

HOUSE BILL NO. 134

INTRODUCED BY J. ECK

BY REQUEST OF THE DEPARTMENT OF CORRECTIONS

A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING A YOUTH ADJUDICATED FOR ONLY MISDEMEANOR OFFENSES FROM BEING TRANSFERRED TO PLACED IN A STATE PRISON; AMENDING SECTION 41-5-208, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 41-5-208, MCA, is amended to read:

"41-5-208. Transfer of supervisory responsibility to district court after juvenile disposition -- nonextended jurisdiction and nontransferred cases. (1) After adjudication by the court of a case that was not transferred to district court under 41-5-206 and that was not prosecuted as an extended jurisdiction juvenile prosecution under part 16 of this chapter, the court may, on the youth's motion or the motion of the county attorney, transfer jurisdiction to the district court and order the transfer of supervisory responsibility from juvenile probation services to adult probation services. A transfer under this section may be made to ensure continued compliance with the court's disposition under 41-5-1512 or 41-5-1513 and may be made at any time after a youth reaches 18 years of age but before the youth reaches 21 years of age. ~~A transfer under this section may not be made unless the youth has been adjudicated for a felony offense.~~

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

- (a) written notice of the motion to transfer;
- (b) an opportunity to be heard in person and to present witnesses and evidence;
- (c) a written statement by the court of the evidence relied on and reasons for the transfer;
- (d) the right to cross-examine witnesses, unless the court finds good cause for not allowing confrontation;

and

1 (e) the right to counsel.

2 (3) After the hearing, if the court finds by a preponderance of the evidence that transfer of continuing
3 supervisory responsibility to the district court is appropriate, the court shall order the transfer.

4 (4) If a youth whose case has been transferred to district court under this section violates a disposition
5 previously imposed under 41-5-1512 or 41-5-1513, the district court may, after hearing, impose conditions as
6 provided under 46-18-201 through 46-18-203, BUT MAY NOT PLACE A YOUTH IN A STATE ADULT CORRECTIONAL
7 FACILITY UNLESS THE YOUTH WAS ADJUDICATED FOR A FELONY OFFENSE.

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

10 (a) be incarcerated in a state adult correctional facility IF THE YOUTH WAS ADJUDICATED FOR A FELONY
11 OFFENSE, boot camp, or prerelease center; or

12 (b) be supervised by the department.

13 (6) The district court's jurisdiction over a case transferred under this section terminates when the youth
14 reaches 25 years of age."

15
16 NEW SECTION. **Section 2. Effective date.** [This act] is effective on passage and approval.

17 - END -