

VOLUME NO. 43

OPINION NO. 45

JUVENILES - Application of registration requirements of Sexual Offender Registration Act to person under 18 adjudicated delinquent pursuant to Youth Court Act;

YOUTH COURT ACT - Application of registration requirements of Sexual Offender Registration Act to person under 18 adjudicated delinquent pursuant to Youth Court Act;

MONTANA CODE ANNOTATED - Sections 41-5-206, 45-2-101.

HELD: A juvenile who is adjudicated delinquent under the Youth Court Act and whose case has not been transferred to district court is exempt from the registration requirement of the Sexual Offender Registration Act.

November 29, 1989

Curt Chisholm, Director  
Department of Institutions  
1539 11th Avenue  
Helena MT 59620

Dear Mr. Chisholm:

You have requested my opinion concerning the following question:

Does the registration portion of the Sexual Offender Registration Act apply to a person under 18 who has been adjudicated delinquent pursuant to the Youth Court Act, but whose conduct, had he been an adult, would have been a violation of the offenses enumerated in the Sexual Offender Registration Act?

The 1989 legislative session enacted chapter 293, entitled the Sexual Offender Registration Act (SORA). Under section 5 of SORA, a sexual offender is required to register with the chief of police or the county sheriff within 14 days of entering a county of residence. A person subject to this registration requirement must comply for a period of ten years after conviction under section 7.

The new act does not include an express statement of purpose, although the purpose may be implied from section 9 of SORA, which states:

**Sentence upon conviction -- restriction on employment.** A judge sentencing a person upon conviction of a sexual offense shall, as a condition to probation, parole, or deferment or suspension of sentence, impose upon the defendant reasonable employment or occupational prohibitions and restrictions designed to protect the class or classes of persons containing the likely victims of further offenses by the defendant.

The original draft of this section reveals that occupational prohibitions were aimed particularly at child day care facility and school district employees, which suggests that one of the purposes of the Act is the prevention of potential contact between known sexual offenders and children.

Given this purpose, it could be argued that the Legislature's concern for protecting children extends not only to sexual offenders over the age of 18, but also to sexual offenders under 18 years of age whose employment puts them in close contact with children. In light of the ten-year registration period, these sexual offenders could be prevented from entering the target employment areas well into their adulthood, thereby furthering this purpose of SORA. However, I am constrained to conclude that SORA's registration requirement is not intended to extend to youths adjudicated delinquent under the Youth Court Act because of the definition of a sexual offender under SORA.

A sexual offender is defined in SORA as "a person who has been convicted of a sexual offense" under section 2, subsection 2 of the Act. A conviction is defined in section 45-2-101, MCA, of the criminal code as follows:

(15) "Conviction" means a judgment of conviction or sentence entered upon a plea of guilty or upon a verdict or finding of guilty of an offense rendered by a legally constituted jury or by a court of competent jurisdiction authorized to try the case without a jury.

Unlike the conviction procedure of the criminal code, the Youth Court Act is based upon an adjudication process which is noncriminal in nature. Section 41-5-106, MCA, provides:

No placement of any youth in any state youth correctional facility under this chapter shall be deemed commitment to a penal institution. No adjudication upon the status of any youth in the jurisdiction of the court shall operate to impose any of the civil disability imposed on a person by reason of conviction of a criminal offense, nor shall such adjudication be deemed a criminal conviction, nor shall any youth be charged with or convicted of any crime in any court except as provided in this chapter. Neither the disposition of a youth under this chapter nor evidence given in youth court proceedings under this chapter shall be admissible in evidence except as otherwise provided in this chapter.

Given that an adjudication of delinquency under the Youth Court Act is not to be deemed a criminal conviction unless the matter is transferred to a district court under section 41-5-206, MCA, a youth adjudicated delinquent under the Act cannot be considered a sexual offender for purposes of SORA. A juvenile who is adjudicated delinquent under the Youth Court Act and whose case has not been transferred to district court is exempt from SORA's application.

THEREFORE, IT IS MY OPINION:

A juvenile who is adjudicated delinquent under the Youth Court Act and whose case has not been transferred to district court is exempt from the registration requirement of the Sexual Offender Registration Act.

Sincerely,

MARC RACICOT  
Attorney General