

1 HOUSE BILL NO. 614
2 INTRODUCED BY B. MERCER

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE YOUTH COURT ACT; ENUMERATING
5 ADDITIONAL OFFENSES BY A YOUTH THAT MAY BE FILED IN DISTRICT COURT; ALLOWING A YOUTH
6 TO WAIVE THE RIGHT TO A TRANSFER HEARING; PROVIDING REMEDIES WHEN A YOUTH FAILS THE
7 TERMS OF A CONSENT ADJUSTMENT; REVISING LAWS RELATED TO CONSENT DECREES; AND
8 AMENDING SECTIONS 41-5-206, 41-5-208, 41-5-1302, 41-5-1501, AND 41-5-1605, MCA."

9
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11
12 **Section 1.** Section 41-5-206, MCA, is amended to read:

13 **"41-5-206. Filing in district court prior to formal proceedings in youth court.** (1) The county
14 attorney may, in the county attorney's discretion and in accordance with the procedure provided in 46-11-201,
15 file with the district court a motion for leave to file an information in the district court if:

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

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

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

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

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

22 (v) assault on a peace officer or judicial officer as defined in 45-5-210(1)(B)(i), (1)(C), OR (1)(D); or

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

25 or

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

28 (i) negligent homicide as defined in 45-5-104;

- 1 (ii) negligent vehicular homicide while under the influence as defined in 45-5-106;
- 2 (iii) assault on a peace officer or judicial officer as defined in 45-5-210(1)(A) OR (1)(B)(II);
- 3 ~~(ii)(iv)~~ arson as defined in 45-6-103;
- 4 ~~(iii)(v)~~ aggravated assault as defined in 45-5-202;
- 5 ~~(iv)(vi)~~ sexual assault as provided in 45-5-502(3);
- 6 ~~(v)(vii)~~ assault with a weapon as defined in 45-5-213;
- 7 (viii) strangulation of a partner or family member as defined in 45-5-215;
- 8 ~~(vi)(ix)~~ robbery as defined in 45-5-401;
- 9 ~~(vii)(x)~~ burglary or aggravated burglary as defined in 45-6-204;
- 10 (xi) kidnapping as defined in 45-5-302;
- 11 ~~(viii)(xii)~~ aggravated kidnapping as defined in 45-5-303;
- 12 ~~(ix)(xiii)~~ possession of explosives as defined in 45-8-335;
- 13 ~~(x)(xiv)~~ criminal distribution of dangerous drugs as defined in 45-9-101;
- 14 ~~(xi) criminal possession of dangerous drugs as defined in 45-9-102(3);~~
- 15 ~~(xii)(xv)~~ criminal possession with intent to distribute as defined in 45-9-103(1);
- 16 ~~(xiii)(xvi)~~ criminal production or manufacture of dangerous drugs as defined in 45-9-110;
- 17 ~~(xiv)(xvii)~~ use of threat to coerce criminal street gang membership or use of violence to coerce criminal
- 18 street gang membership as defined in 45-8-403;
- 19 ~~(xv)(xviii)~~ escape as defined in 45-7-306;
- 20 (xix) sexual servitude as defined in 45-5-704;
- 21 (xx) aggravated promotion of prostitution as defined in 45-5-603;
- 22 (xxi) ritual abuse of a minor as defined in 45-5-627;
- 23 ~~(xvi)(xxii)~~ attempt, as defined in 45-4-103, of or accountability, as provided in 45-2-301, for any of the
- 24 acts enumerated in subsections (1)(b)(i) through ~~(1)(b)(xv)~~ (1)(b)(xxi).
- 25 (2) The county attorney shall file with the district court a petition for leave to file an information in
- 26 district court if the youth was 17 years of age at the time the youth committed an offense listed under
- 27 subsection (1).
- 28 (3) The district court shall grant leave to file the information if it appears from the affidavit or other

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

- 7 (a) a youth court proceeding and disposition will serve the interests of community protection;
- 8 (b) the nature of the offense does not warrant prosecution in district court; and
- 9 (c) it would be in the best interests of the youth if the matter was prosecuted in youth court.
- 10 (4) The filing of an information in district court terminates the jurisdiction of the youth court over the
11 youth with respect to the acts alleged in the information. A youth may not be prosecuted in the district court for
12 a criminal offense originally subject to the jurisdiction of the youth court unless the case has been filed in the
13 district court as provided in this section. A case may be transferred to district court after prosecution as
14 provided in 41-5-208 or 41-5-1605.

15 ~~(5) An offense not enumerated in subsection (1) that arises during the commission of a crime~~
16 ~~enumerated in subsection (1) may be:~~
17 ~~(a) tried in youth court;~~
18 ~~(b) transferred to district court with an offense enumerated in subsection (1) upon motion of the~~
19 ~~county attorney and order of the district court. The district court shall hold a hearing before deciding the motion.~~

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

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

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

28 (c) If a youth is acquitted in district court of all criminal offenses enumerated in subsection (1), the

1 district court shall sentence the youth in district court pursuant to Title 41 for any remaining offenses for which
2 the youth is found guilty.

3 ~~(6)(7) If a youth is found guilty in district court of an offense enumerated in subsection (1) and any~~
4 ~~offense that arose during the commission of a crime enumerated in subsection (1), the court shall sentence the~~
5 ~~youth pursuant to 41-5-2503 and Titles 45 and 46. If a youth is acquitted in district court of all offenses~~
6 ~~enumerated in subsection (1), the district court shall sentence the youth pursuant to Title 41 for any remaining~~
7 ~~offense for which the youth is found guilty. A youth who is sentenced to the department or a state prison must~~
8 ~~be evaluated and placed by the department in an appropriate correctional facility. The department shall confine~~
9 ~~the youth in an institution that it considers proper, including a correctional facility under the procedures of 52-5-~~
10 ~~111. However, a youth under 16 years of age may not be confined in a state prison facility. During the period of~~
11 ~~confinement, school-aged youth with disabilities must be provided an education consistent with the~~
12 ~~requirements of the federal Individuals With Disabilities Education Act, 20 U.S.C. 1400, et seq.~~

13 ~~(7)(8) If a youth's case is filed in the district court and remains in the district court after the transfer~~
14 ~~hearing, the youth may be detained in a jail or other adult detention facility pending final disposition of the~~
15 ~~youth's case if the youth is kept in an area that provides physical separation from adults accused or convicted~~
16 ~~of criminal offenses.:~~

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

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

21 ~~(i) the youth's:~~

22 ~~(A) age;~~

23 ~~(B) physical and mental maturity; and~~

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

26 ~~(ii) the nature and circumstances of the alleged offense;~~

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

28 ~~(iv) the relative ability of the available adult and juvenile detention facilities to meet the specific~~

1 needs of the youth and protect the safety of the public as well as other detained youth; and
 2 (v) any other relevant factor.
 3 (9) If the court finds, based on the criteria in subsection (8)(b), that it is in the interest of justice to
 4 detain a youth under the jurisdiction of district court in a jail or other adult detention facility pending the final
 5 disposition of the youth's case, the court must:
 6 (a) hold a hearing at least once every 30 days to review whether it is still in the interest of justice to
 7 require the youth to continue to be held in a secure adult facility or have no sight or sound contact with adult
 8 inmates;
 9 (b) hold an additional hearing before the youth has been detained for 180 days to determine, in
 10 writing, if there is good cause for an extension unless the youth expressly waives this limitation."

11
12 **Section 2.** Section 41-5-208, MCA, is amended to read:

13 **"41-5-208. Transfer of supervisory responsibility to district court after juvenile disposition --**
 14 **nonextended jurisdiction and nontransferred cases.** (1) (a) After adjudication by the court of a case that
 15 was not ~~transferred~~ sentenced to district court under pursuant to 41-5-206 and that was not prosecuted as an
 16 extended jurisdiction juvenile prosecution under part 16 of this chapter, the court may, on the youth's motion or
 17 the motion of the county attorney, transfer jurisdiction to the district court and order the transfer of supervisory
 18 responsibility from juvenile probation services to adult probation services. A transfer based on a motion may be
 19 made at any time after a youth reaches 18 years of age but before the youth reaches 21 years of age.

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

24 (2) Before transfer, the court shall hold a hearing on whether the transfer should be made. The
 25 hearing must be held in conformity with the rules on a hearing on a petition alleging delinquency, except that
 26 the hearing must be conducted by the court without a jury. The court shall give the youth, the youth's counsel,
 27 and the youth's parents, guardian, or custodian notice in writing of the time, place, and purpose of the hearing
 28 at least 10 days before the hearing. At the hearing, the youth is entitled to receive: