

SENATE BILL NO. 91

INTRODUCED BY C. KAUFMANN

BY REQUEST OF THE DEPARTMENT OF CORRECTIONS

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE PLACEMENT ALTERNATIVES AVAILABLE TO THE DEPARTMENT OF CORRECTIONS FOR YOUTH CONVICTED OF CERTAIN SERIOUS OFFENSES AND YOUTH TRANSFERRED TO ADULT SUPERVISION; AND AMENDING SECTIONS 41-5-206 AND 41-5-208, 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;
- (iv) assault on a peace officer or judicial officer as defined in 45-5-210; or
- (v) 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;

1 (vi) robbery as defined in 45-5-401;
2 (vii) burglary or aggravated burglary as defined in 45-6-204;
3 (viii) aggravated kidnapping as defined in 45-5-303;
4 (ix) possession of explosives as defined in 45-8-335;
5 (x) criminal distribution of dangerous drugs as defined in 45-9-101;
6 (xi) criminal possession of dangerous drugs as defined in 45-9-102(4) through (6);
7 (xii) criminal possession with intent to distribute as defined in 45-9-103(1);
8 (xiii) criminal production or manufacture of dangerous drugs as defined in 45-9-110;
9 (xiv) use of threat to coerce criminal street gang membership or use of violence to coerce criminal street
10 gang membership as defined in 45-8-403;
11 (xv) escape as defined in 45-7-306;
12 (xvi) attempt, as defined in 45-4-103, of or accountability, as provided in 45-2-301, for any of the acts
13 enumerated in subsections (1)(b)(i) through (1)(b)(xv).

14 (2) The county attorney shall file with the district court a petition for leave to file an information in district
15 court if the youth was 17 years of age at the time the youth committed an offense listed under subsection (1).

16 (3) The district court shall grant leave to file the information if it appears from the affidavit or other
17 evidence supplied by the county attorney that there is probable cause to believe that the youth has committed
18 the alleged offense. Within 30 days after leave to file the information is granted, the district court shall conduct
19 a hearing to determine whether the matter must be transferred back to the youth court, unless the hearing is
20 waived by the youth or by the youth's counsel in writing or on the record. The hearing may be continued on
21 request of either party for good cause. The district court may not transfer the case back to the youth court unless
22 the district court finds, by a preponderance of the evidence, that:

23 (a) a youth court proceeding and disposition will serve the interests of community protection;

24 (b) the nature of the offense does not warrant prosecution in district court; and

25 (c) it would be in the best interests of the youth if the matter was prosecuted in youth court.

26 (4) The filing of an information in district court terminates the jurisdiction of the youth court over the youth
27 with respect to the acts alleged in the information. A youth may not be prosecuted in the district court for a
28 criminal offense originally subject to the jurisdiction of the youth court unless the case has been filed in the district
29 court as provided in this section. A case may be transferred to district court after prosecution as provided in
30 41-5-208 or 41-5-1605.

1 (5) An offense not enumerated in subsection (1) that arises during the commission of a crime
2 enumerated in subsection (1) may be:

3 (a) tried in youth court;

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

6 (6) If a youth is found guilty in district court of an offense enumerated in subsection (1) and any offense
7 that arose during the commission of a crime enumerated in subsection (1), the court shall sentence the youth
8 pursuant to 41-5-2503 and Titles 45 and 46. If a youth is acquitted in district court of all offenses enumerated in
9 subsection (1), the district court shall sentence the youth pursuant to Title 41 for any remaining offense for which
10 the youth is found guilty. A youth who is ~~sentenced~~ committed to the department ~~or a state prison~~ must be
11 evaluated and placed by the department in an appropriate juvenile or adult correctional facility or program. ~~The~~
12 ~~department shall confine the youth in an institution that it considers proper, including a state youth correctional~~
13 ~~facility under the procedures of 52-5-111. A youth who is sentenced to a state prison may be placed in a juvenile~~
14 or adult correctional facility or program as considered appropriate by the department. However, a youth under
15 16 years of age may not be confined in a state prison facility. During the period of confinement, school-aged youth
16 with disabilities must be provided an education consistent with the requirements of the federal Individuals With
17 Disabilities Education Act, 20 U.S.C. 1400, et seq.

18 (7) If a youth's case is filed in the district court and remains in the district court after the transfer hearing,
19 the youth may be detained in a jail or other adult detention facility pending final disposition of the youth's
20 case if the youth is kept in an area that provides physical separation from adults accused or convicted of criminal
21 offenses."

22

23 **Section 2.** Section 41-5-208, MCA, is amended to read:

24 **"41-5-208. Transfer of supervisory responsibility to district court after juvenile disposition --**
25 **nonextended jurisdiction and nontransferred cases.** (1) After adjudication by the court of a case that was not
26 transferred to district court under 41-5-206 and that was not prosecuted as an extended jurisdiction juvenile
27 prosecution under part 16 of this chapter, the court may, on the youth's motion or the motion of the county
28 attorney, transfer jurisdiction to the district court and order the transfer of supervisory responsibility from juvenile
29 probation services to adult probation services. A transfer under this section may be made to ensure continued
30 compliance with the court's disposition under 41-5-1512 or 41-5-1513 and may be made at any time after a youth

1 reaches 18 years of age but before the youth reaches 21 years of age.

2 (2) Before transfer, the court shall hold a hearing on whether the transfer should be made. The hearing
3 must be held in conformity with the rules on a hearing on a petition alleging delinquency, except that the hearing
4 must be conducted by the court without a jury. The court shall give the youth, the youth's counsel, and the youth's
5 parents, guardian, or custodian notice in writing of the time, place, and purpose of the hearing at least 10 days
6 before the hearing. At the hearing, the youth is entitled to receive:

7 (a) written notice of the motion to transfer;

8 (b) an opportunity to be heard in person and to present witnesses and evidence;

9 (c) a written statement by the court of the evidence relied on and reasons for the transfer;

10 (d) the right to cross-examine witnesses, unless the court finds good cause for not allowing confrontation;

11 and

12 (e) the right to counsel.

13 (3) (a) After the hearing, if the court finds by a preponderance of the evidence that transfer of continuing
14 supervisory responsibility to the district court is appropriate, the court shall order the transfer and commit the
15 youth to the department for a term of years, but in no case may the commitment extend beyond the youth's 25th
16 birthday.

17 (b) The court shall suspend a commitment under subsection (3)(a) unless the youth is incarcerated in
18 a state youth correctional facility at the time of the transfer. An order of suspension must enumerate conditions
19 of supervision at the time of transfer. The court may suspend all or part of the commitment or impose the full
20 commitment if the youth is incarcerated in a state youth correctional facility at the time of the transfer.

21 (c) The court may not order a transfer under this section if the youth court finds that the youth committed
22 offenses that would be misdemeanor offenses if committed by an adult.

23 (d) At the time of transfer, all youth court records for the youth are transferred to district court and the
24 department.

25 (4) If a youth ~~whose case has been transferred to district court~~ who has been committed to the
26 department and received a suspended sentence under this section violates a ~~disposition previously imposed~~
27 under 41-5-1512 or 41-5-1513 condition of supervision, the district court may; revoke the suspended commitment
28 pursuant to the provisions of ~~after hearing, impose conditions as provided under 46-18-201 through 46-18-203.~~

29 ~~(5) If, at the time of transfer, the youth is incarcerated in a state youth correctional facility, the district~~
30 ~~court may order that the youth, after reaching 18 years of age:~~

