

SENATE BILL NO. 238
INTRODUCED BY J. MANGAN

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THAT A YOUTH WHO HAS COMMITTED A STATUS OFFENSE MAY NOT BE PLACED IN SECURE DETENTION BY BECOMING A DELINQUENT YOUTH BY VIRTUE OF A PROBATION VIOLATION IN ORDER TO COMPLY WITH FEDERAL LAW; AMENDING SECTION 41-5-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 41-5-103, MCA, is amended to read:

"41-5-103. Definitions. As used in the Montana Youth Court Act, unless the context requires otherwise, the following definitions apply:

- (1) "Adult" means an individual who is 18 years of age or older.
- (2) "Agency" means any entity of state or local government authorized by law to be responsible for the care or rehabilitation of youth.
- (3) "Assessment officer" means a person who is authorized by the court to provide initial intake and evaluation for a youth who appears to be in need of intervention or an alleged delinquent youth.
- (4) "Commit" means to transfer legal custody of a youth to the department or to the youth court.
- (5) "Correctional facility" means a public or private, physically secure residential facility under contract with the department and operated solely for the purpose of housing adjudicated delinquent youth.
- (6) "Cost containment funds" means funds retained by the department under 41-5-132 for distribution by the cost containment review panel.
- (7) "Cost containment review panel" means the panel established in 41-5-131.
- (8) "Court", when used without further qualification, means the youth court of the district court.
- (9) "Criminally convicted youth" means a youth who has been convicted in a district court pursuant to 41-5-206.
- (10) "Custodian" means a person, other than a parent or guardian, to whom legal custody of the youth has been given but does not include a person who has only physical custody.
- (11) "Delinquent youth" means a youth who is adjudicated under formal proceedings under the Montana Youth Court Act as a youth:

(a) who has committed an offense that, if committed by an adult, would constitute a criminal offense; or
(b) who has been placed on probation as a delinquent youth ~~or a youth in need of intervention~~ and who has violated any condition of probation.

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

(13) "Department records" means information or data, either in written or electronic form, maintained by the department pertaining to youth who are committed under 41-5-1512(1)(c) or 41-5-1513(1)(b) or who are under parole supervision. Department records do not include information provided by the department to the department of public health and human services' management information system.

(14) "Detention" means the holding or temporary placement of a youth in the youth's home under home arrest or in a facility other than the youth's own home for:

(a) the purpose of ensuring the continued custody of the youth at any time after the youth is taken into custody and before final disposition of the youth's case;

(b) contempt of court or violation of a valid court order; or

(c) violation of a youth parole agreement.

(15) "Detention facility" means a physically restricting facility designed to prevent a youth from departing at will. The term includes a youth detention facility, short-term detention center, and regional detention facility.

(16) "Emergency placement" means placement of a youth in a youth care facility for less than 45 days to protect the youth when there is no alternative placement available.

(17) "Family" means the parents, guardians, legal custodians, and siblings or other youth with whom a youth ordinarily lives.

(18) "Final disposition" means the implementation of a court order for the disposition or placement of a 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.

(19) "Foster home" means a private residence licensed by the department of public health and human services for placement of a youth.

(20) "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.

(21) "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.

(22) "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. The term does not include a jail.

(23) "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 but does not include a collocated juvenile detention facility that complies with 28 CFR, part 31.

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

(25) "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.

(26) "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.

(27) (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;
- (ii) determine with whom the youth shall live and for what period;
- (iii) protect, train, and discipline the youth; and
- (iv) provide the youth with food, shelter, education, and ordinary medical care.

(b) An individual granted legal custody of a youth shall personally exercise the individual's rights and duties as guardian unless otherwise authorized by the court entering the order.

(28) "Necessary parties" includes the youth and the youth's parents, guardian, custodian, or spouse.

(29) "Out-of-home placement" means placement of a youth in a program, facility, or home, other than a custodial parent's home, for purposes other than preadjudicatory detention. The term does not include shelter care or emergency placement of less than 45 days.

(30) "Parent" means the natural or adoptive parent but does not include a person whose parental rights have been judicially terminated, nor does it include the putative father of an illegitimate youth unless the putative father's paternity is established by an adjudication or by other clear and convincing proof.

(31) "Probable cause hearing" means the hearing provided for in 41-5-332.

(32) "Regional detention facility" means a youth detention facility established and maintained by two or more counties, as authorized in 41-5-1804.

(33) "Restitution" means payments in cash to the victim or with services to the victim or the general community when these payments are made pursuant to a consent adjustment, consent decree, or other youth

court order.

(34) "Running away from home" means that a youth has been reported to have run away from home without the consent of a parent or guardian or a custodian having legal custody of the youth.

(35) "Secure detention facility" means a public or private facility that:

(a) is used for the temporary placement of youth or individuals accused or convicted of criminal offenses or as a sanction for contempt of court, violation of a parole agreement, or violation of a valid court order; and

(b) is designed to physically restrict the movements and activities of youth or other individuals held in lawful custody of the facility.

(36) "Serious juvenile offender" means a youth who has committed an offense that would be considered a felony offense if committed by an adult and that is an offense against a person, an offense against property, or an offense involving dangerous drugs.

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

(38) "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.

(39) "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.

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

(41) "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.

(42) "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 (42)(a), if the victim is a minor; and

(c) an adult relative of a homicide victim.

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

(44) "Youth assessment" means a multidisciplinary assessment of a youth as provided in 41-5-1201.

(45) "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.

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

(47) "Youth court" means the court established pursuant to this chapter to hear all proceedings in which a youth is alleged to be a delinquent youth or a youth in need of intervention and includes the youth court judge, probation officers, and assessment officers.

(48) "Youth court records" means information or data, either in written or electronic form, maintained by the youth court pertaining to a youth under jurisdiction of the youth court and includes reports of preliminary inquiries, petitions, motions, other filed pleadings, court findings, verdicts, orders and decrees, youth assessment materials, predispositional studies, and supervision records of probationers. Youth court records do not include information provided by the youth court to the department of public health and human services' management information system.

(49) "Youth detention facility" means a secure detention facility licensed by the department for the temporary substitute care of youth that is:

- (a) (i) operated, administered, and staffed separately and independently of a jail; or
- (ii) a collocated secure detention facility that complies with 28 CFR, part 31; and
- (b) used exclusively for the lawful detention of alleged or adjudicated delinquent youth or as a sanction for contempt of court, violation of a parole agreement, or violation of a valid court order.

(50) "Youth in need of intervention" means a youth who is adjudicated as a youth and who commits an offense prohibited by law that if committed by an adult would not constitute a criminal offense, including but not limited to a youth who:

- (a) violates any Montana municipal or state law regarding alcoholic beverages;
- (b) continues to exhibit behavior, including running away from home or habitual truancy, beyond the control of the youth's parents, foster parents, physical custodian, or guardian despite the attempt of the youth's parents, foster parents, physical custodian, or guardian to exert all reasonable efforts to mediate, resolve, or control the youth's behavior; or
- (c) has committed any of the acts of a delinquent youth but whom the youth court, in its discretion, chooses to regard as a youth in need of intervention."

NEW SECTION. **Section 2. Effective date.** [This act] is effective on passage and approval.

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