

HOUSE BILL NO. 210

INTRODUCED BY K. WAGONER

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A BILL FOR AN ACT ENTITLED: "AN ACT ELIMINATING THE CRIMES OF ASSAULT ON A PEACE OFFICER OR JUDICIAL OFFICER AND ASSAULT UPON A SPORTS OFFICIAL; AMENDING SECTIONS 41-5-206, 46-16-226, AND 46-23-502, MCA; AND REPEALING SECTIONS 45-5-210 AND 45-5-211, 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) sexual intercourse without consent as defined in 45-5-503;
- (ii) deliberate homicide as defined in 45-5-102;
- (iii) mitigated deliberate homicide as defined in 45-5-103; or
- ~~(iv) assault on a peace officer or judicial officer as defined in 45-5-210; or~~

~~(iv)~~ (iv) the attempt, as defined in 45-4-103, of or accountability, as provided in 45-2-301, for either deliberate or mitigated deliberate homicide; 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:

- (i) negligent homicide as defined in 45-5-104;
- (ii) arson as defined in 45-6-103;
- (iii) aggravated assault as defined in 45-5-202;
- (iv) sexual assault as provided in 45-5-502(3);
- (v) assault with a weapon as defined in 45-5-213;
- (vi) robbery as defined in 45-5-401;
- (vii) burglary or aggravated burglary as defined in 45-6-204;



- 1 (viii) aggravated kidnapping as defined in 45-5-303;
- 2 (ix) possession of explosives as defined in 45-8-335;
- 3 (x) criminal distribution of dangerous drugs as defined in 45-9-101;
- 4 (xi) criminal possession of dangerous drugs as defined in 45-9-102(4) through (6);
- 5 (xii) criminal possession with intent to distribute as defined in 45-9-103(1);
- 6 (xiii) criminal production or manufacture of dangerous drugs as defined in 45-9-110;
- 7 (xiv) use of threat to coerce criminal street gang membership or use of violence to coerce criminal street
- 8 gang membership as defined in 45-8-403;
- 9 (xv) escape as defined in 45-7-306;
- 10 (xvi) attempt, as defined in 45-4-103, of or accountability, as provided in 45-2-301, for any of the acts
- 11 enumerated in subsections (1)(b)(i) through (1)(b)(xv).
- 12 (2) The county attorney shall file with the district court a petition for leave to file an information in district
- 13 court if the youth was 17 years of age at the time the youth committed an offense listed under subsection (1).
- 14 (3) The district court shall grant leave to file the information if it appears from the affidavit or other
- 15 evidence supplied by the county attorney that there is probable cause to believe that the youth has committed
- 16 the alleged offense. Within 30 days after leave to file the information is granted, the district court shall conduct
- 17 a hearing to determine whether the matter must be transferred back to the youth court, unless the hearing is
- 18 waived by the youth or by the youth's counsel in writing or on the record. The hearing may be continued on
- 19 request of either party for good cause. The district court may not transfer the case back to the youth court unless
- 20 the district court finds, by a preponderance of the evidence, that:
- 21 (a) a youth court proceeding and disposition will serve the interests of community protection;
- 22 (b) the nature of the offense does not warrant prosecution in district court; and
- 23 (c) it would be in the best interests of the youth if the matter was prosecuted in youth court.
- 24 (4) The filing of an information in district court terminates the jurisdiction of the youth court over the youth
- 25 with respect to the acts alleged in the information. A youth may not be prosecuted in the district court for a
- 26 criminal offense originally subject to the jurisdiction of the youth court unless the case has been filed in the district
- 27 court as provided in this section. A case may be transferred to district court after prosecution as provided in
- 28 41-5-208 or 41-5-1605.
- 29 (5) An offense not enumerated in subsection (1) that arises during the commission of a crime
- 30 enumerated in subsection (1) may be:

1 (a) tried in youth court;

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

4 (6) If a youth is found guilty in district court of an offense enumerated in subsection (1) and any offense
5 that arose during the commission of a crime enumerated in subsection (1), the court shall sentence the youth
6 pursuant to 41-5-2503 and Titles 45 and 46. If a youth is acquitted in district court of all offenses enumerated in
7 subsection (1), the district court shall sentence the youth pursuant to Title 41 for any remaining offense for which
8 the youth is found guilty. A youth who is sentenced to the department or a state prison must be evaluated and
9 placed by the department in an appropriate juvenile or adult correctional facility. The department shall confine
10 the youth in an institution that it considers proper, including a state youth correctional facility under the procedures
11 of 52-5-111. However, a youth under 16 years of age may not be confined in a state prison facility. During the
12 period of 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) If a youth's case is filed in the district court and remains in the district court after the transfer hearing,
15 the youth may be detained in a jail or other adult detention facility pending final disposition of the youth's
16 case if the youth is kept in an area that provides physical separation from adults accused or convicted of criminal
17 offenses."

18

19 **Section 2.** Section 46-16-226, MCA, is amended to read:

20 **"46-16-226. Definitions.** As used in 46-16-226 through 46-16-229, the following definitions apply:

21 (1) "Child witness" means an individual who is:

22 (a) 13 years of age or younger at the time the individual is called as a witness in a criminal proceeding
23 involving a sexual or violent offense; or

24 (b) under 16 years of age at the time that the individual is called as a witness in a criminal proceeding
25 involving a sexual or violent offense and who is an individual with a developmental disability, as defined in
26 53-20-102.

27 (2) "Sexual offense" means any violation of or attempt, solicitation, or conspiracy to commit a violation
28 of 45-5-502, 45-5-503, 45-5-504, 45-5-507, 45-5-603, or 45-5-625.

29 (3) "Violent offense" means any violation of or attempt, solicitation, or conspiracy to commit a violation
30 of 45-5-102, 45-5-103, 45-5-202, 45-5-206, ~~45-5-210~~, 45-5-212, 45-5-213, 45-5-302, 45-5-303, 45-5-401,

1 45-6-103, or 45-9-132."

2

3 **Section 3.** Section 46-23-502, MCA, is amended to read:

4 **"46-23-502. Definitions.** As used in 46-18-255 and this part, the following definitions apply:

5 (1) "Department" means the department of corrections provided for in 2-15-2301.

6 (2) "Mental abnormality" means a congenital or acquired condition that affects the mental, emotional,
7 or volitional capacity of a person in a manner that predisposes the person to the commission of one or more
8 sexual offenses to a degree that makes the person a menace to the health and safety of other persons.

9 (3) "Municipality" means an entity that has incorporated as a city or town.

10 (4) "Personality disorder" means a personality disorder as defined in the fourth edition of the Diagnostic
11 and Statistical Manual of Mental Disorders adopted by the American psychiatric association.

12 (5) "Predatory sexual offense" means a sexual offense committed against a stranger or against a person
13 with whom a relationship has been established or furthered for the primary purpose of victimization.

14 (6) "Registration agency" means:

15 (a) if the offender resides in a municipality, the police department of that municipality; or

16 (b) if the offender resides in a place other than a municipality, the sheriff's office of the county in which
17 the offender resides.

18 (7) (a) "Residence" means the location at which a person regularly resides, regardless of the number
19 of days or nights spent at that location, that can be located by a street address, including a house, apartment
20 building, motel, hotel, or recreational or other vehicle.

21 (b) The term does not mean a homeless shelter.

22 (8) "Sexual offender evaluator" means a person qualified under rules established by the department to
23 conduct sexual offender and sexually violent predator evaluations.

24 (9) "Sexual offense" means:

25 (a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-301 (if the victim
26 is less than 18 years of age and the offender is not a parent of the victim), 45-5-302 (if the victim is less than 18
27 years of age and the offender is not a parent of the victim), 45-5-303 (if the victim is less than 18 years of age and
28 the offender is not a parent of the victim), 45-5-310, 45-5-311, 45-5-502(3) (if the victim is less than 16 years of
29 age and the offender is 3 or more years older than the victim), 45-5-503, 45-5-504(1) (if the victim is under 18
30 years of age and the offender is 18 years of age or older), 45-5-504(2)(c), 45-5-507 (if the victim is under 18 years

1 of age and the offender is 3 or more years older than the victim or if the victim is 12 years of age or younger and
2 the offender is 18 years of age or older at the time of the offense), 45-5-601(3), 45-5-602(3), 45-5-603(1)(b) or
3 (2)(b), or 45-5-625; or

4 (b) any violation of a law of another state, a tribal government, or the federal government that is
5 reasonably equivalent to a violation listed in subsection (9)(a) or for which the offender was required to register
6 as a sexual offender after an adjudication or conviction.

7 (10) "Sexual or violent offender" means a person who has been convicted of or, in youth court, found to
8 have committed or been adjudicated for a sexual or violent offense.

9 (11) "Sexually violent predator" means a person who:

10 (a) has been convicted of or, in youth court, found to have committed or been adjudicated for a sexual
11 offense and who suffers from a mental abnormality or a personality disorder that makes the person likely to
12 engage in predatory sexual offenses; or

13 (b) has been convicted of a sexual offense against a victim 12 years of age or younger and the offender
14 is 18 years of age or older.

15 (12) "Transient" means an offender who has no residence.

16 (13) "Violent offense" means:

17 (a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-102, 45-5-103,
18 45-5-202, 45-5-206 (third or subsequent offense), ~~45-5-210(1)(b), (1)(c), or (1)(d)~~, 45-5-212, 45-5-213, 45-5-302
19 (if the victim is not a minor), 45-5-303 (if the victim is not a minor), 45-5-401, 45-6-103, or 45-9-132; or

20 (b) any violation of a law of another state, a tribal government, or the federal government reasonably
21 equivalent to a violation listed in subsection (13)(a)."

22

23 **NEW SECTION. Section 4. Repealer.** The following sections of the Montana Code Annotated are
24 repealed:

25 45-5-210. Assault on peace officer or judicial officer.

26 45-5-211. Assault upon sports official.

27 - END -