

HOUSE BILL NO. 741

INTRODUCED BY L. SMITH, K. SEEKINS-CROWE

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A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE YOUTH COURT ACT; PROVIDING DEFINITIONS; PROVIDING REQUIREMENTS THAT MUST BE MET PRIOR TO INTERROGATING A YOUTH; PROHIBITING CERTAIN CONDUCT RELATED TO INTERROGATING A YOUTH; AND AMENDING SECTION 41-5-331, MCA."

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

**Section 1.** Section 41-5-331, MCA, is amended to read:

**"41-5-331. Rights of youth taken into custody -- questioning -- waiver of rights.** (1) As used in this section:

(a) "Interrogation" means any express questioning or any words or actions that are reasonably likely to elicit an incriminating response.

(b) "Trusted adult" means an adult that is not the youth's parent or guardian:

(i) who has an established relationship with the child to the extent that the adult can provide meaningful advice and concerned help to the child should the need arise; and

(ii) who is not hostile or adverse to the child's interest.

~~(1)(2)~~ When a youth is taken into custody for questioning ~~upon~~ on a matter that could result in a petition alleging that the youth is either a delinquent youth or a youth in need of intervention, the following requirements must be met:

(a) The youth must be advised of the youth's right against self-incrimination and the youth's right to counsel.

(b) The investigating officer, juvenile probation officer, or person assigned to give notice shall immediately notify the parents, guardian, or legal custodian of the youth that the youth has been taken into custody, the reasons for taking the youth into custody, and where the youth is being held. If the parents, guardian, or legal custodian cannot be found through diligent efforts, a close relative or ~~friend~~ trusted adult

1 chosen by the youth must be notified.

2 ~~(2)(3)~~ A youth may waive the rights listed in subsection ~~(4)~~ (2) under the following situations:

3 (a) when the youth is 16 years of age or older and counsel is present, the youth may make an  
4 effective waiver subject to the provisions of 41-5-333(2);

5 (b) when the youth is under 16 years of age, counsel is present, and the youth and the youth's  
6 parent or guardian agree, they may make an effective waiver subject to the provisions of 41-5-333(2); or

7 (c) when the youth is under 16 years of age and the youth and the youth's parent or guardian do  
8 not agree, the youth may make an effective waiver only with advice of counsel.

9 (4) If a youth is in custody and subject to an interrogation for an offense, an interrogation may not  
10 occur unless counsel is present for the entirety of questioning. Additionally, the child has the right:

11 (a) to have the child's parent or guardian present during an interrogation of the child; or

12 (b) to have a trusted adult present during an interrogation of the child if:

13 (i) there is reason to believe that the child's parent or guardian has abused or threatened the  
14 child; or

15 (ii) the child's parent's or guardian's interest is adverse to the child's interest, including that the  
16 parent or guardian is a victim or a codefendant of the offense alleged to have been committed by the child.

17 (5) (a) A youth may not be interrogated unless:

18 (i) they have had a reasonable opportunity to consult with legal counsel;

19 (ii) legal counsel is present during the entirety of questioning;

20 (iii) reasonable notice of the questioning is provided to the youth's parents, guardian, or trusted  
21 adult, who is allowed a reasonable amount of time to travel to the place of questioning in order to be present;  
22 and

23 (iv) the questioning is recorded.

24 (b) If the youth does not have legal counsel present, the questions must be limited to those  
25 reasonably necessary to protect life or property from an imminent threat.

26 (6) Law enforcement, a detention center employee, a peace officer interrogating a youth, or an  
27 individual interrogating a youth on behalf of a peace officer or a law enforcement agency may not knowingly:

28 (a) provide false information about evidence that is reasonably likely to elicit an incriminating

1 response from the child;  
2 (b) employ threats, physical harm, deception, or psychologically manipulative interrogation tactics;  
3 or  
4 (c) make an unauthorized statement about leniency for the offense.  
5 (7) If subsections (5) or (6) are not complied with, the noncompliance creates a rebuttable  
6 presumption that any statement made by a youth during questioning is inadmissible.  
7 (8) A peace officer may question a youth if the peace officer reasonably believes the information  
8 the officer seeks is necessary to protect life or property from an imminent threat, provided the officer complies  
9 with subsection (6) and limits questions to those that are reasonably necessary to obtain information related to  
10 the imminent threat."

11 - END -