financial reasons, the court shall appoint an additional ~~professional person~~ licensed psychiatrist, licensed clinical psychologist, or advanced practice registered nurse to perform the examination. Whenever possible, the court shall allow the committed person or the person's attorney a reasonable choice of an available ~~professional person~~ licensed psychiatrist, licensed clinical psychologist, or advanced practice registered nurse qualified to perform the requested examination. The ~~professional person~~ licensed psychiatrist, licensed clinical psychologist, or advanced practice registered nurse must be compensated by the department of public health and human services.

(5) If the court is satisfied by the report filed under subsection (1) and the testimony of the reporting psychiatrist, licensed clinical psychologist, or advanced practice registered nurse that the committed person may be discharged or released on condition because the person no longer suffers from a mental disease or disorder that causes the person to present a foreseeable substantial risk of serious bodily injury or death to the person or others, a foreseeable substantial risk of ~~an imminent~~ a threat of physical injury to the person or others, or a foreseeable substantial risk of substantial property damage, the court shall order the person's discharge.

(6) (a) If the court is not satisfied, it shall promptly order a hearing to determine whether the person may safely be discharged or released on the grounds that the person no longer suffers from a mental disease or disorder that causes the person to present a foreseeable substantial risk of:

(i) serious bodily injury or death to the person or others;

(ii) ~~an imminent~~ a threat of physical injury to the person or others; or

(iii) substantial property damage.

(b) A hearing is considered a civil proceeding, and the burden is ~~upon the state to prove by clear and convincing~~ on the person to prove by a preponderance of the evidence that the person may ~~not~~ be safely discharged or released because the person no longer continues to suffer from a mental disease or disorder that causes the person to present a foreseeable substantial risk of:

(i) serious bodily injury or death to the person or others;

(ii) ~~an imminent~~ a threat of physical injury to the person or others; or

(iii) substantial property damage.

(c) According to the determination of the court upon the hearing, the committed person must then be discharged or released on conditions that the court determines to be necessary or must be recommitted to the custody of the director of the department of public health and human services, subject to discharge or release only in accordance with the procedures provided in 46-14-303 and this section."

Section 13. Section 46-14-304, MCA, is amended to read:

"46-14-304. ~~Revocation of conditional release~~ Conditional release -- revocation. (1) A person who has been conditionally released remains under the supervision of the department of public health and human services until the committing court discharges the person.

(2) When a person is conditionally released, the director of the department of public health and human services shall provide written notice of the conditions of the person's release to any community facility or program that is treating the person, the county attorney of the county in which the person was committed, and the county attorney of the county in which the person is required to receive treatment. The community facility or program shall report in writing every 3 months regarding the treatment and status of the person to the director of the department of public health and human services, the county attorney of the county in which the person was committed, and the county attorney of the county in which the person is required to receive treatment. The report must include all known violations of the terms and conditions of the person's release and any changes in the person's mental status that would indicate that the person's conditional release should be revoked.

~~(1)~~(3) ~~The~~ Upon motion of the department of public health and human services or a county attorney, the court may order revocation of a person's conditional release if the court determines after hearing evidence that:

(a) the conditions of release have not been fulfilled; and

(b) based on the violations of the conditions and the person's past mental health history, there is a

substantial likelihood that the person continues to suffer from a mental disease or disorder that causes the person to present a substantial risk of:

(i) serious bodily injury or death to the person or others;

(ii) ~~an imminent~~ a threat of physical injury to the person or others; or

(iii) substantial property damage.

~~(2) The court may retain jurisdiction to revoke a conditional release for no longer than 5 years.~~

~~(3)~~(4) If the court finds that the conditional release should be revoked, the court shall immediately order the person to be recommitted to the custody of the director of the department of public health and human services, subject to discharge or release only in accordance with the procedures provided in 46-14-302 and 46-14-303.

(5) When a person fails to comply with conditions of the person's release that require the person to establish, maintain, and reside at a specific residence and the person's whereabouts have become unknown to the supervising authorities or when the person leaves the state of Montana without the consent of the committing court, the person's absence from supervision constitutes a violation of 45-7-306. The offense is considered to have occurred in the county in which the person is authorized to reside."

Section 14. Section 46-15-322, MCA, is amended to read:

"46-15-322. Disclosure by prosecution. (1) Upon request, the prosecutor shall make available to the defendant for examination and reproduction the following material and information within the prosecutor's possession or control:

(a) the names, addresses, and statements of all persons whom the prosecutor may call as witnesses in the case in chief;

(b) all written or oral statements of the defendant and of any person who will be tried with the defendant;

(c) all written reports or statements of experts who have personally examined the defendant or any evidence in the particular case, together with the results of physical examinations, scientific tests, experiments, or comparisons;

(d) all papers, documents, photographs, or tangible objects that the prosecutor may use at trial or that were obtained from or purportedly belong to the defendant; and

(e) all material or information that tends to mitigate or negate the defendant's guilt as to the offense charged or that would tend to reduce the defendant's potential sentence.

(2) At the same time, the prosecutor shall inform the defendant of, and make available to the defendant for examination and reproduction, any written or recorded material or information within the prosecutor's control regarding:

(a) whether there has been any electronic surveillance of any conversations to which the defendant was a party;

(b) whether an investigative subpoena has been executed in connection with the case; and

(c) whether the case has involved an informant and, if so, the informant's identity if the defendant is entitled to know either or both of these facts under Rule 502 of the Montana Rules of Evidence and 46-15-324(3).

(3) The prosecutor may impose reasonable conditions, including an appropriate stipulation concerning chain of custody, to protect physical evidence produced under subsection (1)(d).

(4) The prosecutor's obligation of disclosure extends to material and information in the possession or control of members of the prosecutor's staff and of any other persons who have participated in the investigation or evaluation of the case.

(5) Upon motion showing that the defendant has substantial need in the preparation of the case for additional material or information not otherwise provided for and that the defendant is unable, without undue hardship, to obtain the substantial equivalent by other means, the court, in its discretion, may order any person to make it available to the defendant. The court may, upon the request of any person affected by the order, vacate or modify the order if compliance would be unreasonable or oppressive. The prosecutor may not be required to prepare or disclose summaries of witnesses' testimony.

(6) The prosecutor shall furnish to the defendant no later than 5 days before trial or at a later time as the court may for good cause permit, together with their statements, a list of the names and addresses of all persons whom the prosecutor intends to call as rebuttal witnesses to evidence of good character or the defenses of alibi, compulsion, entrapment, <u>insanity,</u> justifiable use of force, or mistaken identity or the defense that the defendant did not have a particular state of mind that is an element of the offense charged."

Section 15. Section 46-15-323, MCA, is amended to read:

"46-15-323. Disclosure by defendant. (1) At any time after the filing in district court of an indictment or information, the defendant, in connection with the particular crime charged and upon written request of the prosecutor and approval of the court:

(a) shall appear in a lineup;

1 (b) shall speak for identification by witnesses;
2 (c) must be fingerprinted, palm printed, footprinted, or voiceprinted;
3 (d) shall pose for photographs not involving reenactment of an event;
4 (e) shall try on clothing;
5 (f) shall permit the taking of samples of the defendant's hair, blood, saliva, urine, or other specified
6 materials that do not involve unreasonable bodily intrusions;
7 (g) shall provide handwriting samples; or
8 (h) shall submit to a reasonable physical or medical inspection; however, the inspection does not include
9 psychiatric or psychological examination.
10 (2) Within 30 days after the arraignment or at a later time as the court may for good cause permit, the
11 defendant shall provide the prosecutor with a written notice of the defendant's intention to introduce evidence at
12 trial of good character or the defenses of alibi, compulsion, entrapment, insanity, justifiable use of force, or
13 mistaken identity.
14 (3) Within 10 days after receiving a report of the defendant's mental condition from a psychiatrist,
15 psychologist, or advanced practice registered nurse or at a later time as the court may for good cause permit,
16 the defendant shall provide the prosecutor with a written notice of the defendant's intention to introduce evidence
17 at trial of the defense that because of a mental disease or disorder, the defendant did not have a particular state
18 of mind that is an essential element of the offense charged.
19 (4) The notice must specify for each defense the names and addresses of the persons, other than the
20 defendant, whom the defendant may call as witnesses in support of the defense, together with all written reports
21 or statements made by them, including all reports and statements concerning the results of physical
22 examinations, scientific tests, experiments, or comparisons, except that the defendant need not include a
23 privileged report or statement unless the defendant intends to use the privileged report or statement, or the
24 witness who made it, at trial.
25 (5) Prior to trial, the defendant may, upon motion and showing of good cause, add to the list of witnesses
26 the names of any additional witnesses and disclose their reports or statements as required by this section. After
27 the trial commences, no witness may be called by the defendant in support of these defenses unless the name
28 of the witness is included on the list and the witness's report or statement has been disclosed as required by this
29 section, except for good cause shown.
30 (6) Within 30 days after the arraignment or at a later time as the court may for good cause permit, the

defendant shall make available to the prosecutor for testing, examination, or reproduction:

(a) the names, addresses, and statements of all persons, other than the defendant, whom the defendant may call as witnesses in the defense case in chief, together with their statements;

(b) the names and addresses of experts whom the defendant may call at trial, together with the results of their physical examinations, scientific tests, experiments, or comparisons, including all written reports and statements made by these experts in connection with the particular case; and

(c) all papers, documents, photographs, and other tangible objects that the defendant may use at trial.

(7) The defendant's obligation under this section extends to material and information within the possession or control of the defendant, defense counsel, and defense counsel's staff or investigators.

(8) Upon motion of the prosecutor showing that the prosecutor has substantial need in the preparation of the case for additional material or information not otherwise provided for, that the prosecutor is unable, without undue hardship, to obtain the substantial equivalent by other means, and that disclosure of the material or information will not violate the defendant's constitutional rights, the court, in its discretion, may order any person to make the material or information available to the prosecutor. The court may, upon request of any person affected by the order, vacate or modify the order if compliance would be unreasonable or oppressive. The defense counsel may not be required to prepare or disclose summaries of witnesses' testimony."

Section 16. Section 46-18-111, MCA, is amended to read:

"46-18-111. Presentence investigation -- when required -- definition. (1) (a) (i) Upon the acceptance of a plea or upon a verdict or finding of guilty to one or more felony offenses, the district court shall direct the probation and parole officer to make a presentence investigation and report unless an investigation and report has been provided to the court prior to the plea or the verdict or finding of guilty.

(ii) Unless additional information is required under subsections (1)(b)~~,~~ <u>or</u> (1)(c)~~, or (1)(d)~~ or unless more time is required to allow for victim input, a preliminary or final presentence investigation and report must be available to the court within 30 days of the plea or the verdict or finding of guilty.

(iii) The district court shall consider the presentence investigation report prior to sentencing.

(b) If the defendant was convicted of an offense under 45-5-502, 45-5-503, 45-5-504, 45-5-507, 45-5-601(3), 45-5-602(3), 45-5-603(2)(b), 45-5-625, 45-5-627, 45-5-704, 45-5-705, or 45-8-218 or if the defendant was convicted under 46-23-507 and the offender was convicted of failure to register as a sexual offender pursuant to Title 46, chapter 23, part 5, the investigation must include a psychosexual evaluation of the defendant and a

recommendation as to treatment of the defendant in the least restrictive environment, considering the risk the defendant presents to the community and the defendant's needs, unless the defendant was sentenced under 46-18-219. The evaluation must be completed by a sexual offender evaluator who is a member of the Montana sex offender treatment association or has comparable credentials acceptable to the department of labor and industry. The psychosexual evaluation must be made available to the county attorney's office, the defense attorney, the probation and parole officer, and the sentencing judge. All costs related to the evaluation must be paid by the defendant. If the defendant is determined by the district court to be indigent, all costs related to the evaluation are the responsibility of the district court and must be paid by the county or the state, or both, under Title 3, chapter 5, part 9. The district court may order subsequent psychosexual evaluations at the request of the county attorney. The requestor of any subsequent psychosexual evaluations is responsible for the cost of the evaluation.

(c) If the defendant was convicted of an offense under 45-5-212(2)(b) or (2)(c), the investigation may include a mental health evaluation of the defendant and a recommendation as to treatment of the defendant in the least restrictive environment, considering the risk the defendant presents to the community and the defendant's needs. The evaluation must be completed by a qualified psychiatrist, licensed clinical psychologist, advanced practice registered nurse, or other professional with comparable credentials acceptable to the department of labor and industry. The mental health evaluation must be made available to the county attorney's office, the defense attorney, the probation and parole officer, and the sentencing judge. All costs related to the evaluation must be paid by the defendant. If the defendant is determined by the district court to be indigent, all costs related to the evaluation are the responsibility of the district court and must be paid by the county or the state, or both, under Title 3, chapter 5, part 9.

~~(d) When, pursuant to 46-14-311, the court has ordered a presentence investigation and a report pursuant to this section, the mental evaluation required by 46-14-311 must be attached to the presentence investigation report and becomes part of the report. The report must be made available to persons and entities as provided in 46-18-113.~~

(2) The court shall order a presentence investigation report unless the court makes a finding that a report is unnecessary. Unless the court makes that finding, a defendant convicted of any offense not enumerated in subsection (1) that may result in incarceration for 1 year or more may not be sentenced before a written presentence investigation report by a probation and parole officer is presented to and considered by the district court. The district court may order a presentence investigation for a defendant convicted of a misdemeanor only

if the defendant was convicted of a misdemeanor that the state originally charged as a sexual or violent offense as defined in 46-23-502.

(3) The defendant shall pay to the department of corrections a $50 fee at the time that the report is completed, unless the court determines that the defendant is not able to pay the fee within a reasonable time. The fee may be retained by the department and used to finance contracts entered into under 53-1-203(5).

(4) For the purposes of 46-18-112 and this section, "probation and parole officer" means:

(a) a probation and parole officer who is employed by the department of corrections pursuant to 46-23-1002; or

(b) an employee of the department of corrections who has received specific training or who possesses specific expertise to make a presentence investigation and report but who is not required to be licensed as a probation and parole officer by the public safety officer standards and training council created in 2-15-2029."

Section 17. Section 46-23-201, MCA, is amended to read:

"46-23-201. Prisoners eligible for nonmedical parole. (1) Subject to the restrictions contained in subsections (2) through (4) and the parole criteria in 46-23-208, the board may release on nonmedical parole by appropriate order any person who is:

(a) confined in a state prison;

(b) sentenced to the state prison and confined in a prerelease center;

(c) sentenced to prison as an adult pursuant to 41-5-206 and confined in a youth correctional facility;

~~(d) sentenced to be committed to the custody of the director of the department of public health and human services as provided in 46-14-312 and confined in the Montana state hospital, the Montana developmental center, or the Montana mental health nursing care center.~~

(2) Persons under sentence of death, persons sentenced to the department who have been placed by the department in a state prison temporarily for assessment or sanctioning, and persons serving sentences imposed under 46-18-202(2) or 46-18-219 may not be granted a nonmedical parole.

(3) A prisoner serving a time sentence may not be paroled under this section until the prisoner has served at least one-fourth of the prisoner's full term.

(4) A prisoner serving a life sentence may not be paroled under this section until the prisoner has served 30 years.

(5) If a hearing panel denies parole, it may order that the prisoner serve up to 6 years if the prisoner is

confined for a sexual or violent offense, as defined in 46-23-502, or up to 1 year if the prisoner is confined for any other offense before a hearing panel conducts another hearing or review."

Section 18. Section 46-23-208, MCA, is amended to read:

"46-23-208. Nonmedical parole criteria -- information board may consider. (1) The board may release an eligible prisoner on nonmedical parole only when:

(a) there is reasonable probability that the prisoner can be released without detriment to the prisoner or to the community;

(b) release is in the best interests of society;

(c) the prisoner is able and willing to fulfill the obligations of a law-abiding citizen; and

(d) the prisoner does not require:

(i) continued correctional treatment that cannot be found in the community; or

(ii) other programs available only in a correctional facility that will substantially enhance the prisoner's capability to lead a law-abiding life if released, including mental health therapy or vocational training.

(2) Parole may not be ordered as an award of clemency or a reduction of sentence or pardon.

~~(3) For a prisoner sentenced to be committed to the custody of the director of the department of public health and human services as provided in 46-14-312:~~

~~(a) the board may require as a condition of parole participation in a supervised mental health treatment program, if consistent with mental health services recommendations provided by a mental health professional, as that term is defined in 53-21-102, to ensure that the prisoner continues to treat the prisoner's mental disorder; and~~

~~(b) parole may be revoked if a prisoner fails to comply with the terms of a supervised mental health treatment program described in subsection (3)(a), in which case the prisoner must be recommitted to the custody of the director of the department of public health and human services pursuant to 46-14-312.~~

~~(4)~~(3) In making its determination regarding nonmedical parole release, a hearing panel shall consider all available and pertinent information regarding the prisoner, including the following factors:

(a) the circumstances of the offense;

(b) the prisoner's social history and prior criminal record, including the nature and circumstances of the offense, date of offense, and frequency of previous offenses;

(c) the prisoner's conduct, employment, and attitude in prison, including particularly whether the prisoner

has taken advantage of opportunities for treatment and whether the prisoner is clear of major disciplinary violations prior to the hearing;

(d) the reports of any physical, psychological, and mental evaluations that have been made;

(e) the prisoner's maturity, stability, sense of responsibility, and development of traits and behaviors that increase the likelihood the prisoner will conform the prisoner's behavior to the requirements of law;

(f) the adequacy of the prisoner's release plan;

(g) the prisoner's ability and readiness to assume obligations and undertake responsibilities;

(h) the prisoner's education and training;

(i) the prisoner's family status and whether the prisoner has relatives who display an interest or whether the prisoner has other close and constructive associations in the community;

(j) the prisoner's employment history and occupational skills and the stability of the prisoner's past employment;

(k) the type of residence, neighborhood, or community in which the prisoner plans to live;

(l) the prisoner's past use of chemicals, including alcohol, and past habitual or abusive use of chemicals;

(m) the prisoner's mental health needs;

(n) the prisoner's attitude toward law and authority;

(o) the prisoner's behavior and attitude during any previous experience of supervision and the recency of the supervision;

(p) written or oral statements from criminal justice authorities or any other interested person or the interested person's legal representative, including written or oral statements from a victim regarding the effects of the crime on the victim. A victim's statement may also include but is not limited to the circumstances surrounding the crime, the manner in which the crime was committed, and the victim's opinion as to whether the offender should be paroled.

(q) whether parole at this time would diminish the seriousness of the offense; and

(r) any and all other factors that the hearing panel determines to be relevant.

~~(5)~~(4) A victim's statement may be kept confidential."

NEW SECTION. **Section 19. Repealer.** The following sections of the Montana Code Annotated are repealed:

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

1 46-14-312. Sentence to be imposed.

2 46-14-313. Discharge of defendant from supervision.

3

4 NEW SECTION. **Section 20. Codification instruction.** [Section 1] is intended to be codified as an

5 integral part of Title 45, chapter 2, part 2, and the provisions of Title 45, chapter 2, part 2, apply to [section 1].

6 - END -