

1 HOUSE BILL NO. 425

2 INTRODUCED BY E. KERR-CARPENTER, A. BUCKLEY, R. LYNCH, D. BAUM

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO RESTITUTION  
5 PAYMENTS UNDER THE YOUTH COURT ACT; REVISING THE DEFINITION OF "VICTIM"; EXTENDING  
6 THE JURISDICTION OF THE YOUTH COURT RELATED TO RESTITUTION PAYMENTS TO A YOUTH'S  
7 25TH BIRTHDAY; PROVIDING THAT RESTITUTION PAID UNDER THE YOUTH COURT ACT IS NOT  
8 SUBJECT TO SUBROGATION; REQUIRING THE COURT TO RELIEVE AN INDIVIDUAL OF RESTITUTION  
9 PAYMENTS AT THE END OF THE COURT'S JURISDICTION IN CERTAIN CIRCUMSTANCES; PROVIDING  
10 THAT OUTSTANDING RESTITUTION AT THE EXPIRATION OF THE JURISDICTION OF THE COURT IS  
11 VOID; ALLOWING A YOUTH TO PETITION THE COURT FOR MODIFICATION OF A RESTITUTION ORDER;  
12 AND AMENDING SECTIONS 41-5-103, 41-5-205, 41-5-1521, AND 46-18-248, MCA."

13

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

15

16 **Section 1.** Section 41-5-103, MCA, is amended to read:

17 **"41-5-103. Definitions.** As used in the Montana Youth Court Act, unless the context requires  
18 otherwise, the following definitions apply:

19 (1) "Adult" means an individual who is 18 years of age or older.

20 (2) "Agency" means any entity of state or local government authorized by law to be responsible for  
21 the care or rehabilitation of youth.

22 (3) "Assessment officer" means a person who is authorized by the court to provide initial intake  
23 and evaluation for a youth who appears to be in need of intervention or an alleged delinquent youth.

24 (4) "Commit" means to transfer legal custody of a youth to the department or to the youth court.

25 (5) "Conditional release" means the release of a youth from a correctional facility subject to the  
26 terms and conditions of the conditional release agreement provided for in 52-5-126.

27 (6) (a) "Correctional facility" means a public secure residential facility or a private secure  
28 residential facility under contract with the department and operated to provide for the custody, treatment,

1 training, and rehabilitation of:

2 (i) formally adjudicated delinquent youth;

3 (ii) convicted adult offenders or criminally convicted youth; or

4 (iii) a combination of the populations described in subsections (6)(a)(i) and (6)(a)(ii) under  
5 conditions set by the department in rule.

6 (b) The term does not include a state prison as defined in 53-30-101.

7 (7) "Cost containment pool" means an account from which funds are allocated by the office of  
8 court administrator under 41-5-132 to a judicial district that exceeds its annual allocation for juvenile out-of-  
9 home placements, programs, and services or to the department for costs incurred under 41-5-1504.

10 (8) "Cost containment review panel" means the panel established in 41-5-131.

11 (9) "Court", when used without further qualification, means the youth court of the district court.

12 (10) "Criminally convicted youth" means a youth who has been convicted in a district court pursuant  
13 to 41-5-206.

14 (11) (a) "Custodian" means a person, other than a parent or guardian, to whom legal custody of the  
15 youth has been given.

16 (b) The term does not include a person who has only physical custody.

17 (12) "Delinquent youth" means a youth who is adjudicated under formal proceedings under the  
18 Montana Youth Court Act as a youth:

19 (a) who has committed an offense that, if committed by an adult, would constitute a criminal  
20 offense;

21 (b) who has been placed on probation as a delinquent youth and who has violated any condition of  
22 probation; or

23 (c) who has violated the terms and conditions of the youth's conditional release agreement.

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

25 (14) (a) "Department records" means information or data, either in written or electronic form,  
26 maintained by the department pertaining to youth who are committed under 41-5-1513(1)(b).

27 (b) ~~Department records do~~ The term does not include information provided by the department to  
28 the department of public health and human services' management information system or information

1 maintained by the youth court through the office of court administrator.

2 (15) "Detention" means the holding or temporary placement of a youth in the youth's home under  
3 home arrest or in a facility other than the youth's own home for:

4 (a) the purpose of ensuring the continued custody of the youth at any time after the youth is taken  
5 into custody and before final disposition of the youth's case;

6 (b) contempt of court or violation of a valid court order; or

7 (c) violation of the terms and conditions of the youth's conditional release agreement.

8 (16) "Detention facility" means a physically restricting facility designed to prevent a youth from  
9 departing at will. The term includes a youth detention facility, short-term detention center, and regional  
10 detention facility.

11 (17) "Emergency placement" means placement of a youth in a youth care facility for less than 45  
12 days to protect the youth when there is no alternative placement available.

13 (18) "Family" means the parents, guardians, legal custodians, and siblings or other youth with whom  
14 a youth ordinarily lives.

15 (19) "Final disposition" means the implementation of a court order for the disposition or placement  
16 of a youth as provided in 41-5-1422, 41-5-1503, 41-5-1504, 41-5-1512, 41-5-1513, and 41-5-1522 through 41-  
17 5-1525.

18 (20) (a) "Formal youth court records" means information or data, either in written or electronic form,  
19 on file with the clerk of district court pertaining to a youth under the jurisdiction of the youth court and includes  
20 petitions, motions, other filed pleadings, court findings, verdicts, orders and decrees, and predispositional  
21 studies.

22 (b) The term does not include information provided by the youth court to the department of public  
23 health and human services' management information system.

24 (21) "Foster home" means a private residence licensed by the department of public health and  
25 human services for placement of a youth.

26 (22) "Guardian" means an adult:

27 (a) who is responsible for a youth and has the reciprocal rights, duties, and responsibilities with the  
28 youth; and

1 (b) whose status is created and defined by law.

2 (23) "Habitual truancy" means recorded unexcused absences of 9 or more days or 54 or more parts  
3 of a day, whichever is less, in 1 school year.

4 (24) (a) "Holdover" means a room, office, building, or other place approved by the board of crime  
5 control for the temporary detention and supervision of youth in a physically unrestricting setting for a period not  
6 to exceed 24 hours while the youth is awaiting a probable cause hearing, release, or transfer to an appropriate  
7 detention or shelter care facility.

8 (b) The term does not include a jail.

9 (25) (a) "Informal youth court records" means information or data, either in written or electronic form,  
10 maintained by youth court probation offices pertaining to a youth under the jurisdiction of the youth court and  
11 includes reports of preliminary inquiries, youth assessment materials, medical records, school records, and  
12 supervision records of probationers.

13 (b) The term does not include information provided by the youth court to the department of public  
14 health and human services' management information system.

15 (26) (a) "Jail" means a facility used for the confinement of adults accused or convicted of criminal  
16 offenses. The term includes a lockup or other facility used primarily for the temporary confinement of adults  
17 after arrest.

18 (b) The term does not include a colocated juvenile detention facility that complies with 28 CFR,  
19 part 31.

20 (27) "Judge", when used without further qualification, means the judge of the youth court.

21 (28) "Juvenile home arrest officer" means a court-appointed officer administering or supervising  
22 juveniles in a program for home arrest, as provided for in Title 46, chapter 18, part 10.

23 (29) "Law enforcement records" means information or data, either in written or electronic form,  
24 maintained by a law enforcement agency, as defined in 7-32-201, pertaining to a youth covered by this chapter.

25 (30) (a) "Legal custody" means the legal status created by order of a court of competent jurisdiction  
26 that gives a person the right and duty to:

27 (i) have physical custody of the youth;

28 (ii) determine with whom the youth shall live and for what period;

1 (iii) protect, train, and discipline the youth; and

2 (iv) provide the youth with food, shelter, education, and ordinary medical care.

3 (b) An individual granted legal custody of a youth shall personally exercise the individual's rights  
4 and duties as guardian unless otherwise authorized by the court entering the order.

5 (31) "Necessary parties" includes the youth and the youth's parents, guardian, custodian, or  
6 spouse.

7 (32) (a) "Out-of-home placement" means placement of a youth in a program, facility, or home, other  
8 than a custodial parent's home, for purposes other than preadjudicatory detention.

9 (b) The term does not include shelter care or emergency placement of less than 45 days.

10 (33) (a) "Parent" means the natural or adoptive parent.

11 (b) The term does not include:

12 (i) a person whose parental rights have been judicially terminated; or

13 (ii) the putative father of an illegitimate youth unless the putative father's paternity is established by  
14 an adjudication or by other clear and convincing proof.

15 (34) "Probable cause hearing" means the hearing provided for in 41-5-332.

16 (35) "Regional detention facility" means a youth detention facility established and maintained by two  
17 or more counties, as authorized in 41-5-1804.

18 (36) "Restitution" means payments in cash to the victim or with services to the victim or the general  
19 community when these payments are made pursuant to a consent adjustment, consent decree, or other youth  
20 court order.

21 (37) "Running away from home" means that a youth has been reported to have run away from  
22 home without the consent of a parent or guardian or a custodian having legal custody of the youth.

23 (38) "Secure detention facility" means a public or private facility that:

24 (a) is used for the temporary placement of youth or individuals accused or convicted of criminal  
25 offenses or as a sanction for contempt of court, violation of the terms and conditions of the youth's conditional  
26 release agreement, or violation of a valid court order; and

27 (b) is designed to physically restrict the movements and activities of youth or other individuals held  
28 in lawful custody of the facility.

1 (39) "Serious juvenile offender" means a youth who has committed an offense that would be  
2 considered a felony offense if committed by an adult and that is an offense against a person, an offense against  
3 property, or an offense involving dangerous drugs.

4 (40) "Shelter care" means the temporary substitute care of youth in physically unrestricting facilities.

5 (41) "Shelter care facility" means a facility used for the shelter care of youth. The term is limited to  
6 the facilities enumerated in 41-5-347.

7 (42) "Short-term detention center" means a detention facility licensed by the department for the  
8 temporary placement or care of youth, for a period not to exceed 10 days excluding weekends and legal  
9 holidays, pending a probable cause hearing, release, or transfer of the youth to an appropriate detention facility,  
10 youth assessment center, or shelter care facility.

11 (43) "Substitute care" means full-time care of youth in a residential setting for the purpose of  
12 providing food, shelter, security and safety, guidance, direction, and, if necessary, treatment to youth who are  
13 removed from or are without the care and supervision of their parents or guardians.

14 (44) "Victim" means:

15 (a) a natural person who suffers property, physical, or emotional injury as a result of an offense  
16 committed by a youth that would be a criminal offense if committed by an adult;

17 (b) an adult relative of the victim, as defined in subsection (44)(a), if the victim is a minor; and

18 (c) an adult relative of a homicide victim.

19 (45) "Youth" means an individual who is less than 18 years of age without regard to sex or  
20 emancipation.

21 (46) "Youth assessment" means a multidisciplinary assessment of a youth as provided in 41-5-  
22 1203.

23 (47) "Youth assessment center" means a staff-secured location that is licensed by the department  
24 of public health and human services to hold a youth for up to 10 days for the purpose of providing an immediate  
25 and comprehensive community-based youth assessment to assist the youth and the youth's family in  
26 addressing the youth's behavior.

27 (48) "Youth care facility" has the meaning provided in 52-2-602.

28 (49) "Youth court" means the court established pursuant to this chapter to hear all proceedings in

1 which a youth is alleged to be a delinquent youth, a youth in need of intervention, or a youth alleged to have  
2 violated the terms and conditions of the youth's conditional release agreement and includes the youth court  
3 judge, juvenile probation officers, and assessment officers.

4 (50) "Youth detention facility" means a secure detention facility licensed by the department for the  
5 temporary substitute care of youth that is:

6 (a) (i) operated, administered, and staffed separately and independently of a jail; or

7 (ii) a collocated secure detention facility that complies with 28 CFR, part 31; and

8 (b) used exclusively for the lawful detention of alleged or adjudicated delinquent youth or as a  
9 sanction for contempt of court, violation of the terms and conditions of the youth's conditional release  
10 agreement, or violation of a valid court order.

11 (51) "Youth in need of intervention" means a youth who is adjudicated as a youth and who:

12 (a) commits an offense prohibited by law that if committed by an adult would not constitute a  
13 criminal offense, including but not limited to a youth who:

14 (i) violates any Montana municipal or state law regarding alcoholic beverages; or

15 (ii) continues to exhibit behavior, including running away from home or habitual truancy, beyond  
16 the control of the youth's parents, foster parents, physical custodian, or guardian despite the attempt of the  
17 youth's parents, foster parents, physical custodian, or guardian to exert all reasonable efforts to mediate,  
18 resolve, or control the youth's behavior; or

19 (b) has committed any of the acts of a delinquent youth but whom the youth court, in its discretion,  
20 chooses to regard as a youth in need of intervention."

21

22 **Section 2.** Section 41-5-205, MCA, is amended to read:

23 **"41-5-205. Retention of jurisdiction -- termination.** (1) The court may dismiss a petition or  
24 otherwise terminate jurisdiction on its own motion or on the motion or petition of any interested party at any  
25 time. Unless terminated by the court and except as provided in subsections (2) and ~~(3)~~ through (4), the  
26 jurisdiction of the court continues until the individual becomes 21 years of age.

27 (2) Court jurisdiction terminates when:

28 (a) the proceedings are transferred to district court under 41-5-208 or an information is filed

1 concerning the offense in district court pursuant to 41-5-206;

2 (b) the youth is discharged by the department; or

3 (c) execution of a sentence is ordered under 41-5-1605(2)(b)(iii) and the supervisory  
4 responsibilities are transferred to the district court under 41-5-1605.

5 (3) The jurisdiction of the court over an extended jurisdiction juvenile, with respect to the offense  
6 for which the youth was convicted as an extended jurisdiction juvenile, extends until the offender becomes 25  
7 years of age unless the court terminates jurisdiction before that date.

8 (4) The jurisdiction of the court over restitution payments extends until the offender becomes 25  
9 years of age unless the court terminates jurisdiction before that date.

10 ~~(4)(5)~~ The jurisdiction of the court is not terminated if the department issues a release from  
11 supervision due to the expiration of a commitment pursuant to 41-5-1522."

12

13 **Section 3.** Section 41-5-1521, MCA, is amended to read:

14 **"41-5-1521. Restitution.** (1) In determining whether restitution, as authorized by 41-5-1304, 41-5-  
15 1512, or 41-5-1513, is appropriate in a particular case, the following factors may be considered in addition to  
16 any other evidence:

17 (a) the age of the youth;

18 (b) the ability of the youth to pay;

19 (c) the ability of the parents, guardian, or those that contributed to the youth's delinquency or need  
20 for intervention to pay;

21 (d) the amount of damage to the victim; and

22 (e) legal remedies of the victim. However, the ability of the victim or the victim's insurer to stand  
23 any loss may not be considered.

24 (2) Restitution paid by a youth, a youth's parent or guardian, or a person who contributed to the  
25 delinquency of a youth is not subject to subrogation ~~as provided in 46-18-248.~~

26 ~~(3) (a) If the youth, the youth's parent or guardian, or a person who contributed to the delinquency~~  
27 ~~of the youth has not paid the full amount of restitution by the expiration of the jurisdiction of the court or when~~  
28 ~~the case is discharged, the court shall relieve the individual of the requirement to pay full or partial restitution if~~



1 ~~the youth, the youth's parent or guardian, or the person who contributed to the delinquency of the youth~~  
2 ~~presents evidence that the failure to pay restitution was not attributable to a failure on the individual's part to~~  
3 ~~make a good faith effort to pay the restitution amounts as ordered.~~ IF, AFTER A HEARING HELD IN ACCORDANCE  
4 WITH 41-5-1432, THE COURT FINDS THAT THE YOUTH MADE A GOOD FAITH EFFORT YET WAS UNABLE TO PAY  
5 RESTITUTION IN FULL, THE COURT SHALL RELIEVE THE INDIVIDUAL OF THE REQUIREMENT, AND THE BALANCE WILL BE  
6 VOID AND UNCOLLECTABLE.

7 (b) If the court finds that a good faith effort was not made to pay restitution as ordered, the youth  
8 may SHALL remain under the court's jurisdiction AS PROVIDED IN 41-5-208 for up to 3 4 years after the youth's  
9 21st birthday or the expiration of the court's jurisdiction UNTIL THE AGE OF 25. At the expiration of the court's  
10 jurisdiction, the balance of outstanding restitution is void and uncollectable.

11 (c) A youth under obligation to pay restitution may petition the court at any time for modification of  
12 the restitution order."

13

14 **Section 4.** Section 46-18-248, MCA, is amended to read:

15 **"46-18-248. Rights of state for crime victims compensation and assistance -- exception.** (1)

16 ~~Whenever~~ Except as provided in subsection (3), whenever a victim is paid from the state crime victims  
17 compensation and assistance program as provided in Title 53, chapter 9, part 1, for loss arising out of a  
18 criminal act, the state is subrogated, to the extent of the payment to the victim, to the rights of the victim to any  
19 restitution ordered by the court.

20 (2) The rights of the state are subordinate to the claims of multiple victims who have suffered loss  
21 arising out of multiple offenses by the same offender or arising from any transaction that is part of the same  
22 continuous scheme of criminal activity of an offender.

23 (3) Restitution paid by a youth, a youth's parent or guardian, or a person who contributed to the  
24 delinquency of a youth is not subject to subrogation, as provided in 41-5-1521."

25

- END -