

HOUSE BILL NO. 286

INTRODUCED BY STRIZICH, PINSONEAULT

IN THE HOUSE

JANUARY 19, 1991           INTRODUCED AND REFERRED TO COMMITTEE  
ON JUDICIARY.

JANUARY 21, 1991           FIRST READING.

FEBRUARY 4, 1991           COMMITTEE RECOMMEND BILL  
DO PASS. REPORT ADOPTED.

FEBRUARY 5, 1991           PRINTING REPORT.

FEBRUARY 6, 1991           SECOND READING, DO PASS.

FEBRUARY 7, 1991           ENGROSSING REPORT.

FEBRUARY 8, 1991           THIRD READING, PASSED.  
AYES, 94; NOES, 1.

TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 9, 1991           INTRODUCED AND REFERRED TO COMMITTEE  
ON JUDICIARY.

FIRST READING.

MARCH 13, 1991           COMMITTEE RECOMMEND BILL BE  
CONCURRED IN. REPORT ADOPTED.

MARCH 15, 1991           SECOND READING, CONCURRED IN.

MARCH 16, 1991           THIRD READING, CONCURRED IN.  
AYES, 49; NOES, 0.

RETURNED TO HOUSE.

IN THE HOUSE

MARCH 18, 1991           RECEIVED FROM SENATE.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 House BILL NO. 286  
2 INTRODUCED BY Mr. McCall

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO CHANGE THE  
5 DEFINITION OF A YOUTH IN NEED OF SUPERVISION FOR PURPOSES OF  
6 THE MONTANA YOUTH COURT ACT; TO PROVIDE THAT IN INFORMAL  
7 PROCEEDINGS REGARDING A YOUTH, THE PROBATION OFFICER SHALL  
8 BELIEVE THAT THE PARENTS OR OTHER GUARDIAN EXERTED ALL  
9 REASONABLE EFFORTS TO CONTROL THE YOUTH AND THE YOUTH  
10 REMAINS BEYOND CONTROL; AND AMENDING SECTIONS 41-5-103 AND  
11 41-5-401, MCA."  
12

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

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

15 \*41-5-103. Definitions. For the purposes of the Montana  
16 Youth Court Act, unless otherwise stated the following  
17 definitions apply:

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

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

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

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

1 (5) "Department" means the department of family  
2 services provided for in 2-15-2401.

3 (6) "Foster home" means a private residence licensed by  
4 the department for placement of a youth.

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

8 (8) "Judge", when used without further qualification,  
9 means the judge of the youth court.

10 (9) (a) "Legal custody" means the legal status created  
11 by order of a court of competent jurisdiction that gives a  
12 person the right and duty to:

13 (i) have physical custody of the youth;

14 (ii) determine with whom the youth shall live and for  
15 what period;

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

17 (iv) provide the youth with food, shelter, education,  
18 and ordinary medical care.

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

22 (10) "Parent" means the natural or adoptive parent but  
23 does not include a person whose parental rights have been  
24 judicially terminated, nor does it include the putative  
25 father of an illegitimate youth unless his paternity is



-2- INTRODUCED BILL  
HB 286

1 established by an adjudication or by other clear and  
2 convincing proof.

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

5 (12) "Youth court" means the court established pursuant  
6 to this chapter to hear all proceedings in which a youth is  
7 alleged to be a delinquent youth, a youth in need of  
8 supervision, or a youth in need of care and includes the  
9 youth court judge and probation officers.

10 (13) "Delinquent youth" means a youth:

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

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

16 (14) "Youth in need of supervision" means a youth who  
17 commits an offense prohibited by law which, if committed by  
18 an adult, would not constitute a criminal offense, including  
19 but not limited to a youth who:

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

22 (b) ~~habitually--disobeys--the--reasonable--and--lawful~~  
23 demands continues to exhibit behavior beyond the control of  
24 his parents, foster parents, physical custodian, or guardian  
25 ~~or-is-ungovernable-and--beyond--their--control~~ despite the

1 attempt of his parents, foster parents, physical custodian,  
2 or guardian to exert all reasonable efforts to mediate,  
3 resolve, or control the youth's behavior; or

4 ~~(c) being--subject--to-compulsory-school-attendance--is~~  
5 ~~habitually-truant-from-school--or~~

6 ~~(d)~~ has committed any of the acts of a delinquent youth  
7 but whom the youth court in its discretion chooses to regard  
8 as a youth in need of supervision.

9 (15) "Youth in need of care" means a youth as defined in  
10 41-3-102.

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

14 (17) "Necessary parties" include the youth, his parents,  
15 guardian, custodian, or spouse.

16 (18) "State youth correctional facility" means a  
17 residential facility for the rehabilitation of delinquent  
18 youth such as Pine Hills school in Miles City, and Mountain  
19 View school in Helena.

20 (19) "Shelter care" means the temporary substitute care  
21 of youth in physically unrestricting facilities.

22 (20) "Detention" means the temporary substitute care of  
23 youth in physically restricting facilities.

24 (21) "Detention facility" means a physically restricting  
25 facility designed to prevent a youth from departing at will.

1 (22) "Restitution" means payments in cash to the victim  
2 or with services to the victim or the general community when  
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5 (23) "Substitute care" means full-time care of youth in  
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11 (24) "Serious juvenile offender" means a youth who has  
12 committed an offense against the person, an offense against  
13 property, or an offense involving dangerous drugs which  
14 would be considered a felony offense if committed by an  
15 adult."

16 **Section 2.** Section 41-5-401, MCA, is amended to read:

17 "41-5-401. Consent adjustment without petition. (1)  
18 Before a petition is filed, the probation officer may enter  
19 into an informal adjustment and give counsel and advice to  
20 the youth and other interested parties if it appears:

21 (a) the admitted facts bring the case within the  
22 jurisdiction of the court;

23 (b) counsel and advice without filing a petition would  
24 be in the best interests of the child and the public; and

25 (c) the youth may be a youth in need of supervision and

1 if the probation officer believes that the parents, foster  
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3 reasonable efforts to mediate, resolve, or control the  
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7 (2) Any probation or other disposition imposed under  
8 this section against any youth must conform to the following  
9 procedures:

10 (a) Every consent adjustment shall be reduced to  
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12 person having legal custody of the youth.

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20 guardian.

21 (b)(c) Approval by the youth court judge is required if  
22 the complaint alleges commission of a felony or if the youth  
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-End-

APPROVED BY COMMITTEE  
ON JUDICIARY

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*Attorneys* BILL NO. 286  
*for the committee*

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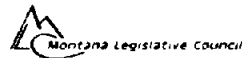
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- (8) "Judge", when used without further qualification, means the judge of the youth court.
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-End-

1 Heards BILL NO. 286

2 INTRODUCED BY Heards

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23 does not include a person whose parental rights have been  
24 judicially terminated, nor does it include the putative  
25 father of an illegitimate youth unless his paternity is



1 (3) "Physical therapy student" or "physical therapy  
2 intern" means an individual enrolled in an accredited  
3 physical therapy curriculum and who, as part of his  
4 professional, educational, and clinical training, is  
5 practicing in a physical therapy setting under the  
6 direction, guidance, and observation of a licensed physical  
7 therapist.

8 (4) "Physical therapy therapist assistant" means a  
9 person who is a graduate of an accredited curriculum  
10 approved by the board and who assists a physical therapist  
11 in the practice of physical therapy and whose activities  
12 require an understanding of physical therapy.

13 (5) "Physical therapy practitioner", "physical therapy  
14 specialist", "physiotherapy practitioner", or "manual  
15 therapists" are equivalent terms, and any derivation of the  
16 above or any letters implying the above are equivalent  
17 terms; any reference to any one of them in this chapter  
18 includes the others but does not include certified  
19 corrective therapists or massage therapists.

20 (6) "Physical therapy aide" means a person who aids in  
21 the practice of physical therapy and whose activities  
22 require on-the-job training and supervision by a licensed  
23 physical therapist who must be available for periodic checks  
24 during any procedure or treatment involving a patient.

25 (7) "Board" means the board of physical therapy

1 examiners provided for in 2-15-1858.

2 (8) "Department" means the department of commerce  
3 provided for in Title 2, chapter 15, part 18.

4 (9) "Hearing" means the adjudicative proceeding  
5 concerning the issuance, denial, suspension, or revocation  
6 of a license, after which the appropriate action toward an  
7 applicant or licensee is to be determined by the board.

8 (10) "Topical medications" means medications applied  
9 locally to the skin and includes only medications listed in  
10 [section 2(2)] for which a prescription is required under  
11 state or federal law."

12 NEW SECTION. Section 2. Application and administration  
13 of topical medications -- prescription, purchasing, and  
14 recordkeeping requirements. (1) A licensed physical  
15 therapist may apply or administer topical medications by:

16 (a) direct application;

17 (b) iontophoresis, a process whereby topical  
18 medications are applied through the use of electricity; or

19 (c) phonophoresis, a process whereby topical  
20 medications are applied through the use of ultrasound.

21 (2) A licensed physical therapist may apply or  
22 administer the following topical medications:

23 (a) bactericidal agents;

24 (b) debriding agents;

25 (c) anesthetic agents;

1 (22) "Restitution" means payments in cash to the victim  
 2 or with services to the victim or the general community when  
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-End-

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21 regarding use of alcoholic beverages by minors;

22 (b) ~~habitually--disobeys--the--reasonable--and---lawful~~  
23 demands continues to exhibit behavior beyond the control of  
24 his parents, foster parents, physical custodian, or guardian  
25 ~~or-is-ungovernable-and--beyond--their--control~~ despite the

1 attempt of his parents, foster parents, physical custodian,  
2 or guardian to exert all reasonable efforts to mediate,  
3 resolve, or control the youth's behavior; or

4 ~~(c) being--subject--to-compulsory-school-attendance,-is~~  
5 ~~habitually-truant-from-school;-or~~

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

9 (15) "Youth in need of care" means a youth as defined in  
10 41-3-102.

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

14 (17) "Necessary parties" include the youth, his parents,  
15 guardian, custodian, or spouse.

16 (18) "State youth correctional facility" means a  
17 residential facility for the rehabilitation of delinquent  
18 youth such as Pine Hills school in Miles City, and Mountain  
19 View school in Helena.

20 (19) "Shelter care" means the temporary substitute care  
21 of youth in physically unrestricting facilities.

22 (20) "Detention" means the temporary substitute care of  
23 youth in physically restricting facilities.

24 (21) "Detention facility" means a physically restricting  
25 facility designed to prevent a youth from departing at will.

1 (22) "Restitution" means payments in cash to the victim  
2 or with services to the victim or the general community when  
3 these payments are made pursuant to an informal adjustment,  
4 consent decree, or other youth court order.

5 (23) "Substitute care" means full-time care of youth in  
6 a residential setting for the purpose of providing food,  
7 shelter, security and safety, guidance, direction, and if  
8 necessary, treatment to youth who are removed from or  
9 without the care and supervision of their parents or  
10 guardian.

11 (24) "Serious juvenile offender" means a youth who has  
12 committed an offense against the person, an offense against  
13 property, or an offense involving dangerous drugs which  
14 would be considered a felony offense if committed by an  
15 adult."

16 **Section 2.** Section 41-5-401, MCA, is amended to read:

17 "41-5-401. Consent adjustment without petition. (1)  
18 Before a petition is filed, the probation officer may enter  
19 into an informal adjustment and give counsel and advice to  
20 the youth and other interested parties if it appears:

21 (a) the admitted facts bring the case within the  
22 jurisdiction of the court;

23 (b) counsel and advice without filing a petition would  
24 be in the best interests of the child and the public; and

25 (c) the youth may be a youth in need of supervision and

1 if the probation officer believes that the parents, foster  
2 parents, physical custodian, or guardian exerted all  
3 reasonable efforts to mediate, resolve, or control the  
4 youth's behavior and the youth continues to exhibit behavior  
5 beyond the control of the parents, foster parents, physical  
6 custodian, or guardian.

7 (2) Any probation or other disposition imposed under  
8 this section against any youth must conform to the following  
9 procedures:

10 (a) Every consent adjustment shall be reduced to  
11 writing and signed by the youth and his parents or the  
12 person having legal custody of the youth.

13 (b) If the probation officer believes the youth is a  
14 youth in need of supervision, the probation officer shall  
15 determine that the parents, foster parents, physical  
16 custodian, or guardian exerted all reasonable efforts to  
17 mediate, resolve, or control the youth's behavior and the  
18 youth continues to exhibit behavior beyond the control of  
19 the parents, foster parents, physical custodian, or  
20 guardian.

21 (b)(c) Approval by the youth court judge is required if  
22 the complaint alleges commission of a felony or if the youth  
23 has been or will be in any way detained."

-End-

HOUSE BILL NO. 286

INTRODUCED BY STRIZICH, PINSONEAULT

A BILL FOR AN ACT ENTITLED: "AN ACT TO CHANGE THE DEFINITION OF A YOUTH IN NEED OF SUPERVISION FOR PURPOSES OF THE MONTANA YOUTH COURT ACT; TO PROVIDE THAT IN INFORMAL PROCEEDINGS REGARDING A YOUTH, THE PROBATION OFFICER SHALL BELIEVE THAT THE PARENTS OR OTHER GUARDIAN EXERTED ALL REASONABLE EFFORTS TO CONTROL THE YOUTH AND THE YOUTH REMAINS BEYOND CONTROL; AND AMENDING SECTIONS 41-5-103 AND 41-5-401, MCA."

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

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

"41-5-103. Definitions. For the purposes of the Montana Youth Court Act, unless otherwise stated the following definitions apply:

- (1) "Adult" means an individual who is 18 years of age or older.
(2) "Agency" means any entity of state or local government authorized by law to be responsible for the care or rehabilitation of youth.
(3) "Commit" means to transfer to legal custody.
(4) "Court", when used without further qualification, means the youth court of the district court.

(5) "Department" means the department of family services provided for in 2-15-2401.

(6) "Foster home" means a private residence licensed by the department for placement of a youth.

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

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

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

- (i) have physical custody of the youth;
(ii) determine with whom the youth shall live and for what period;
(iii) protect, train, and discipline the youth; and
(iv) provide the youth with food, shelter, education, and ordinary medical care.

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

(10) "Parent" means the natural or adoptive parent but does not include a person whose parental rights have been judicially terminated, nor does it include the putative father of an illegitimate youth unless his paternity is



1 established by an adjudication or by other clear and  
2 convincing proof.

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

5 (12) "Youth court" means the court established pursuant  
6 to this chapter to hear all proceedings in which a youth is  
7 alleged to be a delinquent youth, a youth in need of  
8 supervision, or a youth in need of care and includes the  
9 youth court judge and probation officers.

10 (13) "Delinquent youth" means a youth:

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

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

16 (14) "Youth in need of supervision" means a youth who  
17 commits an offense prohibited by law which, if committed by  
18 an adult, would not constitute a criminal offense, including  
19 but not limited to a youth who:

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

22 (b) ~~habitually--disobeys--the--reasonable--and--lawful~~  
23 demands continues to exhibit behavior beyond the control of  
24 his parents, foster parents, physical custodian, or guardian  
25 ~~or-is-ungovernable-and--beyend--their--control~~ despite the

1 attempt of his parents, foster parents, physical custodian,  
2 or guardian to exert all reasonable efforts to mediate,  
3 resolve, or control the youth's behavior; or

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6 ~~(d)~~ has committed any of the acts of a delinquent youth  
7 but whom the youth court in its discretion chooses to regard  
8 as a youth in need of supervision.

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10 41-3-102.

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12 guardian to whom legal custody of the youth has been given  
13 but does not include a person who has only physical custody.

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15 guardian, custodian, or spouse.

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20 guardian.

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22 the complaint alleges commission of a felony or if the youth  
23 has been or will be in any way detained."

-End-