

VOLUME NO. 37

OPINION NO. 94

AFTERCARE - Hearings, procedures; DEPARTMENT OF INSTITUTIONS - Aftercare hearings; JUVENILES - Aftercare hearings; YOUTH COURT ACT - Application to aftercare hearings; ATTORNEY GENERAL - Opinion when question decided by district court; REVISED CODES OF MONTANA, 1947, Sections 10-1211, 10-1214, 10-1214(1), 10-1214(2), 80-1414.1, 80-1414.1(6), 80-1416; MONTANA ADMINISTRATIVE CODES - Sections 20-2.2(2)-P240(5), 20-2.2(2)-P240(1).

- HELD: 1. The factors listed in section 10-1214(2) which provide the circumstances under which a youth may be detained in adult facilities are to be read conjunctively.
2. The department through its aftercare counselors determines that detention is required. A youth may be detained by the department only when detention or care is required to protect the person or property of the youth or others or he may abscond or be removed from the community. The department, however, may not order pre-hearing detention in a jail or other adult facility. A youth may not be detained in these facilities unless the youth court orders such detention as provided in section 10-1214(2).

15 December 1977

Robert L. Deschamps, III
Missoula County Attorney
Missoula County Courthouse
Missoula, Montana 59801

Dear Mr. Deschamps:

You have requested my opinion on the following questions pertaining to aftercare procedures:

1. Is detention which occurs on a weekend or holiday counted in determining section 80-1414.1(6)'s prohibition of detention longer than 72 hours pending a hearing on an alleged aftercare agreement violation?
2. Are the factors listed in section 10-1214(2) which provide the circumstances under which a youth may be detained in adult facilities to be read conjunctively or disjunctively?
3. Who determines that pre-hearing detention is warranted based on criteria in section 80-1414.1(6)?

Two titles of the Revised Codes of Montana (1947) must be examined in answering your questions. The Youth Court Act, sections 10-1201 to 1252 governs the initial disposition of youths alleged to be delinquent, in need of care, or who have committed crimes. Transfer of legal custody of a delinquent youth to the Department of Institutions is permissible disposition under the Youth Court Act. Section 10-1210(4)(d); section 10-1222(1)(d). A youth thereafter placed in a state juvenile facility may be released by the department upon signing an aftercare agreement. The release arrangement is similar to parole in that violation of the agreement may be a grounds for returning the youth to the juvenile facility. The department's authority to release the youth, and the provisions governing hearings on alleged violations of aftercare agreements are in sections 80-1414 to 1419. The Youth Court Act, however, is also relevant because section 80-1414.1(6) states that the "[p]rocedures for taking into custody and detention of a youth charged with violation of his aftercare agreement shall be as provided in sections 10-1211, and 10-1214, R.C.M. 1947...."

Section 80-1414.1(6) provides in part that "detention pending a hearing on alleged violations may not be for longer than seventy-two hours unless the time is extended, not to exceed five additional days, by the youth court upon stipulation of the youth or the youth's counsel and the state." The Department of Institutions has determined that weekends and holidays do not count, applying Rule 6(a) of the Montana Rules of Civil Procedure [MAC, § 20-2.2(2)-P240(5)]:

In computing any period of time...

[W]hen the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays and holidays shall be excluded in the computation.

The department based this rule on a youth court decision holding that Rule 6(a) governs computation of the 72 hour period. In the Matter of _____, a Youth, Order and Opinion dated March 15, 1976, Youth Court of the Fifteenth Judicial District, Roosevelt County, District Judge Alfred B. Coate presiding. Therefore, your first question is not properly the subject of an Attorney General's opinion. See section 82-401(6), R.C.M. 1947.

Your second question concerns shelter and detention facilities. Section 80-1414.1(6) provides that sections 10-1211 and 1214 govern custody and detention procedures. Section 10-1214(1) lists several permissible shelter arrangements. Section 10-1214(2) provides that "[t]he youth may be detained in a jail or other facility for the detention of adults only if: the facilities in subsection (1) are not available or do not provide adequate security; the detention is in an area physically and visually separate and removed from those of adults; it appears to the satisfaction of the court that public safety and protection reasonably require detention; and the court so orders." You question whether these factors are to be read conjunctively or disjunctively. It is a rule of statutory construction that when the Legislature uses the word "and," it intends that all requirements must be met. Sutherland, 1A Statutory Construction § 21.14 (1972). Cf. State ex rel. Normile v. Cooney, 100 Mont. 391, 398-399, 47 P.2d 637 (1935). It is therefore my opinion that these factors are to be read conjunctively and that a youth may not be detained in adult facilities unless the youth court so orders after finding that the listed criteria are met.

Apparently, some confusion existed about whether section 10-1214(2), which requires a youth court order prior to detention in adult facilities, should be read literally within the context of aftercare pre-hearing detention. Section 80-1414.1(6) simply provided that the procedures for detention of a youth charged with violation of his aftercare agreement was governed by section 10-1214. Because the youth court was not specifically mentioned by section 80-1414, and aftercare violations are within the jurisdiction of the department, the youth court's role was unclear. The Legislature's intention to involve the youth court in aftercare detention procedures, however, was clarified by its 1977 amendment to section 80-1414.1. The amendment left unaffected the seventy-two hour pre-hearing detention limitation but permits the hearing time to be extended "by the youth court upon stipulation of the youth or the youth's counsel and the state." (Emphasis added.) Section 80-1414.1(6), R.C.M. 1947. Therefore, section 10-1214(2) should be read literally, and neither the department nor the aftercare hearing referee has the power to determine that a youth shall be detained in a jail or other adult facility pending hearing on an alleged aftercare agreement violation.

Your last question concerns detention determinations. Section 80-1414.1(6) lists two situations justifying detention pending hearing on an alleged aftercare hearing violation:

...a youth may not be detained except when his detention or care is required to protect the person or property of the youth or of others; or he may abscond or be removed from the community in which the alleged violation occurred.

Section 80-1414.1(6) states that "procedures for taking into custody and detention of youth charged with violation of his aftercare agreement shall be as provided in sections 10-1211, and 10-1214, R.C.M. 1947...." Your question arises because neither section 80-1414.1 nor sections 10-1211 or 10-1214 address the question of who is authorized to determine that pre-hearing detention is warranted, i.e. who determines that the two factors listed in section 80-1414.1(6) are met. Section 10-1211 is solely concerned with taking a youth into custody (arrest in the adult context) as opposed to any extended care in a restricting facility pending hearing. See section 10-1203(19). Section 10-1214 specifies permissible places of detention, but does not speak to the initial question of whether detention is authorized.

The factor most indicative of the Legislature's intention is its parallel treatment of this type of detention determination under the Youth Court Act. Section 10-1209(4)(c) requires the probation officer in investigating an alleged delinquent youth to "determine," if the youth is in detention or shelter care, whether such detention or shelter care should be continued based upon criteria set forth in 10-1212 [detention is required to protect the person or property of the youth or others; he may abscond; additional criteria not found in the aftercare law, cf. section 10-1212 and 80-1414.1(6)]. The determination is therefore an administrative rather than a judicial one. In the context of aftercare release, control of the youth is vested in the Department of Institutions, section 80-1415, whose aftercare counselors are the administrative counterparts of probation officers under the Youth Court Act. See MAC, section 20-2.2(2)-P220. Therefore, it is the Department of Institutions through its aftercare counselors which determines that detention is warranted based on the criteria set forth in section 80-1414.1(6).

However, section 10-1214(2) limits the department's detention powers. A youth may not be detained in a jail or other adult detention facility absent an order by the youth court, as discussed previously.

THEREFORE, IT IS MY OPINION:

1. The factors listed in section 10-1214(2) which provide the circumstances under which a youth may be detained in adult facilities are to be read conjunctively.
2. The department through its aftercare counselors determines that detention is required. A youth may be detained by the department only when detention or care is required to protect the person or property of the youth or others or he may abscond or be removed from the community. The department, however, may not order pre-hearing detention in a jail or other adult facility. A youth may not be detained in these facilities unless the youth court orders such detention as provided in section 10-1214(2).

Very truly yours,

MIKE GREELY
Attorney General