

1 HOUSE BILL NO. 425
2 INTRODUCED BY E. KERR-CARPENTER, A. BUCKLEY, R. LYNCH, D. BAUM
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO RESTITUTION
5 PAYMENTS UNDER THE YOUTH COURT ACT; REVISING THE DEFINITION OF "VICTIM"; EXTENDING
6 THE JURISDICTION OF THE YOUTH COURT RELATED TO RESTITUTION PAYMENTS TO A YOUTH'S
7 25TH BIRTHDAY; PROVIDING THAT RESTITUTION PAID UNDER THE YOUTH COURT ACT IS NOT
8 SUBJECT TO SUBROGATION; REQUIRING THE COURT TO RELIEVE AN INDIVIDUAL OF RESTITUTION
9 PAYMENTS AT THE END OF THE COURT'S JURISDICTION IN CERTAIN CIRCUMSTANCES; PROVIDING
10 THAT OUTSTANDING RESTITUTION AT THE EXPIRATION OF THE JURISDICTION OF THE COURT IS
11 VOID; ALLOWING A YOUTH TO PETITION THE COURT FOR MODIFICATION OF A RESTITUTION ORDER;
12 AND AMENDING SECTIONS 41-5-103, 41-5-205, 41-5-1521, AND 46-18-248, MCA."

13

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

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16 **Section 1.** Section 41-5-103, MCA, is amended to read:

17 **"41-5-103. Definitions.** As used in the Montana Youth Court Act, unless the context requires
18 otherwise, the following definitions apply:

19 (1) "Adult" means an individual who is 18 years of age or older.

20 (2) "Agency" means any entity of state or local government authorized by law to be responsible for
21 the care or rehabilitation of youth.

22 (3) "Assessment officer" means a person who is authorized by the court to provide initial intake
23 and evaluation for a youth who appears to be in need of intervention or an alleged delinquent youth.

24 (4) "Commit" means to transfer legal custody of a youth to the department or to the youth court.

25 (5) "Conditional release" means the release of a youth from a correctional facility subject to the
26 terms and conditions of the conditional release agreement provided for in 52-5-126.

27 (6) (a) "Correctional facility" means a public secure residential facility or a private secure

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Drafter: Rachel Weiss, 406-444-5367

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1 **Section 2.** Section 41-5-205, MCA, is amended to read:

2 **"41-5-205. Retention of jurisdiction -- termination.** (1) The court may dismiss a petition or
3 otherwise terminate jurisdiction on its own motion or on the motion or petition of any interested party at any
4 time. Unless terminated by the court and except as provided in subsections (2) and ~~(3)~~ through (4), the
5 jurisdiction of the court continues until the individual becomes 21 years of age.

6 (2) Court jurisdiction terminates when:

7 (a) the proceedings are transferred to district court under 41-5-208 or an information is filed
8 concerning the offense in district court pursuant to 41-5-206;

9 (b) the youth is discharged by the department; or

10 (c) execution of a sentence is ordered under 41-5-1605(2)(b)(iii) and the supervisory
11 responsibilities are transferred to the district court under 41-5-1605.

12 (3) The jurisdiction of the court over an extended jurisdiction juvenile, with respect to the offense
13 for which the youth was convicted as an extended jurisdiction juvenile, extends until the offender becomes 25
14 years of age unless the court terminates jurisdiction before that date.

15 (4) The jurisdiction of the court over restitution payments extends until the offender becomes 25
16 years of age unless the court terminates jurisdiction before that date.

17 ~~(4)(5)~~ The jurisdiction of the court is not terminated if the department issues a release from
18 supervision due to the expiration of a commitment pursuant to 41-5-1522."

19

20 **Section 3.** Section 41-5-1521, MCA, is amended to read:

21 **"41-5-1521. Restitution.** (1) In determining whether restitution, as authorized by 41-5-1304, 41-5-
22 1512, or 41-5-1513, is appropriate in a particular case, the following factors may be considered in addition to
23 any other evidence:

24 (a) the age of the youth;

25 (b) the ability of the youth to pay;

26 (c) the ability of the parents, guardian, or those that contributed to the youth's delinquency or need
27 for intervention to pay;

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1 (d) the amount of damage to the victim; and

2 (e) legal remedies of the victim. However, the ability of the victim or the victim's insurer to stand
3 any loss may not be considered.

4 (2) Restitution paid by a youth, a youth's parent or guardian, or a person who contributed to the
5 delinquency of a youth is not subject to subrogation ~~as provided in 46-18-248.~~

6 (3) (a) ~~If the youth, the youth's parent or guardian, or a person who contributed to the delinquency~~
7 ~~of the youth has not paid the full amount of restitution by the expiration of the jurisdiction of the court or when~~
8 ~~the case is discharged, the court shall relieve the individual of the requirement to pay full or partial restitution if~~
9 ~~the youth, the youth's parent or guardian, or the person who contributed to the delinquency of the youth~~
10 ~~presents evidence that the failure to pay restitution was not attributable to a failure on the individual's part to~~
11 ~~make a good faith effort to pay the restitution amounts as ordered. If, after a hearing held in accordance with~~
12 ~~41-5-1432, the court finds that the youth made a good faith effort yet was unable to pay restitution in full, the~~
13 ~~court shall relieve the individual of the requirement, and the balance will be void and uncollectable.~~

14 (b) ~~If the court finds that a good faith effort was not made to pay restitution as ordered, the youth~~
15 ~~may shall remain under the court's jurisdiction as provided in 41-5-208 for up to 3 4 years after the youth's 21st~~
16 ~~birthday or the expiration of the court's jurisdiction until the age of 25. At the expiration of the court's jurisdiction,~~
17 ~~the balance of outstanding restitution is void and uncollectable.~~

18 (c) ~~A youth under obligation to pay restitution may petition the court at any time for modification of~~
19 ~~the restitution order."~~

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21 **Section 4.** Section 46-18-248, MCA, is amended to read:

22 **"46-18-248. Rights of state for crime victims compensation and assistance -- exception.** (1)

23 ~~Whenever~~ Except as provided in subsection (3), whenever a victim is paid from the state crime victims
24 compensation and assistance program as provided in Title 53, chapter 9, part 1, for loss arising out of a
25 criminal act, the state is subrogated, to the extent of the payment to the victim, to the rights of the victim to any
26 restitution ordered by the court.

27 (2) The rights of the state are subordinate to the claims of multiple victims who have suffered loss