*** Bill No. ***

Introduced By *********

By Request of the Department of Public Health and Human Services

A Bill for an Act entitled: "An Act revising laws related to Forensic Mental Health Examination, Report of Examination, and Determination of Fitness to Proceed; amending sections 46-14-202, 46-14-206 and 46-14-221, MCA; and providing an effect date."

Be it enacted by the Legislature of the State of Montana:

Section 1. 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, or the prosecution, the defendant, or defense counsel files a written motion requesting an examination of the defendant, 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.

(2) Except as provided in (6), the court may order the defendant to be committed to a hospital, ~~or~~ another suitable facility, or the Montana state hospital 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. Upon commitment to the Montana state hospital, the superintendent of the Montana state hospital shall designate at least one qualified psychiatrist, licensed clinical psychologist, or advanced practice registered nurse, who may be or include the superintendent, to report upon the defendant’s mental condition.

(3) A court may not order the commitment, transfer, or transport of a defendant to the Montana state hospital unless that facility has confirmed in writing that:

(a) a bed is available for the defendant;

(b) admission of the defendant will not cause the census at the Montana state hospital to exceed its licensed capacity; and

(c) the committing county has provided the information and records requested by the Montana state hospital, including both physical and psychiatric medical information and documentation of legal authority to admit, as required by this part and by the Administrative Rules of Montana, sufficient to evaluate the immediate treatment needs and appropriate placement of the defendant, including whether less restrictive and medically appropriate facilities are available, and sufficient to coordinate patient care during the admission process with criminal justice authorities.

(4) A defendant may not be transported to the Montana state hospital until the provisions of (3) have been fulfilled.

(5) The Montana state hospital may refuse to admit into its custody any defendant whose order of commitment,

transfer, or transport is issued in violation of this section. Refusal to admit a defendant under such circumstances may not be used as a basis for contempt of court. A court may not suspend any provision of this section.

(6) A court may not order 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 unless no forensic evaluator located within the committing county's judicial district is willing, able, or available to perform a forensic evaluation.

(7) Except as provided in 46-14-206(2), a court ordering an examination of a defendant under 46-14-202 may not require that a report of examination include:

(a) an opinion as to the capacity of the defendant to have a particular state of mind that is an element of the offense charged; or

(b) 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 of the law.

~~(3)~~ (8) 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 disorder.

~~(4)~~ ~~(a)~~ (9) The costs incurred for an examination, including 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, personnel costs of the law enforcement agency by whom the defendant is detained, housing expenses of the facility where the examination is performed, and medical costs incurred by such facility while the defendant is housed at the facility, including medical and dental care and costs of medication, ~~ordered under subsection (2)~~ must be paid ~~as follows:~~ by the office of the court administrator, regardless of whether the examination is done at the Montana state hospital or any other facility.

~~(i) if the issue of the defendant's fitness to proceed was raised by the court or the examination was requested by~~

~~the prosecution, the cost of the examination and other associated expenses must be paid by the court or, in district court proceedings, by the office of court administrator, except as provided in subsection (4)(a)(iv);~~

~~(ii) if 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 defendant or, if the defendant was represented by an attorney pursuant to the Montana Public Defender Act, Title 47, chapter 1, by the office of state public defender, except as provided by subsection (4)(a)(iv);~~

~~(iii) if 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 court or, in district court proceedings, by the office of court administrator, and the defendant or, if the defendant was represented by an attorney assigned pursuant to the Montana Public Defender Act, Title 47, chapter 1, by the office of state public defender, except as provided in subsection (4)(a)(iv);~~

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

~~(b) For purposes of this subsection (4), "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 costs of medication.~~"

{*Internal References to 46-14-202:*
3-5-901 46-14-213}

Section 2. Section 46-14-206, MCA, is amended to read: "**46-14-206. Report of examination.** (1) A report of the examination ordered pursuant to 46-14-202 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 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;

(2) After a hearing where the defendant was determined to lack fitness to proceed, or when necessary for psychiatric or psychological testimony upon trial or consideration of mental disease or disorder or

developmental disability in sentencing, the court may direct that a report of the examination include:

~~(d)~~ (a) ~~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)~~ (b) ~~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 of the law.

~~(2)~~ (3) 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."

{*Internal References to 46-14-206:*
46-14-203 46-14-213 46-14-221}

Section 3. Section 46-14-221, MCA, is amended to read: "**46-14-221.** Determination of fitness to proceed — ~~effect of~~ procedure upon finding of unfitness — expenses. (1)(a) When ~~T~~the issue of the defendant's fitness to proceed ~~may be~~ has been raised~~,~~ and an examination of the

defendant has been completed pursuant to 46-14-202, ~~by the court, by the defendant or the defendant's counsel, or by the prosecutor. When the issue is raised, it~~ the defendant's fitness must be determined by the court.

(b) 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.

(c) 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.

(d) In determining whether a defendant lacks fitness to proceed, the court shall restrict its analysis of the issue to:

(i) whether the defendant suffers from a mental disorder, as defined in 53-21-102, or is seriously developmentally disabled, as defined in 53-20-102;

(ii) whether the defendant may require commitment; and

(iii) if the defendant suffers from a mental disease or disorder or developmental disability, whether the defendant has the capacity to understand the proceedings against the defendant and to assist in the defendant's own defense.

(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)~~(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~~ or to the custody of the director 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. The court shall enter into the record a detailed statement of the facts upon which an order is made, and if compliance with the individualized treatment plan is ordered, the court shall also enter into the record specific findings that the state has proved an overriding justification for the order and that the treatment being ordered is medically appropriate.~~

(3) A court may not order the commitment, transfer, or transport of a defendant to the Montana state hospital unless that facility has confirmed in writing that:

(a) a bed is available for the defendant;

(b) admission of the defendant will not cause the census at the Montana state hospital to exceed its licensed capacity; and

(c) the committing county has provided the information and records requested by the Montana state hospital, including both physical and psychiatric medical information and documentation of legal authority to admit, as required by this part and by the Administrative Rules of Montana,

sufficient to evaluate the immediate treatment needs and appropriate placement of the defendant, including whether less restrictive and medically appropriate facilities are available, and sufficient to coordinate patient care during the admission process with criminal justice authorities.

(4) The defendant may not be transported to the Montana state hospital until the provisions of (3) have been fulfilled.

(5) The Montana state hospital may refuse to admit into its custody any defendant whose order of commitment, transfer, or transport is issued in violation of this section. Refusal to admit a defendant under such circumstances may not be used as a basis for contempt of court. A court may not suspend any provision of this section.

~~(3)~~ (6)(a) The committing court shall, within 90 days of ordering commitment, review the defendant's custodial status related to any commitment ordered pursuant to (2)~~fitness to proceed~~. If the court finds that the defendant has not been admitted to an appropriate mental health facility, residential facility, or to the custody of the director of the department of public health and human

services pursuant to (2) and is still unfit to proceed because the defendant has a mental illness or disorder, ~~and that it does not appear that the defendant will become fit to proceed within the reasonably foreseeable future,~~ the court shall assess whether the proceeding against the defendant must be dismissed or whether alternatives to incarceration, if applicable, or to forensic commitment are appropriate under the circumstances, including whether involuntary administration of medications is necessary.~~, except as provided in subsection (4)~~

(b) If upon review of the defendant's custodial status related to any commitment ordered pursuant to (2) it is determined that an incarcerated defendant requires stabilization treatment, including administration of medication, the county attorney may petition the court for an order requiring compliance with stabilization treatment, including involuntary administration of medication. 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 stabilization treatment, including administration of medication is ordered, the court shall also enter into the record the

specific findings that the state has proved an overriding justification for the order and that the treatment being ordered is medically appropriate.

(c) Upon admission to an appropriate mental health facility, residential facility, or to the custody of the director of the department of public health and human services pursuant to (2), the facility shall evaluate the defendant and develop an individualized treatment plan to assist the defendant to gain or regain 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 involuntarily administer medications to treat a defendant pursuant to the determination of the facility's treatment review committee and involuntary medication review board, if the following criteria are met:

(i) the defendant suffers from a mental illness or mental disorder;

(ii) the defendant has been determined to lack fitness to proceed;

(iii) the involuntary administration of medication is in the best medical interests of the defendant;

(iv) the defendant is either gravely disabled or poses a likelihood of serious harm to self or others;

(v) the facility has established a treatment review committee and an involuntary medication review board for the involuntary administration of psychotropic medications; and

(vi) the policies and procedures relating to the involuntary medication review board require provision to the defendant of a notice of rights and notice of an involuntary medication hearing, an involuntary medication hearing, and an appeal process.

(d) the department of public health and human services shall adopt rules governing treatment review and the involuntary medication of medications by a mental health facility, as defined in 53-21-102, a residential facility, as defined in 53-20-102, or the Montana state hospital.

(e) After the initial review of the defendant's custodial status referenced in (6)(a), the court shall review the defendant's custodial status every 30 days thereafter or at an interval the court determines

appropriate under the circumstances. If upon subsequent review the defendant is still unfit, and it does not appear that the defendant will become fit within the reasonably foreseeable future, and that alternatives to forensic commitment are not appropriate under the circumstances, the court shall order the proceeding against the defendant dismissed without prejudice 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.

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

~~(c)~~ (f) 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.

~~(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) ~~Except as provided in subsection (6), the expenses of transporting the defendant to the custody of the director of the department of public health and human services to be placed in an appropriate facility of the department of public health and human services, of the care, custody, and treatment of the defendant at the facility, and of transporting the defendant back are payable by the court or, in district court proceedings, by the office of court administrator.~~ The costs incurred for an examination, including 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, personnel costs of the law enforcement agency by whom the defendant is detained, housing expenses of the facility where the examination is performed, and medical

costs incurred by such facility while the defendant is housed at the facility, including medical and dental care and costs of medication, must be paid by the office of the court administrator, regardless of whether the examination is done at the Montana state hospital or any other facility.

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

{*Internal References to 46-14-221: 3-5-901*}

NEW SECTION. **Section 4. Effective date.** [This act] is effective immediately upon passage.

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