

HOUSE BILL NO. 313

INTRODUCED BY SCHREINER, CALF BOSS RIBS, O'HARA, PRICE, WILMER

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING SCHOOL TRUANCY LAWS; ~~TO PROVIDE AND CLARIFY~~
CLARIFYING CONSEQUENCES TO A TRUANT CHILD AND THE CHILD'S PARENT OR GUARDIAN;
 CLARIFYING THAT A HABITUALLY TRUANT CHILD MAY BE REFERRED TO YOUTH COURT; AMENDING
 SECTIONS 20-5-104, 20-5-105, 20-5-106, AND 41-5-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE
 DATE AND AN APPLICABILITY DATE."

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

SECTION 1. SECTION 20-5-104, MCA, IS AMENDED TO READ:

"20-5-104. Attendance officer. In order to enforce the compulsory attendance provisions of this title,
 each district shall have at least one person serving as an attendance officer according to the following
 requirements:

(1) districts of the first ~~and second~~ class and districts of the second class with a dropout rate higher than
 the statewide average dropout rate as calculated by the office of public instruction shall ~~employ and~~ appoint one
 or more of the district's staff as attendance officers;

(2) districts of the second class with a dropout rate at or below the statewide average dropout rate as
 calculated by the office of public instruction and districts of the third class may ~~employ and~~ appoint an one or
 more of the district's staff as attendance officer ~~or may appoint a constable or other peace officer as an
 attendance officer~~ officers; or

(3) the county superintendent ~~shall~~ must be the attendance officer in second-class or third-class districts
 that do not appoint an attendance officer."

SECTION 2. SECTION 20-5-105, MCA, IS AMENDED TO READ:**"20-5-105. Attendance officer -- powers and duties.** The attendance officer of a district:

(1) must, subject to district policy, be vested with police powers, the authority to serve warrants, and the
 authority to enter places of employment of children in order to enforce the compulsory attendance provisions of
 this title;

1 (2) ~~shall~~ may, subject to district policy, take into custody any child subject to compulsory attendance who
 2 is not excused under the provisions of this title and conduct the child to the school in which the child is or should
 3 be enrolled;

4 (3) ~~shall~~ may, subject to district policy, do whatever else is required to investigate and enforce the
 5 compulsory attendance provisions of this title and the pupil attendance policies of the trustees;

6 (4) ~~shall~~ may, subject to district policy, institute proceedings against any parent, guardian, or other
 7 person violating the compulsory attendance provisions of this title;

8 (5) ~~shall~~ may, subject to district policy, keep a record of transactions for the inspection and information
 9 of the trustees and shall make reports in the manner and to whomever the trustees designate; and

10 (6) ~~shall~~ may, subject to district policy, perform any other duties prescribed by the trustees to preserve
 11 the morals and secure good conduct of the pupils of the district."
 12

13 **Section 3.** Section 20-5-106, MCA, is amended to read:

14 **"20-5-106. Truancy.** (1) For the purposes of this part "truant" or "truancy" means the PERSISTENT
 15 nonattendance without excuse, AS DEFINED BY DISTRICT POLICY, for all or any part or period of a school day
 16 EQUIVALENT TO THE LENGTH OF ONE CLASS PERIOD of a child required to attend a school under 20-5-103.

17 ~~(1)(2) Whenever the~~ If an attendance officer discovers a child IS truant ~~from school or a child subject to~~
 18 ~~compulsory attendance who is not enrolled in a school providing the required instruction and has not been~~
 19 ~~excused under the provisions of this title, on 3 total days or 20 parts or periods of a school day, whichever is less,~~
 20 during a school year, the officer, school, or district shall, THE ATTENDANCE OFFICER MAY make a reasonable effort
 21 to notify in writing the parent, guardian, or other person responsible for the care of the child that the continued
 22 truancy or nonenrollment of the child will may result in the person's prosecution OF THE PARENT, GUARDIAN, OR
 23 OTHER PERSON RESPONSIBLE FOR THE CARE OF THE CHILD under the provisions of this section. If the child is not
 24 ~~enrolled and in attendance at a school or excused from school within 2 days after the receipt of the notice,~~
 25 discovered to be truant after the person has received the notice or ATTENDANCE OFFICER HAS MADE a reasonable
 26 effort to notify the person has been made PARENT, GUARDIAN, OR OTHER PERSON RESPONSIBLE FOR THE CARE OF THE
 27 CHILD, the attendance officer shall file a complaint against the person in a court of competent jurisdiction or MAY
 28 require that the person PARENT, GUARDIAN, OR OTHER PERSON RESPONSIBLE FOR THE CARE OF THE CHILD and THE
 29 child meet with an individual designated by the school district to formulate a truancy plan TO ADDRESS AND
 30 RESOLVE THE TRUANCY. If the person and child fail PARENT, GUARDIAN, OR OTHER PERSON RESPONSIBLE FOR THE CARE

1 ~~OF THE CHILD FAILS to meet with the designated individual or comply with~~ FAILS TO UPHOLD THE RESPONSIBILITIES
 2 UNDER the provisions of the truancy plan, the attendance officer shall file a complaint against the person in a court
 3 of competent jurisdiction MAY REFER THE MATTER TO THE PROSECUTING ATTORNEY IN A COURT OF COMPETENT
 4 JURISDICTION FOR A DETERMINATION REGARDING WHETHER TO PROSECUTE THE PARENT, GUARDIAN, OR OTHER PERSON
 5 RESPONSIBLE FOR THE CARE OF THE CHILD.

6 ~~(2)(3) (a) If convicted, the person shall be fined not less than \$5 \$25 or more than \$20 \$100, ORDERED~~
 7 TO PERFORM UP TO 20 HOURS OF COMMUNITY SERVICE, In the alternative, the person may be required to attend
 8 classes with the child for 1 full school day, or required to give bond in the penal sum of \$100, with sureties,
 9 conditioned upon on the person's agreement to cause the enrollment of the child within 2 days in a school
 10 providing the courses of instruction required by this title and to cause the child to attend that school TO COOPERATE
 11 WITH THE DISTRICT IN IMPLEMENTING THE TRUANCY PLAN PROVIDED FOR IN SUBSECTION (2) for the remainder of the
 12 current school term.

13 ~~(b) If a person refuses to pay a fine and costs, attend classes, or to give a bond as ordered by the court,~~
 14 FAILS TO COMPLY WITH AN ORDER OF THE COURT ISSUED UNDER SUBSECTION (3)(A), the person shall MAY be
 15 imprisoned in the county jail for a term of not less than 10 days or more than 30 3 days.

16 ~~(4) An attendance officer shall file subsequent complaints against the person for every 10 total days or~~
 17 50 parts or periods of a school day the child is found to be truant.

18 ~~(5)(4) (a) If the penalties in subsection (3) are ineffective and the child is discovered by the attendance~~
 19 officer to be truant on 10 9 or more days or 50 54 or more parts or periods of a day in 1 school year, the child may
 20 be referred to youth court as habitually truant under Title 41, chapter 5.

21 ~~(b) An~~ FOLLOWING A REFERRAL TO YOUTH COURT UNDER SUBSECTION (4)(A), AN attendance officer shall
 22 inform the youth court of any subsequent trancies by the child, and the youth court may find the child to be a
 23 youth in need of intervention pursuant to 41-5-103 and make any of the dispositions provided in 41-5-1512."

24
 25 **Section 4.** Section 41-5-103, MCA, is amended to read:

26 **"41-5-103. Definitions.** As used in the Montana Youth Court Act, unless the context requires otherwise,
 27 the following definitions apply:

28 (1) "Adult" means an individual who is 18 years of age or older.

29 (2) "Agency" means any entity of state or local government authorized by law to be responsible for the
 30 care or rehabilitation of youth.

1 (3) "Assessment officer" means a person who is authorized by the court to provide initial intake and
2 evaluation for a youth who appears to be in need of intervention or an alleged delinquent youth.

3 (4) "Commit" means to transfer legal custody of a youth to the department or to the youth court.

4 (5) "Correctional facility" means a public or private, physically secure residential facility under contract
5 with the department and operated solely for the purpose of housing adjudicated delinquent youth.

6 (6) "Cost containment pool" means funds allocated by the department under 41-5-132 for distribution
7 by the cost containment review panel.

8 (7) "Cost containment review panel" means the panel established in 41-5-131.

9 (8) "Court", when used without further qualification, means the youth court of the district court.

10 (9) "Criminally convicted youth" means a youth who has been convicted in a district court pursuant to
11 41-5-206.

12 (10) (a) "Custodian" means a person, other than a parent or guardian, to whom legal custody of the youth
13 has been given.

14 (b) The term does not include a person who has only physical custody.

15 (11) "Delinquent youth" means a youth who is adjudicated under formal proceedings under the Montana
16 Youth Court Act as a youth:

17 (a) who has committed an offense that, if committed by an adult, would constitute a criminal offense; or

18 (b) who has been placed on probation as a delinquent youth and who has violated any condition of
19 probation.

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

21 (13) (a) "Department records" means information or data, either in written or electronic form, maintained
22 by the department pertaining to youth who are committed under 41-5-1513(1)(b) or who are under parole
23 supervision.

24 (b) Department records do not include information provided by the department to the department of
25 public health and human services' management information system or information maintained by the youth court
26 through the office of court administrator.

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

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

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

2 (c) violation of a youth parole agreement.

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

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

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

9 (18) "Final disposition" means the implementation of a court order for the disposition or placement of a
10 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.

11 (19) (a) "Formal youth court records" means information or data, either in written or electronic form, on
12 file with the clerk of district court pertaining to a youth under the jurisdiction of the youth court and includes
13 petitions, motions, other filed pleadings, court findings, verdicts, orders and decrees, and predispositional studies.

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

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

18 (21) "Guardian" means an adult:

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

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

22 (22) "Habitual truancy" means recorded unexcused absences of ~~10~~ 9 days or more days or 50 ~~54~~ or more
23 parts or periods of a day, WHICHEVER IS LESS, in 1 school year ~~of unexcused absences in a semester or absences~~
24 ~~without prior written approval of a parent or a guardian.~~

25 (23) (a) "Holdover" means a room, office, building, or other place approved by the board of crime control
26 for the temporary detention and supervision of youth in a physically unrestricting setting for a period not to exceed
27 24 hours while the youth is awaiting a probable cause hearing, release, or transfer to an appropriate detention
28 or shelter care facility.

29 (b) The term does not include a jail.

30 (24) (a) "Informal youth court records" means information or data, either in written or electronic form,

1 maintained by youth court probation offices pertaining to a youth under the jurisdiction of the youth court and
2 includes reports of preliminary inquiries, youth assessment materials, medical records, school records, and
3 supervision records of probationers.

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

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

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

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

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

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

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

17 (i) have physical custody of the youth;

18 (ii) determine with whom the youth shall live and for what period;

19 (iii) protect, train, and discipline the youth; and

20 (iv) provide the youth with food, shelter, education, and ordinary medical care.

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

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

24 (31) (a) "Out-of-home placement" means placement of a youth in a program, facility, or home, other than
25 a custodial parent's home, for purposes other than preadjudicatory detention.

26 (b) The term does not include shelter care or emergency placement of less than 45 days.

27 (32) (a) "Parent" means the natural or adoptive parent.

28 (b) The term does not include:

29 (i) a person whose parental rights have been judicially terminated; or

30 (ii) the putative father of an illegitimate youth unless the putative father's paternity is established by an

1 adjudication or by other clear and convincing proof.

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

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

5 (35) "Restitution" means payments in cash to the victim or with services to the victim or the general
6 community when these payments are made pursuant to a consent adjustment, consent decree, or other youth
7 court order.

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

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

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

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

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

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

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

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

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

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

30 (44) "Victim" means:

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

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

4 (c) an adult relative of a homicide victim.

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

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

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

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

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

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

17 (a) (i) operated, administered, and staffed separately and independently of a jail; or

18 (ii) a colocated secure detention facility that complies with 28 CFR, part 31; and

19 (b) used exclusively for the lawful detention of alleged or adjudicated delinquent youth or as a sanction
20 for contempt of court, violation of a parole agreement, or violation of a valid court order.

21 (51) "Youth in need of intervention" means a youth who is adjudicated as a youth and who:

22 (a) commits an offense prohibited by law that if committed by an adult would not constitute a criminal
23 offense, including but not limited to a youth who:

24 (i) violates any Montana municipal or state law regarding alcoholic beverages; or

25 (ii) continues to exhibit behavior, including running away from home or habitual truancy, beyond the
26 control of the youth's parents, foster parents, physical custodian, or guardian despite the attempt of the youth's
27 parents, foster parents, physical custodian, or guardian to exert all reasonable efforts to mediate, resolve, or
28 control the youth's behavior; or

29 (b) has committed any of the acts of a delinquent youth but whom the youth court, in its discretion,
30 chooses to regard as a youth in need of intervention."

