

1
2 INTRODUCED BY Marking ^{House} BILL NO. 450
3

4 A BILL FOR AN ACT ENTITLED: "AN ACT MANDATING TRIAL AS AN ADULT FOR A PERSON 12 YEARS
5 OF AGE OR OLDER WHO COMMITS CERTAIN CRIMES; PROVIDING THAT THE MONTANA YOUTH COURT
6 ACT DOES NOT APPLY TO THOSE PERSONS; AND AMENDING SECTIONS 41-5-203 AND 41-5-206,
7 MCA."
8

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
10

11 **Section 1.** Section 41-5-203, MCA, is amended to read:

12 "**41-5-203. Jurisdiction of the court.** (1) Except as provided in ~~subsection~~ subsections (2) and
13 (3), the court has exclusive original jurisdiction of all proceedings under the Montana Youth Court Act in
14 which a youth is alleged to be a delinquent youth, a youth in need of supervision, or a youth in need of care
15 or concerning any person under 21 years of age charged with having violated any law of the state or
16 ordinance of any city or town other than a traffic or fish and game law prior to having become 18 years
17 of age.

18 (2) Justice, municipal, and city courts have concurrent jurisdiction with the youth court over all
19 alcoholic beverage and gambling violations alleged to have been committed by a youth.

20 (3) A youth 12 years of age or older charged with the commission of one of the following offenses
21 must be tried as an adult, and this chapter does not apply:

22 (a) deliberate homicide, 45-5-102;

23 (b) mitigated deliberate homicide, 45-5-103;

24 (c) aggravated assault, 45-5-202(1);

25 (d) kidnapping, 45-5-302, or aggravated kidnapping, 45-5-303, when the restrained person
26 sustained serious bodily injury as a result of the actions of the youth;

27 (e) robbery, 45-5-401, when, in the course of committing the offense, the youth inflicted serious
28 bodily injury upon another; or

29 (f) sexual intercourse without consent, 45-5-503.

30 (4) If a youth is found guilty in district court of any of the offenses listed in subsection (3) and is

1 sentenced to the state prison, the commitment must be to the department of corrections and human
 2 services. The department of corrections and human services shall confine the youth in whatever institution
 3 it considers proper, including a state youth correctional facility under the procedures of 52-5-111.
 4 However, a youth under 16 years of age may not be confined in the state prison. A youth charged with
 5 an offense listed in subsection (3) may not be detained or otherwise placed in a jail or other adult detention
 6 facility before final disposition of the case unless:

7 (a) alternative facilities do not provide adequate security; and

8 (b) the youth is kept in an area that provides physical, as well as sight and sound, separation from
 9 adults accused or convicted of criminal offenses."

10
 11 **Section 2.** Section 41-5-206, MCA, is amended to read:

12 **"41-5-206. Transfer to criminal court.** (1) After a petition has been filed alleging delinquency, the
 13 court may, upon motion of the county attorney, before hearing the petition on its merits, transfer the matter
 14 of prosecution to the district court if:

15 (a) (i) the youth charged was 12 years of age or ~~more~~ older at the time of the conduct alleged to
 16 be unlawful and the unlawful act would constitute ~~sexual intercourse without consent as defined in~~
 17 ~~45-5-503, deliberate homicide as defined in 45-5-102, mitigated deliberate homicide as defined in~~
 18 ~~45-5-103, or the attempt, as defined in 45-4-103, of either deliberate or mitigated deliberate homicide if~~
 19 the act had been committed by an adult; or

20 (ii) the youth charged was 16 years of age or ~~more~~ older at the time of the conduct alleged to be
 21 unlawful and the unlawful act is one or more of the following:

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

23 (B) arson as defined in 45-6-103;

24 (C) ~~aggravated or~~ felony assault as defined in 45-5-202;

25 (D) robbery, as defined in 45-5-401, when, in the course of committing the offense, the youth did
 26 not inflict serious bodily injury upon another;

27 (E) burglary or aggravated burglary as defined in 45-6-204;

28 (F) aggravated kidnapping, as defined in 45-5-303, when the restrained person did not sustain
 29 serious bodily injury as a result of the actions of the youth;

30 (G) possession of explosives as defined in 45-8-335;

1 (H) criminal sale of dangerous drugs as defined in 45-9-101;

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

3 (J) attempt, as defined in 45-4-103, of any of the acts enumerated in subsections (1)(a)(ii)(A)
4 through (1)(a)(ii)(I);

5 (b) a hearing on whether the transfer should be made is held in conformity with the rules on a
6 hearing on a petition alleging delinquency, except that the hearing will be conducted by the youth court
7 without a jury;

8 (c) notice in writing of the time, place, and purpose of the hearing is given to the youth, ~~his~~ the
9 youth's counsel, and ~~his~~ the youth's parents, guardian, or custodian at least 10 days before the hearing;
10 and

11 (d) the court finds upon the hearing of all relevant evidence that there is probable cause to believe
12 that:

13 (i) the youth committed the delinquent act alleged;

14 (ii) the seriousness of the offense and the protection of the community require treatment of the
15 youth beyond that afforded by juvenile facilities; and

16 (iii) the alleged offense was committed in an aggressive, violent, or premeditated manner.

17 (2) In transferring the matter of prosecution to the district court, the court may also consider the
18 following factors:

19 (a) the sophistication and maturity of the youth, determined by consideration of the youth's home,
20 environmental situation, and emotional attitude and pattern of living;

21 (b) the record and previous history of the youth, including previous contacts with the youth court,
22 law enforcement agencies, youth courts in other jurisdictions, prior periods of probation, and prior
23 commitments to juvenile institutions. However, lack of a prior juvenile history with youth courts will not
24 of itself be grounds for denying the transfer.

25 (3) The court shall grant the motion to transfer if the youth was 16 years old or older at the time
26 of the conduct alleged to be unlawful and the unlawful act would constitute ~~deliberate homicide as defined~~
27 ~~in 45-5-102, mitigated deliberate homicide as defined in 45-5-103,~~ or the attempt, as defined in 45-4-103,
28 of either deliberate or mitigated deliberate homicide if the act had been committed by an adult.

29 (4) Upon transfer to district court, the judge shall make written findings of the reasons why the
30 jurisdiction of the youth court was waived and the case transferred to district court.

