

SENATE BILL NO. 265

INTRODUCED BY J. COHENOUR

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO ASSAULTS AGAINST PEACE OFFICERS; CREATING THE CRIME OF ASSAULT ON A FORMER PEACE OFFICER; PROVIDING A SENTENCE ENHANCEMENT FOR OFFENSES COMMITTED BECAUSE THE VICTIM IS A FORMER PEACE OFFICER; AMENDING SECTIONS 41-5-206, 45-5-210, AND 46-23-502, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

**NEW SECTION. Section 1. Sentence enhancement -- offense committed because victim is former peace officer.** (1) A person who has pleaded guilty or nolo contendere to or who has been found guilty of an offense for which the victim is a former peace officer and the person had knowledge that the victim is a former peace officer may, if the provisions of 46-1-401 have been complied with, be sentenced to a term of imprisonment of not less than 5 years or more than 20 years, or both, except as provided in 46-18-222. This sentence is in addition to the punishment provided for commission of the offense.

(2) An additional sentence prescribed by subsection (1) must run consecutively to the sentence provided for the underlying offense, except as provided in 46-18-222.

**Section 2.** 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, former peace officer, or judicial officer as defined in 45-5-210; or

1 (v) the attempt, as defined in 45-4-103, of or accountability, as provided in 45-2-301, for either deliberate  
2 or mitigated deliberate homicide; or

3 (b) the youth charged was 16 years of age or older at the time of the conduct alleged to be unlawful and  
4 the unlawful act is one or more of the following:

5 (i) negligent homicide as defined in 45-5-104;

6 (ii) arson as defined in 45-6-103;

7 (iii) aggravated assault as defined in 45-5-202;

8 (iv) sexual assault as provided in 45-5-502(3);

9 (v) assault with a weapon as defined in 45-5-213;

10 (vi) robbery as defined in 45-5-401;

11 (vii) burglary or aggravated burglary as defined in 45-6-204;

12 (viii) aggravated kidnapping as defined in 45-5-303;

13 (ix) possession of explosives as defined in 45-8-335;

14 (x) criminal distribution of dangerous drugs as defined in 45-9-101;

15 (xi) criminal possession of dangerous drugs as defined in 45-9-102(4) through (6);

16 (xii) criminal possession with intent to distribute as defined in 45-9-103(1);

17 (xiii) criminal production or manufacture of dangerous drugs as defined in 45-9-110;

18 (xiv) use of threat to coerce criminal street gang membership or use of violence to coerce criminal street  
19 gang membership as defined in 45-8-403;

20 (xv) escape as defined in 45-7-306; or

21 (xvi) attempt, as defined in 45-4-103, of or accountability, as provided in 45-2-301, for any of the acts  
22 enumerated in subsections (1)(b)(i) through (1)(b)(xv).

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

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

1 the district court finds, by a preponderance of the evidence, that:

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

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

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

5 (4) The filing of an information in district court terminates the jurisdiction of the youth court over the youth  
6 with respect to the acts alleged in the information. A youth may not be prosecuted in the district court for a  
7 criminal offense originally subject to the jurisdiction of the youth court unless the case has been filed in the district  
8 court as provided in this section. A case may be transferred to district court after prosecution as provided in  
9 41-5-208 or 41-5-1605.

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

12 (a) tried in youth court; or

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

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

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

29

30 **Section 3.** Section 45-5-210, MCA, is amended to read:

1           **"45-5-210. Assault on peace officer, former peace officer, or judicial officer.** (1) A person commits  
2 the offense of assault on a peace officer or judicial officer if the person purposely or knowingly causes:

3           (a) bodily injury to a peace officer or judicial officer;

4           (b) reasonable apprehension of serious bodily injury in a peace officer or judicial officer by use of a  
5 weapon;

6           (c) bodily injury to a peace officer or judicial officer with a weapon; or

7           (d) serious bodily injury to a peace officer or judicial officer.

8           (2) A person commits the offense of assault on a former peace officer if the person has knowledge that  
9 the victim was previously employed as a peace officer, the assault occurs because of the victim's professional  
10 history as a peace officer, and the person purposely or knowingly causes:

11           (a) bodily injury to the former peace officer;

12           (b) reasonable apprehension of serious bodily injury in the former peace officer by use of a weapon;

13           (c) bodily injury to the former peace officer with a weapon; or

14           (d) serious bodily injury to the former peace officer.

15           ~~(2)~~(3) (a) A person convicted of assault on a peace officer or judicial officer under subsection (1)(a),  
16 (1)(b), or (1)(c) or of assault on a former peace officer under subsection (2)(a), (2)(b), or (2)(c) shall be imprisoned  
17 in the state prison for a term of not less than 2 years or more than 10 years and may be fined an amount not to  
18 exceed \$50,000, or both.

19           (b) Except as provided in 46-18-222, a person convicted of assault on a peace officer or judicial officer  
20 under subsection (1)(d) or of assault on a former peace officer under subsection (2)(d) shall be fined an amount  
21 not to exceed \$50,000 or be imprisoned in the state prison for a term of not less than 5 years or more than 20  
22 years, or both.

23           ~~(3)~~(4) As used in this section, the following definitions apply:

24           (a) "Former peace officer" means a person who has ever been employed as a peace officer as defined  
25 in 45-2-101 and includes a person, sworn or unsworn, who has ever been responsible for the care or custody  
26 of an adult or youth offender.

27           ~~(a)~~(b) "Judicial officer" has the meaning provided in 1-1-202 and includes the workers' compensation  
28 judge, water court judges, and judges pro tempore.

29           ~~(b)~~(c) "Peace officer" has the meaning provided in 45-2-101 and includes a person, sworn or unsworn,  
30 who is responsible for the care or custody of an adult or youth offender.

1           ~~(4)~~(5) Criminal endangerment, negligent endangerment, and assault, as defined in 45-5-201, are not  
2 included as offenses of assault on a peace officer, former peace officer, or judicial officer."

3

4           **Section 4.** Section 46-23-502, MCA, is amended to read:

5           **"46-23-502. Definitions.** As used in 46-18-255 and this part, the following definitions apply:

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

7           (2) "Mental abnormality" means a congenital or acquired condition that affects the mental, emotional,  
8 or volitional capacity of a person in a manner that predisposes the person to the commission of one or more  
9 sexual offenses to a degree that makes the person a menace to the health and safety of other persons.

10           (3) "Municipality" means an entity that has incorporated as a city or town.

11           (4) "Personality disorder" means a personality disorder as defined in the fourth edition of the Diagnostic  
12 and Statistical Manual of Mental Disorders adopted by the American psychiatric association.

13           (5) "Predatory sexual offense" means a sexual offense committed against a stranger or against a person  
14 with whom a relationship has been established or furthered for the primary purpose of victimization.

15           (6) "Registration agency" means:

16           (a) if the offender resides in a municipality, the police department of that municipality; or

17           (b) if the offender resides in a place other than a municipality, the sheriff's office of the county in which  
18 the offender resides.

19           (7) (a) "Residence" means the location at which a person regularly resides, regardless of the number  
20 of days or nights spent at that location, that can be located by a street address, including a house, apartment  
21 building, motel, hotel, or recreational or other vehicle.

22           (b) The term does not mean a homeless shelter.

23           (8) "Sexual offender evaluator" means a person qualified under rules established by the department to  
24 conduct psychosexual evaluations of sexual offenders and sexually violent predators.

25           (9) "Sexual offense" means:

26           (a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-301 (if the victim  
27 is less than 18 years of age and the offender is not a parent of the victim), 45-5-302 (if the victim is less than 18  
28 years of age and the offender is not a parent of the victim), 45-5-303 (if the victim is less than 18 years of age and  
29 the offender is not a parent of the victim), 45-5-502 (if the offender is a professional licensed under Title 37 and  
30 commits the offense during any treatment, consultation, interview, or evaluation of a person's physical or mental

1 condition, ailment, disease, or injury), 45-5-502(3) (if the victim is less than 16 years of age and the offender is  
 2 3 or more years older than the victim), 45-5-503, 45-5-504(2)(c), 45-5-504(3) (if the victim is less than 16 years  
 3 of age and the offender is 4 or more years older than the victim), 45-5-507 (if the victim is less than 18 years of  
 4 age and the offender is 3 or more years older than the victim or if the victim is 12 years of age or younger and  
 5 the offender is 18 years of age or older at the time of the offense), 45-5-601(3), 45-5-602(3), 45-5-603(1)(b) or  
 6 (2)(b), 45-5-625, 45-5-704, or 45-5-705; or

7 (b) any violation of a law of another state, a tribal government, or the federal government that is  
 8 reasonably equivalent to a violation listed in subsection (9)(a) or for which the offender was required to register  
 9 as a sexual offender after an adjudication or conviction.

10 (10) "Sexual or violent offender" means a person who has been convicted of or, in youth court, found to  
 11 have committed or been adjudicated for a sexual or violent offense.

12 (11) "Sexually violent predator" means a person who:

13 (a) has been convicted of or, in youth court, found to have committed or been adjudicated for a sexual  
 14 offense and who suffers from a mental abnormality or a personality disorder that makes the person likely to  
 15 engage in predatory sexual offenses; or

16 (b) has been convicted of a sexual offense against a victim 12 years of age or younger and the offender  
 17 is 18 years of age or older.

18 (12) "Transient" means an offender who has no residence.

19 (13) "Violent offense" means:

20 (a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-102, 45-5-103,  
 21 45-5-202, 45-5-206 (third or subsequent offense), 45-5-210(1)(b), (1)(c), or (1)(d), (2)(b), (2)(c), or (2)(d),  
 22 45-5-212, 45-5-213, 45-5-302 (if the victim is not a minor), 45-5-303 (if the victim is not a minor), 45-5-401,  
 23 45-6-103, or 45-9-132; or

24 (b) any violation of a law of another state, a tribal government, or the federal government reasonably  
 25 equivalent to a violation listed in subsection (13)(a)."

26

27 **NEW SECTION. Section 5. Codification instruction.** [Section 1] is intended to be codified as an  
 28 integral part of Title 45, chapter 5, part 2, and the provisions of Title 45, chapter 5, part 2, apply to [section 1].

29

30 **NEW SECTION. Section 6. Effective date.** [This act] is effective on passage and approval.

