



AN ACT REQUIRING THE YOUTH COURT TO IMPOSE RESTRICTIONS ON A DELINQUENT YOUTH'S RESIDENCY IF THE YOUTH HAS BEEN ADJUDICATED FOR A SEXUAL OFFENSE AND HAS BEEN DETERMINED TO BE A LEVEL 3 SEXUAL OFFENDER; REQUIRING NOTIFICATION TO SCHOOL DISTRICTS; AMENDING SECTIONS 41-5-215 AND 41-5-1513, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

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

Section 1. Section 41-5-215, MCA, is amended to read:

"41-5-215. Youth court and department records -- notification of school. (1) Formal youth court records, including reports of preliminary inquiries, petitions, motions, other filed pleadings, court findings, verdicts, and orders and decrees on file with the clerk of court are public records and are open to public inspection until the records are sealed under 41-5-216.

(2) Social, medical, and psychological records, youth assessment materials, predispositional studies, and supervision records of probationers are open only to the following:

- (a) the youth court and its professional staff;
- (b) representatives of any agency providing supervision and having legal custody of a youth;
- (c) any other person, by order of the court, having a legitimate interest in the case or in the work of the court;
- (d) any court and its probation and other professional staff or the attorney for a convicted party who had been a party to proceedings in the youth court when considering the sentence to be imposed upon the party;
- (e) the county attorney;
- (f) the youth who is the subject of the report or record, after emancipation or reaching the age of majority;
- (g) a member of a county interdisciplinary child information team formed under 52-2-211 who is not listed in this subsection (2);
- (h) members of a local interagency staffing group provided for in 52-2-203;

- (i) persons allowed access to the reports referred to under 45-5-624(7); and
- (j) persons allowed access under 42-3-203.

(3) (a) Notwithstanding the requirements of 20-5-321(1)(d) or (1)(e) and subject to the provisions of subsection (3)(b) of this section, the youth court shall notify the school district that the youth presently attends or the school district that the youth has applied to attend of a youth's suspected drug use or criminal activity if after an investigation has been completed:

- (i) the youth has admitted the allegation or a petition has been filed with the youth court; and
- (ii) a juvenile probation officer has reason to believe that a youth is currently involved with drug use or other criminal activity that has a bearing on the safety of children.

(b) Notification under subsection (3)(a) may not be given for status offenses.

(c) In addition to the notice requirements in subsection (3)(a), the youth court shall provide notice to the superintendent of a school district for a level 3 sexual offender as provided in 41-5-1513(3).

~~(e)(d)~~ A school district may not refuse to accept the student if refusal violates the federal Individuals With Disabilities Education Act or the federal Americans With Disabilities Act of 1990.

~~(e)(e)~~ The administrative officials of the school district may enforce school disciplinary procedures that existed at the time of the admission or adjudication. The information may not be further disclosed and may not be made part of the student's permanent records.

(4) In all cases, a victim is entitled to all information concerning the identity and disposition of the youth, as provided in 41-5-1416.

(5) The school district may disclose, without consent, personally identifiable information from an education record of a pupil to the youth court and law enforcement authorities pertaining to violations of the Montana Youth Court Act or criminal laws by the pupil. The youth court or law enforcement authorities receiving the information shall certify in writing to the school district that the information will not be disclosed to any other party except as provided under state law without the prior consent of the parent or guardian of the pupil.

(6) Any part of records information secured from records listed in subsection (2), when presented to and used by the court in a proceeding under this chapter, must also be made available to the counsel for the parties to the proceedings."

Section 2. Section 41-5-1513, MCA, is amended to read:

"41-5-1513. Disposition -- delinquent youth -- restrictions. (1) If a youth is found to be a delinquent youth, the youth court may enter its judgment making one or more of the following dispositions:

(a) any one or more of the dispositions provided in 41-5-1512;

(b) subject to 41-5-1504, 41-5-1512(1)(o)(i), and 41-5-1522, commit the youth to the department for placement in a state youth correctional facility and recommend to the department that the youth not be released until the youth reaches 18 years of age. The provisions of 41-5-355 relating to alternative placements apply to placements under this subsection (1)(b). The court may not place a youth adjudicated to be a delinquent youth in a state youth correctional facility for an act that would be a misdemeanor if committed by an adult unless:

(i) the youth committed four or more misdemeanors in the prior 12 months;

(ii) a psychiatrist or a psychologist licensed by the state or a licensed clinical professional counselor or a licensed clinical social worker has evaluated the youth and recommends placement in a state youth correctional facility; and

(iii) the court finds that the youth will present a danger to the public if the youth is not placed in a state youth correctional facility.

(c) subject to the provisions of subsection ~~(5)~~ (6), require a youth found to be a delinquent youth, as the result of the commission of an offense that would be a violent offense, as defined in 46-23-502, if committed by an adult, to register and remain registered as a violent offender pursuant to Title 46, chapter 23, part 5. The youth court shall retain jurisdiction in a disposition under this subsection to ensure registration compliance.

(d) in the case of a delinquent youth who has been adjudicated for a sexual offense, as defined in 46-23-502, and is required to register as a sexual offender pursuant to Title 46, chapter 23, part 5, exempt the youth from the duty to register if the court finds that:

(i) the youth has not previously been found to have committed or been adjudicated for a sexual offense, as defined in 46-23-502; and

(ii) registration is not necessary for protection of the public and that relief from registration is in the public's best interest;

(e) in the case of a delinquent youth who is determined by the court to be a serious juvenile offender, the judge may specify that the youth be placed in a state youth correctional facility, subject to the provisions of subsection (2), if the judge finds that the placement is necessary for the protection of the public. The court may order the department to notify the court within 5 working days before the proposed release of a youth from a youth

correctional facility. Once a youth is committed to the department for placement in a state youth correctional facility, the department is responsible for determining an appropriate date of release or an alternative placement.

(f) impose a fine as authorized by law if the violation alleged would constitute a criminal offense if committed by an adult.

(2) If a youth has been adjudicated for a sexual offense, as defined in 46-23-502, the youth court shall:

(a) prior to disposition, order a psychosexual evaluation that must comply with the provisions of 46-18-111;

(b) designate the youth's risk level pursuant to 46-23-509; ~~and~~

(c) require completion of sexual offender treatment; and

(d) for a youth designated under this section and 46-23-509 as a level 3 offender, impose upon the youth those restrictions required for adult offenders by 46-18-255(2), unless the youth is approved by the youth court or the department for placement in a home, program, or facility for delinquent youth. Restrictions imposed pursuant to this subsection (2)(d) terminate when the jurisdiction of the youth court terminates pursuant to 41-5-205 unless those restrictions are terminated sooner by an order of the court. However, if a youth's case is transferred to district court pursuant to 41-5-203, 41-5-206, 41-5-208, or 41-5-1605, any remaining part of the restriction imposed pursuant to this subsection (2)(d) is transferred to the jurisdiction of the district court and the supervision of the offender is transferred to the department.

(3) For a youth designated under this section and 46-23-509 as a level 3 offender, the youth court if the youth is under the youth court's jurisdiction or the department if the youth is under the department's jurisdiction shall notify in writing the superintendent of the school district in which the youth is enrolled of the adjudication, any terms of probation or parole, and the facts of the offense for which the youth was adjudicated, except the name of the victim, and provide a copy of the court's disposition order to the superintendent.

~~(3)~~(4) The court may not order a local government entity to pay for care, treatment, intervention, or placement. A court may not order a local government entity to pay for evaluation and in-state transportation of a youth, except as provided in 52-5-109.

~~(4)~~(5) The court may not order a state government entity to pay for care, treatment, intervention, placement, or evaluation that results in a deficit in the annual allocation established for that district under 41-5-130 without approval from the cost containment review panel.

~~(5)~~(6) The duration of registration for a youth who is required to register as a sexual or violent offender

must be as provided in 46-23-506, except that the court may, based on specific findings of fact, order a lesser duration of registration."

Section 3. Effective date. [This act] is effective on passage and approval.

Section 4. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to a delinquent youth, as defined in 41-5-103, adjudicated for the commission of a sexual offense, as defined in 46-23-502, before [the effective date of this act] but for whom no disposition has been ordered pursuant to 41-5-1513.

- END -

I hereby certify that the within bill,
HB 0055, originated in the House.

Chief Clerk of the House

Speaker of the House

Signed this _____ day
of _____, 2009.

President of the Senate

Signed this _____ day
of _____, 2009.

HOUSE BILL NO. 55
INTRODUCED BY R. HAWK

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