

HOUSE BILL NO. 215

INTRODUCED BY K. DUDIK

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 PROHIBITING INCARCERATION OF YOUTH IN AN ADULT PRISON; AND AMENDING SECTIONS 41-5-206 AND 46-18-201, 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;
- (vi) robbery as defined in 45-5-401;
- (vii) burglary or aggravated burglary as defined in 45-6-204;
- (viii) aggravated kidnapping as defined in 45-5-303;

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

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

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

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

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

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

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

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

30 (a) tried in youth court;

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

3 (6) (a) If a youth is found guilty in district court of an offense enumerated in subsection (1) and any  
4 offense that arose during the commission of a crime enumerated in subsection (1), the court shall sentence the  
5 youth pursuant to 41-5-2503 and Titles 45 and 46. If a youth is acquitted in district court of all offenses  
6 enumerated in subsection (1), the district court shall sentence the youth pursuant to Title 41 for any remaining  
7 offense for which the youth is found guilty.

8 (b) A youth who is sentenced to the department ~~or a state prison~~ must be evaluated and placed by the  
9 department in an appropriate juvenile ~~or adult~~ correctional facility. The department shall confine the youth in an  
10 institution that it considers proper, including a state youth correctional facility under the procedures of 52-5-111.  
11 However, a youth ~~under 16 years of age~~ may not be confined in a state prison facility. During the period of  
12 confinement, school-aged youth with disabilities must be provided an education consistent with the requirements  
13 of the federal Individuals With Disabilities Education Act, 20 U.S.C. 1400, et seq.

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

19 **Section 2.** Section 46-18-201, MCA, is amended to read:

20 **"46-18-201. Sentences that may be imposed.** (1) (a) Whenever a person has been found guilty of an  
21 offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may defer imposition  
22 of sentence, except as otherwise specifically provided by statute, for a period:

23 (i) not exceeding 1 year for a misdemeanor or for a period not exceeding 3 years for a felony; or  
24 (ii) not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for a felony if a  
25 financial obligation is imposed as a condition of sentence for either the misdemeanor or the felony, regardless  
26 of whether any other conditions are imposed.

27 (b) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the  
28 case of an offender who has been convicted of a felony on a prior occasion, whether or not the sentence was  
29 imposed, imposition of the sentence was deferred, or execution of the sentence was suspended.

30 (2) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or

1 nolo contendere, a sentencing judge may suspend execution of sentence, except as otherwise specifically  
2 provided by statute, for a period up to the maximum sentence allowed or for a period of 6 months, whichever is  
3 greater, for each particular offense.

4 (3) (a) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty  
5 or nolo contendere, a sentencing judge may impose a sentence that may include:

6 (i) a fine as provided by law for the offense;

7 (ii) payment of costs, as provided in 46-18-232, or payment of costs of assigned counsel as provided in  
8 46-8-113;

9 (iii) a term of incarceration, as provided in Title 45 for the offense, at a county detention center or at a  
10 state prison to be designated by the department of corrections;

11 (iv) commitment of:

12 (A) an offender not referred to in subsection (3)(a)(iv)(B) to the department of corrections with a  
13 recommendation for placement in an appropriate correctional facility or program; however, all but the first 5 years  
14 of the commitment to the department of corrections must be suspended, except as provided in 45-5-503(4),  
15 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(b), and 45-5-625(4); or

16 (B) a youth transferred to district court under 41-5-206 and found guilty in the district court of an offense  
17 enumerated in 41-5-206 to the department of corrections for a period determined by the court for placement in  
18 an appropriate youth correctional facility or program;

19 (v) chemical treatment of sexual offenders, as provided in 45-5-512, if applicable, that is paid for by and  
20 for a period of time determined by the department of corrections, but not exceeding the period of state supervision  
21 of the person;

22 (vi) commitment of an offender to the department of corrections with the requirement that immediately  
23 subsequent to sentencing or disposition the offender is released to community supervision and that any  
24 subsequent violation must be addressed as provided in 46-23-1011 through 46-23-1015; or

25 (vii) any combination of subsections (2) and (3)(a)(i) through (3)(a)(vii).

26 (b) A court may permit a part or all of a fine to be satisfied by a donation of food to a food bank program.

27 (4) When deferring imposition of sentence or suspending all or a portion of execution of sentence, the  
28 sentencing judge may impose on the offender any reasonable restrictions or conditions during the period of the  
29 deferred imposition or suspension of sentence. Reasonable restrictions or conditions imposed under subsection  
30 (1)(a) or (2) may include but are not limited to:

- 1 (a) limited release during employment hours as provided in 46-18-701;
- 2 (b) incarceration in a detention center not exceeding 180 days;
- 3 (c) conditions for probation;
- 4 (d) payment of the costs of confinement;
- 5 (e) payment of a fine as provided in 46-18-231;
- 6 (f) payment of costs as provided in 46-18-232 and 46-18-233;
- 7 (g) payment of costs of assigned counsel as provided in 46-8-113;
- 8 (h) with the approval of the facility or program, an order that the offender be placed in a community
- 9 corrections facility or program as provided in 53-30-321;
- 10 (i) with the approval of the prerelease center or prerelease program and confirmation by the department
- 11 of corrections that space is available and that the offender is a suitable candidate, an order that the offender be
- 12 placed in a chemical dependency treatment program, prerelease center, or prerelease program for a period not
- 13 to exceed 1 year;
- 14 (j) community service;
- 15 (k) home arrest as provided in Title 46, chapter 18, part 10;
- 16 (l) payment of expenses for use of a judge pro tempore or special master as provided in 3-5-116;
- 17 (m) participation in a day reporting program provided for in 53-1-203;
- 18 (n) participation in the 24/7 sobriety and drug monitoring program provided for in Title 44, chapter 4, part
- 19 12, for a violation of 61-8-465, a second or subsequent violation of 61-8-401, 61-8-406, or 61-8-411, or a second
- 20 or subsequent violation of any other statute that imposes a jail penalty of 6 months or more if the abuse of alcohol
- 21 or dangerous drugs was a contributing factor in the commission of the crime or for a violation of any statute
- 22 involving domestic abuse or the abuse or neglect of a minor if the abuse of alcohol or dangerous drugs was a
- 23 contributing factor in the commission of the crime regardless of whether the charge or conviction was for a first,
- 24 second, or subsequent violation of the statute;
- 25 (o) participation in a restorative justice program approved by court order and payment of a participation
- 26 fee of up to \$150 for program expenses if the program agrees to accept the offender;
- 27 (p) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the
- 28 protection of the victim or society;
- 29 (q) with approval of the program and confirmation by the department of corrections that space is
- 30 available, an order that the offender be placed in a residential treatment program; or

1 (r) any combination of the restrictions or conditions listed in this subsection (4).

2 (5) In addition to any other penalties imposed, if a person has been found guilty of an offense upon a  
3 verdict of guilty or a plea of guilty or nolo contendere and the sentencing judge finds that a victim, as defined in  
4 46-18-243, has sustained a pecuniary loss, the sentencing judge shall, as part of the sentence, require payment  
5 of full restitution to the victim, as provided in 46-18-241 through 46-18-249, whether or not any part of the  
6 sentence is deferred or suspended.

7 (6) In addition to any of the penalties, restrictions, or conditions imposed pursuant to subsections (1)  
8 through (5), the sentencing judge may include the suspension of the license or driving privilege of the person to  
9 be imposed upon the failure to comply with any penalty, restriction, or condition of the sentence. A suspension  
10 of the license or driving privilege of the person must be accomplished as provided in 61-5-214 through 61-5-217.

11 (7) In imposing a sentence on an offender convicted of a sexual or violent offense, as defined in  
12 46-23-502, the sentencing judge may not waive the registration requirement provided in Title 46, chapter 23, part  
13 5.

14 (8) If a felony sentence includes probation, the department of corrections shall supervise the offender  
15 unless the court specifies otherwise.

16 (9) When imposing a sentence under this section that includes incarceration in a detention facility or the  
17 state prison, as defined in 53-30-101, the court shall provide credit for time served by the offender before trial or  
18 sentencing.

19 (10) As used in this section, "dangerous drug" has the meaning provided in 50-32-101."

20 - END -