

SENATE BILL NO. 429

INTRODUCED BY J. ESP

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO DETERMINATION AND RESTORATION OF FITNESS IN CRIMINAL PROCEEDINGS; REVISING WHAT ACTS OR OMISSIONS MAY BE CONTEMPT; PROVIDING COMMITMENT PROCEDURES FOR EXAMINATION; PROVIDING PROCEDURES FOR THE INVOLUNTARY ADMINISTRATION OF MEDICATION; REVISING PROVISIONS FOR PAYMENT OF COMMITMENT EXPENSES; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 3-1-501, 3-5-901, 3-10-402, 3-11-303, 46-14-202, 46-14-206, AND 46-14-221, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

**Section 1.** Section 3-1-501, MCA, is amended to read:

**"3-1-501. What acts or omissions are contempts -- civil and criminal contempt.** (1) The following acts or omissions in respect to a court of justice or proceedings in a court of justice are contempts of the authority of the court:

(a) disorderly, contemptuous, or insolent behavior toward the judge while holding the court tending to interrupt the due course of a trial or other judicial proceeding;

(b) a breach of the peace, boisterous conduct, or violent disturbance tending to interrupt the due course of a trial or other judicial proceeding;

(c) misbehavior in office or other willful neglect or violation of duty by an attorney, counsel, clerk, sheriff, coroner, or other person appointed or elected to perform a judicial or ministerial service;

(d) deceit or abuse of the process or proceedings of the court by a party to an action or special proceeding;

(e) disobedience of any lawful judgment, order, or process of the court;

(f) assuming to be an officer, attorney, or counsel of a court and acting as that individual without authority;

(g) rescuing any person or property in the custody of an officer by virtue of an order or process of the court;

(h) unlawfully detaining a witness or party to an action while going to, remaining at, or returning from the court where the action is on the calendar for trial;

(i) any other unlawful interference with the process or proceedings of a court;

(j) disobedience of a subpoena duly served or refusing to be sworn or answer as a witness;

(k) when summoned as a juror in a court, neglecting to attend or serve as a juror or improperly conversing with a party to an action to be tried at the court or with any other person in relation to the merits of the action or receiving a communication from a party or other person in respect to it without immediately disclosing the communication to the court;

(l) disobedience by a lower tribunal, magistrate, or officer of the lawful judgment, order, or process of a superior court or proceeding in an action or special proceeding contrary to law after the action or special proceeding is removed from the jurisdiction of the lower tribunal, magistrate, or officer.

(2) Disobedience of the lawful orders or process of a judicial officer is also a contempt of the authority of the officer.

(3) Refusal or inability to admit a defendant, respondent, patient, or person who has been ordered to be committed, transferred, transported, or sentenced to or directed to be detained at the Montana state hospital or the custody of the director of the department of public health and human services related to a civil or criminal proceeding is not contempt if:

(a) a bed is not available for the defendant, respondent, patient, or person;

(b) admission of the defendant, respondent, patient, or person will cause the census at the hospital to exceed its licensed capacity; or

(c) the information and records requested by the department or hospital are not received, including:

(i) physical and psychiatric health information sufficient to:

(A) evaluate the immediate treatment needs and appropriate placement of the defendant, respondent, patient, or person, including the availability of less restrictive medically appropriate facilities; and

(B) coordinate care with the professional person, county attorney, court, or the person or entity

transporting the respondent during the admission process;

(ii) documentation of legal authority to admit the respondent or patient; and

(iii) other information and records as required by administrative rule.

~~(3)~~(4) A contempt may be either civil or criminal. A contempt is civil if the sanction imposed seeks to force the contemnor's compliance with a court order. A contempt is criminal if the court's purpose in imposing the penalty is to punish the contemnor for a specific act and to vindicate the authority of the court. If the penalty imposed is incarceration, a fine, or both, the contempt is civil if the contemnor can end the incarceration or avoid the fine by complying with a court order and is criminal if the contemnor cannot end the incarceration or avoid the fine by complying with a court order. If the court's purpose in imposing the sanction is to attempt to compel the contemnor's performance of an act, the court shall impose the sanction under 3-1-520 and may not impose a sanction under 45-7-309.

~~(4)~~(5) A person may be found guilty of and penalized for criminal contempt by proof beyond a reasonable doubt. The procedures provided in Title 46 apply to criminal contempt prosecutions, except those under 3-1-511."

**Section 2.** 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;

(v) standing masters; and

(vi) other employees of the district court;

(b) in criminal cases:

- 1 (i) fees for transcripts of proceedings, as provided in 3-5-604;
- 2 (ii) witness fees and necessary expenses, as provided in 46-15-116;
- 3 (iii) juror fees and necessary expenses;
- 4 (iv) for a psychiatric examination under 46-14-202, the cost of the examination and other
- 5 associated expenses, as provided in ~~46-14-202(4)~~ 46-14-202(9)(5); and
- 6 (v) for commitment under 46-14-221, the ~~cost of transporting the defendant to the custody of the~~
- 7 ~~director of the department of public health and human services to be placed in an appropriate facility of the~~
- 8 ~~department of public health and human services and of transporting the defendant back for any proceedings, as~~
- 9 ~~costs~~ provided in ~~46-14-221(5)~~ 46-14-221(8)(5);
- 10 (c) except as provided in 47-1-119, the district court expenses in all postconviction proceedings
- 11 held pursuant to Title 46, chapter 21, and in all habeas corpus proceedings held pursuant to Title 46, chapter
- 12 22, and appeals from those proceedings;
- 13 (d) except as provided in 47-1-119, the following expenses incurred by the state in federal habeas
- 14 corpus cases that challenge the validity of a conviction or of a sentence:
- 15 (i) transcript fees;
- 16 (ii) witness fees; and
- 17 (iii) expenses for psychiatric examinations;
- 18 (e) except as provided in 47-1-119, the following expenses incurred by the state in a proceeding
- 19 held pursuant to Title 41, chapter 3, part 4 or 6, that seeks temporary investigative authority of a youth,
- 20 temporary legal custody of a youth, or termination of the parent-child legal relationship and permanent custody:
- 21 (i) transcript fees;
- 22 (ii) witness fees;
- 23 (iii) expenses for medical and psychological evaluation of a youth or the youth's parent, guardian,
- 24 or other person having physical or legal custody of the youth except for expenses for services that a person is
- 25 eligible to receive under a public program that provides medical or psychological evaluation;
- 26 (iv) expenses associated with appointment of a guardian ad litem or child advocate for the youth;
- 27 and
- 28 (v) expenses associated with court-ordered alternative dispute resolution;

(f) except as provided in 47-1-119, 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 47-1-119, 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 3.** Section 3-10-402, MCA, is amended to read:

**"3-10-402. Proceedings.** When a contempt is committed, whether or not it is in the immediate view and presence of the justice, the procedures contained in ~~3-1-501(3)~~ 3-1-501(4) and ~~(4)~~ (5), 3-1-511 through 3-1-518, and 3-1-520 through 3-1-523 apply."

**Section 4.** Section 3-11-303, MCA, is amended to read:

**"3-11-303. Contempts city judge may punish for -- procedure.** (1) A city judge may punish for

1 contempt persons guilty of only the following acts:

2 (a) disorderly, contemptuous, or insolent behavior toward the judge while holding the court tending  
3 to interrupt the due course of a trial or other judicial proceeding;

4 (b) a breach of the peace, boisterous conduct, or violent disturbance in the presence of the judge  
5 or in the immediate vicinity of the court held by the judge tending to interrupt the due course of a trial or other  
6 judicial proceeding;

7 (c) disobedience or resistance to the execution of a lawful order or process made or issued by the  
8 judge;

9 (d) disobedience to a subpoena served or refusal to be sworn or to answer as a witness;

10 (e) rescuing any person or property in the custody of an officer by virtue of an order or process of  
11 the court.

12 (2) The procedures contained in ~~3-1-501(3)~~ 3-1-501(4) and ~~(4)~~ (5), 3-1-511 through 3-1-518, and  
13 3-1-520 through 3-1-523 apply."

14

15 **Section 5.** Section 46-14-202, MCA, is amended to read:

16 **"46-14-202. Examination of defendant -- commitment procedures for examination of fitness --**

17 **expenses.** ~~(1) If the defendant or the defendant's counsel files a written motion requesting an examination or if~~  
18 ~~the issue of the a defendant's fitness to proceed is raised by the court, the prosecution, or the defendant, or if a~~  
19 ~~defense counsel files a written motion requesting an examination of the defendant, the court shall appoint at~~  
20 ~~least one qualified psychiatrist, licensed clinical psychologist, or advanced practice registered nurse or shall~~  
21 ~~request the superintendent of the Montana state hospital to designate at least one qualified psychiatrist,~~  
22 ~~licensed clinical psychologist, or advanced practice registered nurse, who may be or include the~~  
23 ~~superintendent, to examine and report upon the defendant's mental condition.~~

24 (2) ~~(a) The Except as provided in subsection (6), a court may order the defendant to be committed~~  
25 ~~to a hospital or, other another suitable facility, or the Montana state hospital for the purpose of the examination~~  
26 ~~for a period not exceeding 60 days or a longer period that the court determines to be necessary for the purpose~~  
27 ~~and may direct that a qualified psychiatrist, licensed clinical psychologist, or advanced practice registered nurse~~  
28 ~~retained by the defendant be permitted to witness and participate in the examination.~~

1           (b) On commitment to the Montana state hospital, the superintendent of the hospital shall  
2 designate at least one qualified psychiatrist, licensed clinical psychologist, or advanced practice registered  
3 nurse, who may be or may include the superintendent, to report on the defendant's mental condition.

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

6           (a) a bed is available for the defendant;

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

9           (c) the information and records requested by the hospital are received, including:

10          (i) physical and psychiatric medical information sufficient to:

11          (A) evaluate the immediate treatment needs and appropriate placement of the defendant, including  
12 the availability of less restrictive and medically appropriate facilities ; and

13          (B) coordinate patient care with criminal justice authorities during the admission process;

14          (ii) documentation of legal authority to admit the defendant; and

15          (iii) other information and records as required by administrative rule.

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

18          (5) The Montana state hospital may refuse to admit into its custody a defendant who has been  
19 ordered to be transferred or transported to the hospital until:

20          (a) a bed is available for the defendant;

21          (b) admission of the defendant will not cause the census at the hospital to exceed its licensed bed  
22 capacity;

23          (c) admission will not cause the hospital to violate any law, rule, or certification or licensing  
24 provision; and

25          (d) the information and records requested under subsection (3)(c) is received by the hospital.

26          (6) A court may not order the superintendent of the Montana state hospital to designate a qualified  
27 psychiatrist, licensed clinical psychologist, or advanced practice registered nurse to examine or report on the  
28 defendant's mental condition unless there is no person located within the county of venue of the committing

~~court who is willing, able, or available to perform an examination.~~

~~(7)(3) Except as provided in 46-14-206(2), a court ordering an examination of a defendant under this section 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 development 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)(4) 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)(9) (a) The costs incurred for an examination ordered under subsection (2) must be paid as follows: must be paid by the office of the court administrator, regardless of whether the examination is done at the Montana state hospital or another facility. Costs under this subsection (9) include:~~

~~(a) expenses of transporting a defendant from the place of detention to the place where the examination is performed and returning a defendant to detention;~~

~~(b) personnel costs of a law enforcement agency by whom a defendant is detained;~~

~~(c) housing expenses of a facility where an examination is performed; and~~

~~(d) medical costs incurred by a facility while a defendant is housed at the facility, including:~~

~~(i) medical care;~~

~~(ii) dental care; and~~

~~(iii) costs of medication.~~

~~(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.

(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 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 (5)(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

1 REPRESENTED BY AN ATTORNEY PURSUANT TO THE MONTANA PUBLIC DEFENDER ACT, TITLE 47, CHAPTER 1, BY THE  
2 OFFICE OF STATE PUBLIC DEFENDER, EXCEPT AS PROVIDED BY SUBSECTION (5)(A)(IV);  
3 (III) IF THE EXAMINATION WAS JOINTLY REQUESTED BY THE PROSECUTION AND DEFENSE COUNSEL OR THE  
4 NEED FOR THE EXAMINATION WAS JOINTLY AGREED TO BY THE PROSECUTION AND DEFENSE, THE COST OF THE  
5 EXAMINATION AND OTHER ASSOCIATED EXPENSES MUST BE DIVIDED AND PAID EQUALLY BY THE COURT OR, IN DISTRICT  
6 COURT PROCEEDINGS, BY THE OFFICE OF COURT ADMINISTRATOR, AND THE DEFENDANT OR, IF THE DEFENDANT WAS  
7 REPRESENTED BY AN ATTORNEY ASSIGNED PURSUANT TO THE MONTANA PUBLIC DEFENDER ACT, TITLE 47, CHAPTER 1,  
8 BY THE OFFICE OF STATE PUBLIC DEFENDER, EXCEPT AS PROVIDED IN SUBSECTION (5)(A)(IV);  
9 (IV) ANY COSTS FOR AN EXAMINATION PERFORMED BY AN EMPLOYEE OF THE DEPARTMENT OF PUBLIC  
10 HEALTH AND HUMAN SERVICES, ANY OTHER ASSOCIATED EXPENSES AT A FACILITY OF THE DEPARTMENT OF PUBLIC  
11 HEALTH AND HUMAN SERVICES, AND ANY OTHER ASSOCIATED EXPENSES FOR WHICH THE LEGISLATURE HAS MADE A  
12 GENERAL FUND APPROPRIATION TO THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES MAY NOT BE CHARGED  
13 TO THE OFFICE OF COURT ADMINISTRATOR OR THE OFFICE OF STATE PUBLIC DEFENDER.  
14 (B) FOR PURPOSES OF THIS SUBSECTION (5), "OTHER ASSOCIATED EXPENSES" MEANS THE FOLLOWING  
15 COSTS INCURRED IN ASSOCIATION WITH THE COMMITMENT TO A HOSPITAL OR OTHER SUITABLE FACILITY FOR THE  
16 PURPOSE OF EXAMINATION, REGARDLESS OF WHETHER THE EXAMINATION IS DONE AT THE MONTANA STATE HOSPITAL  
17 OR ANY OTHER FACILITY:  
18 (I) THE EXPENSES OF TRANSPORTING THE DEFENDANT FROM THE PLACE OF DETENTION TO THE PLACE  
19 WHERE THE EXAMINATION IS PERFORMED AND RETURNING THE DEFENDANT TO DETENTION, INCLUDING PERSONNEL  
20 COSTS OF THE LAW ENFORCEMENT AGENCY BY WHOM THE DEFENDANT IS DETAINED;  
21 (II) HOUSING EXPENSES OF THE FACILITY WHERE THE EXAMINATION IS PERFORMED; AND  
22 (III) MEDICAL COSTS, INCLUDING MEDICAL AND DENTAL CARE, INCLUDING COSTS OF MEDICATION.  
23 (6) A COURT MAY NOT ORDER THE SUPERINTENDENT OF THE MONTANA STATE HOSPITAL TO DESIGNATE A  
24 QUALIFIED PSYCHIATRIST, LICENSED CLINICAL PSYCHOLOGIST, OR ADVANCED PRACTICE REGISTERED NURSE TO EXAMINE  
25 OR REPORT ON THE DEFENDANT'S MENTAL CONDITION UNLESS THERE IS NO PERSON LOCATED WITHIN THE COUNTY OF  
26 VENUE OF THE COMMITTING COURT WHO IS WILLING, ABLE, OR AVAILABLE TO PERFORM AN EXAMINATION."

27  
28 **Section 6.** Section 46-14-206, MCA, is amended to read:

1           **"46-14-206. Report of examination.** (1) A report of the examination ordered under 46-14-202 must  
2 include the following:

3           (a) a description of the nature of the examination;

4           (b) a diagnosis of the mental condition of the defendant, including an opinion as to whether the  
5 defendant suffers from a mental disorder, as defined in 53-21-102, and may require commitment or is seriously  
6 developmentally disabled, as defined in 53-20-102; and

7           (c) if the defendant suffers from a mental disease or disorder or developmental disability, an  
8 opinion as to the defendant's capacity to understand the proceedings against the defendant and to assist in the  
9 defendant's own defense;

10           ~~(2) After a hearing in which a defendant is determined to lack fitness to proceed, or when~~  
11 ~~necessary for psychiatric or psychological testimony at trial or consideration of mental disease or disorder or~~  
12 ~~developmental disability at sentencing, a court may direct that a report of an examination include:~~

13           ~~(d)(a) when directed by the court, an opinion as to the capacity of the defendant to have a particular~~  
14 ~~state of mind that is an element of the offense charged; and~~

15           ~~(e)(b) when directed by the court, an opinion as to the capacity of the defendant, because of a mental~~  
16 ~~disease or disorder or developmental disability, to appreciate the criminality of the defendant's behavior or to~~  
17 ~~conform the defendant's behavior to the requirement of the law.~~

18           (2) A COURT MAY DIRECT THAT A REPORT OF EXAMINATION INCLUDE:

19           (A) AN OPINION AS TO THE CAPACITY OF THE DEFENDANT TO HAVE A PARTICULAR STATE OF MIND THAT IS  
20 AN ELEMENT OF THE OFFENSE CHARGED; AND

21           (B) AN OPINION AS TO THE CAPACITY OF THE DEFENDANT, BECAUSE OF A MENTAL DISEASE OR DISORDER  
22 OR DEVELOPMENTAL DISABILITY, TO APPRECIATE THE CRIMINALITY OF THE DEFENDANT'S BEHAVIOR OR TO CONFORM THE  
23 DEFENDANT'S BEHAVIOR TO THE REQUIREMENT OF LAW, WHEN:

24           (I) THE PARTIES, HAVING RECEIVED AN OPINION THAT A DEFENDANT LACKS FITNESS TO PROCEED,  
25 STIPULATE TO THE DEFENDANT'S LACK OF FITNESS;

26           (II) NECESSARY FOR PSYCHIATRIC OR PSYCHOLOGICAL TESTIMONY AT TRIAL;

27           (III) A DEFENDANT RAISES A DEFENSE OF MENTAL DISEASE OR DISORDER OR DEVELOPMENTAL DISABILITY  
28 UNDER THE CIRCUMSTANCES DESCRIBED IN 46-14-311(1); OR

(IV) NECESSARY FOR CONSIDERATION OF MENTAL DISEASE OR DISORDER OR DEVELOPMENTAL DISABILITY

AT SENTENCING.

(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."

**Section 7.** Section 46-14-221, MCA, is amended to read:

**"46-14-221. Determination of fitness to proceed -- effect of procedure on finding of unfitness -- expenses -- involuntary treatment -- rulemaking authority.** (1) ~~(a) The~~ When 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, and an examination of the defendant has been completed under 46-14-~~ 202, 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-EXCEPT AS PROVIDED IN 46-14-206(2), IN determining whether a defendant lacks fitness to proceed, the court shall restrict its analysis of the issues 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)~~ (4), and the court shall commit the

defendant to the custody of the director of the department of public health and human services to be placed in an appropriate mental health facility, as defined in 53-21-102, or residential facility, as defined in 53-20-102, 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 court may not commit the defendant to a private mental health facility or hospital without the express consent of the facility or hospital.

(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 transfer or transport of a defendant to the Montana state hospital until the 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 hospital to exceed its licensed capacity; and

(c) the information and records requested by the hospital are received, including:

(i) physical and psychiatric medical information sufficient to:

(A) evaluate the immediate treatment needs and appropriate placement of the defendant, including the availability of less restrictive and medically appropriate facilities; and

(B) coordinate patient care with criminal justice authorities during the admission process;

(ii) documentation of legal authority to admit the defendant; and

(iii) other information and records as required by administrative rule.

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

~~(5) The Montana state hospital may refuse to admit into its custody a defendant who has been ordered to be transferred or transported to the hospital until:~~

~~(a) a bed is available for the defendant;~~

~~(b) admission of the defendant will not cause the census at the hospital to exceed its licensed bed capacity;~~

~~(c) admission will not cause the hospital to violate any law, rule, or certification or licensing provision; and~~

~~(d) the information and records requested under subsection (3)(c) is received by the hospital.~~

~~(3)(6)(3) (a) The committing court shall, within 7 days of AFTER receiving notice from the department of public health and human services to the court, THE DEFENDANT OR THE DEFENDANT'S COUNSEL, and county attorney that a defendant committed to the Montana state hospital for a fitness evaluation under 46-14-202 or restoration to fitness under 46-14-221 has been determined to be fit or restored to fitness, order the defendant to be returned to the committing county and set the matter for trial. The committing court shall also, for any incarcerated defendant, within 90 days, but no sooner than 45 days, of ordering commitment, review the defendant's fitness to proceed custodial status related to a commitment ordered under subsection (2). 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 under subsection (2) and is still unfit to proceed and that it does not appear that the defendant will become fit to proceed within the reasonably foreseeable future, because the defendant has a mental disorder or mental illness, the court shall assess whether the proceeding against the defendant must be dismissed, except as provided in subsection (4) or whether alternatives to incarceration, if applicable, or to commitment are appropriate under the circumstances, including whether the involuntary administration of medication is necessary.~~

~~(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.~~

~~(b) (i) If, on review of the defendant's custodial status related to any commitment ordered pursuant to subsection (2), it is determined that an incarcerated defendant requires stabilization treatment, including~~

1 administration of medication, the county attorney shall, within 7 days, MAY petition the court for an order  
2 requiring compliance with ~~stabilization~~ treatment, including involuntary administration of medication.

3 (ii) The defendant has a right to a hearing on the petition. The judge shall appoint a professional  
4 person and set a date and time for ~~HOLD~~ the hearing on the petition WITHOUT UNDUE DELAY ~~that may not be on~~  
5 ~~the same day as the initial appearance and that may not exceed 5 days, including weekends and holidays,~~  
6 ~~unless the fifth day falls on a weekend or holiday.~~ The court shall enter into the record a detailed statement of  
7 the facts upon which an order is made, and if involuntary administration of medication or other ~~stabilization~~  
8 treatment is ordered, the court shall also enter into the record the specific findings that the state has proved an  
9 overriding justification for the order and that the treatment being ordered is medically appropriate. The court  
10 may authorize the chief medical officer of a facility or a physician, or the chief medical officer of the department  
11 of public health and human services or a physician or advanced practice registered nurse who is under the  
12 supervision of or employed by the department of public health and human services, to be designated by the  
13 court to administer appropriate medication involuntarily. ~~THE DEPARTMENT MAY CONTRACT WITH QUALIFIED~~  
14 PROVIDERS TO FACILITATE TREATMENT WITHIN AN INCARCERATIVE OR CUSTODIAL SETTING.

15 (c) (i) On admission to an appropriate mental health facility, residential facility, or to the custody of  
16 the director of the department of public health and human services under subsection (2), the facility shall  
17 evaluate the defendant and develop an individualized treatment plan to assist the defendant to gain or regain  
18 fitness to proceed. The treatment plan may include a physician's prescription of reasonable and appropriate  
19 medication that is consistent with accepted medical standards.

20 (ii) If the defendant refuses to comply with the treatment plan, the facility may involuntarily  
21 administer medications to treat a defendant pursuant to the determination of the facility's treatment review  
22 committee and involuntary medication review board, if the following criteria are met:

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

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

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

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

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

(F) 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 involuntary administration of medication 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 under subsection ~~(6)(a)~~ (3)(A), the court shall review the defendant's custodial status every 30 days or at an interval the court determines appropriate under the circumstances. If on subsequent review the defendant is still unfit, 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~~ MAY petition the court in the manner provided in Title 53, chapter 21, to determine the disposition of the defendant pursuant to those provisions.

~~(e)(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)(4)~~ The fact that the defendant is unfit to proceed does not preclude any legal objection to the prosecution that is susceptible to fair determination prior to trial and that is made without the personal participation of the defendant.

~~(5)(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 commitment, examination, or treatment ordered under this section must be paid by the office of the court administrator, regardless of whether the commitment is to, or the examination or treatment is done at, the Montana state hospital or another facility.~~  
~~Costs under this subsection (8) include:~~



(a) expenses of transporting a defendant from the place of detention to the place where the examination is performed and returning a defendant to detention;

(b) personnel costs of a law enforcement agency by whom a defendant is detained;

(c) housing expenses of a facility where an examination is performed; and

(d) medical costs incurred by a facility while a defendant is housed at the facility, including:

(i) medical care;

(ii) dental care; and

(iii) costs of medication.

(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.

(5) 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.

(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."

NEW SECTION. SECTION 8. PRIORITIZATION OF ADMISSIONS. THE MONTANA STATE HOSPITAL SHALL PRIORITIZE ADMISSIONS FOR EVALUATIONS AND TREATMENT AS FOLLOWS:

(1) FIRST PRIORITY SHALL BE GIVEN TO A PRETRIAL DEFENDANT WHO HAS BEEN ORDERED COMMITTED TO BE EVALUATED AND TREATED UNDER 46-14-221;

(2) SECOND PRIORITY SHALL BE GIVEN TO A PRETRIAL DEFENDANT CHARGED WITH A CRIME OF VIOLENCE, AS DEFINED IN 46-18-104, WITH AN ORDER OF TRANSPORT TO THE MONTANA STATE HOSPITAL; AND

(3) AS OTHERWISE ESTABLISHED BY THE DEPARTMENT BY ADMINISTRATIVE RULE.

1            NEW SECTION. Section 9.    **Saving clause.** [This act] does not affect rights and duties that matured,  
2 penalties that were incurred, or proceedings that were begun before [the effective date of this act].

3  
4            COORDINATION SECTION. Section 10.    **Coordination instruction.** If both House Bill No. 851 and  
5 [this act] are passed and approved and if both contain a section that amends 3-5-901, then the section of  
6 House Bill No. 851 that amends 3-5-901 is void.

7  
8            COORDINATION SECTION. Section 11.    **Coordination instruction.** If both House Bill No. 851 and  
9 [this act] are passed and approved and if both contain a section that amends 46-14-202, then the section of  
10 House Bill No. 851 that amends 46-14-202 is void and the references to "department of public health and  
11 human services" in [section 5 of this act], amending 46-14-202, must be changed to "department of health  
12 services".

13  
14            COORDINATION SECTION. Section 12.    **Coordination instruction.** If both House Bill No. 851 and  
15 [this act] are passed and approved and if both contain a section that amends 46-14-221, then the section of  
16 House Bill No. 851 that amends 46-14-221 is void and the references to "department of public health and  
17 human services" in [section 7 of this act], amending 46-14-221, must be changed to "department of health  
18 services".

19  
20            NEW SECTION. Section 13.    **Effective date.** [This act] is effective on passage and approval.

21            - END -