

HOUSE BILL NO. 332

INTRODUCED BY B. MERCER

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE YOUTH COURT ACT; ENUMERATING ADDITIONAL OFFENSES BY A YOUTH THAT MAY BE FILED IN DISTRICT COURT; ALLOWING A YOUTH TO WAIVE THE RIGHT TO A TRANSFER HEARING; PROVIDING REMEDIES WHEN A YOUTH FAILS THE TERMS OF A CONSENT ADJUSTMENT; REVISING LAWS RELATED TO CONSENT DECREES; PROVIDING A DEFINITION; AND AMENDING SECTIONS 41-5-206, 41-5-208, 41-5-1302, 41-5-1501, AND 41-5-1605, MCA."

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

Section 1. Section 41-5-206, MCA, is amended to read:

"41-5-206. Filing in district court prior to formal proceedings in youth court. (1) The county attorney may, in the county attorney's discretion and in accordance with the procedure provided in 46-11-201, file with the district court a motion for leave to file an information in the district court if:

(a) the youth charged was 12 years of age or older at the time of the conduct alleged to be unlawful and the unlawful act would if it had been committed by an adult constitute:

(i) aggravated sexual intercourse without consent as defined in 45-5-508;

~~(i)~~(ii) sexual intercourse without consent as defined in 45-5-503;

~~(ii)~~(iii) deliberate homicide as defined in 45-5-102;

~~(iii)~~(iv) mitigated deliberate homicide as defined in 45-5-103;

~~(iv)~~(v) assault on a peace officer or judicial officer as defined in 45-5-210(1)(b)(i), (1)(c), or (1)(d); or

~~(v)~~(vi) the attempt, as defined in 45-4-103, of or accountability, as provided in 45-2-301, for either deliberate or mitigated deliberate homicide any of the acts enumerated in subsection (1)(a)(i) through (1)(a)(v);

or

(b) the youth charged was 16 years of age or older at the time of the conduct alleged to be unlawful and the unlawful act is one or more of the following:

- 1 (i) negligent homicide as defined in 45-5-104;
 2 (ii) negligent vehicular homicide while under the influence as defined in 45-5-106;
 3 (iii) assault on a peace officer or judicial officer as defined in 45-5-210(1)(a) or (1)(b)(ii);
 4 ~~(ii)(iv)~~ arson as defined in 45-6-103;
 5 ~~(iii)(v)~~ aggravated assault as defined in 45-5-202;
 6 ~~(iv)(vi)~~ sexual assault as provided in 45-5-502(3);
 7 ~~(v)(vii)~~ assault with a weapon as defined in 45-5-213;
 8 (viii) strangulation of a partner or family member as defined in 45-5-215;
 9 ~~(vi)(ix)~~ robbery as defined in 45-5-401;
 10 ~~(vii)(x)~~ burglary or aggravated burglary as defined in 45-6-204;
 11 (xi) kidnapping as defined in 45-5-302;
 12 ~~(viii)(xii)~~ aggravated kidnapping as defined in 45-5-303;
 13 ~~(ix)(xiii)~~ possession of explosives as defined in 45-8-335;
 14 ~~(x)(xiv)~~ criminal distribution of dangerous drugs as defined in 45-9-101;
 15 ~~(xi)~~ criminal possession of dangerous drugs as defined in 45-9-102(3);
 16 ~~(xii)(xv)~~ criminal possession with intent to distribute as defined in 45-9-103(1);
 17 ~~(xiii)(xvi)~~ criminal production or manufacture of dangerous drugs as defined in 45-9-110;
 18 ~~(xiv)(xvii)~~ use of threat to coerce criminal street gang membership or use of violence to coerce
 19 criminal street gang membership as defined in 45-8-403;
 20 ~~(xv)(xviii)~~ escape as defined in 45-7-306;
 21 (xix) aggravated sex trafficking as defined in 45-5-706;
 22 (xx) child sex trafficking as defined in 45-5-711;
 23 (xxi) ritual abuse of a minor as defined in 45-5-627;
 24 ~~(xvi)(xxii)~~ attempt, as defined in 45-4-103, of or accountability, as provided in 45-2-301, for any of
 25 the acts enumerated in subsections (1)(b)(i) through (1)(b)(xv) (1)(b)(xxi).
 26 (2) The county attorney shall file with the district court a petition for leave to file an information in
 27 district court if the youth was 17 years of age at the time the youth committed an offense listed under
 28 subsection (1).

(3) The district court shall grant leave to file the information if it appears from the affidavit or other evidence supplied by the county attorney that there is probable cause to believe that the youth has committed the alleged offense. Within 30 days after leave to file the information is granted, the district court shall conduct a hearing to determine whether the matter must be transferred back to the youth court, unless the hearing is waived by the youth or by the youth's counsel in writing or on the record. The hearing may be continued on request of either party for good cause. The district court may not transfer the case back to the youth court unless the district court finds, by a preponderance of the evidence, that:

(a) a youth court proceeding and disposition will serve the interests of community protection;

(b) the nature of the offense does not warrant prosecution in district court; and

(c) it would be in the best interests of the youth if the matter was prosecuted in youth court.

(4) The filing of an information in district court terminates the jurisdiction of the youth court over the youth with respect to the acts alleged in the information. A youth may not be prosecuted in the district court for a criminal offense originally subject to the jurisdiction of the youth court unless the case has been filed in the district court as provided in this section. A case may be transferred to district court after prosecution as provided in 41-5-208 or 41-5-1605.

~~(5) An offense not enumerated in subsection (1) that arises during the commission of a crime enumerated in subsection (1) may be:~~

~~(a) tried in youth court;~~

~~(b) transferred to district court with an offense enumerated in subsection (1) upon motion of the county attorney and order of the district court. The district court shall hold a hearing before deciding the motion.~~

~~(5) At any time prior to trial, the county attorney may transfer the case to youth court for good cause.~~

~~(6) (a) If, during the commission of a criminal offense enumerated in subsection (1), a youth commits additional criminal offenses that are not enumerated in subsection (1), the county attorney may file those nonenumerated offenses with the same district court.~~

~~(b) If a youth is found guilty in district court of a criminal offense enumerated in subsection (1) and any offense that arose during the commission of a crime enumerated in subsection (1), the court shall sentence the youth pursuant to 41-5-2503 and Titles 45 and 46.~~

1 (c) If a youth is acquitted in district court of all criminal offenses enumerated in subsection (1), the
2 district court shall sentence the youth in district court pursuant to Title 41 for any remaining offenses for which
3 the youth is found guilty.

4 ~~(6)(7) If a youth is found guilty in district court of an offense enumerated in subsection (1) and any~~
5 ~~offense that arose during the commission of a crime enumerated in subsection (1), the court shall sentence the~~
6 ~~youth pursuant to 41-5-2503 and Titles 45 and 46. If a youth is acquitted in district court of all offenses~~
7 ~~enumerated in subsection (1), the district court shall sentence the youth pursuant to Title 41 for any remaining~~
8 ~~offense for which the youth is found guilty. A youth who is sentenced to the department or a state prison must~~
9 ~~be evaluated and placed by the department in an appropriate correctional facility. The department shall confine~~
10 ~~the youth in an institution that it considers proper, including a correctional facility under the procedures of 52-5-~~
11 ~~111. However, a youth under 16 years of age may not be confined in a state prison facility. During the period of~~
12 ~~confinement, school-aged youth with disabilities must be provided an education consistent with the~~
13 ~~requirements of the federal Individuals With Disabilities Education Act, 20 U.S.C. 1400, et seq.~~

14 ~~(7)(8) If a youth's case is filed in the district court and remains in the district court after the transfer~~
15 ~~hearing, the youth may be detained in a jail or other adult detention facility pending final disposition of the~~
16 ~~youth's case if the youth is kept in an area that provides physical separation from adults accused or convicted~~
17 ~~of criminal offenses;~~

18 (a) the youth is kept in an area that provides sight and sound separation from adults accused or
19 convicted of criminal offenses; and

20 (b) the court finds, after a hearing and in writing, that it is in the interest of justice to hold the youth
21 in an adult jail or adult detention facility based on:

22 (i) the youth's:

23 (A) age;

24 (B) physical and mental maturity; and

25 (C) present mental state, including whether the youth presents an imminent risk of harm to the
26 youth's self or others;

27 (ii) the nature and circumstances of the alleged offense;

28 (iii) the youth's history of prior delinquent acts;

1 (iv) the relative ability of the available adult and juvenile detention facilities to meet the specific
2 needs of the youth and protect the safety of the public as well as other detained youth; and

3 (v) any other relevant factor.

4 (9) If the court finds, based on the criteria in subsection (8)(b), that it is in the interest of justice to
5 detain a youth under the jurisdiction of district court in an adult jail or adult detention facility pending the final
6 disposition of the youth's case, the court must:

7 (a) hold a hearing at least once every 30 days to review whether it is still in the interest of justice to
8 require the youth to continue to be held in an area of a secure adult facility that provides sight and sound
9 separation from adults accused or convicted of criminal offenses;

10 (b) hold an additional hearing before the youth has been detained for 180 days to determine, in
11 writing, if there is good cause for an extension unless the youth expressly waives this limitation."

12
13 **Section 2.** Section 41-5-208, MCA, is amended to read:

14 **"41-5-208. Transfer of supervisory responsibility to district court after juvenile disposition --**
15 **nonextended jurisdiction and nontransferred cases.** (1) (a) After adjudication by the court of a case that
16 was not ~~transferred-sentenced~~ to district court ~~under-pursuant to~~ 41-5-206 and that was not prosecuted as an
17 extended jurisdiction juvenile prosecution under part 16 of this chapter, the court may, on the youth's motion or
18 the motion of the county attorney, transfer jurisdiction to the district court and order the transfer of supervisory
19 responsibility from juvenile probation services to adult probation services. A transfer based on a motion may be
20 made at any time after a youth reaches 18 years of age but before the youth reaches 21 years of age.

21 (b) A transfer under this section may be made to ensure continued compliance with the court's
22 disposition under 41-5-1512 or 41-5-1513 and may be made at any time after a youth reaches 18 years of age
23 but before the youth reaches 21 years of age or through stipulation to provide the youth with additional
24 supervision, care, rehabilitation, detention, competency development, and community protection.

25 (2) Before transfer, the court shall hold a hearing on whether the transfer should be made. The
26 hearing must be held in conformity with the rules on a hearing on a petition alleging delinquency, except that
27 the hearing must be conducted by the court without a jury. The court shall give the youth, the youth's counsel,
28 and the youth's parents, guardian, or custodian notice in writing of the time, place, and purpose of the hearing

1 at least 10 days before the hearing. At the hearing, the youth is entitled to receive:

2 (a) written notice of the motion to transfer;

3 (b) an opportunity to be heard in person and to present witnesses and evidence;

4 (c) a written statement by the court of the evidence relied on and reasons for the transfer;

5 (d) the right to cross-examine witnesses, unless the court finds good cause for not allowing
6 confrontation; and

7 (e) the right to counsel.

8 (3) After the hearing, if the court finds by a preponderance of the evidence that transfer of
9 continuing supervisory responsibility to the district court is appropriate, the court shall order the transfer.

10 (4) If a youth whose case has been transferred to district court under this section violates a
11 disposition previously imposed under 41-5-1512 or 41-5-1513, the district court may, after hearing, impose
12 conditions as provided under 46-18-201 through 46-18-203 but may not place a youth in a state adult
13 correctional facility unless the youth was adjudicated for a felony offense.

14 (5) (a) The hearings under subsections (2) and (4) may be waived by the youth through a
15 stipulation in writing prior to or after an adjudication by the court of a case that was not:

16 (i) sentenced in district court pursuant to 41-5-206; or

17 (ii) prosecuted as an extended jurisdiction juvenile prosecution under part 16 of this chapter.

18 (b) Jurisdiction must automatically transfer to the district court, and supervisory responsibility must
19 automatically transfer to adult probation services on the youth turning 18 years of age. The district court may
20 impose conditions as provided under 46-18-201 through 46-18-203, but the youth may not be incarcerated in a
21 state adult correctional facility unless stipulated by the parties.

22 (c) The stipulation provided for in subsection (5)(a) must:

23 (i) advise the youth of their rights to a hearing pursuant to subsections (2) and (4);

24 (ii) advise the youth that the youth is knowingly and voluntarily waiving the right to hearings;

25 (iii) advise the youth of the youth's right to counsel; and

26 (iv) specify the age the youth is to be supervised by adult probation services, up to 25 years of age.

27 ~~(5)(6)~~ If, at the time of transfer, the youth is incarcerated in a correctional facility, the district court may
28 order that the youth, after reaching 18 years of age:

1 (a) be incarcerated in a state adult correctional facility if the youth was adjudicated for a felony
2 offense, boot camp, or prerelease center; or

3 (b) be supervised by the department.

4 ~~(6)(7)~~ The district court's jurisdiction over a case transferred under this section terminates when the
5 youth reaches 25 years of age."

6
7 **Section 3.** Section 41-5-1302, MCA, is amended to read:

8 **"41-5-1302. Consent adjustment without petition.** (1) Before referring the matter to the county
9 attorney and subject to the limitations in subsection (3), the juvenile probation officer or assessment officer may
10 enter into a consent adjustment and give counsel and advice to the youth, the youth's family, and other
11 interested parties if it appears that:

12 (a) the admitted facts bring the case within the jurisdiction of the youth court;

13 (b) the youth and the youth's family have been advised of the youth's right to counsel;

14 ~~(b)(c)~~ counsel and advice without filing a petition would be in the best interests of the child, the family,
15 and the public; and

16 ~~(e)(d)~~ the youth may be a youth in need of intervention and the juvenile probation officer or
17 assessment officer believes that the parents, foster parents, physical custodian, or guardian exerted all
18 reasonable efforts to mediate, resolve, or control the youth's behavior and the youth continues to exhibit
19 behavior beyond the control of the parents, foster parents, physical custodian, or guardian.

20 (2) Any probation or other disposition imposed under this section against a youth must conform to
21 the following procedures:

22 (a) ~~Every~~ Each consent adjustment must be reduced to writing and signed by the youth, the
23 youth's legal counsel if applicable, and the youth's parents or the person having legal custody of the youth.

24 (b) If the juvenile probation officer or assessment officer believes that the youth is a youth in need
25 of intervention, the juvenile probation officer or assessment officer shall determine that the parents, foster
26 parents, physical custodian, or guardian exerted all reasonable efforts to mediate, resolve, or control the youth's
27 behavior and that the youth continues to exhibit behavior beyond the control of the parents, foster parents,
28 physical custodian, or guardian.

(c) Approval by the youth court judge is required if the complaint alleges commission of a felony or if the youth has been or will be in any way detained.

(3) A consent adjustment without petition under this section may not be used to dispose of a youth's alleged second or subsequent offense if:

(a) the youth has admitted commission of or has been adjudicated or sentenced for a prior offense that would be a felony if committed by an adult;

(b) the second or subsequent offense would be a felony if committed by an adult and was committed within 3 years of a prior offense; or

(c) the second or subsequent offense would be a misdemeanor if committed by an adult and was committed within 3 years of a prior offense, other than a felony, unless the juvenile probation officer notifies the youth court and obtains written approval from the county attorney and the youth court judge.

(4) For purposes of subsection (3), related offenses committed by a youth during the same 24-hour period must be considered a single offense.

(5) (a) If the youth fails to fulfill the expressed terms and conditions of a consent adjustment, either prior to discharge by probation services or expiration of the consent adjustment, the county attorney may file a petition to:

(i) charge the youth to be a delinquent youth pursuant to Title 41, chapter 5; or

(ii) revoke the consent adjustment with the youth court.

(b) If a petition to revoke the consent adjustment is filed pursuant to subsection (5)(a)(ii) and the youth court finds that the youth violated the consent adjustment, the youth court may adjudicate the youth pursuant to 41-5-1512. A revocation of a consent adjustment must follow the procedures as set forth in 41-5-1431."

Section 4. Section 41-5-1501, MCA, is amended to read:

"41-5-1501. Consent decree with petition. (1) (a) Subject to the provisions of subsection (2), after the filing of a petition under 41-5-1402 and before the entry of a judgment, ~~the court may, on motion of counsel for the youth or on the court's own motion, suspend the proceedings and continue the youth under supervision under terms and conditions negotiated with probation services and agreed to by all necessary parties. The~~

1 court's order continuing the youth under supervision under this section is known as a "consent decree" the
2 county attorney, the youth's legal counsel, probation services, and the necessary parties may enter into a
3 consent decree. Except as provided in subsection (1)(b), the procedures used and dispositions permitted under
4 this section must conform to the procedures and dispositions specified in 41-5-1302 through 41-5-1304 relating
5 to consent adjustments without petition.

6 (b) A youth may be placed in detention for up to 10 days on a space-available basis at the county's
7 expense, which is not reimbursable under part 19 of this chapter.

8 (2) A consent decree under this section may not be ~~used~~ accepted by the youth court unless:

9 (a) the youth admits guilt enters an admission of guilt for a charge of an offense set forth in the
10 petition and accepts responsibility for the youth's actions ;

11 (b) the youth waives the youth's right to a jury trial;

12 (c) the youth court questions the youth to ensure that the youth knowingly and voluntarily enters
13 the admission and waives the right to a jury trial; and

14 (d) if the youth is not represented by legal counsel, the youth court questions the youth to ensure
15 that the youth knowingly and voluntarily waives the right to counsel.

16 (3) If the youth or the youth's counsel objects to a consent decree, the court shall proceed to
17 findings, adjudication, and disposition of the case.

18 (4) (a) If, either prior to discharge by probation services or expiration of the consent decree, a new
19 petition alleging that the youth is a delinquent youth or a youth in need of intervention is filed against the youth
20 or if the youth fails to fulfill the expressed terms and conditions of the consent decree, ~~the petition under which~~
21 ~~the youth was continued under supervision may be reinstated in the discretion of the county attorney in~~
22 ~~consultation with probation services. In the event of reinstatement, the proceeding on the petition must be~~
23 ~~continued to conclusion as if the consent decree had never been entered~~ a petition to revoke the consent
24 decree may be filed with the youth court at the discretion of the county attorney but in consultation with
25 probation services.

26 (b) Probation services is given discretion to extend a consent decree prior to a petition to revoke a
27 consent decree being filed. In the event of revocation and on a finding by the youth court that the youth violated
28 a consent decree, the youth court shall proceed to adjudication and disposition of the case pursuant to 41-5-

1 1513. A revocation of a consent decree must follow the procedures as set forth in 41-5-1431.

2 (5) A youth who is discharged by probation services or who completes a period under supervision
3 without ~~reinstatement of the original petition~~ a petition to revoke the consent decree being filed may not again
4 be ~~proceeded against adjudicated again~~ in any court for the same offense alleged in the petition, and the
5 original petition must be dismissed with prejudice. This subsection does not preclude a civil suit against the
6 youth for damages arising from the youth's conduct.

7 (6) If the terms of the consent decree extend for a period in excess of 6 months, the juvenile
8 probation officer shall at the end of each 6-month period submit a report that must be reviewed by the court.

9 (7) A consent decree with petition under this section may not be used to dispose of a youth's
10 alleged second or subsequent offense if that offense would be a felony if committed by an adult or third or
11 subsequent offense if that offense would be a misdemeanor if committed by an adult unless it is recommended
12 by the county attorney and accepted by the youth court judge.

13 (8) For the purposes of this section, "consent decree" means an agreement to defer adjudication of
14 the youth as delinquent youth and places the youth on supervision with probation services for a certain amount
15 of time."

16

17 **Section 5.** Section 41-5-1605, MCA, is amended to read:

18 **"41-5-1605. Revocation of stay -- disposition.** (1) If a court has imposed on a youth a sentence
19 stayed under 41-5-1604(1)(a)(ii) and the youth violates the conditions of the stay or is alleged to have
20 committed a new offense, the court may, without notice, direct that the youth be taken into immediate custody.
21 The court shall notify the youth, the youth's counsel, and the youth's parents, guardian, or custodian in writing
22 of the reasons alleged to exist for revocation of the stay of execution of the sentence.

23 (2) (a) The court shall hold a revocation hearing at which the youth is entitled to receive:

24 (i) written notice of the alleged violation;

25 (ii) evidence of the alleged violation;

26 (iii) an opportunity to be heard in person and to present witnesses and evidence;

27 (iv) the right to cross-examine witnesses, unless the court finds good cause for not allowing
28 confrontation; and

1 (v) the right to counsel.

2 (b) After the revocation hearing, if the court finds by a preponderance of the evidence presented
3 that the conditions of the stay have been violated or that the youth has committed a new offense, the court shall
4 provide the youth with a written statement of the evidence relied on and reasons for revocation and shall:

5 (i) continue the stay and place the youth on probation;

6 (ii) impose one or more dispositions under 41-5-1512 or 41-5-1513 if the youth is under 18 years
7 of age; or

8 (iii) subject to ~~41-5-206(6) and (7)~~ 41-5-206(7) and (8) and 41-5-1604(1)(b), order execution of the
9 sentence imposed under 41-5-1604(1)(a)(ii). The court shall order credit for any time served prior to revocation
10 under a disposition under 41-5-1604(1)(a)(i).

11 (3) Upon revocation and disposition under subsection (2)(b)(iii), the youth court shall transfer the
12 case to the district court. Upon transfer, the offender's extended jurisdiction juvenile status is terminated and
13 youth court jurisdiction is terminated. Ongoing supervision of the offender is with the department, rather than
14 the youth court's juvenile probation services."

15 - END -