

1 SENATE BILL NO. 452

2 INTRODUCED BY S. KITZENBERG

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4 A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING THE USE OF INFLAMMATORY AGENTS, SUCH
5 AS PEPPER SPRAY, AGAINST YOUTH DETAINED IN STATE YOUTH CORRECTIONAL FACILITIES AND
6 REGIONAL AND COUNTY YOUTH DETENTION FACILITIES; REQUIRING THE ATTORNEY GENERAL TO
7 INVESTIGATE THE USE OF INFLAMMATORY AGENTS AGAINST YOUTH IN CORRECTIONAL OR
8 DETENTION FACILITIES DURING THE YEARS 1997, 1998, 1999, 2000, AND 2001 AND TO REPORT TO
9 THE LAW, JUSTICE, AND INDIAN AFFAIRS INTERIM COMMITTEE; REQUIRING YOUTH CORRECTIONAL
10 AND DETENTION FACILITIES TO NOTIFY A PARENT OR GUARDIAN OF ANY SERIOUS INCIDENT
11 INVOLVING A YOUTH IN THE FACILITY AND TO REPORT ALL SERIOUS INCIDENTS TO THE BOARD OF
12 CRIME CONTROL; REQUIRING THE BOARD OF CRIME CONTROL TO COMPILE INFORMATION
13 REGARDING SERIOUS INCIDENTS INVOLVING YOUTH IN DETENTION AND TO REPORT THAT
14 INFORMATION TO THE LAW, JUSTICE, AND INDIAN AFFAIRS INTERIM COMMITTEE EVERY 2 YEARS;
15 REQUIRING INSPECTIONS OF JUVENILE DETENTION FACILITIES; AMENDING SECTIONS 41-5-1802 AND
16 52-5-102, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

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20 **Section 1.** Section 41-5-1802, MCA, is amended to read:

21 **"41-5-1802. Rules -- use of inflammatory agents prohibited.** The department shall adopt rules
22 governing licensing procedures for regional and county detention facilities, including the requirement that
23 a youth detention facility provide an educational program for youth in need of that service. Rules adopted
24 by the department under this section must prohibit the use of inflammatory agents for any reason against
25 a youth in a facility. Inflammatory agents include but are not limited to oleoresin capsicum and
26 ortho-chlorobenzalonoitrate."

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28 **Section 2.** Section 52-5-102, MCA, is amended to read:

29 **"52-5-102. Control and management of youth correctional facilities -- rules -- use of inflammatory**
30 **agents prohibited.** (1) The facilities provided for in 52-5-101 shall exercise their functions under the

1 supervision and general management of the department of corrections. Except ~~where~~ when otherwise
2 provided by law, the department ~~by rules~~ shall establish, by rule, standards of care and policies of
3 admission, transfers, discharge, and parole supervision in order to provide adequate care for children and
4 adequate service to the courts. Policies of admission may include criteria for medical examinations required
5 under 52-5-108. The department shall develop special programs within each facility that are adaptable to
6 the particular needs of its operation.

7 (2) A facility provided for in 52-5-101 may not allow the use by facility staff of any inflammatory
8 agent on a youth in the facility for any reason. Rules adopted by the department under subsection (1) must
9 prohibit the use of inflammatory agents for any reason against a youth in a facility. Inflammatory agents
10 include but are not limited to oleoresin capsicum and orthochlorobenzalonoitrate."

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12 NEW SECTION. Section 3. Use of inflammatory agents against detained youth -- investigation
13 by attorney general -- report. (1) The attorney general shall conduct an investigation into the use of any
14 inflammatory agent on any youth detained in a state youth correctional facility or regional or county youth
15 detention facility during the years 1997, 1998, 1999, 2000, and 2001.

16 (2) The attorney general shall compile a database and log for the years 1997 through 2001 that
17 contain the following for every instance that an inflammatory agent was used by facility staff against a
18 youth detained at a state youth correctional facility or regional or county youth detention facility:

- 19 (a) the date and time that the inflammatory agent was used;
- 20 (b) the name of the youth against whom the inflammatory agent was used;
- 21 (c) the youth's race, sex, date of birth, date of admission to the facility, and height and weight
22 at the time of the use of the inflammatory agent;
- 23 (d) the kind of inflammatory agent used;
- 24 (e) the mailing address of the youth's parent or legal guardian;
- 25 (f) the name of the staff person who administered the inflammatory agent and the staff person's
26 training in the use of inflammatory agents;
- 27 (g) the name of the facility director, or the director's designee, who authorized the use of the
28 inflammatory agent; and
- 29 (h) the specific behavior that necessitated the use of an inflammatory agent.

30 (3) The attorney general shall report the findings of the investigation required by subsection (1)

1 to the law, justice, and Indian affairs interim committee, established in 5-5-226, by June 30, 2002.

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3 **NEW SECTION. Section 4. Serious incident involving youth in detention -- notification to parent**

4 **or guardian.** (1) The facility director, or the director's designee, of a state youth correctional facility or
5 of a regional or county youth detention facility shall notify the parent or guardian of any serious incident
6 involving a youth in the facility:

7 (a) by phone within 8 hours of the incident; and

8 (b) in writing, which notification must be mailed within 48 hours of the incident.

9 (2) As used in [section 5] and this section, "serious incident" means:

10 (a) a suicide attempt by the youth;

11 (b) use of force against the youth by the facility staff;

12 (c) a sexual assault against the youth by another youth or by a member of the facility staff;

13 (d) injury to a youth that requires hospitalization; or

14 (e) the death of a youth.

15 (3) The written notification required by subsection (1) must include but is not limited to:

16 (a) the date and time that the serious incident occurred;

17 (b) a brief description of the youth's conduct involved in the incident;

18 (c) a description of the handling of and involvement in the incident by the facility's staff;

19 (d) if force was used by the staff against the youth, a description of the force used and the
20 specific reasons that lesser force was not used;

21 (e) the number of staff persons present when the incident occurred; and

22 (f) clear instructions to the parent or guardian regarding how to contact the board of crime control.

23

24 **NEW SECTION. Section 5. Serious incident involving youth in detention -- report to board of crime**

25 **control -- advisory task force -- inspections of facilities.** (1) The facility director, or the director's designee,
26 of a state youth correctional facility or of a regional or county youth detention facility shall, within 7 days
27 of the incident, report to the board of crime control, provided for in 2-15-2006, any serious incident
28 involving a youth in the facility. The report must be in writing and must include:

29 (a) the date and time that the serious incident occurred;

30 (b) a brief description of the youth's conduct involved in the incident;

1 (c) a description of the handling of and involvement in the incident by the facility's staff;
2 (d) if force was used by the staff against the youth, a description of the force used and the
3 specific reasons that lesser force was not used; and

4 (e) the number of staff persons present when the incident occurred.

5 (2) The board of crime control may require that a facility that reports a serious incident involving
6 a youth provide the board any videotapes, internal incident reports, any report regarding the use of
7 administrative segregation or disciplinary detention of the youth involved in the serious incident, or rule
8 violation writeups of the youth. The board shall monitor the occurrence of serious incidents involving
9 detained youth and may make recommendations to the law, justice, and Indian affairs interim committee,
10 established in 5-5-226, regarding the supervision and general management of state youth correctional
11 facilities and regional or county youth detention facilities.

12 (3) The board of crime control shall review and compile all reports of serious incidents involving
13 youths in detention and shall, by June 30 of each even-numbered year, report the information and
14 recommendations of the board for improvement or reform of juvenile detention services, if any, to the law,
15 justice, and Indian affairs interim committee.

16 (4) The board of crime control shall establish an advisory task force composed of board members
17 to advise the board on conditions and operation of state youth correctional facilities and regional or county
18 youth detention facilities. The task force shall inspect each state youth correctional facility and regional
19 or county youth detention facility each biennium. The board shall establish rules governing inspections,
20 including time of and authorization of inspections, and conduct of inspections, including special inspections
21 to investigate conditions at any facility. The task force may privately interview any youth detained in the
22 facility, at the task force's request. The task force may not be required to give advance notice or to make
23 prior arrangements before conducting an inspection. The task force shall report the task force's findings
24 made in the inspections and any recommendations to the board before June 30 of each even-numbered
25 year.

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27 **NEW SECTION. Section 6. Notification to tribal governments.** The secretary of state shall send
28 a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little
29 Shell band of Chippewa.

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1 NEW SECTION. **Section 7. Codification instruction.** [Sections 4 and 5] are intended to be codified
2 as an integral part of Title 41, chapter 5, part 18, and the provisions of Title 41, chapter 5, part 18, apply
3 to [sections 4 and 5].

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5 NEW SECTION. **Section 8. Effective date.** [This act] is effective July 1, 2001.

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