SENATE BILL NO. 129

INTRODUCED BY T. SCHMIDT

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING TRUANCY LAWS; CLARIFYING THE DEFINITION OF "HABITUAL TRUANCY" AND DEFINING "TRUANCY" AND "UNEXCUSED ABSENCE"; IMPOSING CRIMINAL FINES AND PENALTIES AGAINST PARENTS, GUARDIANS, OR PERSONS RESPONSIBLE FOR THE CARE OF A CHILD WHO FAILS TO COMPLY WITH COMPULSORY ATTENDANCE LAWS; PROVIDING FOR CONFISCATION OF A HABITUALLY TRUANT CHILD'S DRIVER'S LICENSE; AMENDING SECTIONS 20-5-106 AND 41-5-103, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

Section 1. Section 20-5-106, MCA, is amended to read:

"20-5-106. Truancy compliance-- **-- parental penalties -- confiscation of child's driver's license.** (1) Whenever the attendance officer discovers a child who is truant from school or a child subject to compulsory attendance who is not enrolled in a school providing the required instruction and has not been excused under the provisions of this title, ~~he~~ the attendance officer shall notify in writing the parent, guardian, or other person responsible for the care of the child ~~that~~ if subsections (a) through (c) are not complied with, then ~~the continued truancy or nonenrollment of his the child shall will result in his prosecution of~~ will be prosecuted the parent, guardian, or other person responsible for the care of the child under the provisions of this section. ~~If the child is not enrolled and in attendance at a school or excused from school within 2 days after the receipt of the notice, the~~ The attendance officer shall file a complaint against ~~such person~~ the parent, guardian, or other person responsible for the care of the child in a court of competent jurisdiction if the child (a) (b) (c)

(2) If convicted, ~~such person~~ the parent, guardian, or other person responsible for the care of the child shall be fined: ~~not less than $5 or more than $20. In the alternative, he may be required to give bond in the penal sum of $100, with sureties, conditioned upon his agreement to cause the enrollment of his child within 2 days thereafter in a school providing the courses of instruction required by this title and to cause the child to attend that school for the remainder of the current school term. If a person refuses to pay a fine and costs or to give a bond as ordered by the court, he shall be imprisoned in the county jail for a term of not less than 10 days or more than 30 days~~

(a) for the first offense, $50;

1 (b) for the second offense, $150 or 5 days in the county jail; and
2 (c) for the third offense, $300 and 10 days in the county jail.
3 (3) (a) If a child is determined by the attendance officer to be habitually truant, as defined in 41-5-103,
4 the attendance officer shall make a recommendation to the probation officer for a consent adjustment without
5 petition and for confiscation of the child's driver's license pursuant to 41-5-1304.
6 (b) A child who fails to abide by a consent adjustment, as provided for in 41-5-1302, must be adjudicated
7 as provided in the Montana Youth Court Act under Title 41, chapter 5."
8
9 **Section 2.** Section 41-5-103, MCA, is amended to read:
10 **"41-5-103. Definitions.** As used in the Montana Youth Court Act, unless the context requires otherwise,
11 the following definitions apply:
12 (1) "Adult" means an individual who is 18 years of age or older.
13 (2) "Agency" means any entity of state or local government authorized by law to be responsible for the
14 care or rehabilitation of youth.
15 (3) "Assessment officer" means a person who is authorized by the court to provide initial intake and
16 evaluation for a youth who appears to be in need of intervention or an alleged delinquent youth.
17 (4) "Commit" means to transfer legal custody of a youth to the department or to the youth court.
18 (5) "Correctional facility" means a public or private, physically secure residential facility under contract
19 with the department and operated solely for the purpose of housing adjudicated delinquent youth.
20 (6) "Cost containment funds" means funds retained by the department under 41-5-132 for distribution
21 by the cost containment review panel.
22 (7) "Cost containment review panel" means the panel established in 41-5-131.
23 (8) "Court", when used without further qualification, means the youth court of the district court.
24 (9) "Criminally convicted youth" means a youth who has been convicted in a district court pursuant to
25 41-5-206.
26 (10) "Custodian" means a person, other than a parent or guardian, to whom legal custody of the youth
27 has been given but does not include a person who has only physical custody.
28 (11) "Delinquent youth" means a youth who is adjudicated under formal proceedings under the Montana
29 Youth Court Act as a youth:
30 (a) who has committed an offense that, if committed by an adult, would constitute a criminal offense; or

1 (b) who has been placed on probation as a delinquent youth and who has violated any condition of
2 probation.
3 (12) "Department" means the department of corrections provided for in 2-15-2301.
4 (13) (a) "Department records" means information or data, either in written or electronic form, maintained
5 by the department pertaining to youth who are committed under 41-5-1512(1)(c) or 41-5-1513(1)(b) or who are
6 under parole supervision.
7 (b) Department records do not include information provided by the department to the department of
8 public health and human services' management information system or information maintained by the youth court
9 through the office of the court administrator.
10 (14) "Detention" means the holding or temporary placement of a youth in the youth's home under home
11 arrest or in a facility other than the youth's own home for:
12 (a) the purpose of ensuring the continued custody of the youth at any time after the youth is taken into
13 custody and before final disposition of the youth's case;
14 (b) contempt of court or violation of a valid court order; or
15 (c) violation of a youth parole agreement.
16 (15) "Detention facility" means a physically restricting facility designed to prevent a youth from departing
17 at will. The term includes a youth detention facility, short-term detention center, and regional detention facility.
18 (16) "Emergency placement" means placement of a youth in a youth care facility for less than 45 days
19 to protect the youth when there is no alternative placement available.
20 (17) "Family" means the parents, guardians, legal custodians, and siblings or other youth with whom a
21 youth ordinarily lives.
22 (18) "Final disposition" means the implementation of a court order for the disposition or placement of a
23 youth as provided in 41-5-1422, 41-5-1503, 41-5-1504, 41-5-1512, 41-5-1513, and 41-5-1522 through 41-5-1525.
24 (19) (a) "Formal youth court records" means information or data, either in written or electronic form, on
25 file with the clerk of district court pertaining to a youth under the jurisdiction of the youth court and includes
26 petitions, motions, other filed pleadings, court findings, verdicts, orders and decrees, and predispositional studies.
27 (b) The term does not include information provided by the youth court to the department of public health
28 and human services' management information system.
29 (20) "Foster home" means a private residence licensed by the department of public health and human
30 services for placement of a youth.

(21) "Guardian" means an adult:

(a) who is responsible for a youth and has the reciprocal rights, duties, and responsibilities with the youth; and

(b) whose status is created and defined by law.

(22) "Habitual truancy" means ~~recorded absences of 10 days or more of unexcused absences in a semester or absences without prior written approval of a parent or a guardian absences from pupil instruction of 30 minutes or more adding up to a maximum of 30 hours in a semester without a valid excuse~~ a child.

(23) (a) "Holdover" means a room, office, building, or other place approved by the board of crime control for the temporary detention and supervision of youth in a physically unrestricting setting for a period not to exceed 24 hours while the youth is awaiting a probable cause hearing, release, or transfer to an appropriate detention or shelter care facility.

(b) The term does not include a jail.

(24) (a) "Informal youth court records" means information or data, either in written or electronic form, maintained by youth court probation offices pertaining to a youth under the jurisdiction of the youth court and includes reports of preliminary inquiries, youth assessment materials, medical records, school records, and supervision records of probationers.

(b) The term does not include information provided by the youth court to the department of public health and human services' management information system.

(25) (a) "Jail" means a facility used for the confinement of adults accused or convicted of criminal offenses. The term includes a lockup or other facility used primarily for the temporary confinement of adults after arrest.

(b) The term does not include a colocated juvenile detention facility that complies with 28 CFR, part 31.

(26) "Judge", when used without further qualification, means the judge of the youth court.

(27) "Juvenile home arrest officer" means a court-appointed officer administering or supervising juveniles in a program for home arrest, as provided for in Title 46, chapter 18, part 10.

(28) "Law enforcement records" means information or data, either in written or electronic form, maintained by a law enforcement agency, as defined in 7-32-201, pertaining to a youth covered by this chapter.

(29) (a) "Legal custody" means the legal status created by order of a court of competent jurisdiction that gives a person the right and duty to:

(i) have physical custody of the youth;

1 (ii) determine with whom the youth shall live and for what period;
2 (iii) protect, train, and discipline the youth; and
3 (iv) provide the youth with food, shelter, education, and ordinary medical care.
4 (b) An individual granted legal custody of a youth shall personally exercise the individual's rights and
5 duties as guardian unless otherwise authorized by the court entering the order.
6 (30) "Necessary parties" includes the youth and the youth's parents, guardian, custodian, or spouse.
7 (31) (a) "Out-of-home placement" means placement of a youth in a program, facility, or home, other than
8 a custodial parent's home, for purposes other than preadjudicatory detention.
9 (b) The term does not include shelter care or emergency placement of less than 45 days.
10 (32) (a) "Parent" means the natural or adoptive parent.
11 (b) The term does not include:
12 (i) a person whose parental rights have been judicially terminated; or
13 (ii) the putative father of an illegitimate youth unless the putative father's paternity is established by an
14 adjudication or by other clear and convincing proof.
15 (33) "Probable cause hearing" means the hearing provided for in 41-5-332.
16 (34) "Regional detention facility" means a youth detention facility established and maintained by two or
17 more counties, as authorized in 41-5-1804.
18 (35) "Restitution" means payments in cash to the victim or with services to the victim or the general
19 community when these payments are made pursuant to a consent adjustment, consent decree, or other youth
20 court order.
21 (36) "Running away from home" means that a youth has been reported to have run away from home
22 without the consent of a parent or guardian or a custodian having legal custody of the youth.
23 (37) "Secure detention facility" means a public or private facility that:
24 (a) is used for the temporary placement of youth or individuals accused or convicted of criminal offenses
25 or as a sanction for contempt of court, violation of a parole agreement, or violation of a valid court order; and
26 (b) is designed to physically restrict the movements and activities of youth or other individuals held in
27 lawful custody of the facility.
28 (38) "Serious juvenile offender" means a youth who has committed an offense that would be considered
29 a felony offense if committed by an adult and that is an offense against a person, an offense against property,
30 or an offense involving dangerous drugs.

(39) "Shelter care" means the temporary substitute care of youth in physically unrestricting facilities.

(40) "Shelter care facility" means a facility used for the shelter care of youth. The term is limited to the facilities enumerated in 41-5-347.

(41) "Short-term detention center" means a detention facility licensed by the department for the temporary placement or care of youth, for a period not to exceed 10 days excluding weekends and legal holidays, pending a probable cause hearing, release, or transfer of the youth to an appropriate detention facility, youth assessment center, or shelter care facility.

(42) "State youth correctional facility" means the Pine Hills youth correctional facility in Miles City or the Riverside youth correctional facility in Boulder.

(43) "Substitute care" means full-time care of youth in a residential setting for the purpose of providing food, shelter, security and safety, guidance, direction, and, if necessary, treatment to youth who are removed from or are without the care and supervision of their parents or guardians.

(44) "Truancy" means ~~any unexcused absence from pupil instruction of more than a 30-minute period during a school day.~~ an unexcused absence for at least one school period of a school day.

(45) "Unexcused absence" means an absence that was not excused by a parent, guardian, or person responsible for the care of the youth because of the youth's illness, bereavement, family emergency, school-related activity, or other reason accepted by the school.

~~(44)~~(46) "Victim" means:

(a) a person who suffers property, physical, or emotional injury as a result of an offense committed by a youth that would be a criminal offense if committed by an adult;

(b) an adult relative of the victim, as defined in subsection ~~(44)(a)~~ (46)(a), if the victim is a minor; and

(c) an adult relative of a homicide victim.

~~(45)~~(47) "Youth" means an individual who is less than 18 years of age without regard to sex or emancipation.

~~(46)~~(48) "Youth assessment" means a multidisciplinary assessment of a youth as provided in 41-5-1203.

~~(47)~~(49) "Youth assessment center" means a staff-secured location that is licensed by the department of public health and human services to hold a youth for up to 10 days for the purpose of providing an immediate and comprehensive community-based youth assessment to assist the youth and the youth's family in addressing the youth's behavior.

~~(48)~~(50) "Youth care facility" has the meaning provided in 52-2-602.

1 ~~(49)~~(51) "Youth court" means the court established pursuant to this chapter to hear all proceedings in
2 which a youth is alleged to be a delinquent youth or a youth in need of intervention and includes the youth court
3 judge, probation officers, and assessment officers.
4 ~~(50)~~(52) "Youth detention facility" means a secure detention facility licensed by the department for the
5 temporary substitute care of youth that is:
6 (a) (i) operated, administered, and staffed separately and independently of a jail; or
7 (ii) a colocated secure detention facility that complies with 28 CFR, part 31; and
8 (b) used exclusively for the lawful detention of alleged or adjudicated delinquent youth or as a sanction
9 for contempt of court, violation of a parole agreement, or violation of a valid court order.
10 ~~(51)~~(53) "Youth in need of intervention" means a youth who is adjudicated as a youth and who:
11 (a) commits an offense prohibited by law that if committed by an adult would not constitute a criminal
12 offense, including but not limited to a youth who:
13 (i) violates any Montana municipal or state law regarding alcoholic beverages; or
14 (ii) continues to exhibit behavior, including running away from home or habitual truancy, beyond the
15 control of the youth's parents, foster parents, physical custodian, or guardian despite the attempt of the youth's
16 parents, foster parents, physical custodian, or guardian to exert all reasonable efforts to mediate, resolve, or
17 control the youth's behavior; or
18 (b) has committed any of the acts of a delinquent youth but whom the youth court, in its discretion,
19 chooses to regard as a youth in need of intervention."
20
21 NEW SECTION. **Section 3. Effective date -- applicability.** [This act] is effective July 1, 2007, and
22 applies to truancy violations occurring on or after [the effective date of this act].
23 - END -