

HOUSE BILL NO. 236

INTRODUCED BY J. REAVIS, M. YAKAWICH

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR EVALUATIONS IN DETENTION CENTERS OR STATE PRISONS OF DEFENDANTS IN CRIMINAL PROCEEDINGS WHEN MENTAL DISEASE OR DISORDER IS AN ISSUE; PROVIDING RULEMAKING AUTHORITY; AND AMENDING SECTIONS 7-32-2222 AND SECTION 46-14-202, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

(Refer to Introduced Bill)

Strike everything after the enacting clause and insert:

NEW SECTION. Section 1. Examinations conducted at detention center -- rulemaking authority.

An examination to determine a defendant's fitness to proceed as provided in 46-14-202 may be conducted at a detention center. This examination is not a commitment under 46-14-202(2).

(2) The department of public health and human services shall adopt rules to implement this section, including rules for how a psychiatrist, licensed clinical psychologist, or advanced practice registered nurse should conduct an examination at a detention center. The rules must include:

(a) guidelines that factor in the role of the detention center environment when conducting the examination;

(b) standards for the use of two-way electronic audio and video communication to conduct remote examinations;

(c) standards to determine if a follow-up examination is needed at the Montana state hospital; and

(d) when to implement the qualification determination required by 46-14-202(1).

Section 2. Section 46-14-202, MCA, is amended to read:

"46-14-202. Examination of defendant -- qualification determination. (1) (a) 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 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~~ on the defendant's mental condition.

(b) (i) Whether a psychiatrist, licensed clinical psychologist, or advanced practice registered nurse is qualified to examine and report on the defendant's mental condition must be determined by the department of public health and human services.

(ii) In addition to the examiner selected by the department, the prosecution or defense counsel may also hire an independent qualified examiner as provided for in 46-14-204, 46-14-205, and this section.

(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 disorder.

(4) (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 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 the 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."

NEW SECTION. Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 46, chapter 14, part 2, and the provisions of Title 46, chapter 14, part 2, apply to [section 1].

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