

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 23-0701

IN THE MATTER OF:

W.D.,

Youth Under The Age of 18.

REDACTED BRIEF OF APPELLEE

On Appeal from the Montana First Judicial District Court,
Lewis and Clark County, The Honorable Kathy Seeley, Presiding

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STATEMENT OF THE ISSUES

Whether the youth court had authority under Mont. Code Ann. §§ 41-5-208(4) and -1422(1) to place W.D. in a correctional facility until age 25 and require him to register as a sexual offender when the court transferred the matter to the district court and found that W.D. had violated his disposition previously imposed under Mont. Code Ann. § 41-5-1513.

STATEMENT OF THE CASE

On August 5, 2019, the State filed a Petition in the youth court alleging that W.D. had committed the offense of sexual assault, in violation of Mont. Code Ann. § 45-5-502(3),¹ which would be a felony if committed by an adult. (Doc. 6 at 2.) W.D. admitted he had committed the offense and the court found him to be a delinquent youth. (Doc. 24 at 2; 8/21/19 Tr. at 4.) W.D.'s mother arranged for him to be voluntarily admitted to an out-of-state residential treatment center for sexually reactive youth before the dispositional hearing was held. (Docs. 20 at 1-2, 21 at 2.)

The youth court held a dispositional hearing on March 3, 2021, and placed W.D. on probation with conditions until the age of 20, designated him a Tier II

¹ Unless otherwise noted, all references to the Montana Code Annotated are to the 2019 version.

sexual offender, and ordered that W.D. would not be required to register at that time, but “may be required to register upon revocation[.]” (Doc. 24 at 2.) W.D. was ordered to follow conditions, including that he complete sexual offender treatment, comply with all recommendations of his therapist, follow the “conditions of house arrest/curfew, group-home/shelter placement, . . . as determined necessary by the Juvenile Probation Department,” and remain law abiding. (*Id.* at 2-5.) If W.D. “fail[ed] to follow the conditions of his probation order the Juvenile Probation Department [could], at its discretion, bring th[e] matter back to Court for the purpose of re-disposition.” (*Id.* at 6.)

On August 24, 2021, the State filed a Petition to Revoke Probation based on W.D.’s unsuccessful discharge from two different residential treatment centers. (Doc. 27.) W.D. entered admissions to the allegations in the State’s Petition to Revoke, and the youth court committed W.D. to the Montana Department of Corrections (DOC), to be placed in a correctional facility until age 18. (Doc. 32 at 2.) W.D. was required to comply with all previously ordered conditions until the age of 21. (*Id.* at 3.) The order advised that after he was released from the Pine Hills Correctional Facility (Pine Hills), the court would hold a hearing to determine whether he would be required to register as a sexual offender. (*Id.*) As before, the court also stated that the Juvenile Probation Department could bring the matter

back to court for the purpose of re-disposition if W.D. failed to follow the conditions of his probation order. (*Id.* at 4.)

In May 2022, W.D. was released from Pine Hills because he turned 18. (Docs. 39, 41.) The court held a status hearing, and the parties agreed to hold a hearing in six months or sooner to determine whether W.D. would have to register as a sexual offender. (6/22/22 Tr. at 16-18.)

On September 26, 2022, the State filed a motion requesting the court set a Mont. Code Ann. § 41-5-208 transfer hearing. (Doc. 44.) In the motion, the State identified W.D.'s conduct that violated specific court-ordered conditions. (*Id.* at 2.)

On September 29, 2022, the court held a hearing on the State's motion. (Doc. 45.) Officer Flynn testified that he went to W.D.'s residence every day and attended sexual offender treatment with him, things he had never had to do for any other juvenile offender during his 16 years as a juvenile probation officer. (9/29/22 Tr. at 4, 6-14.) He said he could not ensure W.D.'s compliance with his youth court disposition. (*Id.*) While adult probation and parole had more tools, Officer Flynn said they would not be able to adequately supervise W.D. in the community. (*Id.*)

The youth court transferred jurisdiction to the district court and transferred supervisory responsibility to adult probation and parole services until W.D. reaches age 25. (Doc. 48.) The court adopted Officer Flynn's recommendation and committed W.D. to the DOC until age 25, recommended he be placed at the

Missoula Assessment and Sanction Center (MASC) to participate in and complete his required sexual offender treatment, followed by placement to be determined by adult probation and parole. (Doc. 49 at 2.) The court also ordered W.D., at any time not incarcerated, to register as a Tier II sexual offender. (*Id.*)

STATEMENT OF THE FACTS

I. Original disposition

On July 29, 2019, when W.D. was 15 years old, he was at “JFK Park in East Helena playing tag with a—a nine-year-old girl. After playing tag with her a little bit, [he] went and played doctor. And [he] tried—so [he] pulled off her clothes. [He] touched the girl everywhere trying to get off—her clothes off, including her private area.” (8/21/19 Tr. at 8.) The touching was sexual in nature. (*Id.*) The State filed a Petition asking the youth court to declare W.D. a delinquent youth because he had committed the offense of sexual assault against M.H., who was less than 16 years of age and more than 3 years younger than W.D. (Doc. 6 at 2.) W.D. admitted he had committed the sexual assault against M.H. (8/21/19 Tr. at 8.) The court ordered a psychosexual evaluation. (*Id.* at 9.)

Officer Flynn filed a report with the court prior to the dispositional hearing. (Doc. 20.) He outlined W.D.’s history, noting that he “had many behavioral problems” during sixth and seventh grade, with the primary concern being his

interactions with other children, especially girls. (*Id.* at 2.) W.D. often approached them, tried to get close to them, or touch them inappropriately. (*Id.*) He also had to be physically restrained five or six times during this period. (*Id.*) In seventh grade, he was assigned a one-on-one paraprofessional who directly supervised him throughout the entire school day. (*Id.*) In September or October of his eighth-grade year, W.D. was placed in a series of out-of-home treatment centers. (*Id.*)

W.D. had been involved in counseling, primarily through A.W.A.R.E., since he was 5 or 6 years old. (*Id.*) He had been admitted to the Shodair Children's Hospital numerous times. (*Id.*) W.D. was placed at the Lost Creek Home in Anaconda when he was 13 years old, and the next year, he was placed at the Center for Mental Health group home in Great Falls. (*Id.*) W.D. ran away from the group home in Great Falls, assaulted a staff member on July 17, 2019, and was returned to his family home. (*Id.*) W.D. committed the sexual assault which led to the State filing the youth court petition less than two weeks later.

The report outlined where W.D. had been placed since he committed the sexual assault. (*Id.* at 2.) On August 1, 2019, W.D. had been transported to the Cascade County Youth Detention Center. (*Id.*) His mother subsequently arranged for his admission to Benchmark Behavioral Health (Benchmark), a residential treatment center in Utah that specializes in treating sexually reactive youth. (*Id.*) W.D. stayed at Benchmark until November 26, 2019, when Montana Medicaid

determined he no longer needed that level of care. (*Id.*) W.D. was released to his mother's care in East Helena. (*Id.*)

W.D.'s mother reported that he decompensated rapidly after returning home. (*Id.* at 3.) He regularly called 911 for non-emergencies, flooded the apartment and the landlord's apartment below, would not take his medications, and broke things around the house. (*Id.*) On January 23, 2020, W.D.'s mother successfully had him admitted to Sequel Mountain Home Academy (Sequel), in Mountain Home, Idaho. (*Id.*)

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² Information found exclusively in the Psychological Services Consultation (Doc. 21) and/or the Juvenile Psychosexual Examination (Doc. 31) has been redacted in this brief. *See* Mont. Code Ann. §§ 41-5-1513(2)(a), 46-18-113, and M. R. App. P. 10(7)(a).

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The youth court held a dispositional hearing on March 3, 2021. A report from Sequel regarding W.D.'s progress was provided to the court. (3/3/21 Tr. at 5.) The court noted that while Sequel said W.D. had made some positive progress, "he ha[d] not reduced his level of need and level of risk sufficiently enough to warrant his reduction in supervision and oversight from a level one facility. Currently

Sequel is the least restrictive environment for which to have [W.D.] complete his treatment, and he is expected to complete his program in October of this year.”

(Id.)

The court placed W.D. on probation with conditions until the age of 20, designated him a Tier II sexual offender, and ordered that he would not be required to register at that time, but “may be required to register upon revocation[.]”

(Doc. 24 at 2.) The order stated that if W.D. “fail[ed] to follow the conditions of his probation order the Juvenile Probation Department may, at its discretion, bring th[e] matter back to Court for the purpose of re-disposition.” *(Id. at 6.)* Among other things, W.D. was not to have any unsupervised contact with anyone under the age of 18, was to participate in and successfully complete sexual offender treatment with an MSOTA provider and follow all rules and programming, and remain law-abiding. *(Id. at 2-5.)*

II. Revocation pursuant to Mont. Code Ann. § 41-5-1431

W.D. remained at Sequel following his dispositional hearing. A progress summary from the facility, written May 27, 2021, explained that over the 16 months W.D. had been residing there, he had “been involved in 33 incidents, 8 of which ha[d] required emergency safety physical intervention in order to prevent him from harming himself or others. Of the 33 incidents, 8 ha[d] taken place since

January 2021 and include aggressive behaviors as well as property damage and physical assault.” (Doc. 30 at 1.)

The licensed professional counselor and clinical supervisor noted W.D. was 17 and said there was “growing concern that his pattern of conduct [wa]s progressively moving towards more antisocial personality traits, suggesting that he [wa]s developing more criminal type tendencies.” (*Id.*) The providers explained that a youth’s treatment progress is measured by the review of 18 different markers of treatment need called Observable Treatment Indicators (OTI). (*Id.* at 2.) When W.D. had been admitted to Sequel, he presented with an OTI percentage of 100%, meaning his level of need was extremely high. (*Id.*) By April 2020, W.D. managed to “lower[] his level to less than 50%.” (*Id.*) However, by May 27, 2021, W.D.’s OTI level was scored at 72.2%, “demonstrating an increase in recent negative behaviors suggesting overall regression within his behavioral presentation.” (*Id.*) “It [wa]s strongly recommended that [W.D.] be considered for a higher level of care to include potential secure settings which can ensure the safety of those around [W.D.]” (*Id.*)

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On July 28, 2021, W.D. was moved from Sequel to Youth Health Associates (YHA) in Clearview, Utah. (Doc. 29 at 2.) In a Report to the Court, Officer Flynn said that within two days of arriving at YHA, W.D. was “threatening to run away and assault staff, kill staff, and sexually assault staff if they followed him.” (*Id.*) Officer Flynn said W.D. “regained control of himself and did okay for a few weeks before absconding from the facility 4-5 times over the weekend of August 14th.” (*Id.*) W.D. later disclosed to his therapist that “while he was wandering around stores in the community, he spotted some young children and was fanaticizing about acting out sexually upon them.” (*Id.*) YHA terminated W.D. from their program. (*Id.*)

On August 17, 2021, at Office Flynn’s request, the youth court issued a pickup and hold order for W.D. based on allegations that he had violated his conditions of probation by being unsuccessfully terminated from his treatment program at YHA. (Doc. 25.) W.D. was transported to the Five County Youth Detention Center in Idaho on August 19, 2021. (Doc. 29 at 2.)

The State subsequently filed a Petition to Revoke Probation, alleging W.D. violated the terms of the youth court's order by being unsuccessfully discharged from his treatment at Sequel and by being unsuccessfully discharged from his treatment at YHA. (Doc. 27 at 2.)

W.D. entered admissions to the allegations in the State's Petition to Revoke Probation. (9/1/21 Tr. at 7-9.) Both the State and W.D.'s counsel said they agreed with the recommendation in Officer Flynn's report. (*Id.* at 10.) W.D. said he understood the recommendation was for him to go to Pine Hills and that he was not going to say he should not go there. (*Id.* at 10-11.)

The court found W.D. to be a delinquent youth and serious juvenile offender, and that all reasonable efforts had been made to keep him in his home and community. (*Id.* at 11.) The youth court committed W.D. to the DOC until age 18 for placement in a correctional facility. (*Id.* at 11; Doc. 32 at 2.) The court said it would hold a hearing after W.D.'s release from the Pine Hills Correctional Facility to determine whether he would be required to register as a sexual offender. (Doc. 32 at 3.) The court ordered W.D. to comply with all previously ordered conditions until age 21, complete sexual offender treatment, and follow all recommendations of the therapist. (*Id.* at 3-4.) Like the previous dispositional order, the order permitted the Juvenile Probation Department to bring the matter

back to the youth court for the purpose of redistribution in the event W.D. failed to follow his conditions. (*Id.* at 4.)

The day before W.D.'s 18th birthday in May 2022, W.D. was released from the custody and supervision of the DOC, remanded back to youth court and juvenile probation supervision, and returned to live with his mother in East Helena. (Docs. 39 at 4, 41; 9/29/22 Tr. at 8-11.) Pine Hills completed a progress report which was filed with the youth court. (Doc. 39.) The report noted W.D. had completed the minimum credits to earn his high school diploma, was compliant with his medication, and was maintaining his appointments with the child psychiatrist. (*Id.* at 2-3.) However, the report also addressed concerns and issues. (*Id.* at 3.)

During a review in November 2021, W.D. had admitted to sexually inappropriate behavior and had to be restricted from being within six feet of his peers. (*Id.*) On May 12, 2022, just before W.D. aged out of Pine Hills, W.D.'s unit manager noted that he "ha[d] not made much or any progress regarding his previous issues with boundaries." (*Id.*) Additionally, W.D. "was involved in a PREA allegation with another youth that [wa]s currently being investigated." (*Id.*) The report noted that W.D. had successfully completed the inpatient portion of his required sexual offender treatment but would need to continue outpatient treatment in the community with the identified provider. (*Id.*)

On June 22, 2022, consistent with the youth court's revocation order, the court held a status hearing to address whether W.D. would need to register as a sexual offender. At the hearing, Officer Flynn explained that W.D. "age[d] out" of Pine Hills and had been on GPS monitoring based on his behavior the last time he was in the community. (6/22/22 Tr. at 6-7.) He said initially after W.D.'s release from Pine Hills, he had been fairly compliant. (*Id.* at 7.) However, in the weeks preceding the hearing, he had been pushing boundaries. (*Id.* at 8.) W.D. had gotten himself a job, which Officer Flynn said was "commendable," but he did not have permission to do so, and it was not within his treatment plan to be in the community unsupervised. (*Id.*) Additionally, the night before the hearing, W.D. had been at his grandparents' house and had been walking around the trailer park unsupervised, "seeking out and interacting with seven to nine, ten-year-old kids in the park . . . asking them to play games and things. (*Id.*) W.D. was "[a]bsolutely not" supposed to have contact with children under the age of 18. (*Id.* at 8-9.)

Officer Flynn told the court that "miraculously someone 12 years ago or so put [W.D.] on the DD waiver list" for services for individuals with developmental delays. (*Id.* at 9.) W.D. now had a case manager that Officer Flynn was working with to find a group home for individuals with developmental delays, where he could be supervised and receive the treatment he needed. (*Id.*) So far, no one would accept W.D. (*Id.*)

Officer Flynn said W.D.’s therapist at Pine Hills had recommended that he should register as a sexual offender but had not offered an explanation as to why. (*Id.* at 10.) On the other hand, his current therapist was not recommending registration. (*Id.* at 11.) Officer Flynn said it was “a big unknown” as to whether registration would complicate placing W.D. in a group home. (*Id.* at 13.) He had been trying to get more information from the caseworker about any possible effects on placement, but she was on vacation. (*Id.* at 14.) Officer Flynn believed a group home would “[a]bsolutely” be in W.D.’s best interest. (*Id.* at 13.) If W.D. could not live somewhere where “he could be supervised, safe, [and] treated,” it would create an increased risk for the community. (*Id.*) Officer Flynn agreed that having more time would be “a good avenue.” (*Id.* at 14.) Officer Flynn said he “would love” it if they could revisit the registration issue in six months. (*Id.* at 15.)

The parties agreed to address the issue again in six months, and the court set a status conference for January 4, 2023, but said the hearing could be moved up if there was a serious issue before then. (*Id.* at 17-18.)

III. Montana Code Annotated § 41-5-208 transfer

On September 26, 2022, the State filed a Motion to Set Hearing to Transfer Jurisdiction and Supervision. (Doc. 44.) The State asked the court to set a hearing pursuant to Mont. Code Ann. § 41-5-208 to determine whether to transfer

jurisdiction to the district court and supervisory responsibility from juvenile probation services to adult probation services. (*Id.* at 1-2.) The State explained that it had been advised that W.D. had failed to comply with his supervision and had violated the youth court's September 1, 2021 dispositional order:

[B]etween September 9th, 2022 and September 23rd, 2022, the Youth refused to attend his program of MSOTA treatment, and he was unsuccessfully terminated from the program; Between August 1, 2022 and September 26th, 2022, the Youth violated the rules of his GPS monitoring program when he did not charge the bracelet and left the house without permission or supervision; The youth did not remain law abiding in that on or about July 29, 2022, he was cited for Partner Family Member Assault; On or about September 8th, 2022, the Youth did not remain law abiding in that he was cited for Making False Alarms to Agencies of Public Safety on or about September 8th, 2022; the Youth did not remain law abiding in that he was cited for Making False Alarms to Agencies of Public Safety on or about July 11th, 2022; the Youth did not remain law abiding in that he was cited for Making False Alarms to Agencies of Public Safety on or about July 10th, 2022.

(*Id.* at 2.) The State noted when it had filed its notice and that W.D.'s counsel had indicated W.D. was waiving the ten-day notice requirement. (*Id.* at 3)

Officer Flynn filed Recommendations with the court. (Doc. 46.)

Officer Flynn recommended that supervisory responsibility be transferred to adult probation services until W.D. reaches the age of 25, that W.D. be committed to the DOC and placed at MASC to complete sexual offender treatment, and that he should register as a Tier II sexual offender. (Doc. 46.)

On September 29, 2022, the court held a hearing on the State’s Mont. Code Ann. § 41-5-208 motion. After calling the case, the prosecutor said she was “not certain of [W.D.’s] position” and deferred to his counsel. (9/29/22 Tr. at 3.) Clearly aware of the State’s recommendations, W.D.’s counsel explained that they were not contesting transfer, but they “disagree[d] with the DOC commitment request by the state.” (*Id.*) He explained that “[w]ith the allegations made by youth probation, I—we have no—I don’t see where we could contest him going on adult probation, but the mode of which where’s he going after this is the issue that we have.” (*Id.*)

The State called Officer Flynn, who testified that he had been a deputy juvenile probation officer for “16 or so years.” (*Id.* at 4.) He explained that he first met W.D. after he assaulted staff at a group home in Great Falls. (*Id.* at 5.) A couple of weeks later, W.D. sexually assaulted the 9-year-old girl in the park. (*Id.*)

He explained that W.D. recently turned 18 and had been on the GPS program since he was released to the community. (*Id.* at 6.) In addition, Officer Flynn said they had gotten to the point where he would go to W.D.’s home daily to check on him and remind him of the court’s expectations. (*Id.*) Officer Flynn said he had never done that as a juvenile probation officer before. (*Id.*) He said that even this had not proved successful, and W.D.’s behavior had only gotten worse in the last few months. (*Id.* at 7.)

In the past few months, W.D. had been cited three times for making false reports to law enforcement, cited for partner or family member assault against his mother, admitted to having started two fires, and admitted that he planned to allow the GPS bracelet to die so he could leave the house without his mother's supervision. (*Id.* at 7.) W.D. had started executing this plan, and neighbors reported seeing W.D., unsupervised, "with 8, 9, 10, 11 year old kids doing things like touching them, [and] playing gymnastics." (*Id.* at 8.)

W.D. had also admitted to giving "these kids treats, and candy, and things like that." (*Id.*) It had gotten to the point that the neighborhood kids knew where W.D. lived and were coming to his house to visit him. (*Id.*) Officer Flynn said both he and W.D.'s therapist recognized that this was extremely concerning grooming behavior. (*Id.*) He explained that W.D.'s psychosexual evaluations had indicated that he was likely to offend on exactly "those kinds of target populations, those ages of boys and girls in public places where there is not a lot of supervision." (*Id.* at 9.)

Additionally, W.D. was no longer in sexual offender treatment. (*Id.*) For roughly four months, Officer Flynn had been picking up W.D., bringing him to his therapy, and participating in the sessions. (*Id.* at 9-10.) For a while, even if W.D. refused to attend a session, Officer Flynn could get him to go to the next one. (*Id.* at 8.) W.D. had "flat out refused" to attend at all since around September 6.

(*Id.* at 9.) Even when W.D. had been attending, they had to focus on managing his behavior and reinforcing expectations, so not much therapy had even been accomplished. (*Id.* at 10.) He explained that there had been so many concerning incidents that needed to be addressed first that they had not been able to get to the therapy part of things yet. (*Id.* at 10-11.) He noted that the psychosexual evaluations opined that W.D. “has the ability to get there but it’s going to be a long, long process” to complete sexual offender treatment. (*Id.* at 11.)

Officer Flynn said he had done things to help supervise W.D. he had never done as a probation officer before; he had “tried every angle, provided a lot of time to kind of get this through to him.” (*Id.* at 12.) He said there was nothing more that he could do, and he was not aware of any facilities that would treat W.D. (*Id.*) He said it was clear W.D. was not successful in the community and that it would not work to have him in the community. (*Id.*) Officer Flynn said he had talked with many people who worked in developmental delay services, and they had exhausted all their efforts in terms of finding W.D. a group home or a place where he could go. (*Id.*) W.D.’s behavior presented “a huge risk to the community, community safety[.]” (*Id.* at 13.) While he would like to see W.D. in “some sort of a group home setting,” they were at a point where they could not wait any longer for one. (*Id.*)

Officer Flynn said adult probation and parole would have more channels available for W.D., including things like “the MASC program or potentially down the road a prerelease.” (*Id.* at 14.) Adult probation could also put W.D. in jail for a period of time. He explained that W.D. had been in jail for two weeks on charges after he assaulted his mother. (*Id.*) Officer Flynn said W.D. “did well for a brief period of time after.” (*Id.*) He said those were the kinds of things that can work for W.D. but they are sanctions and consequences he could not provide as a juvenile probation officer. (*Id.*)

Officer Flynn said he was asking the court to recommend MASC because he knew adult probation would not be able to devote as much time to W.D. as he had. (*Id.*) He said supervision by adult probation and parole without placement in a facility would not be appropriate at that time because they would not be able to manage W.D. and his needs. (*Id.* at 20.) He explained that as a juvenile probation officer, he had about 30 people on his caseload, but adult probation officers had over 100. (*Id.*) Even with Officer Flynn’s higher level of supervision, W.D. still had not been successful. (*Id.* at 14.)

The State asked the court to transfer supervision to adult probation and parole pursuant to Mont. Code Ann. § 41-5-208. (*Id.* at 21.) Additionally, the State noted the court’s decision in May to defer on deciding whether to require W.D. to register as a sexual offender. (*Id.* at 21-22.) The State asked the court to require

W.D. to register because there were some really concerning behaviors that had thus far been resistant to treatment. (*Id.* at 22.) The prosecutor said W.D. posed a threat to the community at the moment and asked the court to follow Officer Flynn’s recommendation and commit W.D. to the DOC with a recommendation to be placed at MASC to receive sexual offender treatment. (*Id.*)

W.D.’s counsel said he needed treatment in a hospital setting, but they were “past that point.” (*Id.*) He said “[W.D.] would like to go onto an adult probation suspended sentence.” (*Id.* at 23.) However, he acknowledged that there were major concerns with such a disposition given W.D.’s behaviors and given testimony that adult probation would “be less able to watch him than youth probation[.]” (*Id.*) He said that if the court was more inclined to commit W.D. to the DOC, it should only commit him until he turned 23, not until he turned 25. (*Id.*) He also expressed concerns about the consequences if W.D. were to forget or fail to register. (*Id.* at 24.)

W.D. personally addressed the court and said he was “going through some stuff in life,” and he did not think he would be safe if placed in a correctional facility. (*Id.* at 25.)

The court acknowledged W.D.’s fear and explained that it also had to look at the risk to the community. (*Id.*) The court said it had “heard testimony of very concerning behaviors, and I think we all know that adult probation and parole is

not going to offer the kind of supervision that he's had in the community through juvenile probation, and yet that has not been successful either." (*Id.*) The court noted W.D. had agreed to the transfer of continuing supervisory responsibility to the district court. (*Id.* at 25-26.) The youth court found transfer to be appropriate and ordered the transfer to the district court. (*Id.* at 26.)

"Having decided to do that transfer," the court determined it was "also clear in this case that [W.D.] has been unable or unwilling to follow the conditions of the juvenile case, particularly we had testimony that he's refused to go to treatment." (*Id.* at 26.) The court also noted W.D.'s pending criminal charges and his concerning behavior with younger youths. (*Id.*) Given W.D.'s failure to follow his youth court disposition, the court followed Officer Flynn's recommendation. The court committed W.D. to the DOC until the age of 25, with the recommendation that the DOC place W.D. in MASC, and "that he remain there for sufficient time to complete sexual offender treatment." (*Id.* at 26-27.) Following MASC, W.D. would be in a placement approved by adult probation and parole. (*Id.* at 27.) The court found that, for public safety, it was necessary to have W.D. register as a Tier II sexual offender. (*Id.*) The court ordered that any previously ordered conditions would remain in effect. (*Id.*)

SUMMARY OF THE ARGUMENT

The court did not exceed its statutory authority by committing W.D. to the DOC, requiring him to register as a sexual offender when it transferred his youth court matter to the district court, and found that W.D. had violated the conditions of his youth dispositional order. Montana Code Annotated § 41-5-208(4) is not limited to hearings conducted after a matter has previously been transferred to the district court, nor limited to violations that occurred after transfer.

Even if this Court determines Mont. Code Ann. § 41-5-208(4) is limited to cases that were previously transferred to the district court and to violations of youth court dispositions that occurred after transfer, the court still had the authority under Mont. Code Ann. § 41-5-1422(1). This Court has previously held that this provision—even in the absence of a provision specifically governing the revocation or rescission of a youth court disposition—grants youth and district courts broad authority to modify an order issued under the Montana Youth Court Act. Even if the parties led the court down the incorrect procedural posture, the court had the authority to commit W.D. to the DOC and require him to register as a sexual offender.

However, the court exceeded its statutory authority when it did not suspend all but the first five years of W.D.'s commitment to the DOC. This matter should

be remanded for the limited purpose of correcting the order to suspend all but the first five years of the DOC commitment.

ARGUMENT

I. Standard of review

This Court reviews a youth court’s application and interpretation of the Youth Court Act de novo for correctness. *In re K.J.R.*, 2017 MT 45, ¶ 11, 386 Mont. 381, 391 P.3d 1. This Court reviews a youth court’s modification of a prior order for an abuse of discretion. *Id.* (citing *In re C.D.H.*, 2009 MT 8, ¶ 21, 349 Mont. 1, 201 P.3d 126). “The test for an abuse of discretion is ‘whether the trial court acted arbitrarily, without employment of conscientious judgment, or exceeded the bounds of reason resulting in substantial injustice.’” *Id.* (quoting *In re C.D.H.*, ¶ 21).

II. The court acted within its statutory authority under Mont. Code Ann. § 41-5-208(4) when it committed W.D. to the DOC until he is 25 and required him to register, but the court exceeded its statutory authority by failing to suspend all but the first five years of the DOC commitment.

W.D. relies primarily on this Court’s decision in *In re H.R.*, 2023 MT 210, 414 Mont. 46, 537 P.3d 874, in support of his argument that the court exceeded its authority in modifying his disposition. However, *In re H.R.* only addressed whether H.R. had waived his claim, whether Mont. Code Ann. § 41-5-208(1)

provided statutory authority, and whether any error was nonetheless harmless.

While Mont. Code Ann. § 41-5-208(1) does not grant a court the authority to modify a youth court dispositional order at a transfer hearing, Mont. Code Ann. §§ 41-5-208(4) and -1422(1) do grant the authority.

“In the construction of a statute, the office of the judge is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted or to omit what has been inserted. Where there are several provisions or particulars, such a construction is, if possible, to be adopted as will give effect to all.” Mont. Code Ann. § 1-2-101. This Court’s purpose in construing a statute is to ascertain the legislative intent and give effect to the legislative will. Mont. Code Ann. § 1-2-102. “Statutory construction is a holistic endeavor and must account for the statute’s text, language, structure, and object.” *State v. Heath*, 2004 MT 126, ¶ 24, 321 Mont. 280, 90 P.3d 426 (citation and internal quotations omitted). “The legislative intent is to be ascertained, in the first instance, from the plain meaning of the words used.” *Id.* (citation omitted). “The rules of statutory construction require this Court to construe several interrelated statutes in a manner which will give effect to each of them.” *In re U.A.C.*, 2022 MT 230, ¶ 13, 410 Mont. 493, 520 P.3d 295.” “The legislative intent behind a statute may not be gained from the wording of any particular section or sentence, but only from a consideration of the whole.” *Id.* (citation and internal quotations omitted).

“The Youth Court Act must be interpreted and construed to ‘[provide] a program of supervision, care, rehabilitation, detention, competency, development, and community protection for youth before they become adult offenders[.]’” *In re A.S.M.*, 2014 MT 133, ¶ 16, 375 Mont. 147, 325 P.3d 1251 (citing Mont. Code Ann. § 41-5-102(2)(b)) (alteration in original).

Montana Code Annotated § 41-5-208 “is Montana’s nonextended jurisdiction statute and provides for the transfer of supervisory responsibility to the district court after a youth court disposition made pursuant to the provisions of §§ 41-5-1512 or 41-5-1513[.]” *In re A.D.T.*, 2015 MT 178, ¶ 12, 379 Mont. 452, 351 P.3d 682. The statute permits the youth court to transfer jurisdiction to the district court and supervisory responsibility from juvenile probation services to adult probation services to ensure continued compliance with the youth court’s disposition. *Id.* “Section 41-5-208(4), MCA, provides the specific procedure to be followed when a youth has a case transferred from youth court to district court and has been found to have violated the terms of the youth court’s disposition.” *Id.* ¶ 13.

Montana Code Annotated § 41-5-208 is admittedly not the model of clarity. For example, Mont. Code Ann. § 41-5-208(1) allows transfer under this section to occur at any time after a youth reaches age 18 but before the youth reaches age 21. Subsection (5) provides specific options available to the district court if the youth

is incarcerated at a state youth correctional facility at the time of transfer—without requiring proof that the youth has violated the youth court disposition. Mont. Code Ann. § 41-5-208(5). However, a youth who is over 18 could not be housed in a state youth correctional facility at the time of transfer. Mont. Code Ann. § 52-5-101; 1997 Mont. Laws, ch. 550, § 59 (Mont. Code Ann. § 52-5-101 was amended in 1997 to limit state youth correctional facilities for youth ages 10 to 18).

Montana Code Annotated § 41-5-208(4) does not restrict its application to violations that occurred after a transfer to the district court or require a transfer hearing to be conducted separately from a determination that a youth has violated his or her youth court disposition. The Legislature could have added “previously” before “has been transferred” as it did before “imposed under 41-5-1512.” Likewise, the Legislature could have added “subsequently” before “violates a disposition previously imposed,” similar to the language in Mont. Code Ann. § 46-18-201(3)(a)(vi). The Legislature chose not to include either limitation in Mont. Code Ann. § 41-5-208(4).

This Court has never addressed whether the provision allows a court to determine whether to transfer the matter and whether a youth has violated the terms of the youth court’s disposition in the same hearing, or if instead it requires the court to transfer the matter to district court in a previous hearing and only

consider violations that occurred after transfer. However, this court has addressed Mont. Code Ann. § 41-5-208(4) and has upheld the imposition of new conditions in conjunction with a transfer hearing. *In re D.A.S.*, 2008 MT 168, ¶¶ 4-15, 343 Mont. 360, 184 P.3d 349.

In *In re D.A.S.*, the State filed a motion to transfer jurisdiction under Mont. Code Ann. § 41-5-208 after D.A.S. failed to successfully complete sexual offender treatment before he discharged his commitment to the DOC on his 18th birthday. *In re D.A.S.*, ¶¶ 4-5. D.A.S. waived his right to the transfer hearing, stipulated to the transfer to adult supervision and the transfer of jurisdiction to the district court, and agreed to be classified as a Level 1 offender. *Id.* The court subsequently held a hearing to determine supervisory conditions. *Id.* D.A.S. objected that several conditions were inapplicable or unrelated to the offense charged. *Id.* The court ordered conditions and placed D.A.S. on probation until he turned 25. *Id.* ¶¶ 5-7. On appeal, this Court determined the court did not err in imposing the conditions because they were reasonably related to D.A.S. and his circumstantial needs for rehabilitation. *Id.* ¶¶ 9-15.

Montana Code Annotated § 41-5-208(4) does not restrict its application to violations that occurred after a transfer to the district court or require a transfer hearing to be conducted separately from a determination that a youth has violated his or her youth court disposition. The Legislature could have added “previously”

before “has been transferred” or “subsequently” before “violates a disposition previously imposed” but it did not. The Legislature chose not to include either limitation in Mont. Code Ann. § 41-5-208(4) despite including such limitations elsewhere. The legislative history likewise does not indicate any such intended limitation.

Montana Code Annotated § 41-5-208 was enacted in 1995 as Mont. Code Ann. § 41-5-208(2) and originally provided that “[i]f a youth whose case has been transferred to district court under this section violates a disposition imposed under 41-5-523, the district court may impose conditions as provided under 46-18-201 through 41-18-203.” 1995 Mont. Laws, ch. 438, §6. Dennis Paxinos spoke in favor of the bill’s enactment during the legislative session, explaining it “would allow them to deal with individuals as adults when they reach adult age if they do not perform as the judge instructed as juveniles.” Mont. S. Jud. Comm., Hr’g on H.B. 380, 54th Leg. Sess., Reg. Sess. 12 (Mar. 13, 1995), attached as Appellee’s App. A.

In 1997, subsection (2) was moved to subsection (4), and language was added to subsection (4). 1997 Mont. Laws, ch. 286, § 4; 1997 Mont. Laws, ch. 498,

§ 4.³ Montana Code Ann. § 41-5-208(4) now required that, before the court could impose conditions under 46-18-201 through -203, the youth had to have violated a disposition that had been *previously* imposed by the youth court, and there had to be a hearing first. Mont. Code Ann. § 41-5-208(4) (1997).

The Legislature addressed Mont. Code Ann. § 41-5-208(4) again in 1999. 1999 Mont. Laws, ch. 537, § 3. The Honorable Judge John Larson spoke as a proponent for the bill and explained that Mont. Code Ann. § 41-5-208 is used for youths who did not commit an offense transferable under Mont. Code Ann. § 41-5-206. Mont. S. Jud. Comm., Hr'g on S.B. 243, 56th Leg. Sess., Reg. Sess. 3 (Feb. 1, 1999), attached as Appellee's App. B. He explained that these youths would have a juvenile judgment and that the "probation officer has very few tools" to encourage juveniles to comply with their juvenile judgment once they turn 18. *Id.* "Section 41-5-208 makes available the community corrections programs of the adult system." *Id.* He said, "[t]he key to the juvenile system has always been to fashion more individual solutions for the young people." (*Id.*)

He also explained that because the youth will only have a juvenile adjudication, Mont. Code Ann. § 41-5-208 enhances their protections because a

³ "(2) (4) if a youth whose case has been transferred to district court under this section violates a disposition previously imposed under 41-5-523, the district court may, after hearing, impose conditions provided under 46-18-201 through 46-18-203."

youth adjudication “is much more beneficial than an adult adjudication. The juvenile continues to be able to perform the juvenile judgment even as long as age 25, maintain that juvenile judgment and have it sealed rather than go into an adult adjudication.” *Id.* at 4.

In 2015, the Legislature amended Mont. Code Ann. § 41-5-208(4) again to prohibit youth adjudicated of only misdemeanor offenses from being sent to a state adult correctional facility. 2015 Mont. Laws, ch. 51, § 1.⁴

While Mont. Code Ann. § 41-5-208 is not the model of clarity, it allows the court to impose conditions pursuant to Mont. Code Ann. § 46-18-201 “when a youth has a case transferred from youth court to district court and has been found to have violated the terms of the youth court’s disposition.” *In re A.D.T.*, ¶ 13. That is what happened in W.D.’s case. Here, the court determined—and the parties agreed—that there was good cause to transfer the case to the district court. The court also found that W.D. had not followed the conditions of his juvenile disposition because he refused to attend his court-ordered treatment, violated his condition to remain law-abiding by being charged with several offenses, and violated his restriction from having unsupervised contact with minors.

⁴ (4) If a youth whose case has been transferred to district court under this section violates a disposition previously imposed under 41-5-1512 or 41-5-1513, the district court may, after hearing, impose conditions as provided under 46-18-201 through 46-18-203, but may not place a youth in a state adult correctional facility unless the youth was adjudicated for a felony offense.

The court met the requirements of Mont. Code Ann. § 41-5-208(4) and thus had the authority to impose conditions as provided in Mont. Code Ann. §§ 46-18-201 through -203. W.D. was adjudicated for committing an offense that would have been a felony if committed by an adult, so the limitation against placing him in a state adult correctional facility did not apply and, under Mont. Code Ann. § 46-18-201(3)(a)(iv), the court had the authority to commit W.D. to the DOC for placement in an appropriate correctional facility or program. *State v. Lesmeister*, 2000 MT 318, ¶¶ 9-12, 302 Mont. 500, 15 P.3d 392. However, pursuant to Mont. Code Ann. § 46-18-201(3)(a)(iv), all but the first five years of commitment to DOC must be suspended unless the offense is one of the enumerated offenses or it was a youth court matter transferred under Mont. Code Ann. § 41-5-206. Mont. Code Ann. § 46-18-201(3)(a)(iv); *Lesmeister*, ¶ 12.

Here, on September 29, 2022, the court committed W.D. to the DOC until age 25. W.D.'s juvenile matter was not transferred under Mont. Code Ann. § 41-5-206, nor did he commit one of the enumerated offenses listed under Mont. Code Ann. § 46-18-201(3)(a)(iv). On September 29, 2027, W.D. will have served the first 5 years of his DOC commitment but will not turn 25 until May 2029. The court erred in not suspending all but the first 5 years of W.D.'s commitment to the DOC. This matter should be remanded for the limited purpose

of correcting the order to suspend all but the first five years of the commitment to the DOC.

Additionally, Mont. Code Ann. § 46-18-201(7) does not permit a court to waive the registration requirement for a sexual offense. W.D.'s offense, sexual assault under Mont. Code Ann. § 45-5-502(3), is a sexual offense requiring registration. Mont. Code Ann. § 46-23-502. The court had the statutory authority to require W.D. to register as a sexual offender.

W.D. incorrectly suggests that the alleged error in his case could have been avoided if the State had filed a petition to revoke W.D.'s probation under Mont. Code Ann. § 41-5-1431, along with the motion to transfer. (Appellant's Br. at 15-18.) Montana Code Annotated § 41-5-1431 was not designed to address a youth such as W.D., who has already turned 18. Under Mont. Code Ann. § 41-5-1431, if a youth is found to have violated a term of his probation, the court may "make any judgment of disposition that could have been made in the original case." Mont. Code Ann. § 41-5-1431(3).

The dispositions that were available to the youth court in W.D.'s original case were the dispositions in Mont. Code Ann. § 41-5-1513, which also incorporates Mont. Code Ann. § 41-5-1512. W.D. was already 18. A petition for revocation under Mont. Code Ann. § 41-15-1431 would not have permitted the court to place W.D. in any correctional facility. Montana Code Ann.

§ 41-5-1513(1)(b)⁵ only permits commitment in a state youth correctional facility until the youth turns 18, and if the youth is a serious juvenile offender, the court can commit the youth to a state youth correctional facility under Mont. Code Ann. § 41-5-1513(1)(c). State youth correctional facilities are only for youths aged 10-18. Mont. Code Ann. § 52-5-101. Montana Code Annotated § 41-5-1431 was not intended to address youths who, like W.D., aged out of a youth correctional facility but were still not complying with their youth court disposition and who needed to be in a secure facility in order to comply. As the legislative history demonstrates that is why the Legislature enacted Mont. Code Ann. § 41-5-208(4).

III. Even if this Court determines Mont. Code Ann. § 41-5-208(4) did not permit the court to commit W.D. to the DOC and require him to register as a sexual offender, the court had the authority to do so under Mont. Code Ann. § 41-5-1422(1).

The court had the authority under Mont. Code Ann. § 41-5-1422(1) to modify its prior order to require W.D. to register as a sexual offender, and even if this court were to determine Mont. Code Ann. § 41-5-208(4) did not authorize the court to grant transfer and determine W.D. had violated his youth court disposition

⁵ The applicable youth dispositional statute, as in adult sentencing, are those in effect at the time the underlying offense was committed. *State v. Adams*, 2013 MT 189, ¶ 4 n.1, 371 Mont. 28, 305 P.3d 808. W.D. committed the offense July 29, 2019.

in the same hearing, Mont. Code Ann. § 41-5-1422(1) still allowed the court to modify W.D.’s dispositional orders.

The Youth Court Act “vests the youth court with broad discretion to ‘modify’ youth court orders ‘at any time.’” *In re K.J.R.*, 2017 MT 45, ¶ 23, 386 Mont. 381, 391 P.3d 71 (quoting Mont. Code Ann. § 41-5-1422(1)). This Court has recognized that Mont. Code Ann. § 41-5-1422(1) likewise “does not preclude a district court from modifying a youth court order following the appropriate hearing.” *In re A.S.M.*, 2014 MT 133, ¶ 16, 375 Mont. 147, 325 P.3d 1251. This is because “[i]t is consistent with the scheme of the Youth Court Act that a dispositional order may be modified, including by a district court, even though the youth is no longer a minor.” *Id.* (citing Mont. Code Ann. §§ 41-5-208(4), -102(2)(b)).

This Court has previously held that even if the Youth Court Act “does not mandate a structured procedure for revision or revocation” of a disposition, “the Act nonetheless vests the youth court with broad discretion to ‘modify’ youth court orders ‘at any time.’” *In re K.J.R.*, ¶ 23. In *In re K.J.R.*, the youth court had committed the youth to a private, out-of-home placement. *Id.* ¶ 21. K.J.R. repeatedly violated rules at his different placements and had to be moved. *Id.* ¶¶ 6-8. The State filed a petition to revoke probation based on allegations that K.J.R. had been truant, been insubordinate at school, been involved in an assault,

and failed to return to his placement. *Id.* ¶ 8. The court adjudicated the violations as true and subsequently revoked K.J.R.’s disposition and committed him to the DOC until he turned 18. *Id.* ¶¶ 8-10. On appeal, K.J.R. asserted the court unlawfully revoked his original disposition because he had not been subject to any court-imposed conditions of probation. *Id.* ¶ 14. This Court held that although the parties led the court down the incorrect procedural posture, the court “clearly had continuing discretionary authority under § 41-5-1422(1), MCA, to revoke K.J.R.’s original commitment[.]” *Id.* ¶¶ 25-26.

W.D. had been on notice since the first dispositional order placing him on probation that he could be required to register and that his juvenile probation officer could ask the court to modify his disposition if he violated the terms of his juvenile order. The same provision was carried over into the court’s order following revocation. That order also advised W.D. that the court would hold a hearing when he was released from Pine Hills to determine whether he needed to register as a sexual offender. At that hearing, the court agreed to give W.D. more time to try to get into a group home before determining whether he needed to register. The court also noted that they would address the issue sooner if something serious happened—and it did. The State’s Mont. Code Ann. § 41-5-208 motion identified which court-ordered conditions W.D. violated, the specific dates he violated those conditions, and what conduct violated those conditions. The record

also establishes that W.D. knew his probation officer's recommendation would be addressed at the Mont. Code Ann. § 41-5-208 hearing. At the beginning of the hearing, before any statement from Officer Flynn or the State regarding the recommendations, counsel indicated that W.D. did not agree with the recommendations, even though he agreed with the transfer.

The court had the authority under Mont. Code Ann. § 41-5-1422(1) to modify its dispositional order at any time. W.D. had been on notice since his original dispositional order that the court could modify his disposition if he violated the conditions of his disposition and that the court would determine whether he had to register after his release from Pine Hills. As in *In re K.J.R.*, W.D. has not asserted or shown "that any of the court's substantive findings of fact or factual considerations were clearly erroneous." *In re K.J.R.*, ¶ 26. W.D. only challenges the court's statutory authority. As in *In re K.J.R.*, the court had the authority to modify its dispositional order to require W.D. to register as a sexual offender and commit him to the DOC.

The court's order is consistent with the Youth Court Act policy of ensuring oversight over a youth completing treatment ordered as part of their youth court disposition. The court weighed the facts and circumstances before it and balanced W.D.'s need for additional comprehensive oversight, his need to be treated, and the safety and protection of the community. The court acted within its authority under

Mont. Code Ann. §§ 41-5-1422(1), and -208(4) when it committed W.D. to the DOC and required him to register as a sexual offender. As discussed above, the court exceeded its authority by failing to suspend all but the first five years of the commitment to the DOC.

CONCLUSION

This Court should remand this matter for the limited purpose of correcting the court's order to suspend all but the first five years of the commitment to the DOC.

Respectfully submitted this 10th day of February, 2026.

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this principal brief is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double-spaced except for footnotes and for quoted and indented material; and the word count calculated by Microsoft Word for Windows is 9,187 words, excluding cover page, table of contents, table of authorities, certificate of service, certificate of compliance, signatures, and any appendices.

/s/ Christine Hutchison

CHRISTINE HUTCHISON

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 23-0701

IN THE MATTER OF:

W.D.,

Youth Under The Age of 18.

APPENDIX

Mont. S. Jud. Comm., Hr'g on H.B. 380,
54th Leg. Sess., Reg. Sess. 12 (Mar. 13, 1995).....App. A

Mont. S. Jud. Comm., Hr'g on S.B. 243,
56th Leg. Sess., Reg. Sess. 3 (Feb. 1, 1999) App. B

CERTIFICATE OF SERVICE

I, Christine M. Hutchison, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellee's Response to the following on 02-10-2026:

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