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House BILL NO. 327

INTRODUCED BY

*Bertram* *Coffe* *Bergman* *Nelson* *Blainard* *Albrecht*  
*Wells* *Wagner* *Kottel* **DENNY**

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT THE TAKING AND RESULTS OF A DRUG TEST IMPOSED AS A CONDITION OF PROBATION ARE ADMISSIBLE IN A PROCEEDING IN WHICH THE YOUTH IS ALLEGED TO HAVE POSSESSED DANGEROUS DRUGS; ALLOWING A YOUTH 16 YEARS OF AGE OR MORE TO BE TRIED AS AN ADULT FOR CRIMINAL POSSESSION OF DANGEROUS DRUGS; CHANGING FROM 21 TO 16 THE AGE AT WHICH A PERSON CONVICTED OF POSSESSION OF DANGEROUS DRUGS FOR THE FIRST TIME IS PRESUMED TO BE ENTITLED TO A DEFERRED INCARCERATION SENTENCE; PROVIDING THAT THE CONVICTED PERSON PAY THE MAXIMUM FINE ALLOWABLE FOR POSSESSION OF DANGEROUS DRUGS; AND AMENDING SECTIONS 41-5-206 AND 45-9-102, MCA."

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

**NEW SECTION. Section 1. Failure of drug test imposed as condition of probation -- use in evidence.** If testing for drugs is imposed as a condition of probation under 41-5-401, 41-5-523, or 41-5-524, the taking and results of the test are admissible in evidence in a youth court proceeding in which the youth is alleged to have violated 45-9-102 or in a criminal proceeding for violation of 45-9-102 if the youth is transferred to the district court for trial as an adult.

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

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

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

- 1 (ii) the youth charged was 16 years of age or more at the time of the conduct alleged to be unlawful  
2 and the unlawful act is one or more of the following:
- 3 (A) negligent homicide as defined in 45-5-104;
  - 4 (B) arson as defined in 45-6-103;
  - 5 (C) aggravated or felony assault as defined in 45-5-202;
  - 6 (D) robbery as defined in 45-5-401;
  - 7 (E) burglary or aggravated burglary as defined in 45-6-204;
  - 8 (F) aggravated kidnapping as defined in 45-5-303;
  - 9 (G) possession of explosives as defined in 45-8-335;
  - 10 (H) criminal sale of dangerous drugs as defined in 45-9-101;
  - 11 (I) criminal possession of dangerous drugs as defined in 45-9-102;
  - 12 ~~(J)~~ criminal production or manufacture of dangerous drugs as defined in 45-9-110;
  - 13 ~~(K)~~ attempt, as defined in 45-4-103, of any of the acts enumerated in subsections (1)(a)(ii)(A)  
14 through ~~(1)(a)(iii)(H)~~ (1)(a)(ii)(J);
- 15 (b) a hearing on whether the transfer should be made is held in conformity with the rules on a  
16 hearing on a petition alleging delinquency, except that the hearing must be conducted by the youth court  
17 without a jury;
- 18 (c) notice in writing of the time, place, and purpose of the hearing is given to the youth, the  
19 youth's counsel, and the youth's parents, guardian, or custodian at least 10 days before the hearing; and
- 20 (d) the court finds upon the hearing of all relevant evidence that there is probable cause to believe  
21 that:
- 22 (i) the youth committed the delinquent act alleged;
  - 23 (ii) the seriousness of the offense and the protection of the community require treatment of the  
24 youth beyond that afforded by juvenile facilities; and
  - 25 (iii) the alleged offense was committed in an aggressive, violent, or premeditated manner.
- 26 (2) In transferring the matter of prosecution to the district court, the court may also consider the  
27 following factors:
- 28 (a) the sophistication and maturity of the youth, determined by consideration of the youth's home,  
29 environmental situation, and emotional attitude and pattern of living;
  - 30 (b) the record and previous history of the youth, including previous contacts with the youth court,

1 law enforcement agencies, and youth courts in other jurisdictions, prior periods of probation, and prior  
2 commitments to juvenile institutions. However, lack of a prior juvenile history with youth courts is not of  
3 itself grounds for denying the transfer.

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

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

10 (5) The transfer terminates the jurisdiction of the youth court over the youth with respect to the  
11 acts alleged in the petition. A youth may not be prosecuted in the district court for a criminal offense  
12 originally subject to the jurisdiction of the youth court unless the case has been transferred as provided in  
13 this section. A case may be transferred to district court after prosecution as provided in 41-5-208 or  
14 41-5-1105.

15 (6) Upon order of the youth court transferring the case to the district court under subsection (5),  
16 the county attorney shall file the information against the youth without unreasonable delay.

17 (7) Any offense not enumerated in subsection (1) that arises during the commission of a crime  
18 enumerated in subsection (1) may be:

19 (a) tried in youth court;

20 (b) transferred to district court with an offense enumerated in subsection (1), upon motion of the  
21 county attorney and order of the youth court judge.

22 (8) If a youth is found guilty in district court of any of the offenses transferred by the youth court  
23 and is sentenced to the state prison, the commitment must be to the department of corrections. The  
24 department shall confine the youth in whatever institution that it considers proper, including a state youth  
25 correctional facility under the procedures of 52-5-111. However, a youth under 16 years of age may not  
26 be confined in the state prison.

27 (9) A youth whose case is transferred to district court may not be detained or otherwise placed  
28 in a jail or other adult detention facility before final disposition of the youth's case unless:

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

30 (b) the youth is kept in an area that provides physical, as well as sight and sound, separation from

1 adults accused or convicted of criminal offenses."

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3 **Section 3.** Section 45-9-102, MCA, is amended to read:

4 **"45-9-102. Criminal possession of dangerous drugs.** (1) A person commits the offense of criminal  
5 possession of dangerous drugs if ~~he~~ the person possesses any dangerous drug, as defined in 50-32-101.

6 (2) A person convicted of criminal possession of marijuana or its derivatives in an amount the  
7 aggregate weight of which does not exceed 60 grams of marijuana or 1 gram of hashish is, for the first  
8 offense, guilty of a misdemeanor and shall be punished by a fine of not less than \$100 or more than \$500  
9 and by imprisonment in the county jail for not more than 6 months. The minimum fine must be imposed  
10 as a condition of a suspended or deferred sentence. A person convicted of a second or subsequent offense  
11 under this subsection is punishable by a fine not to exceed \$1,000 or imprisonment in the county jail for  
12 a term not to exceed 1 year or in the state prison for a term not to exceed 3 years or both such fine and  
13 imprisonment.

14 (3) A person convicted of criminal possession of an anabolic steroid as listed in 50-32-226 is, for  
15 the first offense, guilty of a misdemeanor and shall be punished by a fine of not less than \$100 or more  
16 than \$500, ~~or~~ by imprisonment in the county jail for not more than 6 months, or both.

17 (4) A person convicted of criminal possession of an opiate, as defined in 50-32-101(19), shall be  
18 imprisoned in the state prison for a term of not less than 2 years or more than 5 years and may be fined  
19 not more than \$50,000, except as provided in 46-18-222.

20 (5) A person convicted of criminal possession of dangerous drugs not otherwise provided for in  
21 subsection (2), (3), or (4) shall be imprisoned in the state prison for a term not to exceed 5 years or be  
22 fined an amount not to exceed \$50,000, or both.

23 (6) A person of the age of ~~21~~ 16 years or under convicted of a first violation under this section is  
24 presumed to be entitled to a deferred imposition of sentence of imprisonment, but the maximum fine  
25 allowable for the offense must be imposed and the youth is solely responsible for payment of the fine.

26 (7) Ultimate users and practitioners and agents under their supervision acting in the course of a  
27 professional practice, as defined by 50-32-101, are exempt from this section."

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29 **NEW SECTION. Section 4. Codification instruction.** [Section 1] is intended to be codified as an  
30 integral part of Title 41, chapter 5, part 1, and the provisions of Title 41, chapter 5, apply to

1 [section 1].

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0327, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

A bill for an act providing that the taking and results of a drug test imposed as a condition of probation are admissible in a proceeding in which the youth is alleged to have possessed dangerous drugs; allowing a youth 16 years of age or more to be tried as an adult for criminal possession of dangerous drugs; changing from 21 to 16 the age at which a person convicted of possession of dangerous drugs for the first time is presumed to be entitled to a deferred incarceration sentence; providing that the convicted person pay the maximum fine allowable for possession of dangerous drugs.

ASSUMPTIONS:

1. The Department of Corrections (DOC) assumes that the youth court would incur the costs of drug testing for juveniles on probation.
2. DOC assumes this bill will only affect juveniles under the jurisdiction of the youth court and alleviates the necessity of proving foundation in a court of law for a drug test to be used as evidence. This change will have no fiscal impact.
3. Assume that current trends of juveniles convicted of criminal possession of dangerous drugs will continue. According to Montana Board of Crime Control (MBCC) statistics, there were 197 offenders convicted of this crime in 1993, 415 in 1994, 468 in 1995. The 3 calendar year average is 360. An average of 3.6% offenders were convicted of felony offenses. MBCC 1995 data shows that 41.4% of offenses were committed by juveniles over the age of 16. It is also assumed that 149 juveniles will be transferred to District Court (360 x .414) each year of the biennium.
4. DOC assumes that 3.6% of 149 or 5 offenders will be placed in the boot camp as will an additional 10% of the remaining 144 for a total of 19 offenders each year. The boot camp cost is \$114.39 per day and average length of stay is 90 days. Upon release, these offenders would participate in an aftercare program for 60 days at a cost of \$39.87 per day. Upon completion of the aftercare phase they would be supervised by adult probation and parole at a cost of \$2.68 per day for approximately 2 years.
5. The remaining 90% of the offenders (130) will be sentenced to adult probation. It is assumed that this supervision will last at least two years.
6. The \$2.68 per day includes FTE, personal services and operating costs for adult probation and parole officers to supervise the number of additional offenders.
7. There is no fiscal impact to the Department of Justice.
8. There is no fiscal impact to the Board of Crime Control.

FISCAL IMPACT:

<u>Expenditures:</u>	<u>FY98</u>	<u>FY99</u>
	<u>Difference</u>	<u>Difference</u>
FTE	2.00	4.00
Boot Camp (19 offenders/yr)	195,607	195,607
Aftercare	45,452	45,452
Parole supervision after Boot Camp	10,948	29,534
Probation costs (130/FY98, 260/FY99)	127,166	254,332
Total	379,173	524,925

Funding:

General Fund (01)	379,173	524,925
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LONG RANGE EFFECTS OF PROPOSED LEGISLATION:

There will be additional long range impact of this legislation as the offenders who will violate probation or parole requirements will subsequently be incarcerated.

*Dave Lewis* 1-31-97  
 DAVE LEWIS, BUDGET DIRECTOR DATE  
 Office of Budget and Program Planning

ELLEN BERGMAN, PRIMARY SPONSOR DATE

Fiscal Note for HB0327, as introduced

**HB 327**