



MARCH 12, 1991

CONCURRED IN.

THIRD READING, AMENDMENTS  
CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 *HOUSE BILL NO. 148*  
 2 INTRODUCED BY *[Signature]*  
 3 BY REQUEST OF THE JOINT INTERIM SUBCOMMITTEE  
 4 ON ADULT AND JUVENILE DETENTION

5  
 6 A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING HOME ARREST IN  
 7 LIEU OF IMPRISONMENT FOR CERTAIN CRIMINAL OFFENSES; ALLOWING  
 8 HOME ARREST FOR BOTH ADULT AND JUVENILE OFFENDERS;  
 9 PROHIBITING HOME ARREST FOR CERTAIN FELONY OFFENSES;  
 10 AMENDING SECTIONS 41-5-306, 41-5-403, 41-5-523, 46-18-201,  
 11 61-8-714, AND 61-8-722, MCA; AND PROVIDING AN APPLICABILITY  
 12 DATE."

13  
 14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

15 NEW SECTION. Section 1. Definitions. As used in  
 16 [sections 1 through 6], the following definitions apply:

17 (1) "Approved monitoring device" means an electronic  
 18 device or apparatus, approved by the department of  
 19 institutions, that is limited in capability to recording or  
 20 transmitting information concerning the offender's presence  
 21 in or absence from the home. The device must be minimally  
 22 intrusive. A monitoring device may not be approved that is  
 23 capable of recording or transmitting:

- 24 (a) visual images;
- 25 (b) oral or wire communications or any sound; or

1 (c) information concerning the offender's activities  
 2 while inside the home.

3 (2) (a) "Home" means the temporary or permanent  
 4 residence of an offender consisting of the actual living  
 5 area. The term includes a hospital, nursing care facility,  
 6 hospice, halfway house, group home, residential treatment  
 7 facility, boarding house, or a facility described in  
 8 41-5-306(1).

9 (b) When more than one residence or family are located  
 10 on a single piece of property, the term does not include the  
 11 residence of any other person who is not part of the social  
 12 unit formed by the offender's immediate family.

13 (3) "Home arrest" means the use of a person's home for  
 14 purposes of confinement.

15 (4) "Supervising authority" means the probation and  
 16 parole bureau of the corrections division of the department  
 17 of institutions or, in the case of a juvenile, the juvenile  
 18 probation division of the youth court or any other person or  
 19 entity appointed by the court.

20 (5) "Violent felony offense" means deliberate homicide,  
 21 mitigated deliberate homicide, negligent homicide,  
 22 aggravated assault, negligent vehicular assault, kidnapping,  
 23 aggravated kidnapping, robbery, sexual intercourse without  
 24 consent, sexual abuse of children, arson, aggravated  
 25 burglary, escape, any criminal attempt to commit an



1 enumerated offense, or conviction as a persistent felony  
 2 offender when the offender has a felony conviction for any  
 3 of the listed offenses within the 5-year period preceding  
 4 the date of the present conviction.

5 NEW SECTION. Section 2. Home arrest -- petition --  
 6 agreement. (1) An offender may petition a sentencing court  
 7 for an order directing that all or a portion of a sentence  
 8 of imprisonment in the county jail or state prison be served  
 9 under conditions of home arrest. Petitions may be considered  
 10 and ruled upon by the sentencing court prior to and  
 11 throughout the term of the offender's sentence.

12 (2) The sentencing judge shall study the records of all  
 13 persons petitioning for home arrest and, in his discretion,  
 14 may:

15 (a) cause additional background or character  
 16 information to be collected or reduced to writing by the  
 17 probation officer;

18 (b) conduct hearings on the desirability of granting  
 19 home arrest;

20 (c) impose on the home arrestee conditions that are  
 21 proper, including restitution;

22 (d) order that all or a portion of a sentence of  
 23 imprisonment in the county jail or state prison be served  
 24 under conditions of home arrest at whatever time or  
 25 intervals, consecutive or nonconsecutive, that the court

1 determines. The time actually spent in home arrest pursuant  
 2 to this section may not exceed 6 months or the maximum term  
 3 of imprisonment imposed, whichever is shorter;

4 (e) issue a warrant for a person when there is reason  
 5 to believe the person has violated the conditions of home  
 6 arrest, conduct hearings on the matter, and order  
 7 reimprisonment in the county jail or state prison upon proof  
 8 of violation; and

9 (f) grant final discharge from arrest.

10 (3) A home arrestee shall execute a written agreement  
 11 with the court setting forth all the conditions of home  
 12 arrest. The order of home arrest must incorporate that  
 13 agreement and must order compliance with its terms. The  
 14 order and agreement must be transmitted to the supervising  
 15 authority and to the appropriate jail or prison official.

16 (4) Time spent in home arrest must be credited against  
 17 the maximum term of imprisonment imposed for the offender  
 18 pursuant to law.

19 (5) Home arrest must be under the supervision of the  
 20 supervising authority. A home arrestee is subject to the  
 21 decisions of the supervising authority during the period of  
 22 supervision. Fees for supervision or equipment usage must be  
 23 paid directly to the supervising authority.

24 NEW SECTION. Section 3. Home arrest -- conditions --  
 25 fees -- consent of cohabitators. (1) The conditions of home

1 arrest must include the following:

2 (a) The home arrestee must be confined to his home at  
3 all times except when:

4 (i) working at approved employment or traveling  
5 directly to and from employment;

6 (ii) seeking employment;

7 (iii) undergoing medical, psychiatric, or mental health  
8 treatment or participating in an approved counseling or  
9 aftercare program;

10 (iv) attending an approved educational institution or  
11 program;

12 (v) attending a regularly scheduled religious service  
13 at a place of worship; or

14 (vi) participating in an approved community service  
15 program.

16 (b) Violation of the provisions of subsection (1) may  
17 subject the home arrestee to prosecution under 45-7-306.

18 (c) The home arrestee shall conform to a schedule  
19 prepared by the supervising authority, specifically setting  
20 forth the times when he may be absent from the home and the  
21 locations where he may be during those times.

22 (d) The home arrestee may not commit another offense  
23 during the period of home arrest.

24 (e) The home arrestee may not change the place of home  
25 arrest or the schedule without prior approval of the

1 supervising authority.

2 (f) The home arrestee shall maintain a telephone or  
3 other approved monitoring device in the home or on the  
4 arrestee's person at all times.

5 (g) Any other reasonable conditions may be set by the  
6 court or the supervising authority, including:

7 (i) restitution;

8 (ii) supervision fees under 7-32-2245, 46-18-702, or  
9 46-18-703;

10 (iii) any of the conditions imposed on persons on  
11 probation or conditional discharge under 46-23-1011 or  
12 46-23-1021.

13 (2) A written and notarized consent agreement must be  
14 filed with the court by every adult who will share the  
15 offender's home during the term of home arrest.

16 NEW SECTION. **Section 4. Home arrest -- ineligibility.**

17 A person being held under a detainer, warrant, or process  
18 issued by some other jurisdiction is not eligible for home  
19 arrest. A person convicted of a violent felony offense is  
20 not eligible for home arrest.

21 NEW SECTION. **Section 5. Home arrest -- responsibility**

22 for own living expenses -- government benefits. A person  
23 serving a sentence under conditions of home arrest is  
24 responsible for food, housing, clothing, and medical care  
25 expenses and is eligible for government benefits to the same

1 extent as a person on probation, parole, or conditional  
2 discharge.

3 NEW SECTION. Section 6. Home arrest -- list of  
4 offenders. At least once every 30 days, the supervising  
5 authority shall provide all local and county law enforcement  
6 agencies with a list of the offenders under home arrest in  
7 their jurisdictions. This list must include the following  
8 information:

- 9 (1) the offender's place of home arrest;  
10 (2) the offense for which the offender was charged,  
11 convicted, or otherwise placed under home arrest;  
12 (3) the date that the sentence of home arrest will be  
13 completed; and  
14 (4) the name, address, and phone number of the officer  
15 of the supervising authority for the offender.

16 **Section 7.** Section 41-5-306, MCA, is amended to read:

17 **"41-5-306. (Temporary) Place of shelter care or**  
18 **detention.** (1) After a probable cause hearing provided for  
19 in 41-5-303, a youth alleged to be a youth in need of  
20 supervision may be placed only in:

- 21 (a) in a licensed youth foster home as defined in  
22 41-3-1102;  
23 (b) in a facility operated by a licensed child welfare  
24 agency; or  
25 (c) in a licensed youth group home as defined in

1 41-3-1102; or

2 (d) under home arrest, either in his own home or in one  
3 of the facilities described in subsections (1)(a) through  
4 (1)(c), as provided in [sections 1 through 6].

5 (2) A youth alleged to be in need of care ~~shall~~ may be  
6 placed only in the facilities ~~stated~~ listed in subsection  
7 (1) ~~of this section~~ and ~~shall~~ may not be placed in a jail or  
8 other facility intended or used for the detention of adults  
9 charged with criminal offenses.

10 (3) After a probable cause hearing provided for in  
11 41-5-303, a youth alleged to be a delinquent youth may be  
12 placed only in the facilities described in subsection (1),  
13 under home arrest as provided in subsection (1), in a  
14 detention facility, or in a jail or other facility for the  
15 detention of adults only if the facilities in subsection (1)  
16 are not available or do not provide adequate security and  
17 the detention is in an area physically and visually separate  
18 and removed from that of adults. (Terminates July 1,  
19 1991--sec. 14, Ch. 434, L. 1989.)

20 **41-5-306. (Effective July 1, 1991) Place of shelter**  
21 **care or detention.** (1) After a probable cause hearing  
22 provided for in 41-5-303, a youth alleged to be a youth in  
23 need of supervision may be placed only in:

- 24 (a) in a licensed youth foster home as defined in  
25 41-3-1102;

1 (b) in a facility operated by a licensed child welfare  
2 agency; or

3 (c) in a licensed youth group home as defined in  
4 41-3-1102; or

5 (d) under home arrest, either in his own home or in one  
6 of the facilities described in subsections (1)(a) through  
7 (1)(c), as provided in [sections 1 through 6].

8 (2) A youth alleged to be in need of care ~~shall~~ may be  
9 placed only in the facilities stated listed in subsection  
10 (1) ~~of this section~~ and ~~shall~~ may not be placed in a jail or  
11 other facility intended or used for the detention of adults  
12 charged with criminal offenses.

13 (3) After a probable cause hearing provided for in  
14 41-5-303, a youth alleged to be a delinquent youth may be  
15 placed only in the facilities described in subsection (1),  
16 under home arrest as provided in subsection (1), or in a  
17 detention facility as defined in 41-5-103."

18 **Section 8.** Section 41-5-403, MCA, is amended to read:

19 "41-5-403. **Disposition permitted under informal**  
20 **adjustment.** (1) The following dispositions may be imposed by  
21 informal adjustment:

22 (a) probation;

23 (b) placement of the youth for substitute care into a  
24 youth care facility as defined in 41-3-1102 and as  
25 determined by the department;

1 (c) placement of the youth in a private agency  
2 responsible for the care and rehabilitation of ~~such-a~~ the  
3 youth as determined by the department;

4 (d) restitution upon approval of the youth court judge;  
5 (e) placement of the youth under home arrest as  
6 provided in [sections 1 through 6].

7 (2) In determining whether restitution is appropriate  
8 in a particular case, the following factors may be  
9 considered in addition to any other evidence:

10 (a) age of the youth;

11 (b) ability of the youth to pay;

12 (c) ability of the parents or legal guardian to pay;

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

14 (e) legal remedies of the victim; however, the ability  
15 of the victim or his insurer to stand any loss may not be  
16 considered in any case.

17 (3) If the youth violates his aftercare agreement as  
18 provided for in 53-30-226, he must be returned to the court  
19 for further disposition. ~~No~~ A youth may not be placed in a  
20 state youth correctional facility under informal  
21 adjustment."

22 **Section 9.** Section 41-5-523, MCA, is amended to read:

23 "41-5-523. **(Temporary) Disposition of delinquent youth**  
24 **and youth in need of supervision.** (1) If a youth is found to  
25 be delinquent or in need of supervision, the youth court may

1 enter its judgment making any of the following dispositions:

2 (a) place the youth on probation;

3 (b) commit the youth to the department if the court  
4 determines that the youth is in need of placement in other  
5 than the youth's own home<sup>7</sup>, provided<sup>7</sup>-however<sup>7</sup> that:

6 (i) in the case of a youth in need of supervision, the  
7 court shall determine whether continuation in the home would  
8 be contrary to the welfare of the youth and whether  
9 reasonable efforts have been made to prevent or eliminate  
10 the need for removal of the youth from his home. The court  
11 shall include such a determination in the order committing  
12 the youth to the department.

13 (ii) in the case of a delinquent youth who is determined  
14 by the court to be a serious juvenile offender, the judge  
15 may specify that the youth be placed in a youth correctional  
16 facility if the judge finds that such the placement is  
17 necessary for the protection of the public;

18 (c) order restitution by the youth or his parents;

19 (d) impose a fine as authorized by law if the violation  
20 alleged would constitute a criminal offense if committed by  
21 an adult;

22 (e) require the performance of community service;

23 (f) require the youth, his parents, his guardians, or  
24 the persons having legal custody of the youth to receive  
25 counseling services;

1 (g) require the medical and psychological evaluation of  
2 the youth, his parents, his guardians, or the persons having  
3 legal custody of the youth;

4 (h) require the parents, guardians, or other persons  
5 having legal custody of the youth to furnish such services  
6 as the court may designate;

7 (i) order such further care, treatment, evaluation, or  
8 relief that the court considers beneficial to the youth and  
9 the community and that does not obligate funding from the  
10 department without the department's approval, except that a  
11 youth may not be placed by a youth court in a residential  
12 treatment facility as defined in 50-5-101. Only the  
13 department may, pursuant to subsection (1)(b), place a youth  
14 in a residential treatment facility.

15 (j) commit the youth to a mental health facility if,  
16 based upon the testimony of a professional person as defined  
17 in 53-21-102, the court finds that the youth is seriously  
18 mentally ill as defined in 53-21-102. The youth is entitled  
19 to all rights provided by 53-21-114 through 53-21-119. Upon  
20 release or discharge from the mental health facility, the  
21 youth must be returned to the court for further disposition  
22 in accordance with this section unless the court order has  
23 expired or the court no longer retains jurisdiction under  
24 41-5-205.

25 (k) place the youth under home arrest as provided in



1 [sections 1 through 6].

2 (2) When a youth is committed to the department, the  
3 department shall determine the appropriate placement and  
4 rehabilitation program for the youth after considering the  
5 recommendations made under 41-5-527 by the youth placement  
6 committee. Placement is subject to the following  
7 limitations:

8 (a) A youth in need of supervision may not be placed in  
9 a youth correctional facility.

10 (b) A youth may not be held in a youth correctional  
11 facility for a period of time in excess of the maximum  
12 period of imprisonment that could be imposed on an adult  
13 convicted of the offense or offenses that brought the youth  
14 under the jurisdiction of the youth court. Nothing in this  
15 section limits the power of the department to enter into an  
16 aftercare agreement with the youth pursuant to 53-30-226.

17 (c) No A youth may not be placed in or transferred to a  
18 penal institution or other facility used for the execution  
19 of sentence of adults convicted of crimes.

20 (3) A youth placed by the department in a youth  
21 correctional facility must be supervised by the department.  
22 A youth placed in any other placement must be supervised by  
23 the youth probation officer of the youth court having  
24 jurisdiction over the youth.

25 (4) At any time after the youth has been taken into

1 custody, the court may, with the consent of the youth in the  
2 manner provided in 41-5-303 for consent by a youth to a  
3 waiver of his constitutional rights or after the youth has  
4 been adjudicated delinquent or in need of supervision, order  
5 the youth to be evaluated by the department for a period not  
6 to exceed 45 days. The department shall determine the place  
7 and manner of evaluation.

8 (5) No An evaluation of a youth may not be performed at  
9 the Montana state hospital unless such the youth is  
10 transferred to the district court under 41-5-206.

11 (6) Any order of the court may be modified at any time.  
12 In the case of a youth committed to the department, an order  
13 pertaining to the youth may be modified only upon notice to  
14 the department and subsequent hearing.

15 (7) Whenever the court commits a youth to the  
16 department, it must shall transmit with the dispositional  
17 judgment copies of a medical report and such any other  
18 clinical, predisposition, or other reports and information  
19 pertinent to the care and treatment of the youth.

20 41-5-523. (Effective July 1, 1991) Disposition of  
21 delinquent youth and youth in need of supervision. (1) If a  
22 youth is found to be delinquent or in need of supervision,  
23 the youth court may enter its judgment making any of the  
24 following dispositions:

25 (a) place the youth on probation;

1 (b) commit the youth to the department if the court  
2 determines that the youth is in need of placement in other  
3 than the youth's own home, provided, however, that:

4 (i) in the case of a youth in need of supervision, the  
5 court shall determine whether continuation in the home would  
6 be contrary to the welfare of the youth and whether  
7 reasonable efforts have been made to prevent or eliminate  
8 the need for removal of the youth from his home. The court  
9 shall include such a determination in the order committing  
10 the youth to the department.

11 (ii) in the case of a delinquent youth who is determined  
12 by the court to be a serious juvenile offender, the judge  
13 may specify that the youth be placed in a youth correctional  
14 facility if the judge finds that such the placement is  
15 necessary for the protection of the public;

16 (c) order restitution by the youth or his parents;

17 (d) impose a fine as authorized by law if the violation  
18 alleged would constitute a criminal offense if committed by  
19 an adult;

20 (e) require the performance of community service;

21 (f) require the youth, his parents, his guardians, or  
22 the persons having legal custody of the youth to receive  
23 counseling services;

24 (g) require the medical and psychological evaluation of  
25 the youth, his parents, his guardians, or the persons having

1 legal custody of the youth;

2 (h) require the parents, guardians, or other persons  
3 having legal custody of the youth to furnish such services  
4 as the court may designate;

5 (i) order such further care, treatment, evaluation, or  
6 relief that the court considers beneficial to the youth and  
7 the community and that does not obligate funding from the  
8 department without the department's approval, except that a  
9 youth may not be placed by a youth court in a residential  
10 treatment facility as defined in 50-5-101. Only the  
11 department may, pursuant to subsection (1)(b), place a youth  
12 in a residential treatment facility.

13 (j) commit the youth to a mental health facility if,  
14 based upon the testimony of a professional person as defined  
15 in 53-21-102, the court finds that the youth is seriously  
16 mentally ill as defined in 53-21-102. The youth is entitled  
17 to all rights provided by 53-21-114 through 53-21-119. Upon  
18 release or discharge from the mental health facility, the  
19 youth must be returned to the court for further disposition  
20 in accordance with this section unless the court order has  
21 expired or the court no longer retains jurisdiction under  
22 41-5-205.

23 (k) place the youth under home arrest as provided in  
24 [sections 1 through 6].

25 (2) When a youth is committed to the department, the

1 department shall determine the appropriate placement and  
 2 rehabilitation program for the youth after considering the  
 3 recommendations made under 41-5-527 by the youth placement  
 4 committee. Placement is subject to the following  
 5 limitations:

6 (a) A youth in need of supervision may not be placed in  
 7 a youth correctional facility.

8 (b) A youth may not be held in a youth correctional  
 9 facility for a period of time in excess of the maximum  
 10 period of imprisonment that could be imposed on an adult  
 11 convicted of the offense or offenses that brought the youth  
 12 under the jurisdiction of the youth court. Nothing in this  
 13 section limits the power of the department to enter into an  
 14 aftercare agreement with the youth pursuant to 53-30-226.

15 (c) No A youth may not be placed in or transferred to a  
 16 penal institution or other facility used for the execution  
 17 of sentence of adults convicted of crimes.

18 (3) A youth placed by the department in a youth  
 19 correctional facility must be supervised by the department.  
 20 A youth placed in any other placement must be supervised by  
 21 the youth probation officer of the youth court having  
 22 jurisdiction over the youth.

23 (4) At any time after the youth has been taken into  
 24 custody and before final disposition, the court may, with  
 25 the consent of the youth in the manner provided in 41-5-303

1 for consent by a youth to a waiver of his constitutional  
 2 rights or after the youth has been adjudicated delinquent or  
 3 in need of supervision, order the youth to be evaluated for  
 4 a period not to exceed 45 days. The county commissioners are  
 5 responsible for the cost of the evaluation and may contract  
 6 with the department or other public or private agencies to  
 7 obtain evaluation services.

8 (5) No An evaluation of a youth may not be performed at  
 9 the Montana state hospital unless such the youth is  
 10 transferred to the district court under 41-5-206.

11 (6) Any order of the court may be modified at any time.  
 12 In the case of a youth committed to the department, an order  
 13 pertaining to the youth may be modified only upon notice to  
 14 the department and subsequent hearing.

15 (7) Whenever the court commits a youth to the  
 16 department, it must shall transmit with the dispositional  
 17 judgment copies of a medical report and such any other  
 18 clinical, predisposition, or other reports and information  
 19 pertinent to the care and treatment of the youth."

20 **Section 10.** Section 46-18-201, MCA, is amended to read:

21 "46-18-201. Sentences that may be imposed. (1) Whenever  
 22 a person has been found guilty of an offense upon a verdict  
 23 or a plea of guilty, the court may:

24 (a) defer imposition of sentence, excepting except as  
 25 provided in 61-8-714 and 61-8-722 for sentences for driving

1 under the influence of alcohol or drugs, for a period,  
 2 except as otherwise provided, not exceeding 1 year for any  
 3 misdemeanor or for a period not exceeding 3 years for any  
 4 felony. The sentencing judge may impose upon the defendant  
 5 any reasonable restrictions or conditions during the period  
 6 of the deferred imposition. Reasonable restrictions or  
 7 conditions may include:

- 8 (i) jail base release;
- 9 (ii) jail time not exceeding 180 days;
- 10 (iii) conditions for probation;
- 11 (iv) restitution;
- 12 (v) payment of the costs of confinement;
- 13 (vi) payment of a fine as provided in 46-18-231;
- 14 (vii) payment of costs as provided in 46-18-232 and  
 15 46-18-233;
- 16 (viii) payment of costs of court----appointed  
 17 court-appointed counsel as provided in 46-8-113;
- 18 (ix) community service;
- 19 (x) home arrest as provided in [sections 1 through 6];
- 20 ~~(x)~~(xi) any other reasonable conditions considered  
 21 necessary for rehabilitation or for the protection of  
 22 society; or
- 23 ~~(x)~~(xii) any combination of the above.
- 24 (b) suspend execution of sentence up to the maximum  
 25 sentence allowed for each particular offense. The sentencing

1 judge may impose on the defendant any reasonable  
 2 restrictions or conditions during the period of suspended  
 3 sentence. Reasonable restrictions or conditions may include  
 4 any of those listed in subsections subsection (1)(a)~~(i)~~  
 5 ~~through-(i)(a)(xi)~~.

- 6 (c) impose a fine as provided by law for the offense;
- 7 (d) require payment of costs as provided in 46-18-232  
 8 or payment of costs of court-appointed counsel as provided  
 9 in 46-8-113;
- 10 (e) commit the defendant to a correctional institution,  
 11 with or without a fine as provided by law for the offense;
- 12 (f) impose any combination of subsections (1)(b)  
 13 through (1)(e).

14 (2) If any a financial obligation is imposed as a  
 15 condition under subsection (1)(a), sentence may be deferred  
 16 for a period not exceeding 2 years for any a misdemeanor or  
 17 for a period not exceeding 6 years for any a felony,  
 18 regardless of whether any other conditions are imposed.

19 (3) If any restrictions or conditions imposed under  
 20 subsection (1)(a) or (1)(b) are violated, the court shall  
 21 consider any elapsed time and either expressly allow part or  
 22 all of it as a credit against the sentence or reject all or  
 23 part as a credit and state its reasons in the order. Credit,  
 24 however, must be allowed for jail or home arrest time  
 25 already served.

1 (4) Except as provided in 46-18-222, the imposition or  
2 execution of the first 2 years of a sentence of imprisonment  
3 imposed under the following sections may not be deferred or  
4 suspended: 45-5-103, 45-5-202(3) relating to aggravated  
5 assault, 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-503(2)  
6 and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(3), and  
7 45-9-103(2).

8 (5) Except as provided in 46-18-222, the imposition or  
9 execution of the first 10 years of a sentence of  
10 imprisonment imposed under 45-5-102 may not be deferred or  
11 suspended.

12 (6) Except as provided in 46-18-222, imposition of  
13 sentence in a felony case may not be deferred in the case of  
14 a defendant who has been convicted of a felony on a prior  
15 occasion, whether or not the sentence was imposed,  
16 imposition of the sentence was deferred, or execution of the  
17 sentence was suspended.

18 (7) If the victim was less than 16 years old, the  
19 imposition or execution of the first 30 days of a sentence  
20 of imprisonment imposed under 45-5-502(3), 45-5-503,  
21 45-5-504, 45-5-505, or 45-5-507 may not be deferred or  
22 suspended. Section 46-18-222 does not apply to the first 30  
23 days of such the imprisonment.

24 (8) In imposing a sentence on a defendant convicted of  
25 a sexual offense as defined in 46-23-502, the court may not

1 waive the registration requirement provided in 46-18-254,  
2 46-18-255, and Title 46, chapter 23, part 5.

3 (9) A person convicted of a sexual offense, as defined  
4 in 46-23-502, and sentenced to imprisonment in the state  
5 prison shall enroll in the educational phase of the prison's  
6 sexual offender program."

7 **Section 11.** Section 61-8-714, MCA, is amended to read:

8 **\*61-8-714. Penalty for driving under the influence of**  
9 **alcohol or drugs.** (1) A Except as provided in subsection  
10 (7), a person convicted of a violation of 61-8-401 shall be  
11 punished by imprisonment in the county jail for not less  
12 than 24 consecutive hours or more than 60 days and shall be  
13 punished by a fine of not less than \$100 or more than \$500.  
14 The jail sentence may not be suspended unless the judge  
15 finds that the imposition of the jail sentence will pose a  
16 risk to the defendant's physical or mental well-being.

17 (2) On Except as provided in subsection (7), on a  
18 second conviction, he shall be punished by a fine of not  
19 less than \$300 or more than \$500 and by imprisonment for not  
20 less than 7 days, at least 48 hours of which must be served  
21 consecutively, or more than 6 months. ~~Three~~ Except as  
22 provided in subsection (7), 3 days of the jail sentence may  
23 not be suspended unless the judge finds that the imposition  
24 of the jail sentence will pose a risk to the defendant's  
25 physical or mental well-being.

1       (3) ~~On~~ Except as provided in subsection (7), on the  
 2 third or subsequent conviction, he shall be punished by  
 3 imprisonment for a term of not less than 30 days, at least  
 4 48 hours of which must be served consecutively, or more than  
 5 1 year, and by a fine of not less than \$500 or more than  
 6 \$1,000. Notwithstanding Except as provided in subsection  
 7 (7), notwithstanding any provision to the contrary providing  
 8 for suspension of execution of a sentence imposed under this  
 9 subsection, the imposition or execution of the first 10 days  
 10 of the ~~jaill~~ sentence imposed for a third or subsequent  
 11 offense that occurred within 5 years of the first offense  
 12 may not be deferred or suspended.

13       (4) In addition to the punishment provided in this  
 14 section, regardless of disposition, the defendant shall  
 15 complete an alcohol information course at an alcohol  
 16 treatment program approved by the department of  
 17 institutions, which may, in the sentencing court's  
 18 discretion and upon recommendation of a certified chemical  
 19 dependency counselor, include alcohol or drug treatment, or  
 20 both. On conviction of a second or subsequent offense under  
 21 this section, in addition to the punishment provided in this  
 22 section, regardless of disposition, the defendant shall  
 23 complete an alcohol information course at an alcohol  
 24 treatment program approved by the department of  
 25 institutions, which must include alcohol or drug treatment,

1 or both. Each counselor providing education or treatment  
 2 shall, at the commencement of the education or treatment,  
 3 notify the court that the defendant has been enrolled in a  
 4 course or treatment program. If the defendant fails to  
 5 attend the course or the treatment program, the counselor  
 6 shall notify the court of the failure. As long as the  
 7 alcohol information course and treatment program are  
 8 approved as provided in this subsection, the defendant may  
 9 attend the information course and treatment program of his  
 10 choice. The treatment provided to the defendant at a  
 11 treatment program must be at a level appropriate to his  
 12 alcohol problem, as determined by the judge based upon the  
 13 recommendation from the certified chemical dependency  
 14 counselor.

15       (5) For the purpose of determining the number of  
 16 convictions under this section, "conviction" means a final  
 17 conviction, as defined in 45-2-101, in this state,  
 18 conviction for a violation of a similar statute in another  
 19 state, or a forfeiture of bail or collateral deposited to  
 20 secure the defendant's appearance in court in this state or  
 21 another state, which forfeiture has not been vacated. An  
 22 offender is considered to have been previously convicted for  
 23 the purposes of this section if less than 5 years have  
 24 elapsed between the commission of the present offense and a  
 25 previous conviction. If there has been no additional

1 conviction for an offense under this section for a period of  
 2 5 years after a prior conviction hereunder under this  
 3 section, then all records and data relating to the prior  
 4 conviction are confidential criminal justice information as  
 5 defined in 44-5-103 and public access to the information may  
 6 only be obtained by district court order upon good cause  
 7 shown.

8 (6) For the purpose of calculating subsequent  
 9 convictions under this section, a conviction for a violation  
 10 of 61-8-406 also constitutes a conviction for a violation of  
 11 61-8-401.

12 (7) The court may order that a term of imprisonment  
 13 imposed under this section be served under home arrest as  
 14 provided in [sections 1 through 6]."

15 **Section 12.** Section 61-8-722, MCA, is amended to read:

16 "61-8-722. Penalty for driving with excessive blood  
 17 alcohol concentration. (1) A Except as provided in  
 18 subsection (7), a person convicted of a violation of  
 19 61-8-406 shall be punished by imprisonment for not more than  
 20 10 days and shall be punished by a fine of not less than  
 21 \$100 or more than \$500.

22 (2) On Except as provided in subsection (7), on a  
 23 second conviction of a violation of 61-8-406, he shall be  
 24 punished by imprisonment for not less than 48 consecutive  
 25 hours or more than 30 days and by a fine of not less than

1 \$300 or more than \$500.

2 (3) On Except as provided in subsection (7), on a third  
 3 or subsequent conviction of a violation of 61-8-406, he  
 4 shall be punished by imprisonment for not less than 48  
 5 consecutive hours or more than 6 months and by a fine of not  
 6 less than \$500 or more than \$1,000.

7 (4) The provisions of 61-5-205(2), 61-5-208(2), and  
 8 61-11-203(2)(d) relating to revocation and suspension of  
 9 driver's licenses ~~shall~~ apply to any conviction under  
 10 61-8-406.

11 (5) In addition to the punishment provided in this  
 12 section, regardless of disposition, the defendant shall  
 13 complete an alcohol information course at an alcohol  
 14 treatment program approved by the department of  
 15 institutions, which may include alcohol or drug treatment,  
 16 or both, if considered necessary by the counselor conducting  
 17 the program. Each counselor providing such education or  
 18 treatment shall, at the commencement of the education or  
 19 treatment, notify the court that the defendant has been  
 20 enrolled in a course or treatment program. If the defendant  
 21 fails to attend the course or the treatment program, the  
 22 counselor shall notify the court of the failure.

23 (6) For the purpose of determining the number of  
 24 convictions under this section, "conviction" means a final  
 25 conviction, as defined in 45-2-101, in this state or a

1 similar statute in another state or a forfeiture of bail or  
 2 collateral deposited to secure the defendant's appearance in  
 3 court in this state or another state, which forfeiture has  
 4 not been vacated. An offender is considered to have been  
 5 previously convicted for the purposes of this section if  
 6 less than 5 years have elapsed between the commission of the  
 7 present offense and a previous conviction. If there has been  
 8 no additional conviction for an offense under this section  
 9 for a period of 5 years after a prior conviction hereunder  
 10 under this section, then such the prior offense shall must  
 11 be expunged from the defendant's record.

12 (7) The court may order that a term of imprisonment  
 13 imposed under this section be served under home arrest as  
 14 provided in [sections 1 through 6]."

15 NEW SECTION. Section 13. Codification instruction.  
 16 [Sections 1 through 6] are intended to be codified as an  
 17 integral part of Title 46, chapter 18, and the provisions of  
 18 Title 46, chapter 18, apply to [sections 1 through 6].

19 NEW SECTION. Section 14. Severability. If a part of  
 20 [this act] is invalid, all valid parts that are severable  
 21 from the invalid part remain in effect. If a part of [this  
 22 act] is invalid in one or more of its applications, the part  
 23 remains in effect in all valid applications that are  
 24 severable from the invalid applications.

25 NEW SECTION. Section 15. Applicability. [This act]

1 applies to sentences imposed after [the effective date of  
 2 this act].

-End-



STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0148, Second Reading.

DESCRIPTION OF PROPOSED LEGISLATION:


A bill allowing home arrest in lieu of imprisonment for certain criminal offenses; home arrest for both adult and juvenile offenders; prohibiting home arrest for certain felony offenses; amending sections and providing an applicability date."

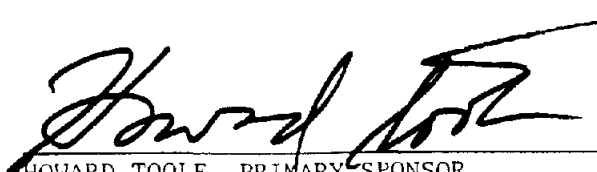
ASSUMPTIONS:

1. As amended, HB0148 will have no appreciable impact upon the Department of Institutions. Two of the amendments removed the majority of the initial impact:
  - a. The department may now accept or reject any referral from the court.
  - b. The department is the recognized supervising authority for adult felons only. Previously the department would also have been required to supervise misdemeanants.
2. Home arrest for second and third DUI convictions has been removed from HB0148.
3. The bill allows for the defendant to pay the costs associated with home arrest, if capable.
4. If she/he is not capable, the defendant would be placed in current level corrections programs (Intensive Supervision Program or Probation).

FISCAL IMPACT:

No impact.

  
ROD SUNDSTED, BUDGET DIRECTOR      DATE  
Office of Budget and Program Planning      1-23-91

  
HOWARD TOOLE, PRIMARY SPONSOR      DATE  
Fiscal Note for HB0148, Second Reading      1/23/91  
HB 148 Rev.

APPROVED BY COMMITTEE  
ON JUDICIARY

HOUSE BILL NO. 148

INTRODUCED BY TOOLE, HALLIGAN, RUSSELL, J. RICE

BY REQUEST OF THE JOINT INTERIM SUBCOMMITTEE

ON ADULT AND JUVENILE DETENTION

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING HOME ARREST IN LIEU OF IMPRISONMENT FOR CERTAIN CRIMINAL OFFENSES; ALLOWING HOME ARREST FOR BOTH ADULT AND JUVENILE OFFENDERS; PROHIBITING HOME ARREST FOR CERTAIN FELONY OFFENSES; AMENDING SECTIONS 41-5-306, 41-5-403, 41-5-523, 46-18-201, 61-8-714, AND 61-8-722, MCA; AND PROVIDING AN APPLICABILITY DATE."

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

NEW SECTION. **Section 1. Definitions.** As used in [sections 1 through 6], the following definitions apply:

(1) "~~Approved--monitoring~~ MONITORING device" means an electronic device or apparatus, ~~approved-by--the--department of--institutions,~~ that is limited in capability to recording or transmitting information concerning the offender's presence in or absence from the home. The device must be minimally intrusive. ~~A-monitoring-device-may-not-be-approved that-is-capable-of-recording-or-transmitting:~~

- ~~{a)--visual-images;~~
- ~~{b)--oral-or-wire-communications-or-any-sound;-or~~

~~{c)--information-concerning--the--offender's--activities while-inside-the-home-~~

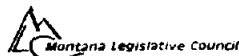
(2) (a) "Home" means the temporary or permanent residence of an offender consisting of the actual living area APPROVED BY THE SUPERVISING AUTHORITY. ~~The--term includes-a-hospital;-nursing-care-facility;-hospice;-halfway house;-group-home;-residential-treatment-facility;-boarding house;-or-a-facility-described-in-41-5-306{1};~~

(b) When more than one residence or family are located on a single piece of property, the term does not include the residence of any other person who is not part of the social unit formed by the offender's immediate family.

(3) "Home arrest" means the use of a person's home for purposes of confinement.

(4) "Supervising authority" means, IN THE CASE OF AN ADULT FELON, the probation--and--parole--bureau--of--the corrections division of the department of institutions; IN THE CASE OF AN ADULT MISDEMEANANT, A COURT-APPROVED ENTITY OTHER THAN THE CORRECTIONS DIVISION OF THE DEPARTMENT OF INSTITUTIONS; or, in the case of a juvenile, the juvenile probation division of the youth court or any other person or entity appointed by the court.

(5) "Violent felony offense" means deliberate homicide, mitigated deliberate homicide, negligent homicide, aggravated assault, negligent vehicular assault, kidnapping,



1 aggravated kidnapping, robbery, sexual intercourse without  
 2 consent, sexual abuse of children, arson, aggravated  
 3 burglary, escape, any criminal attempt to commit an  
 4 enumerated offense, or conviction as a persistent felony  
 5 offender when the offender has a felony conviction for any  
 6 of the listed offenses within the 5-year period preceding  
 7 the date of the present conviction.

8 NEW SECTION. Section 2. Home arrest -- petition --  
 9 agreement. (1) An offender may petition a sentencing court  
 10 for an order directing that all or a portion of a sentence  
 11 of imprisonment in the county jail or state prison be served  
 12 under conditions of home arrest. Petitions may be considered  
 13 and ruled upon by the sentencing court prior to and  
 14 throughout the term of the offender's sentence.

15 (2) The sentencing judge shall study the records of all  
 16 persons petitioning for home arrest and, in his discretion,  
 17 may:

18 (a) ~~cause---additional---background---or---character~~  
 19 ~~information--to-be--collected--or-reduced-to-writing-by-the~~  
 20 ~~probation--officer; REFER THE CASE TO THE APPROPRIATE~~  
 21 ~~SUPERVISING AUTHORITY FOR APPROVAL AND ACCEPTANCE INTO THE~~  
 22 ~~HOME ARREST PROGRAM. THE SUPERVISING AUTHORITY MAY ACCEPT OR~~  
 23 ~~REJECT ANY REFERRAL.~~

24 (b) conduct hearings on the desirability of granting  
 25 home arrest;

1 ~~(c)--impose--on--the--home--arrestee--conditions--that--are~~  
 2 ~~proper,--including--restitution;~~

3 ~~(d)(C) order--that--all--or--a--portion--of--a--sentence--of~~  
 4 ~~imprisonment--in--the--county--jail--or--state--prison--be--served~~  
 5 ~~under--conditions--of--home--arrest--at--whatever--time---or~~  
 6 ~~intervals,--consecutive--or--nonconsecutive,--that--the--court~~  
 7 ~~determines ORDER A TERM OF HOME ARREST IN LIEU OF A SENTENCE~~  
 8 ~~OF IMPRISONMENT IN THE COUNTY JAIL OR STATE PRISON. The time~~  
 9 ~~actually spent in home arrest pursuant to this section may~~  
 10 ~~not exceed 6 months or the maximum term of imprisonment~~  
 11 ~~imposed, whichever is shorter.~~

12 ~~(e)(D) issue a warrant for a person when there is~~  
 13 ~~reason to believe the person has violated the conditions of~~  
 14 ~~home arrest, conduct hearings on the matter, and order~~  
 15 ~~reimprisonment IMPRISONMENT in the county jail or state~~  
 16 ~~prison upon proof of violation; and~~

17 ~~(f)(E) grant final discharge from arrest.~~

18 (3) A home arrestee shall execute a written agreement  
 19 with the court setting forth all the conditions of home  
 20 arrest. The order of home arrest must incorporate that  
 21 agreement and must order compliance with its terms. The  
 22 order and agreement must be transmitted to the supervising  
 23 authority and to the appropriate jail or prison official.

24 (4) Time spent in home arrest must be credited against  
 25 the maximum term of imprisonment imposed for the offender

1 pursuant to law.

2 (5) Home arrest must be under the supervision of the  
 3 supervising authority. A home arrestee is subject to the  
 4 decisions of the supervising authority during the period of  
 5 supervision. Fees for supervision or equipment usage must be  
 6 paid directly to the ~~supervising authority~~ CLERK OF THE  
 7 SENTENCING COURT.

8 NEW SECTION. Section 3. Home arrest -- conditions --  
 9 fees -- consent of cohabitators. (1) ~~The conditions of home~~  
 10 arrest must include A HOME ARRESTEE MUST BE CONFINED TO HIS  
 11 HOME UNDER CONDITIONS IMPOSED BY THE SENTENCING COURT, WHICH  
 12 MAY INCLUDE BUT ARE NOT LIMITED TO the following:

13 (a) The home arrestee must be confined to his home at  
 14 all times except when:

15 (i) working at approved employment or traveling  
 16 directly to and from employment;

17 (ii) seeking employment;

18 (iii) undergoing medical, psychiatric, or mental health  
 19 treatment or participating in an approved counseling or  
 20 aftercare program;

21 (iv) attending an approved educational institution or  
 22 program;

23 (v) attending a regularly scheduled religious service  
 24 at a place of worship; or

25 (vi) participating in an approved community service

1 program; OR

2 ~~(b) Violation of the provisions of subsection (1) may~~  
 3 ~~subject the home arrestee to prosecution under 45-7-306.~~

4 ~~(c)(VII) The home arrestee shall conform~~ CONFORMING to a  
 5 schedule prepared by the supervising authority, specifically  
 6 setting forth the times when he may be absent from the home  
 7 and the locations where he may be during those times.

8 ~~(d)(B) The home arrestee may not commit another offense~~  
 9 during the period of home arrest.

10 ~~(e)(C) The home arrestee may not change the place of~~  
 11 home arrest or the schedule without prior approval of the  
 12 supervising authority.

13 ~~(f)(D) The home arrestee shall maintain a telephone or~~  
 14 other approved monitoring device in the home or on the  
 15 arrestee's person at all times.

16 ~~(g)(E) Any other reasonable conditions may be~~  
 17 CONDITIONS set by the court or the supervising authority  
 18 including MAY INCLUDE:

19 (i) restitution;

20 (ii) supervision fees under 7-32-2245, 46-18-702, or  
 21 46-18-703;

22 (iii) any of the conditions imposed on persons on  
 23 probation or conditional discharge under 46-23-1011 or  
 24 46-23-1021.

25 (2) A written and notarized consent agreement must be

1 filed with the court by every adult who will share the  
2 offender's home during the term of home arrest.

3 (3) VIOLATION OF THE PROVISIONS OF ANY CONDITION OF  
4 HOME ARREST MAY SUBJECT THE HOME ARRESTEE TO PROSECUTION  
5 UNDER 45-7-306.

6 NEW SECTION. Section 4. Home arrest -- ineligibility.  
7 A person being held under a detainer, warrant, or process  
8 issued by some other jurisdiction is not eligible for home  
9 arrest. A person convicted of a violent felony offense is  
10 not eligible for home arrest.

11 NEW SECTION. Section 5. Home arrest -- responsibility  
12 for own living expenses -- government benefits. A person  
13 serving a sentence under conditions of home arrest is  
14 responsible for food, housing, clothing, and medical care  
15 expenses and is eligible for government benefits to the same  
16 extent as a person on probation, parole, or conditional  
17 discharge.

18 NEW SECTION. Section 6. Home arrest -- list of  
19 offenders. At least once every 30 days, the supervising  
20 authority shall provide all local and county law enforcement  
21 agencies with a list of the offenders under home arrest in  
22 their jurisdictions. This list must include the following  
23 information:

- 24 (1) the offender's place of home arrest;  
25 (2) the offense for which the offender was charged,

1 convicted, or otherwise placed under home arrest;

2 (3) the date that the sentence of home arrest will be  
3 completed; and

4 (4) the name, address, and phone number of the officer  
5 of the supervising authority for the offender.

6 **Section 7.** Section 41-5-306, MCA, is amended to read:

7 **"41-5-306. (Temporary) Place of shelter care or**  
8 **detention.** (1) After a probable cause hearing provided for  
9 in 41-5-303, a youth alleged to be a youth in need of  
10 supervision may be placed only in:

11 (a) in a licensed youth foster home as defined in  
12 41-3-1102;

13 (b) in a facility operated by a licensed child welfare  
14 agency; or

15 (c) in a licensed youth group home as defined in  
16 41-3-1102; or

17 (d) under home arrest, either in his own home or in one  
18 of the facilities described in subsections (1)(a) through  
19 (1)(c), as provided in [sections 1 through 6].

20 (2) A youth alleged to be in need of care ~~shall~~ may be  
21 placed only in the facilities ~~stated~~ listed in subsection  
22 (1) ~~of this section~~ and ~~shall~~ may not be placed in a jail or  
23 other facility intended or used for the detention of adults  
24 charged with criminal offenses.

25 (3) After a probable cause hearing provided for in

1 41-5-303, a youth alleged to be a delinquent youth may be  
 2 placed only in the facilities described in subsection (1),  
 3 under home arrest as provided in subsection (1), in a  
 4 detention facility, or in a jail or other facility for the  
 5 detention of adults only if the facilities in subsection (1)  
 6 are not available or do not provide adequate security and  
 7 the detention is in an area physically and visually separate  
 8 and removed from that of adults. (Terminates July 1,  
 9 1991--sec. 14, Ch. 434, L. 1989.)

10 41-5-306. (Effective July 1, 1991) Place of shelter  
 11 care or detention. (1) After a probable cause hearing  
 12 provided for in 41-5-303, a youth alleged to be a youth in  
 13 need of supervision may be placed only in:

14 (a) in a licensed youth foster home as defined in  
 15 41-3-1102;

16 (b) in a facility operated by a licensed child welfare  
 17 agency; or

18 (c) in a licensed youth group home as defined in  
 19 41-3-1102; or

20 (d) under home arrest, either in his own home or in one  
 21 of the facilities described in subsections (1)(a) through  
 22 (1)(c), as provided in [sections 1 through 6].

23 (2) A youth alleged to be in need of care ~~shall~~ may be  
 24 placed only in the facilities ~~stated~~ listed in subsection  
 25 (1) ~~of this section~~ and ~~shall~~ may not be placed in a jail or

1 other facility intended or used for the detention of adults  
 2 charged with criminal offenses.

3 (3) After a probable cause hearing provided for in  
 4 41-5-303, a youth alleged to be a delinquent youth may be  
 5 placed only in the facilities described in subsection (1),  
 6 under home arrest as provided in subsection (1), or in a  
 7 detention facility as defined in 41-5-103."

8 **Section 8.** Section 41-5-403, MCA, is amended to read:

9 "41-5-403. **Disposition permitted under informal**  
 10 **adjustment.** (1) The following dispositions may be imposed by  
 11 informal adjustment:

12 (a) probation;

13 (b) placement of the youth for substitute care into a  
 14 youth care facility as defined in 41-3-1102 and as  
 15 determined by the department;

16 (c) placement of the youth in a private agency  
 17 responsible for the care and rehabilitation of ~~such-a~~ the  
 18 youth as determined by the department;

19 (d) restitution upon approval of the youth court judge;

20 (e) placement of the youth under home arrest as  
 21 provided in [sections 1 through 6].

22 (2) In determining whether restitution is appropriate  
 23 in a particular case, the following factors may be  
 24 considered in addition to any other evidence:

25 (a) age of the youth;

- 1 (b) ability of the youth to pay;
- 2 (c) ability of the parents or legal guardian to pay;
- 3 (d) amount of damage to the victim; and
- 4 (e) legal remedies of the victim; however, the ability
- 5 of the victim or his insurer to stand any loss may not be
- 6 considered in any case.

7 (3) If the youth violates his aftercare agreement as  
 8 provided for in 53-30-226, he must be returned to the court  
 9 for further disposition. ~~No~~ A youth may not be placed in a  
 10 state youth correctional facility under informal  
 11 adjustment."

12 **Section 9.** Section 41-5-523, MCA, is amended to read:

13 **"41-5-523. (Temporary) Disposition of delinquent youth**  
 14 **and youth in need of supervision.** (1) If a youth is found to  
 15 be delinquent or in need of supervision, the youth court may  
 16 enter its judgment making any of the following dispositions:

- 17 (a) place the youth on probation;
- 18 (b) commit the youth to the department if the court
- 19 determines that the youth is in need of placement in other
- 20 than the youth's own home; ~~provided; however;~~ that:
- 21 (i) in the case of a youth in need of supervision, the
- 22 court shall determine whether continuation in the home would
- 23 be contrary to the welfare of the youth and whether
- 24 reasonable efforts have been made to prevent or eliminate
- 25 the need for removal of the youth from his home. The court

1 shall include ~~such a~~ determination in the order committing  
 2 the youth to the department.

3 (ii) in the case of a delinquent youth who is determined  
 4 by the court to be a serious juvenile offender, the judge  
 5 may specify that the youth be placed in a youth correctional  
 6 facility if the judge finds that ~~such~~ the placement is  
 7 necessary for the protection of the public;

8 (c) order restitution by the youth or his parents;

9 (d) impose a fine as authorized by law if the violation  
 10 alleged would constitute a criminal offense if committed by  
 11 an adult;

12 (e) require the performance of community service;

13 (f) require the youth, his parents, his guardians, or  
 14 the persons having legal custody of the youth to receive  
 15 counseling services;...

16 (g) require the medical and psychological evaluation of  
 17 the youth, his parents, his guardians, or the persons having  
 18 legal custody of the youth;

19 (h) require the parents, guardians, or other persons  
 20 having legal custody of the youth to furnish ~~such~~ services  
 21 as the court may designate;

22 (i) order ~~such~~ further care, treatment, evaluation, or  
 23 relief that the court considers beneficial to the youth and  
 24 the community and that does not obligate funding from the  
 25 department without the department's approval, except that a

1 youth, may not be placed by a youth court in a residential  
2 treatment facility as defined in 50-5-101. Only the  
3 department may, pursuant to subsection (1)(b), place a youth  
4 in a residential treatment facility.

5 (j) commit the youth to a mental health facility if,  
6 based upon the testimony of a professional person as defined  
7 in 53-21-102, the court finds that the youth is seriously  
8 mentally ill as defined in 53-21-102. The youth is entitled  
9 to all rights provided by 53-21-114 through 53-21-119. Upon  
10 release or discharge from the mental health facility, the  
11 youth must be returned to the court for further disposition  
12 in accordance with this section unless the court order has  
13 expired or the court no longer retains jurisdiction under  
14 41-5-205.

15 (k) place the youth under home arrest as provided in  
16 [sections 1 through 6].

17 (2) When a youth is committed to the department, the  
18 department shall determine the appropriate placement and  
19 rehabilitation program for the youth after considering the  
20 recommendations made under 41-5-527 by the youth placement  
21 committee. Placement is subject to the following  
22 limitations:

23 (a) A youth in need of supervision may not be placed in  
24 a youth correctional facility.

25 (b) A youth may not be held in a youth correctional

1 facility for a period of time in excess of the maximum  
2 period of imprisonment that could be imposed on an adult  
3 convicted of the offense or offenses that brought the youth  
4 under the jurisdiction of the youth court. Nothing in this  
5 section limits the power of the department to enter into an  
6 aftercare agreement with the youth pursuant to 53-30-226.

7 (c) No A youth may not be placed in or transferred to a  
8 penal institution or other facility used for the execution  
9 of sentence of adults convicted of crimes.

10 (3) A youth placed by the department in a youth  
11 correctional facility must be supervised by the department.  
12 A youth placed in any other placement must be supervised by  
13 the youth probation officer of the youth court having  
14 jurisdiction over the youth.

15 (4) At any time after the youth has been taken into  
16 custody, the court may, with the consent of the youth in the  
17 manner provided in 41-5-303 for consent by a youth to a  
18 waiver of his constitutional rights or after the youth has  
19 been adjudicated delinquent or in need of supervision, order  
20 the youth to be evaluated by the department for a period not  
21 to exceed 45 days. The department shall determine the place  
22 and manner of evaluation.

23 (5) No An evaluation of a youth may not be performed at  
24 the Montana state hospital unless such the youth is  
25 transferred to the district court under 41-5-206.



1 (6) Any order of the court may be modified at any time.  
2 In the case of a youth committed to the department, an order  
3 pertaining to the youth may be modified only upon notice to  
4 the department and subsequent hearing.

5 (7) Whenever the court commits a youth to the  
6 department, it ~~must~~ shall transmit with the dispositional  
7 judgment copies of a medical report and ~~such~~ any other  
8 clinical, predisposition, or other reports and information  
9 pertinent to the care and treatment of the youth.

10 41-5-523. (Effective July 1, 1991) Disposition of  
11 delinquent youth and youth in need of supervision. (1) If a  
12 youth is found to be delinquent or in need of supervision,  
13 the youth court may enter its judgment making any of the  
14 following dispositions:

- 15 (a) place the youth on probation;
- 16 (b) commit the youth to the department if the court  
17 determines that the youth is in need of placement in other  
18 than the youth's own home~~7~~, provided7-~~however7~~ that:

19 (i) in the case of a youth in need of supervision, the  
20 court shall determine whether continuation in the home would  
21 be contrary to the welfare of the youth and whether  
22 reasonable efforts have been made to prevent or eliminate  
23 the need for removal of the youth from his home. The court  
24 shall include ~~such~~ a determination in the order committing  
25 the youth to the department.

1 (ii) in the case of a delinquent youth who is determined  
2 by the court to be a serious juvenile offender, the judge  
3 may specify that the youth be placed in a youth correctional  
4 facility if the judge finds that ~~such~~ the placement is  
5 necessary for the protection of the public;

6 (c) order restitution by the youth or his parents;

7 (d) impose a fine as authorized by law if the violation  
8 alleged would constitute a criminal offense if committed by  
9 an adult;

10 (e) require the performance of community service;

11 (f) require the youth, his parents, his guardians, or  
12 the persons having legal custody of the youth to receive  
13 counseling services;

14 (g) require the medical and psychological evaluation of  
15 the youth, his parents, his guardians, or the persons having  
16 legal custody of the youth;

17 (h) require the parents, guardians, or other persons  
18 having legal custody of the youth to furnish ~~such~~ services  
19 as the court may designate;

20 (i) order ~~such~~ further care, treatment, evaluation, or  
21 relief that the court considers beneficial to the youth and  
22 the community and that does not obligate funding from the  
23 department without the department's approval, except that a  
24 youth may not be placed by a youth court in a residential  
25 treatment facility as defined in 50-5-101. Only the

1 department may, pursuant to subsection (1)(b), place a youth  
2 in a residential treatment facility.

3 (j) commit the youth to a mental health facility if,  
4 based upon the testimony of a professional person as defined  
5 in 53-21-102, the court finds that the youth is seriously  
6 mentally ill as defined in 53-21-102. The youth is entitled  
7 to all rights provided by 53-21-114 through 53-21-119. Upon  
8 release or discharge from the mental health facility, the  
9 youth must be returned to the court for further disposition  
10 in accordance with this section unless the court order has  
11 expired or the court no longer retains jurisdiction under  
12 41-5-205.

13 (k) place the youth under home arrest as provided in  
14 [sections 1 through 6].

15 (2) When a youth is committed to the department, the  
16 department shall determine the appropriate placement and  
17 rehabilitation program for the youth after considering the  
18 recommendations made under 41-5-527 by the youth placement  
19 committee. Placement is subject to the following  
20 limitations:

21 (a) A youth in need of supervision may not be placed in  
22 a youth correctional facility.

23 (b) A youth may not be held in a youth correctional  
24 facility for a period of time in excess of the maximum  
25 period of imprisonment that could be imposed on an adult

1 convicted of the offense or offenses that brought the youth  
2 under the jurisdiction of the youth court. Nothing in this  
3 section limits the power of the department to enter into an  
4 aftercare agreement with the youth pursuant to 53-30-226.

5 (c) No A youth may not be placed in or transferred to a  
6 penal institution or other facility used for the execution  
7 of sentence of adults convicted of crimes.

8 (3) A youth placed by the department in a youth  
9 correctional facility must be supervised by the department.  
10 A youth placed in any other placement must be supervised by  
11 the youth probation officer of the youth court having  
12 jurisdiction over the youth.

13 (4) At any time after the youth has been taken into  
14 custody and before final disposition, the court may, with  
15 the consent of the youth in the manner provided in 41-5-303  
16 for consent by a youth to a waiver of his constitutional  
17 rights or after the youth has been adjudicated delinquent or  
18 in need of supervision, order the youth to be evaluated for  
19 a period not to exceed 45 days. The county commissioners are  
20 responsible for the cost of the evaluation and may contract  
21 with the department or other public or private agencies to  
22 obtain evaluation services.

23 (5) No An evaluation of a youth may not be performed at  
24 the Montana state hospital unless such the youth is  
25 transferred to the district court under 41-5-206.

1 (6) Any order of the court may be modified at any time.  
 2 In the case of a youth committed to the department, an order  
 3 pertaining to the youth may be modified only upon notice to  
 4 the department and subsequent hearing.

5 (7) Whenever the court commits a youth to the  
 6 department, it ~~must~~ shall transmit with the dispositional  
 7 judgment copies of a medical report and ~~such~~ any other  
 8 clinical, predisposition, or other reports and information  
 9 pertinent to the care and treatment of the youth."

10 **Section 10.** Section 46-18-201, MCA, is amended to read:

11 "46-18-201. Sentences that may be imposed. (1) Whenever  
 12 a person has been found guilty of an offense upon a verdict  
 13 or a plea of guilty, the court may:

14 (a) defer imposition of sentence, ~~excepting~~ except as  
 15 provided in 61-8-714 and 61-8-722 for sentences for driving  
 16 under the influence of alcohol or drugs, for a period,  
 17 except as otherwise provided, not exceeding 1 year for any  
 18 misdemeanor or for a period not exceeding 3 years for any  
 19 felony. The sentencing judge may impose upon the defendant  
 20 any reasonable restrictions or conditions during the period  
 21 of the deferred imposition. Reasonable restrictions or  
 22 conditions may include:

- 23 (i) jail base release;
- 24 (ii) jail time not exceeding 180 days;
- 25 (iii) conditions for probation;

- 1 (iv) restitution;
- 2 (v) payment of the costs of confinement;
- 3 (vi) payment of a fine as provided in 46-18-231;
- 4 (vii) payment of costs as provided in 46-18-232 and
- 5 46-18-233;
- 6 (viii) payment of costs of ~~court~~ court-appointed
- 7 court-appointed counsel as provided in 46-8-113;
- 8 (ix) community service;
- 9 (x) home arrest as provided in [sections 1 through 6];
- 10 ~~(xi)~~ (xi) any other reasonable conditions considered
- 11 necessary for rehabilitation or for the protection of
- 12 society; or
- 13 ~~(xii)~~ (xii) any combination of the above.
- 14 (b) suspend execution of sentence up to the maximum
- 15 sentence allowed for each particular offense. The sentencing
- 16 judge may impose on the defendant any reasonable
- 17 restrictions or conditions during the period of suspended
- 18 sentence. Reasonable restrictions or conditions may include
- 19 any of those listed in ~~subsections~~ subsection (1)(a)~~(i)~~
- 20 ~~through-(i)(a)(xi)~~.
- 21 (c) impose a fine as provided by law for the offense;
- 22 (d) require payment of costs as provided in 46-18-232
- 23 or payment of costs of court-appointed counsel as provided
- 24 in 46-8-113;
- 25 (e) commit the defendant to a correctional institution,

1 with or without a fine as provided by law for the offense;

2 (f) impose any combination of subsections (1)(b)  
3 through (1)(e).

4 (2) If any a financial obligation is imposed as a  
5 condition under subsection (1)(a), sentence may be deferred  
6 for a period not exceeding 2 years for any a misdemeanor or  
7 for a period not exceeding 6 years for any a felony,  
8 regardless of whether any other conditions are imposed.

9 (3) If any restrictions or conditions imposed under  
10 subsection (1)(a) or (1)(b) are violated, the court shall  
11 consider any elapsed time and either expressly allow part or  
12 all of it as a credit against the sentence or reject all or  
13 part as a credit and state its reasons in the order. Credit,  
14 however, must be allowed for jail or home arrest time  
15 already served.

16 (4) Except as provided in 46-18-222, the imposition or  
17 execution of the first 2 years of a sentence of imprisonment  
18 imposed under the following sections may not be deferred or  
19 suspended: 45-5-103, 45-5-202(3) relating to aggravated  
20 assault, 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-503(2)  
21 and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(3), and  
22 45-9-103(2).

23 (5) Except as provided in 46-18-222, the imposition or  
24 execution of the first 10 years of a sentence of  
25 imprisonment imposed under 45-5-102 may not be deferred or

1 suspended.

2 (6) Except as provided in 46-18-222, imposition of  
3 sentence in a felony case may not be deferred in the case of  
4 a defendant who has been convicted of a felony on a prior  
5 occasion, whether or not the sentence was imposed,  
6 imposition of the sentence was deferred, or execution of the  
7 sentence was suspended.

8 (7) If the victim was less than 16 years old, the  
9 imposition or execution of the first 30 days of a sentence  
10 of imprisonment imposed under 45-5-502(3), 45-5-503,  
11 45-5-504, 45-5-505, or 45-5-507 may not be deferred or  
12 suspended. Section 46-18-222 does not apply to the first 30  
13 days of such the imprisonment.

14 (8) In imposing a sentence on a defendant convicted of  
15 a sexual offense as defined in 46-23-502, the court may not  
16 waive the registration requirement provided in 46-18-254,  
17 46-18-255, and Title 46, chapter 23, part 5.

18 (9) A person convicted of a sexual offense, as defined  
19 in 46-23-502, and sentenced to imprisonment in the state  
20 prison shall enroll in the educational phase of the prison's  
21 sexual offender program."

22 **Section 11.** Section 61-8-714, MCA, is amended to read:  
23 "61-8-714. Penalty for driving under the influence of  
24 alcohol or drugs. (1) Except as provided in subsection  
25 (7), a person convicted of a violation of 61-8-401 shall be

1 punished by imprisonment in the county jail for not less  
 2 than 24 consecutive hours or more than 60 days and shall be  
 3 punished by a fine of not less than \$100 or more than \$500.  
 4 The jail IMPRISONMENT sentence may not be suspended unless  
 5 the judge finds that the imposition of the jail IMPRISONMENT  
 6 sentence will pose a risk to the defendant's physical or  
 7 mental well-being.

8 (2) ~~On Except-as-provided-in-subsection-(7)}~~ ON a  
 9 second conviction, he shall be punished by a fine of not  
 10 less than \$300 or more than \$500 and by imprisonment for not  
 11 less than 7 days, at least 48 hours of which must be served  
 12 consecutively, or more than 6 months. ~~Three Except-as~~  
 13 ~~provided-in--subsection--(7)}~~ THREE days of the jail  
 14 IMPRISONMENT sentence may not be suspended unless the judge  
 15 finds that the imposition of the jail IMPRISONMENT sentence  
 16 will pose a risk to the defendant's physical or mental  
 17 well-being.

18 (3) ~~On Except-as-provided-in-subsection-(7)}~~ ON the  
 19 third or subsequent conviction, he shall be punished by  
 20 imprisonment for a term of not less than 30 days, at least  
 21 48 hours of which must be served consecutively, or more than  
 22 1 year, and by a fine of not less than \$500 or more than  
 23 \$1,000. ~~Notwithstanding Except--as--provided--in--subsection~~  
 24 ~~(7)}~~ NOTWITHSTANDING any provision to the  
 25 contrary providing for suspension of execution of a sentence

1 imposed under this subsection, the imposition or execution  
 2 of the first 10 days of the jail IMPRISONMENT sentence  
 3 imposed for a third or subsequent offense that occurred  
 4 within 5 years of the first offense may not be deferred or  
 5 suspended.

6 (4) In addition to the punishment provided in this  
 7 section, regardless of disposition, the defendant shall  
 8 complete an alcohol information course at an alcohol  
 9 treatment program approved by the department of  
 10 institutions, which may, in the sentencing court's  
 11 discretion and upon recommendation of a certified chemical  
 12 dependency counselor, include alcohol or drug treatment, or  
 13 both. On conviction of a second or subsequent offense under  
 14 this section, in addition to the punishment provided in this  
 15 section, regardless of disposition, the defendant shall  
 16 complete an alcohol information course at an alcohol  
 17 treatment program approved by the department of  
 18 institutions, which must include alcohol or drug treatment,  
 19 or both. Each counselor providing education or treatment  
 20 shall, at the commencement of the education or treatment,  
 21 notify the court that the defendant has been enrolled in a  
 22 course or treatment program. If the defendant fails to  
 23 attend the course or the treatment program, the counselor  
 24 shall notify the court of the failure. As long as the  
 25 alcohol information course and treatment program are

1 approved as provided in this subsection, the defendant may  
 2 attend the information course and treatment program of his  
 3 choice. The treatment provided to the defendant at a  
 4 treatment program must be at a level appropriate to his  
 5 alcohol problem, as determined by the judge based upon the  
 6 recommendation from the certified chemical dependency  
 7 counselor.

8 (5) For the purpose of determining the number of  
 9 convictions under this section, "conviction" means a final  
 10 conviction, as defined in 45-2-101, in this state,  
 11 conviction for a violation of a similar statute in another  
 12 state, or a forfeiture of bail or collateral deposited to  
 13 secure the defendant's appearance in court in this state or  
 14 another state, which forfeiture has not been vacated. An  
 15 offender is considered to have been previously convicted for  
 16 the purposes of this section if less than 5 years have  
 17 elapsed between the commission of the present offense and a  
 18 previous conviction. If there has been no additional  
 19 conviction for an offense under this section for a period of  
 20 5 years after a prior conviction hereunder under this  
 21 section, then all records and data relating to the prior  
 22 conviction are confidential criminal justice information as  
 23 defined in 44-5-103 and public access to the information may  
 24 only be obtained by district court order upon good cause  
 25 shown.

1 (6) For the purpose of calculating subsequent  
 2 convictions under this section, a conviction for a violation  
 3 of 61-8-406 also constitutes a conviction for a violation of  
 4 61-8-401.

5 (7) The court may order that a term of imprisonment  
 6 imposed under this section be served BY IMPRISONMENT under  
 7 home arrest as provided in [sections 1 through 6]."

8 **Section 12.** Section 61-8-722, MCA, is amended to read:

9 "61-8-722. Penalty for driving with excessive blood  
 10 alcohol concentration. (1) A ~~Except---as---provided---in~~  
 11 ~~subsection--{7},--a~~ A person convicted of a violation of  
 12 61-8-406 shall be punished by imprisonment for not more than  
 13 10 days and shall be punished by a fine of not less than  
 14 \$100 or more than \$500.

15 (2) ~~On Except--as--provided-in-subsection-{7},--on~~ ON a  
 16 second conviction of a violation of 61-8-406, he shall be  
 17 punished by imprisonment for not less than 48 consecutive  
 18 hours or more than 30 days and by a fine of not less than  
 19 \$300 or more than \$500.

20 (3) ~~On Except--as--provided-in-subsection-{7},--on~~ ON a  
 21 third or subsequent conviction of a violation of 61-8-406,  
 22 he shall be punished by imprisonment for not less than 48  
 23 consecutive hours or more than 6 months and by a fine of not  
 24 less than \$500 or more than \$1,000.

25 (4) The provisions of 61-5-205(2), 61-5-208(2), and

1 61-11-203(2)(d) relating to revocation and suspension of  
2 driver's licenses ~~shall~~ apply to any conviction under  
3 61-8-406.

4 (5) In addition to the punishment provided in this  
5 section, regardless of disposition, the defendant shall  
6 complete an alcohol information course at an alcohol  
7 treatment program approved by the department of  
8 institutions, which may include alcohol or drug treatment,  
9 or both, if considered necessary by the counselor conducting  
10 the program. Each counselor providing such education or  
11 treatment shall, at the commencement of the education or  
12 treatment, notify the court that the defendant has been  
13 enrolled in a course or treatment program. If the defendant  
14 fails to attend the course or the treatment program, the  
15 counselor shall notify the court of the failure.

16 (6) For the purpose of determining the number of  
17 convictions under this section, "conviction" means a final  
18 conviction, as defined in 45-2-101, in this state or a  
19 similar statute in another state or a forfeiture of bail or  
20 collateral deposited to secure the defendant's appearance in  
21 court in this state or another state, which forfeiture has  
22 not been vacated. An offender is considered to have been  
23 previously convicted for the purposes of this section if  
24 less than 5 years have elapsed between the commission of the  
25 present offense and a previous conviction. If there has been

1 no additional conviction for an offense under this section  
2 for a period of 5 years after a prior conviction hereunder  
3 under this section, then such the prior offense shall must  
4 be expunged from the defendant's record.

5 (7) The court may order that a term of imprisonment  
6 imposed under this section be served BY IMPRISONMENT under  
7 home arrest as provided in [sections 1 through 6]."

8 NEW SECTION. Section 13. Codification instruction.  
9 [Sections 1 through 6] are intended to be codified as an  
10 integral part of Title 46, chapter 18, and the provisions of  
11 Title 46, chapter 18, apply to [sections 1 through 6].

12 NEW SECTION. Section 14. Severability. If a part of  
13 [this act] is invalid, all valid parts that are severable  
14 from the invalid part remain in effect. If a part of [this  
15 act] is invalid in one or more of its applications, the part  
16 remains in effect in all valid applications that are  
17 severable from the invalid applications.

18 NEW SECTION. Section 15. Applicability. [This act]  
19 applies to sentences imposed after [the effective date of  
20 this act].

-End-

## 1 HOUSE BILL NO. 148

2 INTRODUCED BY TOOLE, HALLIGAN, RUSSELL, J. RICE

3 BY REQUEST OF THE JOINT INTERIM SUBCOMMITTEE

4 ON ADULT AND JUVENILE DETENTION

5  
6 A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING HOME ARREST IN  
7 LIEU OF IMPRISONMENT FOR CERTAIN CRIMINAL OFFENSES; ALLOWING  
8 HOME ARREST FOR BOTH ADULT AND JUVENILE OFFENDERS;  
9 PROHIBITING HOME ARREST FOR CERTAIN FELONY OFFENSES;  
10 AMENDING SECTIONS 41-5-306, 41-5-403, 41-5-523, 46-18-201,  
11 61-8-714, AND 61-8-722, MCA; AND PROVIDING AN APPLICABILITY  
12 DATE."

13  
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:15 NEW SECTION. Section 1. Definitions. As used in

16 [sections 1 through 6], the following definitions apply:

17 (1) "~~Approved--monitoring~~ MONITORING device" means an  
18 electronic device or apparatus,~~approved-by--the--department~~  
19 ~~of--institutions~~, that is limited in capability to recording  
20 or transmitting information concerning the offender's  
21 presence in or absence from the home. The device must be  
22 minimally intrusive. ~~A-monitoring-device-may-not-be-approved~~  
23 ~~that-is-capable-of-recording-or-transmitting:~~

24 ~~(a)--visual-images;~~25 ~~(b) -oral-or-wire-communications-or-any-sound;-or~~

1 ~~(c)--information-concerning--the--offender's--activities~~  
2 ~~while-inside-the-home;~~

3 (2) (a) "Home" means the temporary or permanent  
4 residence of an offender consisting of the actual living  
5 area APPROVED BY THE SUPERVISING AUTHORITY. ~~The--term~~  
6 ~~includes-a-hospital;-nursing-care-facility;-hospice;-halfway~~  
7 ~~house;-group-home;-residential-treatment-facility;-boarding~~  
8 ~~house;-or-a-facility-described-in-41-5-306(1);~~

9 (b) When more than one residence or family are located  
10 on a single piece of property, the term does not include the  
11 residence of any other person who is not part of the social  
12 unit formed by the offender's immediate family.

13 (3) "Home arrest" means the use of a person's home for  
14 purposes of confinement.

15 (4) "Supervising authority" means, IN THE CASE OF AN  
16 ADULT FELON, the ~~probation--and--parole--bureau--of--the~~  
17 ~~corrections division of the department of institutions; IN~~  
18 THE CASE OF AN ADULT MISDEMEANANT, A COURT-APPROVED ENTITY  
19 OTHER THAN THE CORRECTIONS DIVISION OF THE DEPARTMENT OF  
20 INSTITUTIONS; or, in the case of a juvenile, the juvenile  
21 probation division of the youth court or any other person or  
22 entity appointed by the court.

23 (5) "Violent felony offense" means deliberate homicide,  
24 mitigated deliberate homicide, negligent homicide,  
25 aggravated assault, negligent vehicular assault, kidnapping,



1 aggravated kidnapping, robbery, sexual intercourse without  
2 consent, sexual abuse of children, arson, aggravated  
3 burglary, escape, any criminal attempt to commit an  
4 enumerated offense, or conviction as a persistent felony  
5 offender when the offender has a felony conviction for any  
6 of the listed offenses within the 5-year period preceding  
7 the date of the present conviction.

8 NEW SECTION. Section 2. Home arrest -- petition --  
9 agreement. (1) An offender may petition a sentencing court  
10 for an order directing that all or a portion of a sentence  
11 of imprisonment in the county jail or state prison be served  
12 under conditions of home arrest. Petitions may be considered  
13 and ruled upon by the sentencing court prior to and  
14 throughout the term of the offender's sentence.

15 (2) The sentencing judge shall study the records of all  
16 persons petitioning for home arrest and, in his discretion,  
17 may:

18 (a) ~~cause---additional---background---or---character~~  
19 ~~information--to--be--collected--or--reduced-to-writing-by-the~~  
20 ~~probation--officer;~~ REFER THE CASE TO THE APPROPRIATE  
21 SUPERVISING AUTHORITY FOR APPROVAL AND ACCEPTANCE INTO THE  
22 HOME ARREST PROGRAM. THE SUPERVISING AUTHORITY MAY ACCEPT OR  
23 REJECT ANY REFERRAL.

24 (b) conduct hearings on the desirability of granting  
25 home arrest;

1 ~~{e}--impose--on--the--home--arrestee--conditions--that--are~~  
2 ~~proper,--including--restitution;~~

3 ~~{d}{C} order--that--all--or--a--portion--of--a--sentence--of~~  
4 ~~imprisonment--in--the--county--jail--or--state--prison--be--served~~  
5 ~~under--conditions--of--home--arrest--at--whatever--time---or~~  
6 ~~intervals,--consecutive--or--nonconsecutive,--that--the--court~~  
7 ~~determines~~ ORDER A TERM OF HOME ARREST IN LIEU OF A SENTENCE  
8 OF IMPRISONMENT IN THE COUNTY JAIL OR STATE PRISON. The time  
9 actually spent in home arrest pursuant to this section may  
10 not exceed 6 months or the maximum term of imprisonment  
11 imposed, whichever is shorter.

12 ~~{e}{D}~~ issue a warrant for a person when there is  
13 reason to believe the person has violated the conditions of  
14 home arrest, conduct hearings on the matter, and order  
15 ~~reimprisonment~~ IMPRISONMENT in the county jail or state  
16 prison upon proof of violation; and

17 ~~{f}{E}~~ grant final discharge from arrest.

18 (3) A home arrestee shall execute a written agreement  
19 with the court setting forth all the conditions of home  
20 arrest. The order of home arrest must incorporate that  
21 agreement and must order compliance with its terms. The  
22 order and agreement must be transmitted to the supervising  
23 authority and to the appropriate jail or prison official.

24 (4) Time spent in home arrest must be credited against  
25 the maximum term of imprisonment imposed for the offender

1 pursuant to law.

2 (5) Home arrest must be under the supervision of the  
3 supervising authority. A home arrestee is subject to the  
4 decisions of the supervising authority during the period of  
5 supervision. Fees for supervision or equipment usage must be  
6 paid directly to the supervising--authority CLERK OF THE  
7 SENTENCING COURT.

8 NEW SECTION. Section 3. Home arrest -- conditions --  
9 fees -- consent of cohabitators. (1) The--conditions--of--home  
10 arrest--must-include A HOME ARRESTEE MUST BE CONFINED TO HIS  
11 HOME UNDER CONDITIONS IMPOSED BY THE SENTENCING COURT, WHICH  
12 MAY INCLUDE BUT ARE NOT LIMITED TO the following:

13 (a) The home arrestee must be confined to his home at  
14 all times except when:

15 (i) working at approved employment or traveling  
16 directly to and from employment;

17 (ii) seeking employment;

18 (iii) undergoing medical, psychiatric, or mental health  
19 treatment or participating in an approved counseling or  
20 aftercare program;

21 (iv) attending an approved educational institution or  
22 program;

23 (v) attending a regularly scheduled religious service  
24 at a place of worship; or

25 (vi) participating in an approved community service

1 program; OR

2 ~~(b)--Violation-of-the-provisions-of-subsection--(1)--may~~  
3 ~~subject-the-home-arrestee-to-prosecution-under-45-7-306-~~

4 ~~(c)(VII) The-home-arrestee-shall-conform~~ CONFORMING to a  
5 schedule prepared by the supervising authority, specifically  
6 setting forth the times when he may be absent from the home  
7 and the locations where he may be during those times.

8 ~~(d)(B)~~ (B) The home arrestee may not commit another offense  
9 during the period of home arrest.

10 ~~(e)(C)~~ (C) The home arrestee may not change the place of  
11 home arrest or the schedule without prior approval of the  
12 supervising authority.

13 ~~(f)(D)~~ (D) The home arrestee shall maintain a telephone or  
14 other approved monitoring device in the home or on the  
15 arrestee's person at all times.

16 ~~(g)(E) Any--other--reasonable--conditions--may--be~~  
17 CONDITIONS set by the court or the supervising authority  
18 including MAY INCLUDE:

19 (i) restitution;

20 (ii) supervision fees under 7-32-2245, 46-18-702, or  
21 46-18-703;

22 (iii) any of the conditions imposed on persons on  
23 probation or conditional discharge under 46-23-1011 or  
24 46-23-1021.

25 (2) A written and notarized consent agreement must be

1 filed with the court by every adult who will share the  
 2 offender's home during the term of home arrest.

3 (3) VIOLATION OF THE PROVISIONS OF ANY CONDITION OF  
 4 HOME ARREST MAY SUBJECT THE HOME ARRESTEE TO PROSECUTION  
 5 UNDER 45-7-306.

6 NEW SECTION. Section 4. Home arrest -- ineligibility.  
 7 A person being held under a detainer, warrant, or process  
 8 issued by some other jurisdiction is not eligible for home  
 9 arrest. A person convicted of a violent felony offense is  
 10 not eligible for home arrest.

11 NEW SECTION. Section 5. Home arrest -- responsibility  
 12 for own living expenses -- government benefits. A person  
 13 serving a sentence under conditions of home arrest is  
 14 responsible for food, housing, clothing, and medical care  
 15 expenses and is eligible for government benefits to the same  
 16 extent as a person on probation, parole, or conditional  
 17 discharge.

18 NEW SECTION. Section 6. Home arrest -- list of  
 19 offenders. At least once every 30 days, the supervising  
 20 authority shall provide all local and county law enforcement  
 21 agencies with a list of the offenders under home arrest in  
 22 their jurisdictions. This list must include the following  
 23 information:

- 24 (1) the offender's place of home arrest;
- 25 (2) the offense for which the offender was charged,

1 convicted, or otherwise placed under home arrest;

2 (3) the date that the sentence of home arrest will be  
 3 completed; and

4 (4) the name, address, and phone number of the officer  
 5 of the supervising authority for the offender.

6 **Section 7.** Section 41-5-306, MCA, is amended to read:

7 "41-5-306. (Temporary) Place of shelter care or  
 8 detention. (1) After a probable cause hearing provided for  
 9 in 41-5-303, a youth alleged to be a youth in need of  
 10 supervision may be placed only in:

11 (a) in a licensed youth foster home as defined in  
 12 41-3-1102;

13 (b) in a facility operated by a licensed child welfare  
 14 agency; or

15 (c) in a licensed youth group home as defined in  
 16 41-3-1102; or

17 (d) under home arrest, either in his own home or in one  
 18 of the facilities described in subsections (1)(a) through  
 19 (1)(c), as provided in [sections 1 through 6].

20 (2) A youth alleged to be in need of care ~~shall~~ may be  
 21 placed only in the facilities ~~stated~~ listed in subsection  
 22 (1) ~~of this section~~ and ~~shall~~ may not be placed in a jail or  
 23 other facility intended or used for the detention of adults  
 24 charged with criminal offenses.

25 (3) After a probable cause hearing provided for in

1 41-5-303, a youth alleged to be a delinquent youth may be  
 2 placed only in the facilities described in subsection (1),  
 3 under home arrest as provided in subsection (1), in a  
 4 detention facility, or in a jail or other facility for the  
 5 detention of adults only if the facilities in subsection (1)  
 6 are not available or do not provide adequate security and  
 7 the detention is in an area physically and visually separate  
 8 and removed from that of adults. (Terminates July 1,  
 9 1991--sec. 14, Ch. 434, L. 1989.)

10 41-5-306. (Effective July 1, 1991) Place of shelter  
 11 care or detention. (1) After a probable cause hearing  
 12 provided for in 41-5-303, a youth alleged to be a youth in  
 13 need of supervision may be placed only in:

14 (a) in a licensed youth foster home as defined in  
 15 41-3-1102;

16 (b) in a facility operated by a licensed child welfare  
 17 agency; or

18 (c) in a licensed youth group home as defined in  
 19 41-3-1102; or

20 (d) under home arrest, either in his own home or in one  
 21 of the facilities described in subsections (1)(a) through  
 22 (1)(c), as provided in [sections 1 through 6].

23 (2) A youth alleged to be in need of care ~~shall~~ may be  
 24 placed only in the facilities ~~stated~~ listed in subsection  
 25 (1) ~~of this section~~ and ~~shall~~ may not be placed in a jail or

1 other facility intended or used for the detention of adults  
 2 charged with criminal offenses.

3 (3) After a probable cause hearing provided for in  
 4 41-5-303, a youth alleged to be a delinquent youth may be  
 5 placed only in the facilities described in subsection (1),  
 6 under home arrest as provided in subsection (1), or in a  
 7 detention facility as defined in 41-5-103."

8 **Section 8.** Section 41-5-403, MCA, is amended to read:

9 **"41-5-403. Disposition permitted under informal**  
 10 **adjustment.** (1) The following dispositions may be imposed by  
 11 informal adjustment:

12 (a) probation;

13 (b) placement of the youth for substitute care into a  
 14 youth care facility as defined in 41-3-1102 and as  
 15 determined by the department;

16 (c) placement of the youth in a private agency  
 17 responsible for the care and rehabilitation of ~~such a~~ the  
 18 youth as determined by the department;

19 (d) restitution upon approval of the youth court judge;

20 (e) placement of the youth under home arrest as  
 21 provided in [sections 1 through 6].

22 (2) In determining whether restitution is appropriate  
 23 in a particular case, the following factors may be  
 24 considered in addition to any other evidence:

25 (a) age of the youth;

1 (b) ability of the youth to pay;

2 (c) ability of the parents or legal guardian to pay;

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

4 (e) legal remedies of the victim; however, the ability  
5 of the victim or his insurer to stand any loss may not be  
6 considered in any case.

7 (3) If the youth violates his aftercare agreement as  
8 provided for in 53-30-226, he must be returned to the court  
9 for further disposition. No A youth may not be placed in a  
10 state youth correctional facility under informal  
11 adjustment."

12 **Section 9.** Section 41-5-523, MCA, is amended to read:

13 "41-5-523. (Temporary) Disposition of delinquent youth  
14 and youth in need of supervision. (1) If a youth is found to  
15 be delinquent or in need of supervision, the youth court may  
16 enter its judgment making any of the following dispositions:

17 (a) place the youth on probation;

18 (b) commit the youth to the department if the court  
19 determines that the youth is in need of placement in other  
20 than the youth's own home~~7~~ provided~~7~~ however~~7~~ that:

21 (i) in the case of a youth in need of supervision, the  
22 court shall determine whether continuation in the home would  
23 be contrary to the welfare of the youth and whether  
24 reasonable efforts have been made to prevent or eliminate  
25 the need for removal of the youth from his home. The court

1 shall include such a determination in the order committing  
2 the youth to the department.

3 (ii) in the case of a delinquent youth who is determined  
4 by the court to be a serious juvenile offender, the judge  
5 may specify that the youth be placed in a youth correctional  
6 facility if the judge finds that such the placement is  
7 necessary for the protection of the public;

8 (c) order restitution by the youth or his parents;

9 (d) impose a fine as authorized by law if the violation  
10 alleged would constitute a criminal offense if committed by  
11 an adult;

12 (e) require the performance of community service;

13 (f) require the youth, his parents, his guardians, or  
14 the persons having legal custody of the youth to receive  
15 counseling services;

16 (g) require the medical and psychological evaluation of  
17 the youth, his parents, his guardians, or the persons having  
18 legal custody of the youth;

19 (h) require the parents, guardians, or other persons  
20 having legal custody of the youth to furnish such services  
21 as the court may designate;

22 (i) order such further care, treatment, evaluation, or  
23 relief that the court considers beneficial to the youth and  
24 the community and that does not obligate funding from the  
25 department without the department's approval, except that a

1 youth may not be placed by a youth court in a residential  
2 treatment facility as defined in 50-5-101. Only the  
3 department may, pursuant to subsection (1)(b), place a youth  
4 in a residential treatment facility.

5 (j) commit the youth to a mental health facility if,  
6 based upon the testimony of a professional person as defined  
7 in 53-21-102, the court finds that the youth is seriously  
8 mentally ill as defined in 53-21-102. The youth is entitled  
9 to all rights provided by 53-21-114 through 53-21-119. Upon  
10 release or discharge from the mental health facility, the  
11 youth must be returned to the court for further disposition  
12 in accordance with this section unless the court order has  
13 expired or the court no longer retains jurisdiction under  
14 41-5-205.

15 (k) place the youth under home arrest as provided in  
16 [sections 1 through 6].

17 (2) When a youth is committed to the department, the  
18 department shall determine the appropriate placement and  
19 rehabilitation program for the youth after considering the  
20 recommendations made under 41-5-527 by the youth placement  
21 committee. Placement is subject to the following  
22 limitations:

23 (a) A youth in need of supervision may not be placed in  
24 a youth correctional facility.

25 (b) A youth may not be held in a youth correctional

1 facility for a period of time in excess of the maximum  
2 period of imprisonment that could be imposed on an adult  
3 convicted of the offense or offenses that brought the youth  
4 under the jurisdiction of the youth court. Nothing in this  
5 section limits the power of the department to enter into an  
6 aftercare agreement with the youth pursuant to 53-30-226.

7 (c) No A youth may not be placed in or transferred to a  
8 penal institution or other facility used for the execution  
9 of sentence of adults convicted of crimes.

10 (3) A youth placed by the department in a youth  
11 correctional facility must be supervised by the department.  
12 A youth placed in any other placement must be supervised by  
13 the youth probation officer of the youth court having  
14 jurisdiction over the youth.

15 (4) At any time after the youth has been taken into  
16 custody, the court may, with the consent of the youth in the  
17 manner provided in 41-5-303 for consent by a youth to a  
18 waiver of his constitutional rights or after the youth has  
19 been adjudicated delinquent or in need of supervision, order  
20 the youth to be evaluated by the department for a period not  
21 to exceed 45 days. The department shall determine the place  
22 and manner of evaluation.

23 (5) No An evaluation of a youth may not be performed at  
24 the Montana state hospital unless such the youth is  
25 transferred to the district court under 41-5-206.

1 (6) Any order of the court may be modified at any time.  
 2 In the case of a youth committed to the department, an order  
 3 pertaining to the youth may be modified only upon notice to  
 4 the department and subsequent hearing.

5 (7) Whenever the court commits a youth to the  
 6 department, it ~~must~~ shall transmit with the dispositional  
 7 judgment copies of a medical report and such any other  
 8 clinical, predisposition, or other reports and information  
 9 pertinent to the care and treatment of the youth.

10 41-5-523. (Effective July 1, 1991) Disposition of  
 11 delinquent youth and youth in need of supervision. (1) If a  
 12 youth is found to be delinquent or in need of supervision,  
 13 the youth court may enter its judgment making any of the  
 14 following dispositions:

15 (a) place the youth on probation;

16 (b) commit the youth to the department if the court  
 17 determines that the youth is in need of placement in other  
 18 than the youth's own home~~7~~, ~~provided7-however7~~ that:

19 (i) in the case of a youth in need of supervision, the  
 20 court shall determine whether continuation in the home would  
 21 be contrary to the welfare of the youth and whether  
 22 reasonable efforts have been made to prevent or eliminate  
 23 the need for removal of the youth from his home. The court  
 24 shall include such a determination in the order committing  
 25 the youth to the department.

1 (ii) in the case of a delinquent youth who is determined  
 2 by the court to be a serious juvenile offender, the judge  
 3 may specify that the youth be placed in a youth correctional  
 4 facility if the judge finds that such the placement is  
 5 necessary for the protection of the public;

6 (c) order restitution by the youth or his parents;

7 (d) impose a fine as authorized by law if the violation  
 8 alleged would constitute a criminal offense if committed by  
 9 an adult;

10 (e) require the performance of community service;

11 (f) require the youth, his parents, his guardians, or  
 12 the persons having legal custody of the youth to receive  
 13 counseling services;

14 (g) require the medical and psychological evaluation of  
 15 the youth, his parents, his guardians, or the persons having  
 16 legal custody of the youth;

17 (h) require the parents, guardians, or other persons  
 18 having legal custody of the youth to furnish such services  
 19 as the court may designate;

20 (i) order such further care, treatment, evaluation, or  
 21 relief that the court considers beneficial to the youth and  
 22 the community and that does not obligate funding from the  
 23 department without the department's approval, except that a  
 24 youth may not be placed by a youth court in a residential  
 25 treatment facility as defined in 50-5-101. Only the

1 department may, pursuant to subsection (1)(b), place a youth  
2 in a residential treatment facility.

3 (j) commit the youth to a mental health facility if,  
4 based upon the testimony of a professional person as defined  
5 in 53-21-102, the court finds that the youth is seriously  
6 mentally ill as defined in 53-21-102. The youth is entitled  
7 to all rights provided by 53-21-114 through 53-21-119. Upon  
8 release or discharge from the mental health facility, the  
9 youth must be returned to the court for further disposition  
10 in accordance with this section unless the court order has  
11 expired or the court no longer retains jurisdiction under  
12 41-5-205.

13 (k) place the youth under home arrest as provided in  
14 [sections 1 through 6].

15 (2) When a youth is committed to the department, the  
16 department shall determine the appropriate placement and  
17 rehabilitation program for the youth after considering the  
18 recommendations made under 41-5-527 by the youth placement  
19 committee. Placement is subject to the following  
20 limitations:

21 (a) A youth in need of supervision may not be placed in  
22 a youth correctional facility.

23 (b) A youth may not be held in a youth correctional  
24 facility for a period of time in excess of the maximum  
25 period of imprisonment that could be imposed on an adult

1 convicted of the offense or offenses that brought the youth  
2 under the jurisdiction of the youth court. Nothing in this  
3 section limits the power of the department to enter into an  
4 aftercare agreement with the youth pursuant to 53-30-226.

5 (c) No A youth may not be placed in or transferred to a  
6 penal institution or other facility used for the execution  
7 of sentence of adults convicted of crimes.

8 (3) A youth placed by the department in a youth  
9 correctional facility must be supervised by the department.  
10 A youth placed in any other placement must be supervised by  
11 the youth probation officer of the youth court having  
12 jurisdiction over the youth.

13 (4) At any time after the youth has been taken into  
14 custody and before final disposition, the court may, with  
15 the consent of the youth in the manner provided in 41-5-303  
16 for consent by a youth to a waiver of his constitutional  
17 rights or after the youth has been adjudicated delinquent or  
18 in need of supervision, order the youth to be evaluated for  
19 a period not to exceed 45 days. The county commissioners are  
20 responsible for the cost of the evaluation and may contract  
21 with the department or other public or private agencies to  
22 obtain evaluation services.

23 (5) No An evaluation of a youth may not be performed at  
24 the Montana state hospital unless such the youth is  
25 transferred to the district court under 41-5-206.



(6) Any order of the court may be modified at any time. In the case of a youth committed to the department, an order pertaining to the youth may be modified only upon notice to the department and subsequent hearing.

(7) Whenever the court commits a youth to the department, it must shall transmit with the dispositional judgment copies of a medical report and such any other clinical, predisposition, or other reports and information pertinent to the care and treatment of the youth."

**Section 10.** Section 46-18-201, MCA, is amended to read:

"46-18-201. Sentences that may be imposed. (1) Whenever a person has been found guilty of an offense upon a verdict or a plea of guilty, the court may:

(a) defer imposition of sentence, excepting except as provided in 61-8-714 and 61-8-722 for sentences for driving under the influence of alcohol or drugs, for a period, except as otherwise provided, not exceeding 1 year for any misdemeanor or for a period not exceeding 3 years for any felony. The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the period of the deferred imposition. Reasonable restrictions or conditions may include:

- (i) jail base release;
- (ii) jail time not exceeding 180 days;
- (iii) conditions for probation;

- (iv) restitution;
- (v) payment of the costs of confinement;
- (vi) payment of a fine as provided in 46-18-231;
- (vii) payment of costs as provided in 46-18-232 and 46-18-233;
- (viii) payment of costs of ~~court~~ court-appointed ~~counsel~~ counsel as provided in 46-8-113;
- (ix) community service;
- (x) home arrest as provided in [sections 1 through 6];
- ~~(xi)~~ (xi) any other reasonable conditions considered necessary for rehabilitation or for the protection of society; or
- ~~(xii)~~ (xii) any combination of the above.
- (b) suspend execution of sentence up to the maximum sentence allowed for each particular offense. The sentencing judge may impose on the defendant any reasonable restrictions or conditions during the period of suspended sentence. Reasonable restrictions or conditions may include any of those listed in subsections subsection (1)(a)~~(i)~~ through-(i)(a)-(xi).
- (c) impose a fine as provided by law for the offense;
- (d) require payment of costs as provided in 46-18-232 or payment of costs of court-appointed counsel as provided in 46-8-113;
- (e) commit the defendant to a correctional institution,

1 with or without a fine as provided by law for the offense;

2 (f) impose any combination of subsections (1)(b)  
3 through (1)(e).

4 (2) If any a financial obligation is imposed as a  
5 condition under subsection (1)(a), sentence may be deferred  
6 for a period not exceeding 2 years for any a misdemeanor or  
7 for a period not exceeding 6 years for any a felony,  
8 regardless of whether any other conditions are imposed.

9 (3) If any restrictions or conditions imposed under  
10 subsection (1)(a) or (1)(b) are violated, the court shall  
11 consider any elapsed time and either expressly allow part or  
12 all of it as a credit against the sentence or reject all or  
13 part as a credit and state its reasons in the order. Credit,  
14 however, must be allowed for jail or home arrest time  
15 already served.

16 (4) Except as provided in 46-18-222, the imposition or  
17 execution of the first 2 years of a sentence of imprisonment  
18 imposed under the following sections may not be deferred or  
19 suspended: 45-5-103, 45-5-202(3) relating to aggravated  
20 assault, 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-503(2)  
21 and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(3), and  
22 45-9-103(2).

23 (5) Except as provided in 46-18-222, the imposition or  
24 execution of the first 10 years of a sentence of  
25 imprisonment imposed under 45-5-102 may not be deferred or

1 suspended.

2 (6) Except as provided in 46-18-222, imposition of  
3 sentence in a felony case may not be deferred in the case of  
4 a defendant who has been convicted of a felony on a prior  
5 occasion, whether or not the sentence was imposed,  
6 imposition of the sentence was deferred, or execution of the  
7 sentence was suspended.

8 (7) If the victim was less than 16 years old, the  
9 imposition or execution of the first 30 days of a sentence  
10 of imprisonment imposed under 45-5-502(3), 45-5-503,  
11 45-5-504, 45-5-505, or 45-5-507 may not be deferred or  
12 suspended. Section 46-18-222 does not apply to the first 30  
13 days of such the imprisonment.

14 (8) In imposing a sentence on a defendant convicted of  
15 a sexual offense as defined in 46-23-502, the court may not  
16 waive the registration requirement provided in 46-18-254,  
17 46-18-255, and Title 46, chapter 23, part 5.

18 (9) A person convicted of a sexual offense, as defined  
19 in 46-23-502, and sentenced to imprisonment in the state  
20 prison shall enroll in the educational phase of the prison's  
21 sexual offender program."

22 **Section 11.** Section 61-8-714, MCA, is amended to read:

23 "61-8-714. Penalty for driving under the influence of  
24 alcohol or drugs. (1) A Except as provided in subsection  
25 (7), a person convicted of a violation of 61-8-401 shall be

1 punished by imprisonment in the county jail for not less  
 2 than 24 consecutive hours or more than 60 days and shall be  
 3 punished by a fine of not less than \$100 or more than \$500.  
 4 The ~~jail~~ IMPRISONMENT sentence may not be suspended unless  
 5 the judge finds that the imposition of the ~~jail~~ IMPRISONMENT  
 6 sentence will pose a risk to the defendant's physical or  
 7 mental well-being.

8 (2) ~~On Except-as-provided-in-subsection-(7)7--on~~ ON a  
 9 second conviction, he shall be punished by a fine of not  
 10 less than \$300 or more than \$500 and by imprisonment for not  
 11 less than 7 days, at least 48 hours of which must be served  
 12 consecutively, or more than 6 months. ~~Three Except-as~~  
 13 ~~provided-in-subsection--(7)7--3~~ THREE days of the ~~jail~~  
 14 IMPRISONMENT sentence may not be suspended unless the judge  
 15 finds that the imposition of the ~~jail~~ IMPRISONMENT sentence  
 16 will pose a risk to the defendant's physical or mental  
 17 well-being.

18 (3) ~~On Except-as-provided-in-subsection-(7)7--on~~ ON the  
 19 third or subsequent conviction, he shall be punished by  
 20 imprisonment for a term of not less than 30 days, at least  
 21 48 hours of which must be served consecutively, or more than  
 22 1 year, and by a fine of not less than \$500 or more than  
 23 \$1,000. ~~Notwithstanding Except--as--provided--in--subsection~~  
 24 ~~(7)7--notwithstanding~~ NOTWITHSTANDING any provision to the  
 25 contrary providing for suspension of execution of a sentence

1 imposed under this subsection, the imposition or execution  
 2 of the first 10 days of the ~~jail~~ IMPRISONMENT sentence  
 3 imposed for a third or subsequent offense that occurred  
 4 within 5 years of the first offense may not be deferred or  
 5 suspended.

6 (4) In addition to the punishment provided in this  
 7 section, regardless of disposition, the defendant shall  
 8 complete an alcohol information course at an alcohol  
 9 treatment program approved by the department of  
 10 institutions, which may, in the sentencing court's  
 11 discretion and upon recommendation of a certified chemical  
 12 dependency counselor, include alcohol or drug treatment, or  
 13 both. On conviction of a second or subsequent offense under  
 14 this section, in addition to the punishment provided in this  
 15 section, regardless of disposition, the defendant shall  
 16 complete an alcohol information course at an alcohol  
 17 treatment program approved by the department of  
 18 institutions, which must include alcohol or drug treatment,  
 19 or both. Each counselor providing education or treatment  
 20 shall, at the commencement of the education or treatment,  
 21 notify the court that the defendant has been enrolled in a  
 22 course or treatment program. If the defendant fails to  
 23 attend the course or the treatment program, the counselor  
 24 shall notify the court of the failure. As long as the  
 25 alcohol information course and treatment program are

1 approved as provided in this subsection, the defendant may  
 2 attend the information course and treatment program of his  
 3 choice. The treatment provided to the defendant at a  
 4 treatment program must be at a level appropriate to his  
 5 alcohol problem, as determined by the judge based upon the  
 6 recommendation from the certified chemical dependency  
 7 counselor.

8 (5) For the purpose of determining the number of  
 9 convictions under this section, "conviction" means a final  
 0 conviction, as defined in 45-2-101, in this state,  
 1 conviction for a violation of a similar statute in another  
 2 state, or a forfeiture of bail or collateral deposited to  
 3 secure the defendant's appearance in court in this state or  
 4 another state, which forfeiture has not been vacated. An  
 5 offender is considered to have been previously convicted for  
 6 the purposes of this section if less than 5 years have  
 7 elapsed between the commission of the present offense and a  
 8 previous conviction. If there has been no additional  
 9 conviction for an offense under this section for a period of  
 0 5 years after a prior conviction hereunder under this  
 1 section, then all records and data relating to the prior  
 2 conviction are confidential criminal justice information as  
 3 defined in 44-5-103 and public access to the information may  
 4 only be obtained by district court order upon good cause  
 5 shown.

1 (6) For the purpose of calculating subsequent  
 2 convictions under this section, a conviction for a violation  
 3 of 61-8-406 also constitutes a conviction for a violation of  
 4 61-8-401.

5 (7) The EXCEPT FOR THE INITIAL 24 HOURS ON A FIRST  
 6 OFFENSE OR THE INITIAL 48 HOURS ON A SECOND OR SUBSEQUENT  
 7 OFFENSE, THE court may order that a term of imprisonment  
 8 imposed under this section be served BY IMPRISONMENT under  
 9 home arrest as provided in [sections 1 through 6]."

10 **Section 12.** Section 61-8-722, MCA, is amended to read:

11 **"61-8-722. Penalty for driving with excessive blood**  
 12 **alcohol concentration. (1) A ~~Except---as---provided---in~~**  
 13 **subsection--(7)--a A person convicted of a violation of**  
 14 **61-8-406 shall be punished by imprisonment for not more than**  
 15 **10 days and shall be punished by a fine of not less than**  
 16 **\$100 or more than \$500.**

17 **(2) ~~On Except--as--provided-in-subsection-(7)--on~~ ON a**  
 18 **second conviction of a violation of 61-8-406, he shall be**  
 19 **punished by imprisonment for not less than 48 consecutive**  
 20 **hours or more than 30 days and by a fine of not less than**  
 21 **\$300 or more than \$500.**

22 **(3) ~~On Except--as--provided-in-subsection-(7)--on~~ ON a**  
 23 **third or subsequent conviction of a violation of 61-8-406,**  
 24 **he shall be punished by imprisonment for not less than 48**  
 25 **consecutive hours or more than 6 months and by a fine of not**

1 less than \$500 or more than \$1,000.

2 (4) The provisions of 61-5-205(2), 61-5-208(2), and  
 3 61-11-203(2)(d) relating to revocation and suspension of  
 4 driver's licenses shall apply to any conviction under  
 5 61-8-406.

6 (5) In addition to the punishment provided in this  
 7 section, regardless of disposition, the defendant shall  
 8 complete an alcohol information course at an alcohol  
 9 treatment program approved by the department of  
 10 institutions, which may include alcohol or drug treatment,  
 11 or both, if considered necessary by the counselor conducting  
 12 the program. Each counselor providing such education or  
 13 treatment shall, at the commencement of the education or  
 14 treatment, notify the court that the defendant has been  
 15 enrolled in a course or treatment program. If the defendant  
 16 fails to attend the course or the treatment program, the  
 17 counselor shall notify the court of the failure.

18 (6) For the purpose of determining the number of  
 19 convictions under this section, "conviction" means a final  
 20 conviction, as defined in 45-2-101, in this state or a  
 21 similar statute in another state or a forfeiture of bail or  
 22 collateral deposited to secure the defendant's appearance in  
 23 court in this state or another state, which forfeiture has  
 24 not been vacated. An offender is considered to have been  
 25 previously convicted for the purposes of this section if

1 less than 5 years have elapsed between the commission of the  
 2 present offense and a previous conviction. If there has been  
 3 no additional conviction for an offense under this section  
 4 for a period of 5 years after a prior conviction hereunder  
 5 under this section, then such the prior offense shall must  
 6 be expunged from the defendant's record.

7 (7) The EXCEPT FOR THE INITIAL 24 HOURS ON A FIRST  
 8 OFFENSE OR THE INITIAL 48 HOURS ON A SECOND OR SUBSEQUENT  
 9 OFFENSE, THE court may order that a term of imprisonment  
 10 imposed under this section be served BY IMPRISONMENT under  
 11 home arrest as provided in [sections 1 through 6]."

12 NEW SECTION. Section 13. Codification instruction.  
 13 [Sections 1 through 6] are intended to be codified as an  
 14 integral part of Title 46, chapter 18, and the provisions of  
 15 Title 46, chapter 18, apply to [sections 1 through 6].

16 NEW SECTION. Section 14. Severability. If a part of  
 17 [this act] is invalid, all valid parts that are severable  
 18 from the invalid part remain in effect. If a part of [this  
 19 act] is invalid in one or more of its applications, the part  
 20 remains in effect in all valid applications that are  
 21 severable from the invalid applications.

22 NEW SECTION. Section 15. Applicability. [This act]  
 23 applies to sentences imposed after [the effective date of  
 24 this act].

SENATE STANDING COMMITTEE REPORT

Page 1 of 1  
February 12, 1991

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 148 (third reading copy -- blue), respectfully report that House Bill No. 148 be amended and as so amended be concurred in:

1. Page 5, line 7.

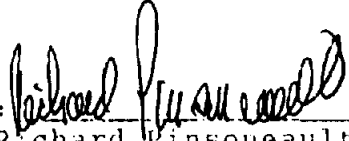
Following: "COURT"

Insert: "and must be distributed by the clerk to the supervising authority"

2. Page 7, line 10.

Following: "."

Insert: "However, this section does not prevent the use of a monitoring device as a part of an intensive supervision program or other program of the department of institutions."

Signed:   
Richard Pinsonneault, Chairman

*MP* 2-12-91  
Ad. Coord.

*SB* 2-12 1:30  
Sec. of Senate

SENATE

*HB 148*

321202SC.Sji

## HOUSE BILL NO. 148

INTRODUCED BY TOOLE, HALLIGAN,

RUSSELL, J. RICE, STRIZICH

BY REQUEST OF THE JOINT INTERIM SUBCOMMITTEE

ON ADULT AND JUVENILE DETENTION

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING HOME ARREST IN LIEU OF IMPRISONMENT FOR CERTAIN CRIMINAL OFFENSES; ALLOWING HOME ARREST FOR BOTH ADULT AND JUVENILE OFFENDERS; PROHIBITING HOME ARREST FOR CERTAIN FELONY OFFENSES; AMENDING SECTIONS 41-5-306, 41-5-403, 41-5-523, 46-18-201, 61-8-714, AND 61-8-722, MCA; AND PROVIDING AN APPLICABILITY DATE."

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

NEW SECTION. Section 1. Definitions. As used in [sections 1 through 6], the following definitions apply:

(1) "~~Approved--monitoring~~ MONITORING device" means an electronic device or apparatus ~~approved-by--the--department of--institutions,~~ that is limited in capability to recording or transmitting information concerning the offender's presence in or absence from the home. The device must be minimally intrusive. ~~A-monitoring-device-may-not-be-approved that-is-capable-of-recording-or-transmitting-~~

~~(a)--visual-images;~~

~~(b)--oral-or-wire-communications-or-any-sound;-or  
(c)--information-concerning--the--offender's--activities while-inside-the-home;~~

(2) (a) "Home" means the temporary or permanent residence of an offender consisting of the actual living area APPROVED BY THE SUPERVISING AUTHORITY. ~~The--term includes-a-hospital,-nursing-care-facility,-hospice,-halfway house,-group-home,-residential-treatment-facility,-boarding house,-or-a-facility-described-in-41-5-306(i);~~

(b) When more than one residence or family are located on a single piece of property, the term does not include the residence of any other person who is not part of the social unit formed by the offender's immediate family.

(3) "Home arrest" means the use of a person's home for purposes of confinement.

(4) "Supervising authority" means, IN THE CASE OF AN ADULT FELON, the ~~probation--and--parole--bureau--of--the~~ corrections division of the department of institutions; IN THE CASE OF AN ADULT MISDEMEANANT, A COURT-APPROVED ENTITY OTHER THAN THE CORRECTIONS DIVISION OF THE DEPARTMENT OF INSTITUTIONS; or, in the case of a juvenile, the juvenile probation division of the youth court or any other person or entity appointed by the court.

(5) "Violent felony offense" means deliberate homicide, mitigated deliberate homicide, negligent homicide,

**REFERENCE BILL**

1 aggravated assault, negligent vehicular assault, kidnapping,  
 2 aggravated kidnapping, robbery, sexual intercourse without  
 3 consent, sexual abuse of children, arson, aggravated  
 4 burglary, escape, any criminal attempt to commit an  
 5 enumerated offense, or conviction as a persistent felony  
 6 offender when the offender has a felony conviction for any  
 7 of the listed offenses within the 5-year period preceding  
 8 the date of the present conviction.

9 NEW SECTION. Section 2. Home arrest -- petition --  
 10 agreement. (1) An offender may petition a sentencing court  
 11 for an order directing that all or a portion of a sentence  
 12 of imprisonment in the county jail or state prison be served  
 13 under conditions of home arrest. Petitions may be considered  
 14 and ruled upon by the sentencing court prior to and  
 15 throughout the term of the offender's sentence.

16 (2) The sentencing judge shall study the records of all  
 17 persons petitioning for home arrest and, in his discretion,  
 18 may:

19 (a) ~~cause---additional---background---or---character~~  
 20 ~~information--to--be--collected--or--reduced-to-writing-by-the~~  
 21 ~~probation--officer;~~ REFER THE CASE TO THE APPROPRIATE  
 22 SUPERVISING AUTHORITY FOR APPROVAL AND ACCEPTANCE INTO THE  
 23 HOME ARREST PROGRAM. THE SUPERVISING AUTHORITY MAY ACCEPT OR  
 24 REJECT ANY REFERRAL.

25 (b) conduct hearings on the desirability of granting

1 home arrest;  
 2 ~~{c}--impose--on--the--home--arrestee-conditions-that-are~~  
 3 ~~proper,-including-restitution;~~  
 4 ~~{d}{C} order-that-all-or-a-portion--of--a--sentence--of~~  
 5 ~~imprisonment--in--the--county-jail-or-state-prison-be-served~~  
 6 ~~under--conditions--of--home--arrest--at--whatever--time---or~~  
 7 ~~intervals,-consecutive--or--nonconsecutive,-that-the-court~~  
 8 ~~determines~~ ORDER A TERM OF HOME ARREST IN LIEU OF A SENTENCE  
 9 OF IMPRISONMENT IN THE COUNTY JAIL OR STATE PRISON. The time  
 10 actually spent in home arrest pursuant to this section may  
 11 not exceed 6 months or the maximum term of imprisonment  
 12 imposed, whichever is shorter.

13 ~~{e}{D}~~ issue a warrant for a person when there is  
 14 reason to believe the person has violated the conditions of  
 15 home arrest, conduct hearings on the matter, and order  
 16 ~~reimprisonment~~ IMPRISONMENT in the county jail or state  
 17 prison upon proof of violation; and

18 ~~{f}{E}~~ grant final discharge from arrest.

19 (3) A home arrestee shall execute a written agreement  
 20 with the court setting forth all the conditions of home  
 21 arrest. The order of home arrest must incorporate that  
 22 agreement and must order compliance with its terms. The  
 23 order and agreement must be transmitted to the supervising  
 24 authority and to the appropriate jail or prison official.

25 (4) Time spent in home arrest must be credited against



1 the maximum term of imprisonment imposed for the offender  
 2 pursuant to law.

3 (5) Home arrest must be under the supervision of the  
 4 supervising authority. A home arrestee is subject to the  
 5 decisions of the supervising authority during the period of  
 6 supervision. Fees for supervision or equipment usage must be  
 7 paid directly to the ~~supervising--authority~~ CLERK OF THE  
 8 SENTENCING COURT AND MUST BE DISTRIBUTED BY THE CLERK TO THE  
 9 SUPERVISING AUTHORITY.

10 NEW SECTION. Section 3. Home arrest -- conditions --  
 11 fees -- consent of cohabitators. (1) ~~The--conditions--of--home~~  
 12 ~~arrest--must-include~~ A HOME ARRESTEE MUST BE CONFINED TO HIS  
 13 HOME UNDER CONDITIONS IMPOSED BY THE SENTENCING COURT, WHICH  
 14 MAY INCLUDE BUT ARE NOT LIMITED TO the following:

15 (a) The home arrestee must be confined to his home at  
 16 all times except when:

17 (i) working at approved employment or traveling  
 18 directly to and from employment;

19 (ii) seeking employment;

20 (iii) undergoing medical, psychiatric, or mental health  
 21 treatment or participating in an approved counseling or  
 22 aftercare program;

23 (iv) attending an approved educational institution or  
 24 program;

25 (v) attending a regularly scheduled religious service

1 at a place of worship; or

2 (vi) participating in an approved community service  
 3 program; OR

4 ~~(b)--Violation-of-the-provisions-of-subsection--(1)--may~~  
 5 ~~subject-the-home-arrestee-to-prosecution-under-45-7-306-~~

6 ~~(c)(VII) The-home-arrestee-shall-conform~~ CONFORMING to a  
 7 schedule prepared by the supervising authority, specifically  
 8 setting forth the times when he may be absent from the home  
 9 and the locations where he may be during those times.

10 ~~(d)(B)~~ The home arrestee may not commit another offense  
 11 during the period of home arrest.

12 ~~(e)(C)~~ The home arrestee may not change the place of  
 13 home arrest or the schedule without prior approval of the  
 14 supervising authority.

15 ~~(f)(D)~~ The home arrestee shall maintain a telephone or  
 16 other approved monitoring device in the home or on the  
 17 arrestee's person at all times.

18 ~~(g)(E) Any---other---reasonable---conditions---may---be~~  
 19 CONDITIONS set by the court or the supervising authority  
 20 including MAY INCLUDE:

21 (i) restitution;

22 (ii) supervision fees under 7-32-2245, 46-18-702, or  
 23 46-18-703;

24 (iii) any of the conditions imposed on persons on  
 25 probation or conditional discharge under 46-23-1011 or

1 46-23-1021.

2 (2) A written and notarized consent agreement must be  
3 filed with the court by every adult who will share the  
4 offender's home during the term of home arrest.

5 (3) VIOLATION OF THE PROVISIONS OF ANY CONDITION OF  
6 HOME ARREST MAY SUBJECT THE HOME ARRESTEE TO PROSECUTION  
7 UNDER 45-7-306.

8 NEW SECTION. Section 4. Home arrest -- ineligibility.

9 A person being held under a detainer, warrant, or process  
10 issued by some other jurisdiction is not eligible for home  
11 arrest. A person convicted of a violent felony offense is  
12 not eligible for home arrest. HOWEVER, THIS SECTION DOES NOT  
13 PREVENT THE USE OF A MONITORING DEVICE AS A PART OF AN  
14 INTENSIVE SUPERVISION PROGRAM OR OTHER PROGRAM OF THE  
15 DEPARTMENT OF INSTITUTIONS.

16 NEW SECTION. Section 5. Home arrest -- responsibility  
17 for own living expenses -- government benefits. A person  
18 serving a sentence under conditions of home arrest is  
19 responsible for food, housing, clothing, and medical care  
20 expenses and is eligible for government benefits to the same  
21 extent as a person on probation, parole, or conditional  
22 discharge.

23 NEW SECTION. Section 6. Home arrest -- list of  
24 offenders. At least once every 30 days, the supervising  
25 authority shall provide all local and county law enforcement

1 agencies with a list of the offenders under home arrest in  
2 their jurisdictions. This list must include the following  
3 information:

- 4 (1) the offender's place of home arrest;
- 5 (2) the offense for which the offender was charged,  
6 convicted, or otherwise placed under home arrest;
- 7 (3) the date that the sentence of home arrest will be  
8 completed; and
- 9 (4) the name, address, and phone number of the officer  
10 of the supervising authority for the offender.

11 **Section 7.** Section 41-5-306, MCA, is amended to read:

12 **"41-5-306. (Temporary) Place of shelter care or**  
13 **detention.** (1) After a probable cause hearing provided for  
14 in 41-5-303, a youth alleged to be a youth in need of  
15 supervision may be placed only in:

- 16 (a) in a licensed youth foster home as defined in  
17 41-3-1102;
- 18 (b) in a facility operated by a licensed child welfare  
19 agency; **or**
- 20 (c) in a licensed youth group home as defined in  
21 41-3-1102; or
- 22 (d) under home arrest, either in his own home or in one  
23 of the facilities described in subsections (1)(a) through  
24 (1)(c), as provided in [sections 1 through 6].

25 (2) A youth alleged to be in need of care ~~shall~~ may be

1 placed only in the facilities ~~stated~~ listed in subsection  
 2 (1) ~~of this section~~ and ~~shall~~ may not be placed in a jail or  
 3 other facility intended or used for the detention of adults  
 4 charged with criminal offenses.

5 (3) After a probable cause hearing provided for in  
 6 41-5-303, a youth alleged to be a delinquent youth may be  
 7 placed only in the facilities described in subsection (1),  
 8 under home arrest as provided in subsection (1), in a  
 9 detention facility, or in a jail or other facility for the  
 10 detention of adults only if the facilities in subsection (1)  
 11 are not available or do not provide adequate security and  
 12 the detention is in an area physically and visually separate  
 13 and removed from that of adults. (Terminates July 1,  
 14 1991--sec. 14, Ch. 434, L. 1989.)

15 **41-5-306.** (Effective July 1, 1991) Place of shelter  
 16 care or detention. (1) After a probable cause hearing  
 17 provided for in 41-5-303, a youth alleged to be a youth in  
 18 need of supervision may be placed only in:

- 19 (a) in a licensed youth foster home as defined in  
 20 41-3-1102;
- 21 (b) in a facility operated by a licensed child welfare  
 22 agency; or
- 23 (c) in a licensed youth group home as defined in  
 24 41-3-1102; or
- 25 (d) under home arrest, either in his own home or in one

1 of the facilities described in subsections (1)(a) through  
 2 (1)(c), as provided in [sections 1 through 6].

3 (2) A youth alleged to be in need of care ~~shall~~ may be  
 4 placed only in the facilities ~~stated~~ listed in subsection  
 5 (1) ~~of this section~~ and ~~shall~~ may not be placed in a jail or  
 6 other facility intended or used for the detention of adults  
 7 charged with criminal offenses.

8 (3) After a probable cause hearing provided for in  
 9 41-5-303, a youth alleged to be a delinquent youth may be  
 10 placed only in the facilities described in subsection (1),  
 11 under home arrest as provided in subsection (1), or in a  
 12 detention facility as defined in 41-5-103."

13 **Section 8.** Section 41-5-403, MCA, is amended to read:

14 **"41-5-403.** Disposition permitted under informal  
 15 adjustment. (1) The following dispositions may be imposed by  
 16 informal adjustment:

- 17 (a) probation;
- 18 (b) placement of the youth for substitute care into a  
 19 youth care facility as defined in 41-3-1102 and as  
 20 determined by the department;
- 21 (c) placement of the youth in a private agency  
 22 responsible for the care and rehabilitation of ~~such--a~~ the  
 23 youth as determined by the department;
- 24 (d) restitution upon approval of the youth court judge;
- 25 (e) placement of the youth under home arrest as

1 provided in [sections 1 through 6].

2 (2) In determining whether restitution is appropriate  
3 in a particular case, the following factors may be  
4 considered in addition to any other evidence:

- 5 (a) age of the youth;  
6 (b) ability of the youth to pay;  
7 (c) ability of the parents or legal guardian to pay;  
8 (d) amount of damage to the victim; and  
9 (e) legal remedies of the victim; however, the ability  
10 of the victim or his insurer to stand any loss may not be  
11 considered in any case.

12 (3) If the youth violates his aftercare agreement as  
13 provided for in 53-30-226, he must be returned to the court  
14 for further disposition. No A youth may not be placed in a  
15 state youth correctional facility under informal  
16 adjustment."

17 **Section 9.** Section 41-5-523, MCA, is amended to read:

18 **"41-5-523. (Temporary) Disposition of delinquent youth**  
19 **and youth in need of supervision.** (1) If a youth is found to  
20 be delinquent or in need of supervision, the youth court may  
21 enter its judgment making any of the following dispositions:

- 22 (a) place the youth on probation;  
23 (b) commit the youth to the department if the court  
24 determines that the youth is in need of placement in other  
25 than the youth's own home; provided; however; that:

1 (i) in the case of a youth in need of supervision, the  
2 court shall determine whether continuation in the home would  
3 be contrary to the welfare of the youth and whether  
4 reasonable efforts have been made to prevent or eliminate  
5 the need for removal of the youth from his home. The court  
6 shall include such a determination in the order committing  
7 the youth to the department.

8 (ii) in the case of a delinquent youth who is determined  
9 by the court to be a serious juvenile offender, the judge  
10 may specify that the youth be placed in a youth correctional  
11 facility if the judge finds that such the placement is  
12 necessary for the protection of the public;

13 (c) order restitution by the youth or his parents;  
14 (d) impose a fine as authorized by law if the violation  
15 alleged would constitute a criminal offense if committed by  
16 an adult;

17 (e) require the performance of community service;

18 (f) require the youth, his parents, his guardians, or  
19 the persons having legal custody of the youth to receive  
20 counseling services;

21 (g) require the medical and psychological evaluation of  
22 the youth, his parents, his guardians, or the persons having  
23 legal custody of the youth;

24 (h) require the parents, guardians, or other persons  
25 having legal custody of the youth to furnish such services

1 as the court may designate;

2 (i) order such further care, treatment, evaluation, or  
3 relief that the court considers beneficial to the youth and  
4 the community and that does not obligate funding from the  
5 department without the department's approval, except that a  
6 youth may not be placed by a youth court in a residential  
7 treatment facility as defined in 50-5-101. Only the  
8 department may, pursuant to subsection (1)(b), place a youth  
9 in a residential treatment facility.

10 (j) commit the youth to a mental health facility if,  
11 based upon the testimony of a professional person as defined  
12 in 53-21-102, the court finds that the youth is seriously  
13 mentally ill as defined in 53-21-102. The youth is entitled  
14 to all rights provided by 53-21-114 through 53-21-119. Upon  
15 release or discharge from the mental health facility, the  
16 youth must be returned to the court for further disposition  
17 in accordance with this section unless the court order has  
18 expired or the court no longer retains jurisdiction under  
19 41-5-205.

20 (k) place the youth under home arrest as provided in  
21 [sections 1 through 6].

22 (2) When a youth is committed to the department, the  
23 department shall determine the appropriate placement and  
24 rehabilitation program for the youth after considering the  
25 recommendations made under 41-5-527 by the youth placement

1 committee. Placement is subject to the following  
2 limitations:

3 (a) A youth in need of supervision may not be placed in  
4 a youth correctional facility.

5 (b) A youth may not be held in a youth correctional  
6 facility for a period of time in excess of the maximum  
7 period of imprisonment that could be imposed on an adult  
8 convicted of the offense or offenses that brought the youth  
9 under the jurisdiction of the youth court. Nothing in this  
10 section limits the power of the department to enter into an  
11 aftercare agreement with the youth pursuant to 53-30-226.

12 (c) ~~No~~ A youth may not be placed in or transferred to a  
13 penal institution or other facility used for the execution  
14 of sentence of adults convicted of crimes.

15 (3) A youth placed by the department in a youth  
16 correctional facility must be supervised by the department.  
17 A youth placed in any other placement must be supervised by  
18 the youth probation officer of the youth court having  
19 jurisdiction over the youth.

20 (4) At any time after the youth has been taken into  
21 custody, the court may, with the consent of the youth in the  
22 manner provided in 41-5-303 for consent by a youth to a  
23 waiver of his constitutional rights or after the youth has  
24 been adjudicated delinquent or in need of supervision, order  
25 the youth to be evaluated by the department for a period not

1 to exceed 45 days. The department shall determine the place  
2 and manner of evaluation.

3 (5) No An evaluation of a youth may not be performed at  
4 the Montana state hospital unless such the youth is  
5 transferred to the district court under 41-5-206.

6 (6) Any order of the court may be modified at any time.  
7 In the case of a youth committed to the department, an order  
8 pertaining to the youth may be modified only upon notice to  
9 the department and subsequent hearing.

10 (7) Whenever the court commits a youth to the  
11 department, it must shall transmit with the dispositional  
12 judgment copies of a medical report and such any other  
13 clinical, predisposition, or other reports and information  
14 pertinent to the care and treatment of the youth.

15 41-5-523. (Effective July 1, 1991) Disposition of  
16 delinquent youth and youth in need of supervision. (1) If a  
17 youth is found to be delinquent or in need of supervision,  
18 the youth court may enter its judgment making any of the  
19 following dispositions:

20 (a) place the youth on probation;  
21 (b) commit the youth to the department if the court  
22 determines that the youth is in need of placement in other  
23 than the youth's own home, ~~provided, however,~~ that:

24 (i) in the case of a youth in need of supervision, the  
25 court shall determine whether continuation in the home would

1 be contrary to the welfare of the youth and whether  
2 reasonable efforts have been made to prevent or eliminate  
3 the need for removal of the youth from his home. The court  
4 shall include such a determination in the order committing  
5 the youth to the department.

6 (ii) in the case of a delinquent youth who is determined  
7 by the court to be a serious juvenile offender, the judge  
8 may specify that the youth be placed in a youth correctional  
9 facility if the judge finds that such the placement is  
10 necessary for the protection of the public;

11 (c) order restitution by the youth or his parents;

12 (d) impose a fine as authorized by law if the violation  
13 alleged would constitute a criminal offense if committed by  
14 an adult;

15 (e) require the performance of community service;

16 (f) require the youth, his parents, his guardians, or  
17 the persons having legal custody of the youth to receive  
18 counseling services;

19 (g) require the medical and psychological evaluation of  
20 the youth, his parents, his guardians, or the persons having  
21 legal custody of the youth;

22 (h) require the parents, guardians, or other persons  
23 having legal custody of the youth to furnish such services  
24 as the court may designate;

25 (i) order such further care, treatment, evaluation, or

1 relief that the court considers beneficial to the youth and  
 2 the community and that does not obligate funding from the  
 3 department without the department's approval, except that a  
 4 youth may not be placed by a youth court in a residential  
 5 treatment facility as defined in 50-5-101. Only the  
 6 department may, pursuant to subsection (1)(b), place a youth  
 7 in a residential treatment facility.

8 (j) commit the youth to a mental health facility if,  
 9 based upon the testimony of a professional person as defined  
 10 in 53-21-102, the court finds that the youth is seriously  
 11 mentally ill as defined in 53-21-102. The youth is entitled  
 12 to all rights provided by 53-21-114 through 53-21-119. Upon  
 13 release or discharge from the mental health facility, the  
 14 youth must be returned to the court for further disposition  
 15 in accordance with this section unless the court order has  
 16 expired or the court no longer retains jurisdiction under  
 17 41-5-205.

18 (k) place the youth under home arrest as provided in  
 19 [sections 1 through 6].

20 (2) When a youth is committed to the department, the  
 21 department shall determine the appropriate placement and  
 22 rehabilitation program for the youth after considering the  
 23 recommendations made under 41-5-527 by the youth placement  
 24 committee. Placement is subject to the following  
 25 limitations:

1 (a) A youth in need of supervision may not be placed in  
 2 a youth correctional facility.

3 (b) A youth may not be held in a youth correctional  
 4 facility for a period of time in excess of the maximum  
 5 period of imprisonment that could be imposed on an adult  
 6 convicted of the offense or offenses that brought the youth  
 7 under the jurisdiction of the youth court. Nothing in this  
 8 section limits the power of the department to enter into an  
 9 aftercare agreement with the youth pursuant to 53-30-226.

10 (c) No A youth may not be placed in or transferred to a  
 11 penal institution or other facility used for the execution  
 12 of sentence of adults convicted of crimes.

13 (3) A youth placed by the department in a youth  
 14 correctional facility must be supervised by the department.  
 15 A youth placed in any other placement must be supervised by  
 16 the youth probation officer of the youth court having  
 17 jurisdiction over the youth.

18 (4) At any time after the youth has been taken into  
 19 custody and before final disposition, the court may, with  
 20 the consent of the youth in the manner provided in 41-5-303  
 21 for consent by a youth to a waiver of his constitutional  
 22 rights or after the youth has been adjudicated delinquent or  
 23 in need of supervision, order the youth to be evaluated for  
 24 a period not to exceed 45 days. The county commissioners are  
 25 responsible for the cost of the evaluation and may contract

1 with the department or other public or private agencies to  
2 obtain evaluation services.

3 (5) ~~No~~ An evaluation of a youth may not be performed at  
4 the Montana state hospital unless such the youth is  
5 transferred to the district court under 41-5-206.

6 (6) Any order of the court may be modified at any time.  
7 In the case of a youth committed to the department, an order  
8 pertaining to the youth may be modified only upon notice to  
9 the department and subsequent hearing.

10 (7) Whenever the court commits a youth to the  
11 department, it ~~must~~ shall transmit with the dispositional  
12 judgment copies of a medical report and such any other  
13 clinical, predisposition, or other reports and information  
14 pertinent to the care and treatment of the youth."

15 **Section 10.** Section 46-18-201, MCA, is amended to read:

16 **"46-18-201.** Sentences that may be imposed. (1) Whenever  
17 a person has been found guilty of an offense upon a verdict  
18 or a plea of guilty, the court may:

19 (a) defer imposition of sentence, excepting except as  
20 provided in 61-8-714 and 61-8-722 for sentences for driving  
21 under the influence of alcohol or drugs, for a period,  
22 except as otherwise provided, not exceeding 1 year for any  
23 misdemeanor or for a period not exceeding 3 years for any  
24 felony. The sentencing judge may impose upon the defendant  
25 any reasonable restrictions or conditions during the period

1 of the deferred imposition. Reasonable restrictions or  
2 conditions may include:

- 3 (i) jail base release;  
4 (ii) jail time not exceeding 180 days;  
5 (iii) conditions for probation;  
6 (iv) restitution;  
7 (v) payment of the costs of confinement;  
8 (vi) payment of a fine as provided in 46-18-231;  
9 (vii) payment of costs as provided in 46-18-232 and  
10 46-18-233;

11 (viii) payment of costs of ~~court---~~appointed  
12 court-appointed counsel as provided in 46-8-113;

13 (ix) community service;

14 ~~(x)~~ (x) home arrest as provided in [sections 1 through 6];

15 ~~(\*)~~(xi) any other reasonable conditions considered  
16 necessary for rehabilitation or for the protection of  
17 society; or

18 ~~(\*)~~(xii) any combination of the above.

19 (b) suspend execution of sentence up to the maximum  
20 sentence allowed for each particular offense. The sentencing  
21 judge may impose on the defendant any reasonable  
22 restrictions or conditions during the period of suspended  
23 sentence. Reasonable restrictions or conditions may include  
24 any of those listed in subsections subsection (1)(a){i}  
25 through-(i){a}{xi}.



1 (c) impose a fine as provided by law for the offense;  
 2 (d) require payment of costs as provided in 46-18-232  
 3 or payment of costs of court-appointed counsel as provided  
 4 in 46-8-113;  
 5 (e) commit the defendant to a correctional institution,  
 6 with or without a fine as provided by law for the offense;  
 7 (f) impose any combination of subsections (1)(b)  
 8 through (1)(e).

9 (2) If any a financial obligation is imposed as a  
 10 condition under subsection (1)(a), sentence may be deferred  
 11 for a period not exceeding 2 years for any a misdemeanor or  
 12 for a period not exceeding 6 years for any a felony,  
 13 regardless of whether any other conditions are imposed.

14 (3) If any restrictions or conditions imposed under  
 15 subsection (1)(a) or (1)(b) are violated, the court shall  
 16 consider any elapsed time and either expressly allow part or  
 17 all of it as a credit against the sentence or reject all or  
 18 part as a credit and state its reasons in the order. Credit,  
 19 however, must be allowed for jail or home arrest time  
 20 already served.

21 (4) Except as provided in 46-18-222, the imposition or  
 22 execution of the first 2 years of a sentence of imprisonment  
 23 imposed under the following sections may not be deferred or  
 24 suspended: 45-5-103, 45-5-202(3) relating to aggravated  
 25 assault, 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-503(2)

1 and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(3), and  
 2 45-9-103(2).

3 (5) Except as provided in 46-18-222, the imposition or  
 4 execution of the first 10 years of a sentence of  
 5 imprisonment imposed under 45-5-102 may not be deferred or  
 6 suspended.

7 (6) Except as provided in 46-18-222, imposition of  
 8 sentence in a felony case may not be deferred in the case of  
 9 a defendant who has been convicted of a felony on a prior  
 10 occasion, whether or not the sentence was imposed,  
 11 imposition of the sentence was deferred, or execution of the  
 12 sentence was suspended.

13 (7) If the victim was less than 16 years old, the  
 14 imposition or execution of the first 30 days of a sentence  
 15 of imprisonment imposed under 45-5-502(3), 45-5-503,  
 16 45-5-504, 45-5-505, or 45-5-507 may not be deferred or  
 17 suspended. Section 46-18-222 does not apply to the first 30  
 18 days of such the imprisonment.

19 (8) In imposing a sentence on a defendant convicted of  
 20 a sexual offense as defined in 46-23-502, the court may not  
 21 waive the registration requirement provided in 46-18-254,  
 22 46-18-255, and Title 46, chapter 23, part 5.

23 (9) A person convicted of a sexual offense, as defined  
 24 in 46-23-502, and sentenced to imprisonment in the state  
 25 prison shall enroll in the educational phase of the prison's

1 sexual offender program."

2 **Section 11.** Section 61-8-714, MCA, is amended to read:

3 "61-8-714. Penalty for driving under the influence of  
4 alcohol or drugs. (1) A Except as provided in subsection  
5 (7), a person convicted of a violation of 61-8-401 shall be  
6 punished by imprisonment in the county jail for not less  
7 than 24 consecutive hours or more than 60 days and shall be  
8 punished by a fine of not less than \$100 or more than \$500.  
9 The ~~jail~~ IMPRISONMENT sentence may not be suspended unless  
10 the judge finds that the imposition of the ~~jail~~ IMPRISONMENT  
11 sentence will pose a risk to the defendant's physical or  
12 mental well-being.

13 (2) ~~On Except--as--provided-in-subsection-(7)--on~~ ON a  
14 second conviction, he shall be punished by a fine of not  
15 less than \$300 or more than \$500 and by imprisonment for not  
16 less than 7 days, at least 48 hours of which must be served  
17 consecutively, or more than 6 months. ~~Three Except--as~~  
18 ~~provided--in--subsection--(7)--3~~ THREE days of the ~~jail~~  
19 IMPRISONMENT sentence may not be suspended unless the judge  
20 finds that the imposition of the ~~jail~~ IMPRISONMENT sentence  
21 will pose a risk to the defendant's physical or mental  
22 well-being.

23 (3) ~~On Except-as-provided-in-subsection-(7)--on~~ ON the  
24 third or subsequent conviction, he shall be punished by  
25 imprisonment for a term of not less than 30 days, at least

1 48 hours of which must be served consecutively, or more than  
2 1 year, and by a fine of not less than \$500 or more than  
3 \$1,000. ~~Notwithstanding Except--as--provided-in-subsection~~  
4 ~~(7)--notwithstanding~~ NOTWITHSTANDING any provision to the  
5 contrary providing for suspension of execution of a sentence  
6 imposed under this subsection, the imposition or execution  
7 of the first 10 days of the ~~jail~~ IMPRISONMENT sentence  
8 imposed for a third or subsequent offense that occurred  
9 within 5 years of the first offense may not be deferred or  
10 suspended.

11 (4) In addition to the punishment provided in this  
12 section, regardless of disposition, the defendant shall  
13 complete an alcohol information course at an alcohol  
14 treatment program approved by the department of  
15 institutions, which may, in the sentencing court's  
16 discretion and upon recommendation of a certified chemical  
17 dependency counselor, include alcohol or drug treatment, or  
18 both. On conviction of a second or subsequent offense under  
19 this section, in addition to the punishment provided in this  
20 section, regardless of disposition, the defendant shall  
21 complete an alcohol information course at an alcohol  
22 treatment program approved by the department of  
23 institutions, which must include alcohol or drug treatment,  
24 or both. Each counselor providing education or treatment  
25 shall, at the commencement of the education or treatment,

1 notify the court that the defendant has been enrolled in a  
 2 course or treatment program. If the defendant fails to  
 3 attend the course or the treatment program, the counselor  
 4 shall notify the court of the failure. As long as the  
 5 alcohol information course and treatment program are  
 6 approved as provided in this subsection, the defendant may  
 7 attend the information course and treatment program of his  
 8 choice. The treatment provided to the defendant at a  
 9 treatment program must be at a level appropriate to his  
 10 alcohol problem, as determined by the judge based upon the  
 11 recommendation from the certified chemical dependency  
 12 counselor.

13 (5) For the purpose of determining the number of  
 14 convictions under this section, "conviction" means a final  
 15 conviction, as defined in 45-2-101, in this state,  
 16 conviction for a violation of a similar statute in another  
 17 state, or a forfeiture of bail or collateral deposited to  
 18 secure the defendant's appearance in court in this state or  
 19 another state, which forfeiture has not been vacated. An  
 20 offender is considered to have been previously convicted for  
 21 the purposes of this section if less than 5 years have  
 22 elapsed between the commission of the present offense and a  
 23 previous conviction. If there has been no additional  
 24 conviction for an offense under this section for a period of  
 25 5 years after a prior conviction hereunder under this

1 section, then all records and data relating to the prior  
 2 conviction are confidential criminal justice information as  
 3 defined in 44-5-103 and public access to the information may  
 4 only be obtained by district court order upon good cause  
 5 shown.

6 (6) For the purpose of calculating subsequent  
 7 convictions under this section, a conviction for a violation  
 8 of 61-8-406 also constitutes a conviction for a violation of  
 9 61-8-401.

10 (7) The EXCEPT FOR THE INITIAL 24 HOURS ON A FIRST  
 11 OFFENSE OR THE INITIAL 48 HOURS ON A SECOND OR SUBSEQUENT  
 12 OFFENSE, THE court may order that a term of imprisonment  
 13 imposed under this section be served BY IMPRISONMENT under  
 14 home arrest as provided in [sections 1 through 6]."

15 **Section 12.** Section 61-8-722, MCA, is amended to read:

16 "61-8-722. Penalty for driving with excessive blood  
 17 alcohol concentration. (1) A Except--as--provided--in  
 18 subsection-(7)7-a A person convicted of a violation of  
 19 61-8-406 shall be punished by imprisonment for not more than  
 20 10 days and shall be punished by a fine of not less than  
 21 \$100 or more than \$500.

22 (2) On Except-as-provided-in-subsection-(7)7--on ON a  
 23 second conviction of a violation of 61-8-406, he shall be  
 24 punished by imprisonment for not less than 48 consecutive  
 25 hours or more than 30 days and by a fine of not less than

1 \$300 or more than \$500.

2 (3) ~~On Except-as-provided-in-subsection-(7),~~ ~~on~~ ON a  
 3 third or subsequent conviction of a violation of 61-8-406,  
 4 he shall be punished by imprisonment for not less than 48  
 5 consecutive hours or more than 6 months and by a fine of not  
 6 less than \$500 or more than \$1,000.

7 (4) The provisions of 61-5-205(2), 61-5-208(2), and  
 8 61-11-203(2)(d) relating to revocation and suspension of  
 9 driver's licenses shall apply to any conviction under  
 10 61-8-406.

11 (5) In addition to the punishment provided in this  
 12 section, regardless of disposition, the defendant shall  
 13 complete an alcohol information course at an alcohol  
 14 treatment program approved by the department of  
 15 institutions, which may include alcohol or drug treatment,  
 16 or both, if considered necessary by the counselor conducting  
 17 the program. Each counselor providing such education or  
 18 treatment shall, at the commencement of the education or  
 19 treatment, notify the court that the defendant has been  
 20 enrolled in a course or treatment program. If the defendant  
 21 fails to attend the course or the treatment program, the  
 22 counselor shall notify the court of the failure.

23 (6) For the purpose of determining the number of  
 24 convictions under this section, "conviction" means a final  
 25 conviction, as defined in 45-2-101, in this state or a

1 similar statute in another state or a forfeiture of bail or  
 2 collateral deposited to secure the defendant's appearance in  
 3 court in this state or another state, which forfeiture has  
 4 not been vacated. An offender is considered to have been  
 5 previously convicted for the purposes of this section if  
 6 less than 5 years have elapsed between the commission of the  
 7 present offense and a previous conviction. If there has been  
 8 no additional conviction for an offense under this section  
 9 for a period of 5 years after a prior conviction hereunder  
 10 under this section, then such the prior offense shall must  
 11 be expunged from the defendant's record.

12 (7) THE EXCEPT FOR THE INITIAL 24 HOURS ON A FIRST  
 13 OFFENSE OR THE INITIAL 48 HOURS ON A SECOND OR SUBSEQUENT  
 14 OFFENSE, THE court may order that a term of imprisonment  
 15 imposed under this section be served BY IMPRISONMENT under  
 16 home arrest as provided in [sections 1 through 6]."

17 NEW SECTION. Section 13. Codification instruction.  
 18 [Sections 1 through 6] are intended to be codified as an  
 19 integral part of Title 46, chapter 18, and the provisions of  
 20 Title 46, chapter 18, apply to [sections 1 through 6].

21 NEW SECTION. Section 14. Severability. If a part of  
 22 [this act] is invalid, all valid parts that are severable  
 23 from the invalid part remain in effect. If a part of [this  
 24 act] is invalid in one or more of its applications, the part  
 25 remains in effect in all valid applications that are

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1 severable from the invalid applications.

2 NEW SECTION. **Section 15. Applicability.** [This act]  
3 applies to sentences imposed after [the effective date of  
4 this act].

-End-