

HOUSE BILL NO. 111

INTRODUCED BY R. LYNCH

BY REQUEST OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS REGARDING THE MAINTENANCE OF MINOR IN POSSESSION CONVICTION AND ADJUDICATION INFORMATION; ELIMINATING THE REQUIREMENT THAT A COURT REPORT A MINOR IN POSSESSION CONVICTION OR ADJUDICATION TO THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; ELIMINATING THE REQUIREMENT THAT THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES MAINTAIN A LIST OF PERSONS CONVICTED OF THE OFFENSE OF MINOR IN POSSESSION; AND AMENDING SECTIONS 41-5-215, 41-5-216, AND 45-5-624, MCA."

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

Section 1. Section 41-5-215, MCA, is amended to read:

"41-5-215. Youth court and department records -- notification of school. (1) Formal youth court records, including reports of preliminary inquiries, petitions, motions, other filed pleadings, court findings, verdicts, and orders and decrees on file with the clerk of court are public records and are open to public inspection until the records are sealed under 41-5-216.

(2) Social, medical, and psychological records, youth assessment materials, predispositional studies, and supervision records of probationers are open only to the following:

- (a) the youth court and its professional staff;
- (b) representatives of any agency providing supervision and having legal custody of a youth;
- (c) any other person, by order of the court, having a legitimate interest in the case or in the work of the court;
- (d) any court and its probation and other professional staff or the attorney for a convicted party who had been a party to proceedings in the youth court when considering the sentence to be imposed upon the party;
- (e) the county attorney;
- (f) the youth who is the subject of the report or record, after emancipation or reaching the age of majority;
- (g) a member of a county interdisciplinary child information and school safety team formed under

1 52-2-211 who is not listed in this subsection (2);

2 (h) members of a local interagency staffing group provided for in 52-2-203;

3 ~~(i) persons allowed access to the reports referred to under 45-5-624(7);~~

4 ~~(j)(i)~~ persons allowed access under 42-3-203; and

5 ~~(k)(i)~~ persons conducting evaluations as required in 41-5-2003.

6 (3) (a) Notwithstanding the requirements of 20-5-321(1)(d) or (1)(e), subject to the provisions of
7 subsection (3)(b) of this section, and according to the guidelines in subsection (3)(f) of this section, the chief
8 probation officer or other designee from the district that has jurisdiction over the matter or the department of
9 corrections for youth under the supervision of the department shall notify the school district that the youth
10 presently attends or the school district that the youth has applied to attend of a youth's past or current drug use
11 or criminal activity if after an investigation has been completed:

12 (i) a petition has been filed with the youth court or charges are filed in district court alleging a violation
13 of any section in Title 45, chapter 5; or

14 (ii) the youth has admitted the allegation and the acts involve any offense in which another youth was an
15 alleged victim and the admitted activity has a bearing on the safety of children.

16 (b) Notification under subsection (3)(a) may not be given for status offenses.

17 (c) Notification under subsection (3)(a) terminates upon the end of the youth court's supervision or the
18 discharge of the youth by the department of corrections.

19 (d) A school district may not refuse to accept the student if refusal violates the federal Individuals With
20 Disabilities Education Act or the federal Americans With Disabilities Act of 1990.

21 (e) The administrative officials of the school district may enforce school disciplinary procedures that
22 existed at the time of the admission or adjudication. The information may not be further disclosed and may not
23 be made part of the student's permanent records.

24 (f) Notification to the school district under subsection (3)(a) must be provided to:

25 (i) the school district superintendent or the superintendent's designee in districts that employ a
26 superintendent;

27 (ii) the building principal or the principal's designee in school districts where the building principal is the
28 only administrator; or

29 (iii) the county superintendent in school districts that do not employ an administrator.

30 (4) In all cases, a victim is entitled to all information concerning the identity and disposition of the youth,

1 as provided in 41-5-1416.

2 (5) The school district may disclose, without consent, personally identifiable information from an
3 education record of a pupil to the youth court and law enforcement authorities pertaining to violations of the
4 Montana Youth Court Act or criminal laws by the pupil. The youth court or law enforcement authorities receiving
5 the information shall certify in writing to the school district that the information will not be disclosed to any other
6 party except as provided under state law without the prior consent of the parent or guardian of the pupil.

7 (6) Any part of records information secured from records listed in subsection (2), when presented to and
8 used by the court in a proceeding under this chapter, must also be made available to the counsel for the parties
9 to the proceedings."

10

11 **Section 2.** Section 41-5-216, MCA, is amended to read:

12 **"41-5-216. Disposition of youth court, law enforcement, and department records -- sharing and**
13 **access to records.** (1) Formal youth court records, law enforcement records, and department records that are
14 not exempt from sealing under subsections (4) and (6) and that pertain to a youth covered by this chapter must
15 be physically sealed on the youth's 18th birthday. In those cases in which jurisdiction of the court or any agency
16 is extended beyond the youth's 18th birthday, the records must be physically sealed upon termination of the
17 extended jurisdiction.

18 (2) Except as provided in subsection (6), when the records pertaining to a youth pursuant to this section
19 are sealed, an agency, other than the department, that has in its possession copies of the sealed records shall
20 destroy the copies of the records. Anyone violating the provisions of this subsection is subject to contempt of
21 court.

22 (3) Except as provided in subsection (6), this section does not prohibit the destruction of records with
23 the consent of the youth court judge or county attorney after 10 years from the date of sealing.

24 (4) The requirements for sealed records in this section do not apply to medical records, fingerprints, DNA
25 records, photographs, youth traffic records, records in any case in which the youth did not fulfill all requirements
26 of the court's judgment or disposition, records referred to in 42-3-203, ~~reports referred to in 45-5-624(7)~~, or the
27 information referred to in 46-23-508, in any instance in which the youth was required to register as a sexual
28 offender pursuant to Title 46, chapter 23, part 5.

29 (5) After formal youth court records, law enforcement records, and department records are sealed, they
30 are not open to inspection except, upon order of the youth court, for good cause, including when a youth commits

1 a new offense, to:

2 (a) those persons and agencies listed in 41-5-215(2); and

3 (b) adult probation professional staff preparing a presentence report on a youth who has reached the
4 age of majority.

5 (6) (a) When formal youth court records, law enforcement records, and department records are sealed
6 under subsection (1), the electronic records of the management information system maintained by the department
7 of public health and human services and by the department relating to the youth whose records are being sealed
8 must be preserved for the express purpose of research and program evaluation as provided in subsection (6)(b).

9 (b) The department of public health and human services and the department shall disassociate the
10 offense and disposition information from the name of the youth in the respective management information system.

11 The offense and disposition information must be maintained separately and may be used only:

12 (i) for research and program evaluation authorized by the department of public health and human
13 services or by the department and subject to any applicable laws; and

14 (ii) as provided in Title 5, chapter 13.

15 (7) (a) Informal youth court records for a youth for whom formal proceedings have been filed must be
16 physically sealed on the youth's 18th birthday or, in those cases in which jurisdiction of the court or any agency
17 is extended beyond the youth's 18th birthday, upon termination of the extended jurisdiction and may be inspected
18 only pursuant to subsection (5).

19 (b) The informal youth court records may be maintained and inspected only by youth court personnel
20 upon a new offense prior to the youth's 18th birthday.

21 (c) Except as provided in subsection (7)(a), when a youth becomes 18 years of age or when extended
22 supervision ends and the youth was involved only in informal proceedings, informal youth court records that are
23 in hard-copy form must be destroyed and any electronic records in the youth court management information
24 system must disassociate the offense and disposition information from the name of the youth and may be used
25 only for the following purposes:

26 (i) for research and program evaluation authorized by the office of the court administrator and subject
27 to any applicable laws; and

28 (ii) as provided in Title 5, chapter 13.

29 (8) Nothing in this section prohibits the intra-agency use or information sharing of formal or informal youth
30 court records within the juvenile probation management information system. Electronic records of the youth court

1 may not be shared except as provided in 41-5-1524. If a person authorized under 41-5-215 is in need of a copy
2 of a record that is in electronic form, the juvenile probation officer shall make only a physical copy of the record
3 that is authorized and the person receiving the record shall destroy the record after it has fulfilled its purpose or
4 as provided in subsection (2) of this section.

5 (9) This section does not prohibit the intra-agency use or information sharing of formal or informal youth
6 court records within the department's youth management information system. Electronic records of the
7 department's youth management information system may not be shared except as provided in subsection (5).
8 If a person authorized under 41-5-215 is in need of a copy of a record that is in electronic form, the department
9 shall make only a physical copy of the record that is authorized and the person receiving the record shall destroy
10 the record after it has fulfilled its purpose or as provided in subsection (2) of this section.

11 (10) This section does not prohibit the sharing of formal or informal youth court records with a short-term
12 detention center, a youth care facility, a youth assessment center, or a youth detention facility upon placement
13 of a youth within the facility.

14 (11) This section does not prohibit access to formal or informal youth court records, including electronic
15 records, for purposes of conducting evaluations as required by 41-5-2003.

16 (12) This section does not prohibit the office of court administrator, upon written request from the
17 department of public health and human services, from confirming whether a person applying for a registry
18 identification card pursuant to 50-46-307 or 50-46-308 is currently under youth court supervision."

19

20 **Section 3.** Section 45-5-624, MCA, is amended to read:

21 **"45-5-624. Possession of or unlawful attempt to purchase intoxicating substance -- interference**
22 **with sentence or court order.** (1) A person under 21 years of age commits the offense of possession of an
23 intoxicating substance if the person knowingly consumes or has in the person's possession an intoxicating
24 substance. A person may not be arrested for or charged with the offense solely because the person was at a
25 place where other persons were possessing or consuming alcoholic beverages. A person does not commit the
26 offense if the person consumes or gains possession of an alcoholic beverage because it was lawfully supplied
27 to the person under 16-6-305 or when in the course of employment it is necessary to possess alcoholic
28 beverages.

29 (2) (a) In addition to any disposition by the youth court under 41-5-1512, a person under 18 years of age
30 who is convicted under this section:

- 1 (i) for a first offense, shall be fined an amount not less than \$100 and not to exceed \$300 and:
2 (A) shall be ordered to perform 20 hours of community service;
3 (B) shall be ordered, and the person's parent or parents or guardian shall be ordered, to complete and
4 pay all costs of participation in a community-based substance abuse information course that meets the
5 requirements of subsection ~~(9)~~ (8), if one is available; and
6 (C) if the person has a driver's license, must have the license confiscated by the court for 30 days,
7 except as provided in subsection (2)(b);
8 (ii) for a second offense, shall be fined an amount not less than \$200 and not to exceed \$600 and:
9 (A) shall be ordered to perform 40 hours of community service;
10 (B) shall be ordered, and the person's parent or parents or guardian shall be ordered, to complete and
11 pay all costs of participation in a community-based substance abuse information course that meets the
12 requirements of subsection ~~(9)~~ (8), if one is available;
13 (C) if the person has a driver's license, must have the license confiscated by the court for 6 months,
14 except as provided in subsection (2)(b); and
15 (D) shall be required to complete a chemical dependency assessment and treatment, if recommended,
16 as provided in subsection ~~(8)~~ (7);
17 (iii) for a third or subsequent offense, shall be fined an amount not less than \$300 or more than \$900,
18 shall be ordered to perform 60 hours of community service, shall be ordered, and the person's parent or parents
19 or guardian shall be ordered, to complete and pay all costs of participation in a community-based substance
20 abuse information course that meets the requirements of subsection ~~(9)~~ (8), if one is available, and shall be
21 required to complete a chemical dependency assessment and treatment, if recommended, as provided in
22 subsection ~~(8)~~ (7). If the person has a driver's license, the court shall confiscate the license for 6 months, except
23 as provided in subsection (2)(b).
24 (b) If the convicted person fails to complete the community-based substance abuse information course
25 and has a driver's license, the court shall order the license suspended for 3 months for a first offense, 9 months
26 for a second offense, and 12 months for a third or subsequent offense.
27 (c) The court shall retain jurisdiction for up to 1 year to order suspension of a license under subsection
28 (2)(b).
29 (3) A person 18 years of age or older who is convicted of the offense of possession of an intoxicating
30 substance:

1 (a) for a first offense:

2 (i) shall be fined an amount not less than \$100 or more than \$300;

3 (ii) shall be ordered to perform 20 hours of community service; and

4 (iii) shall be ordered to complete and pay all costs of participation in a community-based substance abuse
5 information course that meets the requirements of subsection ~~(9)~~ (8);

6 (b) for a second offense:

7 (i) shall be fined an amount not less than \$200 or more than \$600;

8 (ii) shall be ordered to perform 40 hours of community service; and

9 (iii) shall be ordered to complete and pay for an alcohol information course at an alcohol treatment
10 program that meets the requirements of subsection ~~(9)~~ (8), which may, in the court's discretion and on
11 recommendation of a licensed addiction counselor, include alcohol or drug treatment, or both;

12 (c) for a third or subsequent offense:

13 (i) shall be fined an amount not less than \$300 or more than \$900;

14 (ii) shall be ordered to perform 60 hours of community service;

15 (iii) shall be ordered to complete and pay for an alcohol information course at an alcohol treatment
16 program that meets the requirements of subsection ~~(9)~~ (8), which may, in the sentencing court's discretion and
17 on recommendation of a licensed addiction counselor, include alcohol or drug treatment, or both; and

18 (iv) in the discretion of the court, shall be imprisoned in the county jail for a term not to exceed 6 months.

19 (4) A person under 21 years of age commits the offense of attempt to purchase an intoxicating substance
20 if the person knowingly attempts to purchase an alcoholic beverage. A person convicted of attempt to purchase
21 an intoxicating substance shall be fined an amount not to exceed \$150 if the person was under 21 years of age
22 at the time that the offense was committed and may be ordered to perform community service.

23 (5) A defendant who fails to comply with a sentence and is under 21 years of age and was under 18
24 years of age when the defendant failed to comply must be transferred to the youth court. If proceedings for failure
25 to comply with a sentence are held in the youth court, the offender must be treated as an alleged youth in need
26 of intervention as defined in 41-5-103. The youth court may enter its judgment under 41-5-1512.

27 (6) A person commits the offense of interference with a sentence or court order if the person purposely
28 or knowingly causes a child or ward to fail to comply with a sentence imposed under this section or a youth court
29 disposition order for a youth found to have violated this section and upon conviction shall be fined \$100 or
30 imprisoned in the county jail for 10 days, or both.

1 ~~(7) A conviction or youth court adjudication under this section must be reported by the court to the~~
 2 ~~department of public health and human services if treatment is ordered under subsection (8):~~

3 ~~(8)(7)~~ (a) A person convicted of a second or subsequent offense of possession of an intoxicating
 4 substance shall be ordered to complete a chemical dependency assessment.

5 (b) The assessment must be completed at a treatment program that meets the requirements of
 6 subsection ~~(9)~~ (8) and must be conducted by a licensed addiction counselor. The person may attend a program
 7 of the person's choice as long as a licensed addiction counselor provides the services. If able, the person shall
 8 pay the cost of the assessment and any resulting treatment.

9 (c) The assessment must describe the person's level of abuse or dependency, if any, and contain a
 10 recommendation as to the appropriate level of treatment, if treatment is indicated. A person who disagrees with
 11 the initial assessment may, at the person's expense, obtain a second assessment provided by a licensed
 12 addiction counselor or program that meets the requirements of subsection ~~(9)~~ (8).

13 (d) The treatment provided must be at a level appropriate to the person's alcohol or drug problem, or
 14 both, if any, as determined by a licensed addiction counselor pursuant to diagnosis and patient placement rules
 15 adopted by the department of public health and human services. Upon the determination, the court shall order
 16 the appropriate level of treatment, if any. If more than one counselor makes a determination, the court shall order
 17 an appropriate level of treatment based on the determination of one of the counselors.

18 (e) Each counselor providing treatment shall, at the commencement of the course of treatment, notify
 19 the court that the person has been enrolled in a chemical dependency treatment program. If the person fails to
 20 attend the treatment program, the counselor shall notify the court of the failure.

21 ~~(f) The court shall report to the department of public health and human services the name of any person~~
 22 ~~who is convicted under this section. The department of public health and human services shall maintain a list of~~
 23 ~~those persons who have been convicted under this section. This list must be made available on request to peace~~
 24 ~~officers and to any court.~~

25 ~~(9)(8)~~ (a) A community-based substance abuse information course required under subsection (2)(a)(i)(B),
 26 (2)(a)(ii)(B), (2)(a)(iii), or (3)(a)(iii) must be:

27 (i) approved by the department of public health and human services under 53-24-208 or by a court or
 28 provided under a contract with the department of corrections; or

29 (ii) provided by a hospital licensed under Title 50, chapter 5, part 2, that provides chemical dependency
 30 services and that is accredited by the joint commission on accreditation of healthcare organizations to provide

1 chemical dependency services.

2 (b) An alcohol information course required under subsection (3)(b)(iii) or (3)(c)(iii) must be provided at
3 an alcohol treatment program:

4 (i) approved by the department of public health and human services under 53-24-208 or by a court or
5 provided under a contract with the department of corrections; or

6 (ii) provided by a hospital licensed under Title 50, chapter 5, part 2, that provides chemical dependency
7 services and that is accredited by the joint commission on accreditation of healthcare organizations to provide
8 chemical dependency services.

9 (c) A chemical dependency assessment required under subsection ~~(8)~~ (7) must be completed at a
10 treatment program:

11 (i) approved by the department of public health and human services under 53-24-208 or by a court or
12 provided under a contract with the department of corrections; or

13 (ii) provided by a hospital licensed under Title 50, chapter 5, part 2, that provides chemical dependency
14 services and that is accredited by the joint commission on accreditation of healthcare organizations to provide
15 chemical dependency services.

16 ~~(44)~~(9) Information provided or statements made by a person under 21 years of age to a health care
17 provider or law enforcement personnel regarding an alleged offense against that person under Title 45, chapter
18 5, part 5, may not be used in a prosecution of that person under this section. This subsection's protection also
19 extends to a person who helps the victim obtain medical or other assistance or report the offense to law
20 enforcement personnel.

21 ~~(44)~~(10) (a) A person under 21 years of age may not be charged or prosecuted under subsection (1) if:

22 (i) the person has consumed an intoxicating substance and seeks medical treatment at a health care
23 facility or contacts law enforcement personnel or an emergency medical service provider for the purpose of
24 seeking medical treatment;

25 (ii) the person accompanies another person under 21 years of age who has consumed an intoxicating
26 substance and seeks medical treatment at a health care facility or contacts law enforcement personnel or an
27 emergency medical service provider for the purpose of seeking medical treatment for the other person; or

28 (iii) the person requires medical treatment as a result of consuming an intoxicating substance and
29 evidence of a violation of this section is obtained during the course of seeking or receiving medical treatment.

30 (b) For the purposes of this subsection ~~(44)~~ (10), the following definitions apply:

1 (i) "Health care facility" means a facility or entity that is licensed, certified, or otherwise authorized by law
2 to administer medical treatment in this state.

3 (ii) "Medical treatment" means medical treatment provided by a health care facility or an emergency
4 medical service. (See compiler's comments for contingent termination of certain text.)"

5 - END -