

HOUSE BILL NO. 22

2nd Special Session

Introduced and Referred to Committee on State Administration:

6/23/82

Died in Committee

121 2551 #2

1
2 INTRODUCTION BY Keedy Bill No. 22

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO TRANSFER CONTROL OF
5 THE MONTANA STATE PRISON, THE SWAN RIVER YOUTH FOREST CAMP,
6 THE PINE HILLS SCHOOL, THE MOUNTAIN VIEW SCHOOL, AND THE
7 FUNCTIONS OF THE DIVISION OF CORRECTIONS FROM THE DEPARTMENT
8 OF INSTITUTIONS TO A CORRECTIONS COMMISSION; TO ESTABLISH A
9 CORRECTIONS COMMISSION; PROVIDING THE COMMISSION WITH AN
10 EXECUTIVE DIRECTOR; PROVIDING FOR AN APPROPRIATION; AMENDING
11 SECTIONS 2-15-2302, 2-18-103, 7-4-2913, 7-6-2427, 18-2-301,
12 18-4-104, 20-7-404, 20-9-304, 41-5-103, 41-5-206, 41-5-523,
13 41-5-902, 44-5-202, 44-5-213, 46-18-203, 46-19-303,
14 46-19-305, 46-23-103, 46-23-401, 46-23-1001, 50-3-102,
15 50-21-103, 53-1-101, 53-1-202, 53-1-204, 53-1-206, 53-1-301
16 THROUGH 53-1-304, AND 53-30-105, MCA; AND REPEALING SECTION
17 53-30-201, MCA."

18
19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

20 NEW SECTION. Section 1. Corrections commission --
21 allocation -- composition -- terms. (1) There is a
22 corrections commission.

23 (2) The corrections commission is allocated to the
24 department of administration for administrative purposes
25 only as prescribed in 2-15-121, except:

1 (a) the commission may hire personnel, and
2 2-15-121(2)(d) does not apply; and

3 (b) 2-15-121(3)(b) does not apply to allocation of
4 office space at institutions under the control of the
5 commission.

6 (3) The commission is composed of five members
7 appointed by the governor as follows:

8 (a) one member having professional qualifications in
9 juvenile corrections;

10 (b) one member having professional qualifications in
11 adult corrections;

12 (c) one member having professional qualifications in
13 law enforcement; and

14 (d) two members who have demonstrated an active
15 interest in statewide issues regarding correctional
16 policies.

17 (4) The appointment of each member is subject to the
18 confirmation of the senate. However, the governor may
19 appoint a member to assume office before the senate meets at
20 its next regular session to consider the appointment. A
21 member so appointed has all the powers of the office upon
22 assuming that office and is a de jure officer,
23 notwithstanding the fact that the senate has not yet
24 confirmed the appointment. If the senate does not confirm
25 the appointment of a member, the governor shall appoint a

1 new member to serve for the remainder of the term.

2 (5) A vacancy shall be filled in the same manner as
3 regular appointments, and the member appointed to fill a
4 vacancy shall serve for the unexpired term to which he is
5 appointed.

6 (6) The members shall serve staggered terms of 5
7 years. The initial appointments shall be as follows:

8 (a) two members for 3-year terms;

9 (b) one member for a 4-year term; and

10 (c) two members for 5-year terms.

11 (7) Members may be removed by the governor only for
12 cause.

13 NEW SECTION. Section 2. Corrections commission's
14 powers and duties. The corrections commission shall:

15 (1) establish the state's correction policy which
16 shall include but not be limited to policies relating to
17 punishment, public security, deterrence, and rehabilitation;

18 (2) have control and supervision over the juvenile and
19 adult correctional programs and institutions in this state;

20 (3) adopt rules, not inconsistent with the
21 constitution and laws of the state, for its own government
22 which are proper and necessary for the execution of the
23 powers and duties conferred upon it by law;

24 (4) provide, subject to the laws of the state, rules
25 for the government of the state's correctional programs and

1 institutions;

2 (5) keep a record of its proceedings;

3 (6) report as provided in 2-7-102;

4 (7) have, when not otherwise provided by law, control
5 of all books, records, buildings, grounds, and other
6 property of the correctional programs and institutions under
7 control of the commission;

8 (8) have general control of all receipts and
9 disbursements of the correctional programs and institutions
10 under the control of the commission; and

11 (9) appoint an executive director of corrections, fix
12 his term of office and salary, and generally prescribe his
13 duties.

14 NEW SECTION. Section 3. Executive director of
15 corrections -- powers and duties. In accordance with the
16 policies and rules established by the corrections
17 commission, the executive director of corrections shall:

18 (1) supervise the administration of all institutions,
19 facilities, and services under the commission's
20 jurisdiction;

21 (2) employ personnel as required in the administration
22 of the provisions of [sections 2 through 5];

23 (3) prescribe the duties of all personnel of
24 correctional programs and institutions and rules governing
25 transfer of employees from one program or institution to

1 another or transfers within facilities of each institution;

2 (4) institute programs for the training and
3 development of personnel and may suspend, discharge, or
4 otherwise discipline personnel in accordance with policies
5 prescribed by the commission;

6 (5) establish programs of research, statistics, and
7 planning, including studies and evaluation of the
8 performance of the various functions and activities of the
9 correctional programs and institutions, studies affecting
10 the treatment of offenders, and information about other
11 programs;

12 (6) make an annual report to the governor and the
13 legislature on the work of the commission, including:

14 (a) statistics and other data;

15 (b) income derived by the commission from agriculture,
16 livestock, and other farming activities and from prison
17 inmates' activities;

18 (c) a summary of expenditures of the commission; and

19 (d) recommendations for legislation affecting the
20 commission;

21 (7) submit annually a report to the governor and the
22 legislature analyzing the adequacy of the corrections
23 policies adopted by the commission and the extent to which
24 those policies have been successful; and

25 (8) periodically submit to the commission an analysis

1 of the programs and institutions under his administration
2 and an analysis and evaluation of the adequacy and
3 effectiveness of programs, personnel, buildings, and
4 facilities.

5 NEW SECTION. Section 4. Institutions in commission.
6 The following institutions are under the control of the
7 commission:

8 (1) Montana state prison;

9 (2) Mountain View school;

10 (3) Pine Hills school;

11 (4) Swan River youth forest camp; and

12 (5) any other institution that provides care and
13 services for juvenile delinquents, including but not limited
14 to youth forest camps and juvenile reception and evaluation
15 centers.

16 NEW SECTION. Section 5. Exception to pay schedules.
17 The commission may authorize a separate pay schedule for
18 medical doctors if the rates provided in the adjusted
19 schedules under 2-18-311 and 2-18-312 are not sufficient to
20 attract and retain fully licensed and qualified physicians
21 at state institutions under the commission's control.

22 NEW SECTION. Section 6. Appropriation. (1) All funds
23 previously appropriated to the department of institutions
24 for the division of corrections and for the following
25 institutions for fiscal year 1983 are transferred to the

1 commission:

2 (a) Montana state prison;

3 (b) Mountain View school;

4 (c) Pine Hills school;

5 (d) Swan River youth forest camp; and

6 (e) any other institution which provides care and
7 services for juvenile delinquents, including but not limited
8 to youth forest camps and juvenile reception and evaluation
9 centers.

10 (2) There is appropriated from the general fund to the
11 commission established in [section 1] for fiscal year 1983
12 [\$_____] for the administrative costs of the operation of
13 the commission and the salary of the executive director of
14 corrections.

15 NEW SECTION. Section 7. Name changes. (1) Any
16 references to "department of institutions" or to
17 "department", meaning the department of institutions, are
18 changed to "corrections commission" or "commission",
19 whichever is applicable, meaning the corrections commission
20 created in [section 1] in the following:

21 (a) 41-5-403, 41-5-511, 41-5-803, 41-5-805, 41-5-901,
22 41-5-903, 41-5-911 through 41-5-913, and 41-5-922;

23 (b) Title 46, chapter 23; and

24 (c) 53-30-106, 53-30-107, 53-30-109 through 53-30-111,
25 53-30-202 through 53-30-204, 53-30-208 through 53-30-214,

1 and 53-30-226 through 53-30-229.

2 (2) The code commissioner shall change the terms in
3 the sections cited in subsection (1) in accordance with this
4 section.

5 NEW SECTION. Section 8. Transfer of legal custody.
6 All adults and youths committed under Title 41, chapter 5,
7 or Title 46 to the legal custody of the department of
8 institutions prior to the effective date of this act are
9 transferred to the legal custody of the corrections
10 commission.

11 Section 9. Section 2-15-2302, MCA, is amended to read:

12 "2-15-2302. Board of pardons -- composition --
13 allocation -- quasi-judicial. (1) There is a board of
14 pardons.

15 (2) The board consists of three members and an
16 auxiliary member, at least one of whom shall have particular
17 knowledge of Indian culture and problems. Members of the
18 board, including the auxiliary member, shall possess
19 academic training which has qualified them for professional
20 practice in a field such as criminology, education,
21 psychiatry, psychology, law, social work, sociology, or
22 guidance and counseling. Related work experience in the
23 areas listed may be substituted for these educational
24 requirements.

25 (3) The auxiliary member shall attend any meeting that

1 a regular board member is unable to attend, and at that time
2 the auxiliary member has all the rights and responsibilities
3 of a regular board member.

4 (4) The board is allocated to the department of
5 administration for administrative purposes only as
6 prescribed in 2-15-121. However, the board may hire its own
7 personnel, and 2-15-121(2)(d) does not apply.

8 (5) The board, including the auxiliary member, is
9 designated as a quasi-judicial board for purposes of
10 2-15-124, except board members shall be compensated as
11 provided by legislative appropriation."

12 Section 10. Section 2-18-103, MCA, is amended to read:

13 "2-18-103. Officers and employees excepted. Parts 1
14 and 2 do not apply to the following positions in state
15 government:

- 16 (1) elected officials;
17 (2) county assessors and their chief deputy;
18 (3) officers and employees of the legislative branch;
19 (4) judges and employees of the judicial branch;
20 (5) members of boards and commissions appointed by the
21 governor, appointed by the legislature, or appointed by
22 other elected state officials;
23 (6) officers or members of the militia;
24 (7) agency heads appointed by the governor;
25 (8) academic and professional administrative personnel

1 with individual contracts under the authority of the board
2 of regents of higher education;

3 (9) academic and professional administrative personnel
4 who have entered into individual contracts with the state
5 school for the deaf and blind under the authority of the
6 state board of public education;

7 (10) teachers under the authority of the department of
8 institutions;

9 ~~(11) teachers under the authority of the corrections~~
10 ~~commission;~~

11 ~~(12) investment officer and assistant investment~~
12 ~~officer of the board of investments; and~~

13 ~~(13) four professional staff positions under the~~
14 ~~board of oil and gas conservation."~~

15 Section 11. Section 7-4-2913, MCA, is amended to read:

16 "7-4-2913. Payment of costs of inquest. Whenever an
17 inquest is held because of the death of an individual
18 confined in the state prison, the county clerk of the county
19 where the inquest is held shall make out a statement of all
20 the costs incurred by the county in the inquest, properly
21 certified by the coroner of the county. This statement shall
22 be sent to the department--of--institutions ~~warden of the~~
23 ~~Montana state prison~~ for approval, and after approval, the
24 department ~~warden~~ shall pay the costs out of the money
25 appropriated for the support of the state prison to the

1 county treasurer of the county where the inquest was held."

2 Section 12. Section 7-6-2427, MCA, is amended to read:

3 "7-6-2427. Special provisions for certain charges
4 related to criminal prosecutions. (1) Notwithstanding
5 7-6-2426, all costs of a criminal prosecution, including
6 attorneys' fees, of an offense committed in the state prison
7 are not charges against the county in which the state prison
8 is located. Such costs shall be paid by the department--of
9 institutions Montana state prison.

10 (2) When a criminal action is removed before trial,
11 the costs accruing upon such removal and trial must be a
12 charge against the county in which the indictment was found
13 or information filed."

14 Section 13. Section 18-2-301, MCA, is amended to read:

15 "18-2-301. Bids required -- advertising. (1) It is
16 unlawful for the board of examiners or any offices,
17 departments, institutions, or any agent of the state of
18 Montana acting for or in behalf of the state to do, to cause
19 to be done, or to let any contract for the construction of
20 buildings or the alteration and improvement of buildings and
21 adjacent grounds on behalf of and for the benefit of the
22 state when the amount involved is \$25,000 or more without
23 first advertising in at least one issue each week for 3
24 consecutive weeks in two newspapers published in the state,
25 one of which must be published at the seat of government and

1 the other in the county where the work is to be performed,
2 calling for sealed bids to perform such work and stating the
3 time and place bids will be considered.

4 (2) All such work may be done, caused to be done, or
5 contracted for only after competitive bidding.

6 (3) If no bid for such work is accepted, the work may
7 not be done or accomplished. The work may be readvertised
8 from time to time until awarded to a qualified competitive
9 bidder.

10 (4) This section does not apply to work done by
11 inmates at the Montana state prison or at an institution in
12 the department of institutions."

13 Section 14. Section 18-4-104, MCA, is amended to read:

14 "18-4-104. Purchases exempt from general requirements.

15 (1) Fresh fruits and vegetables (other than potatoes) shall
16 not be included in the supplies to be purchased as provided
17 in this chapter. The department may allow a state agency or
18 institution to purchase fresh fruits and vegetables. An
19 itemized account shall be kept of these purchases and the
20 account shall be furnished to the department.

21 (2) Likewise, when immediate delivery of articles or
22 performance of service is required by the public exigencies,
23 the articles or service so required may be procured by open
24 purchase or contract at the place and in the manner in which
25 the articles are usually bought and sold or the services

1 engaged between individuals but under the direction of the
2 department.

3 (3) The department of administration may exempt the
4 department of institutions ~~and the corrections commission~~
5 from the provisions of part 2 of this chapter for the
6 purchase of suitable clothing by the department of
7 institutions ~~or the corrections commission~~ for residents of
8 ~~its~~ their institutions and community-based programs.

9 (4) As used in this section, "suitable clothing" means
10 styled, seasonable clothing, which will allow the resident
11 to make a normal appearance in the community."

12 Section 15. Section 20-7-404, MCA, is amended to read:

13 "20-7-404. Cooperation of state agencies. The state
14 department of health, the department of institutions, ~~the~~
15 ~~corrections commission~~, the department of social and
16 rehabilitation services, and the state school for the deaf
17 and blind shall cooperate with the superintendent of public
18 instruction in assisting school districts in discovering
19 children in need of special education. Nothing herein shall
20 be construed to interfere with the purpose and function of
21 these state agencies."

22 Section 16. Section 20-9-304, MCA, is amended to read:

23 "20-9-304. Eligibility for and payment of state impact
24 aid. Any district which shall have children of employees of
25 a public institution may be eligible for state impact aid

1 under the following provisions:

2 (1) An "employee" means an employee of a public
3 institution under the administration of the department of
4 institutions, as defined in 53-1-202, ~~or the corrections~~
5 ~~commission, provided for in [section 1]~~, who resides on the
6 property of such a public institution.

7 (2) A school district shall receive annually from
8 moneys available for state equalization aid \$150 for each
9 elementary pupil and \$250 for each high school pupil whose
10 parents are employees of an institution located in the
11 school district where the pupil attends school or in a
12 school district which has a tuition agreement with the
13 district where the pupil attends school.

14 (3) A district which is eligible for state impact aid
15 shall apply for such aid to the superintendent of public
16 instruction in the manner prescribed by the rules prescribed
17 by the superintendent of public instruction.

18 (4) The distribution of state impact aid shall be
19 deposited in the general fund of the district and shall not
20 be considered as a part of the state equalization aid but
21 shall be used to reduce the property tax in support of the
22 general fund of the district."

23 Section 17. Section 41-5-103, MCA, is amended to read:

24 "41-5-103. Definitions. For the purposes of the
25 Montana Youth Court Act, unless otherwise stated the

1 following definitions apply:

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

4 (2) "Agency" means the department--of--institutions
5 ~~corrections commission~~, the department of social and
6 rehabilitation services, and any division or department of
7 either.

8 (3) "Commit" means to transfer to legal custody.

9 (4) "Court", when used without further qualification,
10 means the youth court of the district court.

11 (5) "Foster home" means a private residence approved
12 by the court for placement of a youth.

13 (6) "Guardianship" means the status created and
14 defined by law between a youth and an adult with the
15 reciprocal rights, duties, and responsibilities.

16 (7) "Judge", when used without further qualification,
17 means the judge of the youth court.

18 (8) (a) "Legal custody" means the legal status created
19 by order of a court of competent jurisdiction that gives a
20 person the right and duty to:

21 (i) have physical custody of the youth;

22 (ii) determine with whom the youth shall live and for
23 what period;

24 (iii) protect, train, and discipline the youth; and

25 (iv) provide the youth with food, shelter, education,

1 and ordinary medical care.

2 (b) An individual granted legal custody of a youth
3 shall personally exercise his rights and duties as guardian
4 unless otherwise authorized by the court entering the order.

5 (9) "Parent" means the natural or adoptive parent but
6 does not include a person whose parental rights have been
7 judicially terminated, nor does it include the putative
8 father of an illegitimate youth unless his paternity is
9 established by an adjudication or by other clear and
10 convincing proof.

11 (10) "Youth" means an individual who is less than 18
12 years of age without regard to sex or emancipation.

13 (11) "Youth court" means the court established pursuant
14 to this chapter to hear all proceedings in which a youth is
15 alleged to be a delinquent youth, a youth in need of
16 supervision, or a youth in need of care and includes the
17 youth court, the judge, and probation officers.

18 (12) "Delinquent youth" means a youth:

19 (a) who has committed an offense which, if committed
20 by an adult, would constitute a criminal offense;

21 (b) who, having been placed on probation as a
22 delinquent youth or a youth in need of supervision, violates
23 any condition of his probation.

24 (13) "Youth in need of supervision" means a youth who
25 commits an offense prohibited by law which, if committed by

1 an adult, would not constitute a criminal offense, including
2 but not limited to a youth who:

3 (a) violates any Montana municipal or state law
4 regarding use of alcoholic beverages by minors;

5 (b) habitually disobeys the reasonable and lawful
6 demands of his parents or guardian or is ungovernable and
7 beyond their control;

8 (c) being subject to compulsory school attendance, is
9 habitually truant from school; or

10 (d) has committed any of the acts of a delinquent
11 youth but whom the youth court in its discretion chooses to
12 regard as a youth in need of supervision.

13 (14) "Youth in need of care" means a youth as defined
14 in 41-3-102.

15 (15) "Custodian" means a person other than a parent or
16 guardian to whom legal custody of the youth has been given
17 but does not include a person who has only physical custody.

18 (16) "Necessary parties" include the youth, his
19 parents, guardian, custodian, or spouse.

20 (17) "State youth correctional facility" means a
21 residential facility for the rehabilitation of delinquent
22 youth such as Pine Hills school in Miles City, and Mountain
23 View school in Helena, and Swan River youth forest camp.

24 (18) "Shelter care" means the temporary care of youth
25 in physically unrestricting facilities.

1 (19) "Detention" means the temporary care of youth in
2 physically restricting facilities.

3 (20) "District youth guidance home" means a
4 family-oriented residence established in a judicial district
5 of the state of Montana as an alternative to existing state
6 youth correctional facilities, the function of which is to
7 provide a home and guidance through adult supervision for
8 delinquent youths and youths in need of supervision.

9 (21) "Restitution" means payments in cash to the victim
10 or with services to the victim or the general community when
11 these payments are made under the jurisdiction of a youth
12 court proceeding."

13 Section 18. Section 41-5-206, MCA, is amended to read:
14 "41-5-206. Transfer to criminal court. (1) After a
15 petition has been filed alleging delinquency, the court may,
16 upon motion of the county attorney, before hearing the
17 petition on its merits, transfer the matter of prosecution
18 to the district court if:

19 (a) the youth charged was 16 years of age or more at
20 the time of the conduct alleged to be unlawful and the
21 unlawful act is one or more of the following:

- 22 (i) criminal homicide as defined in 45-5-101;
23 (ii) arson as defined in 45-6-103;
24 (iii) aggravated assault as defined in 45-5-202;
25 (iv) robbery as defined in 45-5-401;

1 (v) burglary or aggravated burglary as defined in
2 45-6-204;

3 (vi) sexual intercourse without consent as defined in
4 45-5-503;

5 (vii) aggravated kidnapping as defined in 45-5-303;

6 (viii) possession of explosives as defined in 45-8-335;

7 (ix) criminal sale of dangerous drugs for profit as
8 included in 45-9-101;

9 (x) attempt as defined in 45-4-103 of any of the acts
10 enumerated in subsections (1)(a)(i) through (1)(a)(ix);

11 (b) a hearing on whether the transfer should be made
12 is held in conformity with the rules on a hearing on a
13 petition alleging delinquency, except that the hearing will
14 be to the youth court without a jury;

15 (c) notice in writing of the time, place, and purpose
16 of the hearing is given to the youth, his counsel, and his
17 parents, guardian, or custodian at least 10 days before the
18 hearing; and

19 (d) the court finds upon the hearing of all relevant
20 evidence that there are reasonable grounds to believe that:

21 (i) the youth committed the delinquent act alleged;

22 (ii) the seriousness of the offense and the protection
23 of the community require treatment of the youth beyond that
24 afforded by juvenile facilities; and

25 (iii) the alleged offense was committed in an

1 aggressive, violent, or premeditated manner.

2 (2) In transferring the matter of prosecution to the
3 district court, the court may also consider the following
4 factors:

5 (a) the sophistication and maturity of the youth,
6 determined by consideration of his home, environmental
7 situation, and emotional attitude and pattern of living;

8 (b) the record and previous history of the youth,
9 including previous contacts with the youth court, law
10 enforcement agencies, youth courts in other jurisdictions,
11 prior periods of probation, and prior commitments to
12 juvenile institutions. However, lack of a prior juvenile
13 history with youth courts will not of itself be grounds for
14 denying the transfer.

15 (c) the severity of the offense;

16 (d) the prospects for adequate protection of the
17 public and the likelihood of reasonable rehabilitation of
18 the youth by the use of procedures, services, and facilities
19 currently available to the youth court.

20 (3) Upon transfer to district court, the judge shall
21 make written findings of the reasons why the jurisdiction of
22 the court was waived and the case transferred to district
23 court.

24 (4) The transfer terminates the jurisdiction of the
25 court over the youth with respect to the acts alleged in the

1 petition. No youth may be prosecuted in the district court
2 for a criminal offense originally subject to the
3 jurisdiction of the youth court unless the case has been
4 transferred as provided in this section.

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

8 (6) Any offense not enumerated in subsection (1)(a)
9 that arises during the commission of a crime enumerated in
10 subsection (1)(a) may be:

11 (a) tried in youth court;

12 (b) transferred to district court with an offense
13 enumerated in subsection (1)(a), upon motion of the county
14 attorney and acceptance by the district court judge.

15 (7) If a youth is found guilty in district court of
16 any of the offenses enumerated in subsection (1)(a) of this
17 section and is sentenced to the state prison, his commitment
18 shall be to the ~~department--of--institutions~~ corrections
19 commission which shall confine the youth in whatever
20 institution under its control that it considers proper."

21 Section 19. Section 41-5-523, MCA, is amended to read:
22 "41-5-523. Disposition of delinquent youth and youth
23 in need of supervision. (1) If a youth is found to be
24 delinquent or in need of supervision, the court may enter
25 its judgment making the following disposition:

1 (a) place the youth on probation;

2 (b) place in a licensed foster home or a home approved
3 by the court;

4 (c) place the youth in a private agency responsible
5 for the care and rehabilitation of such a youth, including
6 but not limited to a district youth guidance home;

7 (d) transfer legal custody to the ~~department--of~~
8 ~~institutions~~ corrections commission; provided, however, that
9 in the case of a youth in need of supervision, such transfer
10 of custody does not authorize the ~~department-of-institutions~~
11 corrections commission to place the youth in a state youth
12 correctional facility and such custody may not continue for
13 a period of more than 6 months without a subsequent court
14 order after notice and hearing;

15 (e) such further care and treatment or evaluation that
16 the court considers beneficial to the youth, consistent with
17 subsection (1)(d) of this section;

18 (f) order restitution by the youth.

19 (2) At any time after the youth has been taken into
20 custody, the court may, with the consent of the youth in the
21 manner provided in 41-5-303 for consent by a youth to waiver
22 of his constitutional rights or after the youth has been
23 adjudicated delinquent or in need of supervision:

24 (a) order the youth to be evaluated by the ~~department~~
25 ~~of--institutions~~ corrections commission for a period not to

1 exceed 45 days of evaluation at a reception and evaluation
2 center for youths; or

3 (b) in the case of a delinquent youth 16 years or
4 older whom the court considers a suitable person for
5 placement at a youth forest camp, notify the executive
6 ~~director of the department of institutions~~ corrections of
7 the finding. The executive ~~director of the department of~~
8 ~~institutions~~ shall then designate to the court the facility
9 to which the youth shall be delivered for evaluation. The
10 court may then commit the youth to the ~~department of~~
11 ~~institutions~~ corrections commission for a period not to
12 exceed 45 days for the purpose of evaluation as to the
13 youth's suitability for placement and order the youth
14 delivered for evaluation to the youth facility designated by
15 the executive director. If after the evaluation the
16 ~~department of institutions~~ commission reports to the court
17 that such child is suitable for placement in a youth forest
18 camp and if there is space available at a camp, the court
19 may then commit such child directly to the youth forest camp
20 under the terms of commitment of this chapter. If the
21 ~~department of institutions~~ commission reports and states the
22 reasons to the court why the youth is not suitable for
23 placement, the youth shall be returned to the court for such
24 further disposition as the court may consider advisable
25 under the provisions of this chapter. The costs of

1 transporting the youth to the designated youth facility for
2 evaluation and cost of returning the youth to the court
3 shall be borne by the county of residence of the youth.

4 (3) No youth may be committed or transferred to a
5 penal institution or other facility used for the execution
6 of sentence of adult persons convicted of crimes except as
7 provided by subsection (2)(b).

8 (4) Any order of the court may be modified at any
9 time.

10 (5) Whenever the court vests legal custody in an
11 agency, institution, or department, it must transmit with
12 the dispositional judgment copies of a medical report and
13 such other clinical, predisposition, or other reports and
14 information pertinent to the care and treatment of the
15 youth.

16 (6) The order of commitment to the ~~department of~~
17 ~~institutions~~ corrections commission shall read as follows:

18 ORDER OF COMMITMENT

19 State of Montana)

20) ss.

21 County of)

22 In the district court for the Judicial District.
23 On the day of, 19... .., a minor of this
24 county, years of age, was brought before me charged

1 with Upon due proof I find that is a suitable
2 person to be committed to the ~~department of institutions~~
3 corrections commission.

4 It is ordered that be committed to the ~~department~~
5 ~~of institutions~~ corrections commission until

6 The names, addresses, and occupations of the parents
7 are:

8 Name	Address	Occupation
9
10

11 The names and addresses of their nearest relatives are:
12
13

14 Witness my hand this day of A.D. 19...
15
16 Judge"

17 Section 20. Section 41-5-902, MCA, is amended to read:
18 "41-5-902. Rules. The ~~director of the department of~~
19 ~~institutions~~ corrections commission may adopt reasonable
20 rules and standards to carry out the administration and
21 purposes of this part."

22 Section 21. Section 44-5-202, MCA, is amended to read:
23 "44-5-202. Photographs and fingerprints. (1) The
24 following agencies may, if authorized by subsections (2)
25 through (5), collect, process, and preserve photographs and

1 fingerprints:

2 (a) any criminal justice agency performing, under law,
3 the functions of a police department or a sheriff's office,
4 or both;

5 (b) the corrections commission;

6 ~~(b)(c)~~ the department of institutions; and

7 ~~(c)(d)~~ the department of justice.

8 (2) The ~~department of institutions~~ personnel of the
9 corrections commission may photograph and fingerprint anyone
10 ~~under the jurisdiction of the division of corrections or its~~
11 ~~successor who is committed to an institution or program~~
12 under the control of the commission.

13 (3) A criminal justice agency described in subsection
14 (1)(a) shall photograph and fingerprint a person who has
15 been arrested or noticed or summoned to appear to answer an
16 information or indictment if:

17 (a) the charge is the commission of a felony;

18 (b) the identification of an accused is in issue; or

19 (c) it is required to do so by court order.

20 (4) Whenever a person charged with the commission of a
21 felony is not arrested, he shall submit himself to the
22 sheriff, chief of police, or other concerned law enforcement
23 officer for fingerprinting at the time of his initial
24 appearance in court to answer the information or indictment
25 against him.

1 (5) A criminal justice agency described in subsection
 2 (1)(a) may photograph and fingerprint an accused if he has
 3 been arrested for the commission of a misdemeanor, except
 4 that an individual arrested for a traffic, regulatory, or
 5 fish and game offense may not be photographed or
 6 fingerprinted unless he is incarcerated.

7 (6) Within 10 days the originating agency shall send
 8 the state repository a copy of each fingerprint taken on a
 9 completed form provided by the state repository.

10 (7) The state repository shall compare the
 11 fingerprints received with those already on file in the
 12 state repository. If it is determined that the individual is
 13 wanted or is a fugitive from justice, the state repository
 14 shall at once inform the originating agency. If it is
 15 determined that the individual has a criminal record, the
 16 state repository shall send the originating agency a copy of
 17 the individual's complete criminal history record.

18 (8) Photographs and fingerprints taken shall be
 19 returned by the state repository to the originating agency,
 20 which shall return all copies to the individual from whom
 21 they were taken:

22 (a) if a court so orders; or

23 (b) upon the request of the individual:

24 (i) if no charges were filed;

25 (ii) if a misdemeanor charge did not result in a

1 conviction; or

2 (iii) if the individual was found innocent of the
 3 offense charged."

4 Section 22. Section 44-5-213, MCA, is amended to read:
 5 "44-5-213. Procedures to ensure accuracy of criminal
 6 history records. In order to ensure complete and accurate
 7 criminal history record information:

8 (1) the department of justice shall maintain a
 9 centralized state repository of criminal history record
 10 information to serve all criminal justice agencies in the
 11 state;

12 (2) dispositions resulting from formal proceedings in
 13 a court having jurisdiction in a criminal action against an
 14 individual who has been photographed and fingerprinted under
 15 44-5-202 shall be reported to the originating agency and the
 16 state repository within 15 days. If the dispositions can
 17 readily be collected and reported through the court system,
 18 the dispositions may be submitted to the state repository by
 19 the administrative office of the courts.

20 (3) an originating agency shall advise the state
 21 repository within 30 days of all dispositions concerning the
 22 termination of criminal proceedings against an individual
 23 who has been photographed and fingerprinted under 44-5-202;

24 (4) ~~the corrections commission and~~ the department of
 25 institutions shall advise the state repository within 30

1 days of all dispositions subsequent to conviction of an
2 individual who has been photographed and fingerprinted under
3 44-5-202;

4 (5) each criminal justice agency shall query the state
5 repository prior to dissemination of any criminal history
6 record information to ensure the timeliness of the
7 information. When no final disposition is shown by the state
8 repository records, the state repository shall query the
9 source of the document or other appropriate source for
10 current status. Inquiries shall be made prior to any
11 dissemination except in those cases in which time is of the
12 essence and the repository is technically incapable of
13 responding within the necessary time period. If time is of
14 the essence, the inquiry shall still be made and the
15 response shall be forwarded as soon as it is received.

16 (6) each criminal justice agency shall ensure that all
17 its criminal justice information is complete, accurate, and
18 current; and

19 (7) the department of justice shall adopt rules for
20 criminal justice agencies other than those that are part of
21 the judicial branch of government to implement this section.
22 The department of justice may adopt rules for the same
23 purpose for the judicial branch of government if the supreme
24 court consents to the rules."

25 Section 23. Section 46-18-203, MCA, is amended to

1 read:

2 "46-18-203. Revocation of suspended or deferred
3 sentence. A judge, magistrate, or justice of the peace who
4 has suspended the execution of a sentence or deferred the
5 imposition of a sentence of imprisonment under 46-18-201 or
6 his successor is authorized, during the period of the
7 suspended sentence or deferred imposition of sentence, in
8 his discretion, to revoke the suspension or impose sentence
9 and order the person committed. He may also, in his
10 discretion, order the prisoner placed under the jurisdiction
11 of the ~~department of institutions~~ corrections commission as
12 provided by law or retain such jurisdiction with his court.
13 Prior to the revocation of an order suspending or deferring
14 the imposition of sentence, the person affected shall be
15 given a hearing."

16 Section 24. Section 46-19-303, MCA, is amended to
17 read:

18 "46-19-303. Power of governor to enter into contracts.
19 The governor is hereby empowered to designate ~~the~~
20 corrections commission or the department of institutions to
21 enter into such contracts recommended by the corrections
22 commission or by the department on behalf of this state as
23 may be appropriate to implement the participation of this
24 state in the Western Interstate Corrections Compact pursuant
25 to 46-19-301."

1 Section 25. Section 46-19-305, MCA, is amended to
2 read:

3 "46-19-305. Hearings requested by other states. The
4 board of pardons, ~~the corrections commission~~ and the
5 department of institutions shall hold such hearings as may
6 be requested by any other party state pursuant to Article
7 IV(6) of the Western Interstate Corrections Compact."

8 Section 26. Section 46-23-103, MCA, is amended to
9 read:

10 "46-23-103. Definitions. Unless the context requires
11 otherwise, in this chapter the following definitions apply:

12 (1) "Board" means the board of pardons provided for in
13 2-15-2302.

14 (2) "Department" ~~"Commission"~~ means the department of
15 ~~institutions corrections commission~~ provided for in ~~title 23~~
16 ~~chapter 15 part 23 [section 1]~~.

17 (3) "Executive clemency" refers to the powers of the
18 governor as provided by section 12 of Article VI of the
19 constitution of Montana.

20 (4) "Parole" means the release to the community of a
21 prisoner by the decision of the board prior to the
22 expiration of his term, subject to conditions imposed by the
23 board and subject to supervision of the department ~~of~~
24 ~~institutions corrections commission~~."

25 Section 27. Section 46-23-401, MCA, is amended to

1 read:

2 "46-23-401. Definitions. Unless the context requires
3 otherwise, in this part the following definitions apply:

4 (1) "Applicant" means any prisoner who is eligible
5 under 46-23-411 and who signs an application to participate
6 in the supervised release program.

7 (2) "Board" means the board of pardons provided for in
8 2-15-2302.

9 (3) "Department" ~~"Commission"~~ means the department of
10 ~~institutions corrections commission~~ provided for in
11 ~~2-15-2302 [section 1]~~.

12 (4) "Prisoner" means a person sentenced by a state
13 district court to a term of confinement in the state prison.

14 (5) "State prison" means the Montana state prison at
15 Deer Lodge or any adult correctional facility designated by
16 the department ~~commission~~.

17 (6) "Sponsor" means any federal, state, county, local,
18 or private agency, Indian tribe and reservation, or any
19 person, group, association, or organization approved by the
20 department ~~commission~~ to undertake the supervision of
21 prisoners participating in the supervised release program.

22 (7) "Supervising agent" means a probation and parole
23 officer of the department ~~commission~~."

24 Section 28. Section 46-23-1001, MCA, is amended to
25 read:

1 *46-23-1001. Definitions. As used in this part, unless
2 the context requires otherwise, the following definitions
3 apply:

4 (1) "Board" means the board of pardons provided for in
5 2-15-2302.

6 (2) "Department" "Commission" means the department-of
7 institutions corrections commission provided for in ~~Title-2v~~
8 chapter-15, part-23 [section 1].

9 (3) "Parole" means the release to the community of a
10 prisoner by the decision of the board prior to the
11 expiration of his term, subject to conditions imposed by the
12 board and subject to supervision of the department
13 commission.

14 (4) "Probation" means the release by the court without
15 imprisonment, except as otherwise provided by law, of a
16 defendant found guilty of a crime upon verdict or plea,
17 subject to conditions imposed by the court and subject to
18 the supervision of the department commission upon direction
19 of the court."

20 Section 29. Section 50-3-102, MCA, is amended to read:

21 "50-3-102. Powers and duties of state fire marshal.

22 (1) For the purpose of reducing the state's fire loss, the
23 state fire marshal shall:

24 (a) make at least one inspection a year of each state
25 institution in the department of institutions and submit a

1 copy of the report to the department of institutions with
2 recommendations in regard to fire prevention, fire
3 protection, and public safety;

4 ~~(b) make at least one inspection a year of each state~~
5 ~~institution under the control of the corrections commission~~
6 ~~and submit a copy of the report to the commission with~~
7 ~~recommendations in regard to fire prevention, fire~~
8 ~~protection, and public safety;~~

9 ~~(b)(c) make at least one inspection a year of each~~
10 ~~unit of the Montana university system and submit a copy of~~
11 ~~the report to the commissioner of higher education with~~
12 ~~recommendations in regard to fire prevention, fire~~
13 ~~protection, and public safety;~~

14 ~~(e)(d) inspect public, business, or industrial~~
15 ~~buildings and require conformance to law and rules~~
16 ~~promulgated under the provisions of this chapter;~~

17 ~~(d)(a) assist local fire and law enforcement~~
18 ~~authorities in arson investigations and supervise such~~
19 ~~investigations when, in his judgment, supervision is~~
20 ~~necessary;~~

21 ~~(e)(f) review all training programs on investigation~~
22 ~~of accidental and incendiary fires;~~

23 ~~(f)(g) provide fire prevention and fire protection~~
24 ~~information to public officials and the general public;~~

25 ~~(g)(h) encourage and assist local fire authorities in~~

1 fire prevention programs and adopt standards and implement a
2 program to encourage fire departments to meet such
3 standards;

4 (h)(1) be the state entity primarily responsible for
5 promoting fire safety at the state level and to represent
6 the state in structural fire matters;

7 (i)(1) encourage coordination of all services and
8 agencies in structural fire matters to reduce duplication
9 and fill voids in services;

10 (j)(1) establish rules concerning responsibilities and
11 procedures to be followed when there is a threat of
12 explosive material in a building housing state offices;

13 (k)(1) keep in his office a record of all fires
14 occurring in the state, the origin of the fires, and all
15 facts, statistics, and circumstances relating thereto which
16 have been determined by investigations under the provisions
17 of chapter 63 of this title; and, except for statements of
18 witnesses given during an investigation and information that
19 may be held in confidence under 50-63-403, the record shall
20 be open at all times to public inspection; and

21 (l)(1) make an annual report to the attorney general
22 containing a detailed statement of his official action and
23 the transactions of his department, and the attorney general
24 shall, in turn, submit the report to the governor with such
25 recommendations and comments thereon as he considers

1 necessary.

2 (2) The state fire marshal may:

3 (a) adopt rules necessary for safeguarding life and
4 property from the hazards of fire and explosion and carrying
5 into effect the fire prevention laws of this state; and

6 (b) if necessary to safeguard life and property under
7 rules promulgated pursuant to this section, maintain an
8 action to enjoin the use of all or a portion of a building
9 or restrain a specific activity until there is compliance
10 with the rules."

11 Section 30. Section 50-21-103, MCA, is amended to
12 read:

13 "50-21-103. Limitations on right to perform autopsy or
14 dissection. The right to perform an autopsy, dissect a human
15 body, or make any post-mortem examination involving
16 dissection of any part of a body is limited to cases where:

17 (1) specifically authorized by law;

18 (2) a coroner is authorized to hold an inquest and
19 then only to the extent that the coroner may authorize
20 dissection or autopsy;

21 (3) authorized by a written statement of the deceased,
22 whether the statement is of a testamentary character or
23 otherwise;

24 (4) authorized by the husband, wife, or next of kin
25 responsible by law for burial to determine the cause of

1 death and then only to the extent so authorized;

2 (5) the decedent died in a hospital operated by the
3 United States veterans administration, Montana school for
4 the deaf and blind, ~~the corrections commission~~ or an
5 institution in the department of institutions leaving no
6 surviving husband, wife, or next of kin responsible by law
7 for burial and the manager or superintendent of the hospital
8 or institution where death occurred obtains authority on
9 order of the district court to determine the cause of death
10 and then only to the extent authorized by court order;

11 (6) the decedent died in the state, was a resident,
12 but left no surviving husband, wife, or next of kin charged
13 by law with the duty of burial and the attending physician
14 obtains authority on order of the district court for the
15 purpose of ascertaining the cause of death and then only to
16 the extent authorized by court order after it has been shown
17 that the physician made diligent search for the next of kin
18 responsible by law for burial."

19 Section 31. Section 53-1-101, MCA, is amended to read:
20 "53-1-101. Definitions. Unless the context requires
21 otherwise, in this chapter the following definitions apply:

22 (1) "Department" means the department of institutions
23 provided for in Title 2, chapter 15, part 23.

24 (2) "Director" means the director of institutions
25 provided for in 2-15-2301.

1 (3) "Institution" means any of the institutions listed
2 in 53-1-202 and ~~section 4~~."

3 Section 32. Section 53-1-202, MCA, is amended to read:
4 "53-1-202. Institutions in department. (1) The
5 following institutions are in the department:

- 6 (a) Galen state hospital;
- 7 (b) Montana veterans' home;
- 8 ~~(c) State prison;~~
- 9 ~~(d) Mountain View school;~~
- 10 ~~(e) Pine Hills school;~~
- 11 ~~(f)(c) Boulder River school and hospital;~~
- 12 ~~(g)(d) Warm Springs state hospital;~~
- 13 ~~(h)(e) Montana center for the aged;~~
- 14 ~~(i) Swan River youth forest camp;~~
- 15 ~~(j)(f) Eastmont training center;~~
- 16 ~~(k) Any other institution which provides care and~~
17 ~~services for juvenile delinquents, including but not limited~~
18 ~~to youth forest camps and juvenile reception and evaluation~~
19 ~~centers.~~

20 (2) A state institution may not be moved,
21 discontinued, or abandoned without prior consent of the
22 legislature."

23 Section 33. Section 53-1-204, MCA, is amended to read:
24 "53-1-204. Responsibility of ~~warden~~ and
25 superintendents of institutions. The ~~warden~~ or

1 superintendents of institutions in the department are
 2 responsible for the immediate management and control of
 3 their respective institutions, subject to the general
 4 policies and programs established by the department."

5 Section 34. Section 53-1-206, MCA, is amended to read:

6 "53-1-206. Participation by institutions in research
 7 programs. The department ~~corrections commission~~ may direct
 8 ~~require that~~ a penal and corrective institution ~~of the state~~
 9 ~~to~~ participate in and cooperate with programs of research
 10 and development being conducted and carried on by any units
 11 of the Montana university system, by any of the other
 12 educational institutions of the state of Montana, or by any
 13 foundation or agency thereof in the fields of science,
 14 health, education, and natural resources. These programs may
 15 include the voluntary participation of the inmates of the
 16 institution in testing and experimental work conducted as a
 17 part thereof. Any funds received from the authorized
 18 programs may be shared with the participating inmates or
 19 otherwise held and used for the welfare and rehabilitation
 20 thereof and may not become a part of the regular budgeted
 21 operation of the institution."

22 Section 35. Section 53-1-301, MCA, is amended to read:

23 "53-1-301. Permitted institutional industries, ~~powers~~
 24 ~~of department, and --~~ incentive pay to inmates. ~~The Both the~~
 25 ~~department and the corrections commission may:~~

1 (1) establish industries in ~~facilities under their~~
 2 ~~jurisdiction, including institutions under the department of~~
 3 ~~institutions and the corrections commission,~~ which will
 4 result in the production or manufacture of such products and
 5 the rendering of such services as may be needed by any
 6 department or agency of the state or any political
 7 subdivision thereof, by any agency of the federal
 8 government, by any other states or their political
 9 subdivisions, or by nonprofit organizations and that will
 10 assist in the rehabilitation of residents in ~~institutions~~
 11 ~~such facilities;~~

12 (2) contract with private industry for the sale of
 13 goods or components manufactured or produced in shops under
 14 its jurisdiction;

15 (3) print catalogs describing goods manufactured or
 16 produced by ~~institutions~~ a facility and distribute the
 17 catalogs;

18 (4) fix the sale price for goods produced or
 19 manufactured at ~~institutions~~ a facility. Prices shall not
 20 exceed prices existing in the open market for goods of
 21 comparable quality.

22 (5) require ~~institutions~~ a facility under its
 23 jurisdiction to purchase needed goods from other
 24 ~~institutions facilities;~~

25 (6) provide for the repair and maintenance of property

1 and equipment of ~~institutions a~~ facility by residents of
2 ~~institutions facilities~~;

3 (7) provide for construction projects up to the
4 aggregate sum of \$25,000 per project, by residents of
5 ~~institutions facilities~~; provided, however, said
6 construction work is not covered by a collective bargaining
7 agreement;

8 (8) provide for the repair and maintenance at an
9 ~~institution a~~ facility of furniture and equipment of any
10 state agency;

11 (9) provide for the manufacture at an ~~institution a~~
12 facility of motor vehicle license plates and other related
13 articles;

14 (10) with the approval of the ~~commission or~~ department,
15 sell manufactured or agricultural products and livestock on
16 the open market;

17 (11) provide for the manufacture at an ~~institution a~~
18 facility of highway, road, and street marking signs for the
19 use of the state or any of its political subdivisions,
20 except when the manufacture of the signs is in violation of
21 a collective bargaining contract;

22 (12) (a) pay an inmate or resident of an ~~institution a~~
23 facility from receipts from the sale of products produced or
24 manufactured or services rendered in a program in which he
25 is working.

1 (b) Payment for the performance of work may be based
2 on the following criteria:

- 3 (i) knowledge and skill;
4 (ii) attitude toward authority;
5 (iii) physical effort;
6 (iv) responsibility for equipment and materials;
7 (v) regard for safety of others.

8 (c) The maximum rate of pay shall be determined by the
9 appropriation established for each program."

10 Section 36. Section 53-1-302, MCA, is amended to read:

11 "53-1-302. Disposition of receipts from sale of goods.
12 Receipts from the sale of goods produced or manufactured by
13 an institution in the department of institutions or the
14 corrections commission shall be deposited in the revolving
15 fund account for the use of the industries program of the
16 appropriate institution. At the end of each biennium, all
17 unobligated revolving funds over a \$50,000 ending-fund
18 balance, except for those funds reserved for equipment
19 replacement as determined by an equipment replacement
20 schedule, shall revert to the state general fund account."

21 Section 37. Section 53-1-303, MCA, is amended to read:

22 "53-1-303. Prohibited acts. Unless permitted by the
23 department or the corrections commission, arranging for the
24 labor of a resident of an institution in the department of
25 institutions or the corrections commission is prohibited."

1 Section 38. Section 53-1-304, MCA, is amended to read:

2 *53-1-304. Supervision of industries program. The ~~an~~
3 industries program shall be supervised by the director of
4 the department of institutions or his designated
5 representative ~~or by the corrections commission~~, provided
6 the administration of the industries program is separate
7 from the administration of any institution where the program
8 may be located."

9 Section 39. Section 53-30-105, MCA, is amended to
10 read:

11 *53-30-105. Good time allowance. (1) The ~~department of~~
12 ~~institutions~~ corrections commission shall adopt rules
13 providing for the granting of good time allowance for
14 inmates employed in any prison work or activity. The good
15 time allowance shall operate as a credit on his sentence as
16 imposed by the court, conditioned upon the inmate's good
17 behavior and compliance with the rules made by the
18 ~~department or the warden commission~~. The rules adopted by
19 the ~~department~~ commission may not grant good time allowance
20 to exceed:

21 (a) 10 days per month for inmates assigned to maximum,
22 close, and medium I security classifications;

23 (b) 13 days per month for those classified as medium
24 II and minimum security classifications;

25 (c) 15 days per month for inmates after having been

1 assigned as medium II or minimum security for an
2 uninterrupted period of 1 year;

3 (d) 13 days per month for those inmates enrolled in
4 school who successfully complete the course of study or who
5 while so enrolled are released from prison by discharge or
6 parole;

7 (e) 3 days per month for those inmates participating
8 in self-improvement activities designated by the department.

9 (2) In the event of an attempted escape by an inmate
10 or a violation of the rules prescribed by the ~~department or~~
11 ~~warden~~ commission, the inmate may be punished by the
12 forfeiture of part or all good time allowances. ~~The~~
13 ~~of the state prison shall advise the department of any~~
14 ~~attempted escape or violation of rules on the part of the~~
15 ~~inmate. Any punishment by forfeiture of good time allowance~~
16 ~~must be approved by the departments~~

17 (3) A person may not earn good time under this section
18 while he is on probation or parole."

19 NEW SECTION. Section 40. Codification. Section 1 is
20 intended to be codified as an integral part of Title 2,
21 chapter 15, part 10, and the provisions of Title 2, chapter
22 15, apply to section 1.

23 NEW SECTION. Section 41. Repealer. Section 53-30-201,
24 MCA, is repealed.

25 NEW SECTION. Section 42. Effective date. This act is

LC 0033/01

1 effective July 1, 1982.

-End-