

HOUSE BILL NO. 493

INTRODUCED BY S. KELLY, T. SHARP, E. BYRNE, J. ETCHART, D. BAUM

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING THE CRIME OF POSSESSION OF A STOLEN FIREARM ~~OR STOLEN AMMUNITION~~; PROVIDING A PENALTY; AND AMENDING ~~SECTIONS 41-5-206 AND SECTION~~ 45-8-405, MCA."

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

NEW SECTION. **Section 1. Possession of stolen firearm ~~or stolen ammunition~~ -- penalty.** (1) A person commits the offense of possession of a stolen firearm ~~or stolen ammunition~~ if the person purposely and knowingly receives, possesses, conceals, stores, barter, sells, or disposes of a stolen firearm ~~or stolen ammunition~~.

(2) A person convicted of the offense of possession of a stolen firearm shall be imprisoned in the state prison for a term not to exceed 10 years.

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

~~"41-5-206. Filing in district court prior to formal proceedings in youth court. (1) The county attorney may, in the county attorney's discretion and in accordance with the procedure provided in 46-11-201, file with the district court a motion for leave to file an information in the district court if:~~

~~(a) — the youth charged was 12 years of age or older at the time of the conduct alleged to be unlawful and the unlawful act would if it had been committed by an adult constitute:~~

~~(i) — sexual intercourse without consent as defined in 45-5-503;~~

~~(ii) — deliberate homicide as defined in 45-5-102;~~

~~(iii) — mitigated deliberate homicide as defined in 45-5-103;~~

~~(iv) — assault on a peace officer or judicial officer as defined in 45-5-210; or~~

~~(v) — the attempt, as defined in 45-4-103, of or accountability, as provided in 45-2-301, for either deliberate or mitigated deliberate homicide; or~~

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

- (i) — negligent homicide as defined in 45-5-104;
- (ii) — arson as defined in 45-6-103;
- (iii) — aggravated assault as defined in 45-5-202;
- (iv) — sexual assault as provided in 45-5-502(3);
- (v) — assault with a weapon as defined in 45-5-213;
- (vi) — robbery as defined in 45-5-401;
- (vii) — burglary or aggravated burglary as defined in 45-6-204;
- (viii) — aggravated kidnapping as defined in 45-5-303;
- (ix) — possession of a stolen firearm or stolen ammunition as defined in [section 1];
- (ix)(x) — possession of explosives as defined in 45-8-335;
- (x)(xi) — criminal distribution of dangerous drugs as defined in 45-9-101;
- (xi)(xii) — criminal possession of dangerous drugs as defined in 45-9-102(3);
- (xii)(xiii) — criminal possession with intent to distribute as defined in 45-9-103(1);
- (xiii)(xiv) — criminal production or manufacture of dangerous drugs as defined in 45-9-110;
- (xiv)(xv) — use of threat to coerce criminal street gang membership or use of violence to coerce criminal street gang membership as defined in 45-8-403;
- (xv)(xvi) — escape as defined in 45-7-306;
- (xvi)(xvii) — attempt, as defined in 45-4-103, of or accountability, as provided in 45-2-301, for any of the acts enumerated in subsections (1)(b)(i) through (1)(b)(xv)(xvi).

(2) — The county attorney shall file with the district court a petition for leave to file an information in district court if the youth was 17 years of age at the time the youth committed an offense listed under subsection (1).

(3) — The district court shall grant leave to file the information if it appears from the affidavit or other evidence supplied by the county attorney that there is probable cause to believe that the youth has committed the alleged offense. Within 30 days after leave to file the information is granted, the district court shall conduct a hearing to determine whether the matter must be transferred back to the youth court, unless the hearing is

~~waived by the youth or by the youth's counsel in writing or on the record. The hearing may be continued on request of either party for good cause. The district court may not transfer the case back to the youth court unless the district court finds, by a preponderance of the evidence, that:~~

~~(a) — a youth court proceeding and disposition will serve the interests of community protection;~~

~~(b) — the nature of the offense does not warrant prosecution in district court; and~~

~~(c) — it would be in the best interests of the youth if the matter was prosecuted in youth court.~~

~~(4) — The filing of an information in district court terminates the jurisdiction of the youth court over the youth with respect to the acts alleged in the information. A youth may not be prosecuted in the district court for a criminal offense originally subject to the jurisdiction of the youth court unless the case has been filed in the district court as provided in this section. A case may be transferred to district court after prosecution as provided in 41-5-208 or 41-5-1605.~~

~~(5) — An offense not enumerated in subsection (1) that arises during the commission of a crime enumerated in subsection (1) may be:~~

~~(a) — tried in youth court;~~

~~(b) — transferred to district court with an offense enumerated in subsection (1) upon motion of the county attorney and order of the district court. The district court shall hold a hearing before deciding the motion.~~

~~(6) — If a youth is found guilty in district court of an offense enumerated in subsection (1) and any offense that arose during the commission of a crime enumerated in subsection (1), the court shall sentence the youth pursuant to 41-5-2503 and Titles 45 and 46. If a youth is acquitted in district court of all offenses enumerated in subsection (1), the district court shall sentence the youth pursuant to Title 41 for any remaining offense for which the youth is found guilty. A youth who is sentenced to the department or a state prison must be evaluated and placed by the department in an appropriate correctional facility. The department shall confine the youth in an institution that it considers proper, including a correctional facility under the procedures of 52-5-111. However, a youth under 16 years of age may not be confined in a state prison facility. During the period of confinement, school-aged youth with disabilities must be provided an education consistent with the requirements of the federal Individuals With Disabilities Education Act, 20 U.S.C. 1400, et seq.~~

~~(7) — If a youth's case is filed in the district court and remains in the district court after the transfer hearing, the youth may be detained in a jail or other adult detention facility pending final disposition of the~~

youth's case if the youth is kept in an area that provides physical separation from adults accused or convicted of criminal offenses."

Section 2. Section 45-8-405, MCA, is amended to read:

"45-8-405. Pattern of criminal street gang activity. (1) For purposes of this part, "pattern of criminal street gang activity" means the commission, solicitation, conspiracy, or attempt, the adjudication as a delinquent youth for the commission, attempt, or solicitation, or the conviction of two or more of the offenses listed in subsection (2) within a 3-year period, which offenses were committed on separate occasions.

(2) The offenses that form a pattern of criminal street gang activity include:

- (a) deliberate homicide, as defined in 45-5-102;
- (b) assault with a weapon, as defined in 45-5-213;
- (c) intimidation, as defined in 45-5-203;
- (d) kidnapping, as defined in 45-5-302;
- (e) aggravated kidnapping, as defined in 45-5-303;
- (f) robbery, as defined in 45-5-401;
- (g) sexual intercourse without consent, as defined in 45-5-503;
- (h) aggravated sex trafficking, as defined in 45-5-706;
- (i) child sex trafficking, as defined in 45-5-711;
- (j) criminal mischief, as defined in 45-6-101;
- (k) arson, as defined in 45-6-103;
- (l) burglary, as defined in 45-6-204;
- (m) theft, as defined in 45-6-301;
- (n) forgery, as defined in 45-6-325;
- (o) tampering with witnesses and informants, as defined in 45-7-206;
- (p) bringing armed individuals into the state, as defined in 45-8-106;
- (q) unlawful possession of a firearm by a convicted person, as defined in 45-8-313;
- (r) carrying a concealed weapon, as defined in 45-8-316;
- (s) possession of a stolen firearm ~~or stolen ammunition~~, as defined in [section 1];

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Drafter: Rachel Weiss,

1 ~~(s)~~(t) possession of a deadly weapon by a prisoner, as defined in 45-8-318;

2 ~~(t)~~(u) possession of a destructive device, as defined in 45-8-334;

3 ~~(u)~~(v) possession of explosives, as defined in 45-8-335;

4 ~~(v)~~(w) possession of a sawed-off firearm, as defined in 45-8-340;

5 ~~(w)~~(x) the sale, possession for sale, transportation, manufacture, offer for sale, offer to manufacture,

6 or other offense involving a dangerous drug as prohibited by Title 45, chapter 9;

7 ~~(x)~~(y) use of threat to coerce criminal street gang membership or use of violence to coerce criminal

8 street gang membership provided in 45-8-403."

10 NEW SECTION. Section 3. Codification instruction. [Section 1] is intended to be codified as an
11 integral part of Title 45, chapter 8, part 3, and the provisions of Title 45, chapter 8, part 3, apply to [section 1].

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