

SENATE BILL NO. 38

INTRODUCED BY HALLIGAN  
BY REQUEST OF THE JOINT INTERIM SUBCOMMITTEE  
ON ADULT AND JUVENILE DETENTION

IN THE SENATE

JANUARY 3, 1991            INTRODUCED AND REFERRED TO COMMITTEE  
                                 ON JUDICIARY.

JANUARY 7, 1991            FIRST READING.

JANUARY 18, 1991          COMMITTEE RECOMMEND BILL  
                                 DO PASS AS AMENDED. REPORT ADOPTED.

JANUARY 19, 1991          PRINTING REPORT.

                                 SECOND READING, DO PASS.

JANUARY 21, 1991          ENGROSSING REPORT.

                                 THIRD READING, PASSED.  
                                 AYES, 48; NOES, 0.

                                 TRANSMITTED TO HOUSE.

IN THE HOUSE

JANUARY 21, 1991          INTRODUCED AND REFERRED TO COMMITTEE  
                                 ON JUDICIARY.

JANUARY 22, 1991          FIRST READING.

FEBRUARY 11, 1991          COMMITTEE RECOMMEND BILL BE  
                                 CONCURRED IN. REPORT ADOPTED.

FEBRUARY 16, 1991          SECOND READING, CONCURRED IN.

FEBRUARY 18, 1991          THIRD READING, CONCURRED IN.  
                                 AYES, 91; NOES, 8.

                                 RETURNED TO SENATE.

IN THE SENATE

FEBRUARY 18, 1991          RECEIVED FROM HOUSE.

                                 SENT TO ENROLLING.

FEBRUARY 21, 1991          REPORTED CORRECTLY ENROLLED.

SIGNED BY PRESIDENT.

SIGNED BY SPEAKER.

DELIVERED TO GOVERNOR.

FEBRUARY 26, 1991

RETURNED FROM GOVERNOR WITH  
RECOMMENDED AMENDMENTS.

MARCH 5, 1991

ON MOTION, CONSIDERATION PASSED  
UNTIL 52ND LEGISLATIVE DAY.

MARCH 16, 1991

SECOND READING, GOVERNOR'S  
AMENDMENTS CONCURRED IN.

MARCH 18, 1991

THIRD READING, GOVERNOR'S  
AMENDMENTS CONCURRED IN.

IN THE HOUSE

APRIL 9, 1991

SECOND READING, GOVERNOR'S  
AMENDMENTS CONCURRED IN.

IN THE SENATE

APRIL 11, 1991

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

SENATE BILL NO. 38

INTRODUCED BY HALLIGAN

BY REQUEST OF THE JOINT INTERIM SUBCOMMITTEE

ON ADULT AND JUVENILE DETENTION

A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE 24-HOUR STATUTORY PERIOD FOR HOLDING A YOUTH IN JAIL; TO PROHIBIT THE DETENTION OF A YOUTH IN JAIL EXCEPT UNDER CERTAIN CIRCUMSTANCES; TO ALLOW A 6-HOUR EXCEPTION FOR HOLDING A YOUTH IN JAIL FOR THE PURPOSE OF IDENTIFICATION, PROCESSING, OR TRANSFER OF THE YOUTH TO A DETENTION FACILITY OR SHELTER CARE FACILITY; TO PROVIDE A LIMITED 24-HOUR EXCEPTION FOR THE DETENTION OF A YOUTH IN JAIL PENDING A PROBABLE CAUSE HEARING; TO CLARIFY DETENTION PROCEDURES FOLLOWING A PROBABLE CAUSE HEARING; AMENDING SECTIONS 7-32-2244, 41-5-103, 41-5-206, 41-5-303, 41-5-306, 41-5-307, 41-5-309, 41-5-502, AND 53-30-229, MCA; AMENDING SECTIONS 14 AND 17, CHAPTER 434, LAWS OF 1989; REPEALING SECTION 41-5-308, MCA; AND PROVIDING EFFECTIVE DATES."

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

NEW SECTION. Section 1. Youth not to be detained in jail -- exceptions -- time limitations. (1) A youth may not be detained or otherwise placed in a jail or other adult detention facility except as provided in 41-5-206 and this

section.

(2) A youth who has allegedly committed an offense that, if committed by an adult, would constitute a criminal offense may be temporarily detained in a jail or other adult detention facility for a period not to exceed:

(a) 6 hours, but in no case overnight, for the purpose of identification, processing, or transfer of the youth to an appropriate detention facility or shelter care facility; or

(b) 24 hours, excluding weekends and legal holidays, if the youth is awaiting a probable cause hearing pursuant to 41-5-303.

(3) The exception provided for in subsection (2)(b) applies only if:

(a) the court having jurisdiction over the youth is outside a standard metropolitan statistical area;

(b) alternative facilities are not available or alternative facilities do not provide adequate security; and

(c) the youth is kept in an area that provides physical, as well as sight and sound, separation from adults accused or convicted of criminal offenses.

(4) Whenever, despite all good faith efforts to comply with the time limitations specified in subsection (2), the limitations are exceeded, this circumstance does not serve as grounds for dismissal of the case nor does this



1 circumstance constitute a defense in a subsequent  
2 delinquency or criminal proceeding.

3 **Section 2.** Section 41-5-103, MCA, is amended to read:

4 "~~41-5-103. Definitions. For-the-purposes-of~~ As used in  
5 the Montana Youth Court Act, unless the context requires  
6 otherwise ~~stated~~, the following definitions apply:

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

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

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

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

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

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

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

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

24 (5)(7) "Department" means the department of family  
25 services provided for in 2-15-2401.

1 (8) "Detention" means the holding or temporary  
2 placement of a youth in a facility other than the youth's  
3 own home for the purpose of ensuring the continued custody  
4 of the youth at any time after the youth is taken into  
5 custody and before final disposition of his case.

6 (9) "Detention facility" means a physically restricting  
7 facility designed to prevent a youth from departing at will.

8 (10) "Final disposition" means the implementation of a  
9 court order for the disposition or placement of a youth as  
10 provided in 41-5-523.

11 (6)(11) "Foster home" means a private residence licensed  
12 by the department for placement of a youth.

13 (7)(12) "Guardianship" means the status created and  
14 defined by law between a youth and an adult with the  
15 reciprocal rights, duties, and responsibilities.

16 (13) "Jail" means a facility used for the confinement of  
17 adults accused or convicted of criminal offenses. The term  
18 includes a lockup or other facility used primarily for the  
19 temporary confinement of adults after arrest.

20 (8)(14) "Judge", when used without further  
21 qualification, means the judge of the youth court.

22 (9)(15) (a) "Legal custody" means the legal status  
23 created by order of a court of competent jurisdiction that  
24 gives a person the right and duty to:

25 (i) have physical custody of the youth;

1 (ii) determine with whom the youth shall live and for  
2 what period;

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

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

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

9 {16} "Necessary parties" includes the youth, his  
10 parents, guardian, custodian, or spouse.

11 {10}{17} "Parent" means the natural or adoptive parent  
12 but does not include a person whose parental rights have  
13 been judicially terminated, nor does it include the putative  
14 father of an illegitimate youth unless his paternity is  
15 established by an adjudication or by other clear and  
16 convincing proof.

17 {11} "Youth" means an individual who is less than 18  
18 years of age without regard to sex or emancipation.

19 {12} "Youth court" means the court established pursuant  
20 to this chapter to hear all proceedings in which a youth is  
21 alleged to be a delinquent youth, a youth in need of  
22 supervision, or a youth in need of care and includes the  
23 youth court judge and probation officers.

24 {13} "Delinquent youth" means a youth:

25 {a} who has committed an offense which, if committed by

1 an adult, would constitute a criminal offense;

2 {b} who, having been placed on probation as a  
3 delinquent youth or a youth in need of supervision, violates  
4 any condition of his probation;

5 {14} "Youth in need of supervision" means a youth who  
6 commits an offense prohibited by law which, if committed by  
7 an adult, would not constitute a criminal offense, including  
8 but not limited to a youth who:

9 {a} violates any Montana municipal or state law  
10 regarding use of alcoholic beverages by minors;

11 {b} habitually disobeys the reasonable and lawful  
12 demands of his parents, foster parents, physical custodian,  
13 or guardian or is ungovernable and beyond their control;

14 {c} being subject to compulsory school attendance, is  
15 habitually truant from school; or

16 {d} has committed any of the acts of a delinquent youth  
17 but whom the youth court in its discretion chooses to regard  
18 as a youth in need of supervision.

19 {15} "Youth in need of care" means a youth as defined in  
20 41-3-102.

21 {16} "Custodian" means a person other than a parent or  
22 guardian to whom legal custody of the youth has been given  
23 but does not include a person who has only physical custody.

24 {17} "Necessary parties" include the youth, his parents,  
25 guardian, custodian, or spouse.

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

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

(19) "Serious juvenile offender" means a youth who has committed an offense that would be considered a felony offense if committed by an adult and that is an offense against a person, an offense against property, or an offense involving dangerous drugs.

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

(21) "Shelter care facility" means a facility used for the shelter care of youth. The term is limited to the facilities enumerated in 41-5-306(1).

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

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

~~(22) "Restitution" means payments in cash to the victim or with services to the victim or the general community when these payments are made pursuant to an informal adjustment,~~

~~consent decree, or other youth court order.~~

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

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

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

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

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

(26) "Youth detention facility" means a detention facility that:

1 (a) is operated, administered, and staffed separately  
2 and independently of a jail; and

3 (b) is used exclusively for the lawful detention of  
4 alleged or adjudicated delinquent youth.

5 (27) "Youth in need of care" has the meaning provided  
6 for in 41-3-102.

7 (28) "Youth in need of supervision" means a youth who  
8 commits an offense prohibited by law that, if committed by  
9 an adult, would not constitute a criminal offense, including  
10 but not limited to a youth who:

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

13 (b) habitually disobeys the reasonable and lawful  
14 demands of his parents, foster parents, physical custodian,  
15 or guardian or is beyond control;

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

18 (d) has committed any of the acts of a delinquent youth  
19 but whom the youth court, in its discretion, chooses to  
20 regard as a youth in need of supervision."

21 **Section 3.** Section 41-5-303, MCA, is amended to read:

22 **"41-5-303. (Temporary) Rights of youth taken into**  
23 **custody -- questioning -- hearing for probable cause --**  
24 **detention. (1) When a youth is taken into custody for**  
25 **questioning upon a matter which could result in a petition**

1 alleging that the youth is either delinquent or in need of  
2 supervision, the following requirements must be met:

3 (a) The youth shall be advised of his right against  
4 self-incrimination and his right to counsel.

5 (b) The youth may waive such rights under the following  
6 situations:

7 (i) when the youth is 16 years of age or older, the  
8 youth may make an effective waiver;

9 (ii) when the youth is under the age of 16 years and the  
10 youth and a parent or guardian agree, they may make an  
11 effective waiver; and

12 (iii) when the youth is under the age of 16 years and  
13 the youth and his parent or guardian do not agree, the youth  
14 may make an effective waiver only with advice of counsel.

15 (c) The investigating officer, probation officer, or  
16 person assigned to give notice shall immediately notify the  
17 parents, guardian, or legal custodian of the youth that the  
18 youth has been taken into custody, the reasons for taking  
19 the youth into custody, and where the youth is being held.  
20 If the parents, guardian, or legal custodian cannot be found  
21 through diligent efforts, a close relative or friend chosen  
22 by the youth must be notified.

23 (2) A youth who has been taken into custody may not be  
24 held longer than 24 hours, excluding weekends and legal  
25 holidays, unless a hearing has been held by the court, a

1 justice of the peace, a municipal or city judge, or a  
 2 magistrate to determine whether there is probable cause to  
 3 believe he is a delinquent youth or a youth in need of  
 4 supervision. If a hearing under this subsection is held by a  
 5 justice of the peace, a municipal or city judge, or a  
 6 magistrate, a record of the hearing shall be made by a court  
 7 reporter or by a tape recording of the hearing.

8 (3) At the probable cause hearing, the youth shall be  
 9 informed of his constitutional rights and his rights under  
 10 this chapter.

11 (4) A parent, guardian, or legal custodian of the youth  
 12 may be held in contempt of court for failing to be present  
 13 at the probable cause hearing, unless he:

14 (a) cannot be located through diligent efforts of the  
 15 investigating peace officer or peace officers; or

16 (b) is excused by the court for good cause.

17 (5) At the probable cause hearing, a guardian ad litem  
 18 may be appointed as provided in 41-5-512.

19 (6) If it is determined that there is probable cause to  
 20 believe the youth is delinquent or is a youth in need of  
 21 supervision and if the youth meets the criteria in 41-5-305,  
 22 the youth may be placed in a shelter care facility or  
 23 detention facility as provided in 41-5-306. If probable  
 24 cause is not found, the youth must be immediately released.

25 41-5-303. (Effective July 1, 1991 1992) Rights of youth

1 taken into custody -- questioning -- hearing for probable  
 2 cause -- detention. (1) When a youth is taken into custody  
 3 for questioning upon a matter which that could result in a  
 4 petition alleging that the youth is either a delinquent  
 5 youth or a youth in need of supervision, the following  
 6 requirements must be met:

7 (a) The youth ~~shall~~ must be advised of his right  
 8 against self-incrimination and his right to counsel.

9 (b) The youth may waive such these rights under the  
 10 following situations:

11 (i) when the youth is 16 years of age or older, the  
 12 youth may make an effective waiver;

13 (ii) when the youth is under the age of 16 years and the  
 14 youth and a parent or guardian agree, they may make an  
 15 effective waiver; and

16 (iii) when the youth is under the age of 16 years and  
 17 the youth and his parent or guardian do not agree, the youth  
 18 may make an effective waiver only with advice of counsel.

19 (c) The investigating officer, probation officer, or  
 20 person assigned to give notice shall immediately notify the  
 21 parents, guardian, or legal custodian of the youth that the  
 22 youth has been taken into custody, the reasons for taking  
 23 the youth into custody, and where the youth is being held.  
 24 If the parents, guardian, or legal custodian cannot be found  
 25 through diligent efforts, a close relative or friend chosen



1 by the youth must be notified.

2 (2) ~~A youth who has been taken into custody may not be~~  
 3 ~~held longer than 24 hours, excluding weekends and legal~~  
 4 ~~holidays, unless a hearing has been held by the court, a~~  
 5 ~~justice of the peace, a municipal or city judge, or a~~  
 6 ~~magistrate~~ Unless a youth has been released, a hearing must  
 7 be held within 24 hours after the youth is taken into  
 8 custody, excluding weekends and legal holidays, to determine  
 9 whether there is probable cause to believe he that the youth  
 10 is a delinquent youth or a youth in need of supervision.

11 (3) The probable cause hearing required under  
 12 subsection (2) may be held by the youth court, a justice of  
 13 the peace, a municipal or city judge, or a magistrate having  
 14 jurisdiction in the case as provided in 41-5-203. If a the  
 15 probable cause hearing under this subsection is held by a  
 16 justice of the peace, a municipal or city judge, or a  
 17 magistrate, a record of the hearing shall must be made by a  
 18 court reporter or by a tape recording of the hearing.

19 ~~{3}(4)~~ At the probable cause hearing, the youth shall  
 20 must be informed of his constitutional rights and his rights  
 21 under this chapter.

22 ~~{4}(5)~~ A parent, guardian, or legal custodian of the  
 23 youth may be held in contempt of court for failing to be  
 24 present at or to participate in the probable cause hearing,  
 25 unless he:

1 (a) cannot be located through diligent efforts of the  
 2 investigating peace officer or peace officers; or

3 (b) is excused by the court for good cause.

4 ~~{5}(6)~~ At the probable cause hearing, a guardian ad  
 5 litem may be appointed as provided in 41-5-512.

6 ~~{6}(7)~~ If it is determined that there is probable cause  
 7 to believe the youth is a delinquent youth or is a youth in  
 8 need of supervision, the court having jurisdiction in the  
 9 case shall determine whether the youth should be retained in  
 10 custody. If the court determines that continued custody of  
 11 the youth is necessary and if the youth meets the criteria  
 12 in 41-5-305, the youth may be placed in a shelter-care  
 13 facility or detention facility or shelter care facility as  
 14 provided in 41-5-306 but may not be placed in a jail or  
 15 other facility used for the confinement of adults accused or  
 16 convicted of criminal offenses.

17 (8) If probable cause is not found, or if a probable  
 18 cause hearing is not held within the time specified in  
 19 subsection (2), the youth must be immediately released from  
 20 custody."

21 NEW SECTION. Section 4. Probable cause hearing --  
 22 telephonic proceeding authorized. A probable cause hearing  
 23 may be conducted by telephone if other means of conducting  
 24 the hearing are impractical. All written orders and findings  
 25 of the court in a hearing conducted by telephone must bear

1 the name of the judge or magistrate presiding in the case  
2 and the hour and date the order or findings were issued.

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

4 **"41-5-306. (Temporary) Place of shelter care or**  
5 **detention.** (1) After a probable cause hearing provided for  
6 in 41-5-303, a youth alleged to be a youth in need of  
7 supervision may be placed only in:

8 (a) a licensed youth foster home as defined in  
9 41-3-1102;

10 (b) a facility operated by a licensed child welfare  
11 agency; or

12 (c) a licensed youth group home as defined in  
13 41-3-1102.

14 (2) A youth alleged to be in need of care shall be  
15 placed only in the facilities stated in subsection (1) of  
16 this section and shall not be placed in a jail or other  
17 facility intended or used for the detention of adults  
18 charged with criminal offenses.

19 (3) After a probable cause hearing provided for in  
20 41-5-303, a youth alleged to be a delinquent youth may be  
21 placed only in the facilities described in subsection (1),  
22 in a detention facility, or in a jail or other facility for  
23 the detention of adults only if the facilities in subsection  
24 (1) are not available or do not provide adequate security  
25 and the detention is in an area physically and visually

1 separate and removed from that of adults. (Terminates July  
2 1, 1991 1992--sec. 14, Ch. 434, L. 1989.)

3 **41-5-306. (Effective July 1, 1991 1992) Place of**  
4 **shelter care or detention.** (1) After a probable cause  
5 hearing provided for in 41-5-303, a youth alleged to be a  
6 youth in need of supervision may be placed only in:

7 (a) a licensed youth foster home as defined in  
8 41-3-1102;

9 (b) a facility operated by a licensed child welfare  
10 agency; or

11 (c) a licensed youth group home as defined in  
12 41-3-1102.

13 (2) A youth alleged to be a youth in need of care ~~shall~~  
14 ~~may~~ be placed only in the facilities stated in subsection  
15 (1) ~~of this section~~ and ~~shall may~~ not be placed in a jail or  
16 other facility intended or used for the ~~detention~~  
17 ~~confinement~~ of adults ~~charged with~~ accused or convicted of  
18 criminal offenses.

19 (3) After a probable cause hearing provided for in  
20 41-5-303, a youth alleged to be a delinquent youth may be  
21 placed only in the facilities described in subsection (1) or  
22 in a youth detention facility as defined in 41-5-103."

23 **Section 6.** Section 41-5-206, MCA, is amended to read:

24 **"41-5-206. Transfer to criminal court.** (1) After a  
25 petition has been filed alleging delinquency, the court may,

1 upon motion of the county attorney, before hearing the  
2 petition on its merits, transfer the matter of prosecution  
3 to the district court if:

- 4 (a) (i) the youth charged was 12 years of age or more  
5 at the time of the conduct alleged to be unlawful and the  
6 unlawful act would constitute sexual intercourse without  
7 consent as defined in 45-5-503, deliberate homicide as  
8 defined in 45-5-102, or mitigated deliberate homicide as  
9 defined in 45-5-103, or the attempt, as defined in 45-4-103,  
10 of either deliberate or mitigated deliberate homicide if the  
11 act had been committed by an adult; or
- 12 (ii) the youth charged was 16 years of age or more at  
13 the time of the conduct alleged to be unlawful and the  
14 unlawful act is one or more of the following:
- 15 (A) negligent homicide as defined in 45-5-104;  
16 (B) arson as defined in 45-6-103;  
17 (C) aggravated or felony assault as defined in  
18 45-5-202;  
19 (D) robbery as defined in 45-5-401;  
20 (E) burglary or aggravated burglary as defined in  
21 45-6-204;  
22 (F) aggravated kidnapping as defined in 45-5-303;  
23 (G) possession of explosives as defined in 45-8-335;  
24 (H) criminal sale of dangerous drugs as included in  
25 45-9-101;

1 (I) attempt, as defined in 45-4-103, of any of the acts  
2 enumerated in subsections (1)(a)(ii)(A) through  
3 (1)(a)(ii)(H);

4 (b) a hearing on whether the transfer should be made is  
5 held in conformity with the rules on a hearing on a petition  
6 alleging delinquency, except that the hearing will be ~~to~~  
7 conducted by the youth court without a jury;

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

12 (d) the court finds upon the hearing of all relevant  
13 evidence that there is probable cause to believe that:

- 14 (i) the youth committed the delinquent act alleged;  
15 (ii) the seriousness of the offense and the protection  
16 of the community require treatment of the youth beyond that  
17 afforded by juvenile facilities; and  
18 (iii) the alleged offense was committed in an  
19 aggressive, violent, or premeditated manner.

20 (2) In transferring the matter of prosecution to the  
21 district court, the court may also consider the following  
22 factors:

23 (a) the sophistication and maturity of the youth,  
24 determined by consideration of his home, environmental  
25 situation, and emotional attitude and pattern of living;

1 (b) the record and previous history of the youth,  
 2 including previous contacts with the youth court, law  
 3 enforcement agencies, youth courts in other jurisdictions,  
 4 prior periods of probation, and prior commitments to  
 5 juvenile institutions. However, lack of a prior juvenile  
 6 history with youth courts will not of itself be grounds for  
 7 denying the transfer.

8 (3) The court shall grant the motion to transfer if the  
 9 youth was 16 years old or older at the time of the conduct  
 10 alleged to be unlawful and the unlawful act would constitute  
 11 deliberate homicide as defined in 45-5-102, mitigated  
 12 deliberate homicide as defined in 45-5-103, or the attempt,  
 13 as defined in 45-4-103, of either deliberate or mitigated  
 14 deliberate homicide if the act had been committed by an  
 15 adult.

16 (4) Upon transfer to district court, the judge shall  
 17 make written findings of the reasons why the jurisdiction of  
 18 the youth court was waived and the case transferred to  
 19 district court.

20 (5) The transfer terminates the jurisdiction of the  
 21 youth court over the youth with respect to the acts alleged  
 22 in the petition. No A youth may not be prosecuted in the  
 23 district court for a criminal offense originally subject to  
 24 the jurisdiction of the youth court unless the case has been  
 25 transferred as provided in this section.

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

4 (7) Any offense not enumerated in subsection (1) that  
 5 arises during the commission of a crime enumerated in  
 6 subsection (1) may be:

7 (a) tried in youth court;

8 (b) transferred to district court with an offense  
 9 enumerated in subsection (1), upon motion of the county  
 10 attorney and order of the youth court judge.

11 (8) If a youth is found guilty in district court of any  
 12 of the offenses transferred by the youth court and is  
 13 sentenced to the state prison, his commitment ~~shall~~ must be  
 14 to the department of institutions, ~~which~~ The department  
 15 shall confine the youth in whatever institution it considers  
 16 proper, including a state youth correctional facility under  
 17 the procedures of 53-30-212; however, no youth under 16  
 18 years of age may be confined in the state prison.

19 (9) A youth whose case is transferred to district court  
 20 may not be detained or otherwise placed in an a jail or  
 21 other adult detention facility before final disposition of  
 22 the his case unless ~~the-youth-court-judge-determines-that:~~

23 (a) ~~the-youth~~ alternative facilities do not provide  
 24 adequate security; and

25 (b) ~~detention--in--the--adult--facility--is--in--an--area~~

1 ~~physically, aurally, and visually separate from that of~~  
 2 ~~adults~~ the youth is kept in an area that provides physical,  
 3 as well as sight and sound, separation from adults accused  
 4 or convicted of criminal offenses."

5 **Section 7.** Section 41-5-307, MCA, is amended to read:

6 "41-5-307. Release or delivery from custody. (1)  
 7 Whenever a peace officer believes, on reasonable grounds,  
 8 that a youth can be released to a person who has custody of  
 9 the youth, then the peace officer may release the youth to  
 10 that person upon receiving a written promise from the person  
 11 to bring the youth before the probation officer at a time  
 12 and place specified in the written promise, or a peace  
 13 officer may release the youth under any other reasonable  
 14 circumstances.

15 (2) Whenever the peace officer believes, on reasonable  
 16 grounds, that the youth must be detained, the peace officer  
 17 must shall notify the probation officer immediately and  
 18 shall, as soon as practicable, provide the probation officer  
 19 with a written report of his reasons for holding ~~that the~~ the  
 20 youth in ~~custody~~ detention. If it is necessary to hold the  
 21 youth pending appearance before the youth court, then the  
 22 youth must be held in ~~some a place that has been of~~  
 23 detention approved by the youth court ~~and is completely~~  
 24 ~~separated from adult offenders~~. If the peace officer  
 25 believes that the youth must be sheltered, the peace officer

1 shall notify the probation officer immediately and shall  
 2 provide a written report of his reasons for placing the  
 3 youth in shelter care. If the youth is then held, the youth  
 4 must be ~~sheltered in a place~~ placed in a shelter care  
 5 facility approved by the youth court."

6 **Section 8.** Section 41-5-309, MCA, is amended to read:

7 "41-5-309. Bail. A youth placed in a detention or  
 8 shelter care ~~facility~~ may be released on bail. The court  
 9 shall use the provisions of Title 46, chapter 9, as  
 10 guidance. In determining the amount of bail, the court shall  
 11 consider the financial ability of the youth and the parents  
 12 or legal custodian of the youth."

13 **Section 9.** Section 41-5-502, MCA, is amended to read:

14 "41-5-502. Summons. (1) After a petition has been  
 15 filed, summons ~~shall~~ must be served directly to:

- 16 (a) the youth;  
 17 (b) his parent or parents having actual custody of the  
 18 youth or his guardian or custodian, as the case may be; and  
 19 (c) ~~such~~ other persons as the court may direct.

20 (2) The summons ~~shall~~ must:

- 21 (a) require the parties to whom it is directed to  
 22 appear personally before the court at the time fixed by the  
 23 summons to answer the allegations of the petition;

- 24 (b) advise the parties of their right to counsel under  
 25 the Montana Youth Court Act; and

(c) have attached to it a copy of the petition.

(3) The court may endorse upon the summons an order directing the person or persons having the physical custody or control of the youth to bring the youth to the hearing.

(4) If it appears to the court that the youth needs to be placed in detention or shelter care, the judge may endorse on the summons an order directing the officer serving the summons to at once take the youth into custody and to take him to the place of detention or shelter care designated by the court, subject to the rights of the youth and parent or person having legal custody of the youth as set forth in the provisions of the Montana Youth Court Act relating to detention and shelter care criteria and postdetention proceedings.

(5) If any youth is placed in detention or shelter care ~~or detained~~ under any provision of this chapter pending an adjudication, the court ~~upon petition of the youth, his parents or guardian, or his counsel,~~ shall, as soon as practicable, conduct a probable cause hearing ~~in order to determine whether the circumstances of the case require such detention or shelter care and the form the detention or shelter care should take. All mentioned parties shall be notified of such petition process at the time of initial detention or shelter care~~ as provided in 41-5-303.

(6) The youth court judge may also admit the youth to

bail in accordance with Title 46, chapter 9."

**Section 10.** Section 7-32-2244, MCA, is amended to read:

~~"7-32-2244. Juvenile---detention---center---standards~~  
Detention of juveniles. (1) Juveniles may be held in a detention center only in accordance with [section 1], 41-5-301 through 41-5-307, and 41-5-309.

~~(2) Detention centers that hold juveniles must comply with the standards for the detention of juveniles promulgated by the department of family services."~~

**Section 11.** Section 53-30-229, MCA, is amended to read:

**"53-30-229. Hearing on alleged violation of aftercare agreement -- right to appeal outcome.** (1) When it is alleged by an aftercare counselor that a youth has violated the terms of his aftercare agreement, the youth ~~shall~~ must be granted a hearing at the site of the alleged violation or in the county where in which the youth is residing or is found within 10 days after notice has been served on the youth or the youth is detained, whichever is earlier. The purpose of the hearing is to determine whether the youth committed the violation and, if so, whether the violation is of such a nature that he should be returned to the youth correctional facility from which he was released or a different plan for treatment should be pursued by the department of family services.

(2) The youth, upon advice of an attorney, may waive

1 his right to a hearing.

2 (3) With regard to this hearing, the youth shall must  
3 be given:

4 (a) written notice of the alleged violation of his  
5 aftercare agreement, including notice of the purpose of the  
6 hearing;

7 (b) disclosure of the evidence against him and the  
8 facts constituting the alleged violation;

9 (c) opportunity to be heard in person and to present  
10 witnesses and documentary evidence to controvert the  
11 evidence against him and to show that there are compelling  
12 reasons that justify or mitigate the violation;

13 (d) opportunity to have the referee subpoena witnesses;

14 (e) the right to confront and cross-examine adverse  
15 witnesses;

16 (f) the right to be represented by an attorney;

17 (g) a record of the hearing; and

18 (h) notice that a written statement as to the evidence  
19 relied upon in reaching the final decision and the reasons  
20 for the final decision will be provided by the referee.

21 (4) The department shall appoint a referee, who may not  
22 be an employee of the department, to conduct the hearing. In  
23 the conduct of the hearing, the department may request the  
24 county attorney's assistance as necessary. The department  
25 shall adopt rules necessary to effect a prompt and full

1 review.

2 (5) If the referee finds, by a preponderance of the  
3 evidence, that the youth did in fact commit the violation,  
4 he shall make a recommendation to the department for the  
5 placement of the youth. In making this recommendation, the  
6 referee may consider mitigating circumstances. Final  
7 approval rests with the department and must be made within  
8 10 days of the referee's recommendation.

9 (6) The youth may appeal from the decision at the  
10 hearing to the district court of the county in which the  
11 hearing was held by serving and filing a notice of appeal  
12 with the court within 10 days of the department's decision.  
13 The youth may obtain a written transcript of the hearing  
14 from the department by giving written notice of appeal. The  
15 district court, upon receipt of a notice of appeal, shall  
16 order the department to promptly certify to the court a  
17 record of all proceedings before the department and shall  
18 proceed to a prompt hearing on the appeal based upon the  
19 record on appeal. The decision of the department may not be  
20 altered except for abuse of discretion or manifest  
21 injustice.

22 (7) Pending the hearing on a violation and pending the  
23 department's decision, a youth may not be detained except  
24 when his detention or care is required to protect the person  
25 or property of the youth or of others or he may abscond or

1 be removed from the community. The department shall  
 2 determine the place and manner of detention and is  
 3 responsible for the cost of the detention. Procedures for  
 4 taking into custody and detention of a youth charged with  
 5 violation of his aftercare agreement are as provided in  
 6 41-3-1111, 41-5-303~~(2)~~-through-~~(6)~~, 41-5-306, and ~~41-5-308~~  
 7 [section 1].

8 (8) If the decision is made to return the youth to the  
 9 youth correctional facility from which he was released and  
 10 the youth appeals that decision, he shall await the outcome  
 11 of the appeal at the facility."

12 **Section 12.** Section 14, Chapter 434, Laws of 1989, is  
 13 amended to read:

14 "Section 14. Section 16, Chapter 475, Laws of 1987, is  
 15 amended to read:

16 "Section 16. **Effective dates -- termination date.** (1)  
 17 Except as provided in subsections (2) and (3), sections 1  
 18 through 13 are effective October 1, 1987.

19 (2) The bracketed language in subsection (5) of section  
 20 1 is effective July 1, ~~1991~~ 1992.

21 (3) The bracketed language in subsection (3) of section  
 22 9 terminates July 1, ~~1991~~ 1992."

23 **Section 13.** Section 17, Chapter 434, Laws of 1989, is  
 24 amended to read:

25 "Section 17. **Effective date dates.** ~~fSections-5-and-7-of~~

1 ~~this-act~~-are (1) [Section 7] is effective July 1, 1991.

2 (2) [Section 5] is effective July 1, 1992."

3 **NEW SECTION. Section 14. Repealer.** Section 41-5-308,  
 4 MCA, is repealed.

5 **NEW SECTION. Section 15. Codification instruction.** (1)  
 6 [Sections 1 and 4] are intended to be codified as an  
 7 integral part of Title 41, chapter 5, part 3, and the  
 8 provisions of Title 41, chapter 5, part 3, apply to  
 9 [sections 1 and 4].

10 (2) Section 41-3-1111, MCA, is intended to be  
 11 renumbered and codified as an integral part of Title 41,  
 12 chapter 5, part 3.

13 **NEW SECTION. Section 16. Effective dates.** (1)  
 14 [Sections 12, 13, 15, and this section] are effective July  
 15 1, 1991.

16 (2) [Sections 1 through 11 and 14] are effective July  
 17 1, 1992.

-End-



APPROVED BY COMMITTEE  
ON JUDICIARY

1 SENATE BILL NO. 38

2 INTRODUCED BY HALLIGAN

3 BY REQUEST OF THE JOINT INTERIM SUBCOMMITTEE

4 ON ADULT AND JUVENILE DETENTION

5  
6 A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE 24-HOUR  
7 STATUTORY PERIOD FOR HOLDING A YOUTH IN JAIL; TO PROHIBIT  
8 THE DETENTION OF A YOUTH IN JAIL EXCEPT UNDER CERTAIN  
9 CIRCUMSTANCES; TO ALLOW A 6-HOUR EXCEPTION FOR HOLDING A  
10 YOUTH IN JAIL FOR THE PURPOSE OF IDENTIFICATION, PROCESSING,  
11 OR TRANSFER OF THE YOUTH TO A DETENTION FACILITY OR SHELTER  
12 CARE FACILITY; TO PROVIDE A LIMITED 24-HOUR EXCEPTION FOR  
13 THE DETENTION OF A YOUTH IN JAIL PENDING A PROBABLE CAUSE  
14 HEARING; TO CLARIFY DETENTION PROCEDURES FOLLOWING A  
15 PROBABLE CAUSE HEARING; AMENDING SECTIONS 7-32-2244,  
16 41-5-103, 41-5-206, 41-5-303, 41-5-306, 41-5-307, 41-5-309,  
17 41-5-502, AND 53-30-229, MCA; AMENDING SECTIONS 14 AND 17,  
18 CHAPTER 434, LAWS OF 1989; REPEALING SECTION 41-5-308, MCA;  
19 AND PROVIDING EFFECTIVE DATES."

20  
21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

22 NEW SECTION. **Section 1.** Youth not to be detained in  
23 jail -- exceptions -- time limitations. (1) A youth may not  
24 be detained or otherwise placed in a jail or other adult  
25 detention facility except as provided in 41-5-206 and this

1 section.

2 (2) A youth who has allegedly committed an offense  
3 that, if committed by an adult, would constitute a criminal  
4 offense may be temporarily detained in a jail or other adult  
5 detention facility for a period not to exceed:

6 (a) 6 hours, but in no case overnight, for the purpose  
7 of identification, processing, or transfer of the youth to  
8 an appropriate detention facility or shelter care facility;  
9 or

10 (b) 24 hours, excluding weekends and legal holidays, if  
11 the youth is awaiting a probable cause hearing pursuant to  
12 41-5-303.

13 (3) The exception provided for in subsection (2)(b)  
14 applies only if:

15 (a) the court having jurisdiction over the youth is  
16 outside a standard metropolitan statistical area;

17 (b) alternative facilities are not available or  
18 alternative facilities do not provide adequate security; and

19 (c) the youth is kept in an area that provides  
20 physical, as well as sight and sound, separation from adults  
21 accused or convicted of criminal offenses.

22 (4) Whenever, despite all good faith efforts to comply  
23 with the time limitations specified in subsection (2), the  
24 limitations are exceeded, this circumstance does not serve  
25 as grounds for dismissal of the case nor does this

**SECOND READING**

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1 circumstance constitute a defense in a subsequent  
2 delinquency or criminal proceeding.

3 **Section 2.** Section 41-5-103, MCA, is amended to read:

4 "~~41-5-103. Definitions. For-the-purposes-of~~ As used in  
5 the Montana Youth Court Act, unless the context requires  
6 otherwise stated, the following definitions apply:

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

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

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

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

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

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

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

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

24 {5}{7} "Department" means the department of family  
25 services provided for in 2-15-2401.

1 {8} "Detention" means the holding or temporary  
2 placement of a youth IN THE YOUTH'S HOME UNDER HOME ARREST  
3 OR in a facility other than the youth's own home for the  
4 purpose of ensuring the continued custody of the youth at  
5 any time after the youth is taken into custody and before  
6 final disposition of his case.

7 {9} "Detention facility" means a physically restricting  
8 facility designed to prevent a youth from departing at will.

9 {10} "Final disposition" means the implementation of a  
10 court order for the disposition or placement of a youth as  
11 provided in 41-5-523.

12 {6}{11} "Foster home" means a private residence licensed  
13 by the department for placement of a youth.

14 {7}{12} "Guardianship" means the status created and  
15 defined by law between a youth and an adult with the  
16 reciprocal rights, duties, and responsibilities.

17 {13} "Jail" means a facility used for the confinement of  
18 adults accused or convicted of criminal offenses. The term  
19 includes a lockup or other facility used primarily for the  
20 temporary confinement of adults after arrest.

21 {8}{14} "Judge", when used without further  
22 qualification, means the judge of the youth court.

23 {9}{15} (a) "Legal custody" means the legal status  
24 created by order of a court of competent jurisdiction that  
25 gives a person the right and duty to:

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

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

10 (16) "Necessary parties" includes the youth, his  
 11 parents, guardian, custodian, or spouse.

12 ~~{10}~~{17} "Parent" means the natural or adoptive parent  
 13 but does not include a person whose parental rights have  
 14 been judicially terminated, nor does it include the putative  
 15 father of an illegitimate youth unless his paternity is  
 16 established by an adjudication or by other clear and  
 17 convincing proof.

18 ~~{11}~~"Youth" means an individual who is less than 18  
 19 years of age without regard to sex or emancipation.

20 ~~{12}~~"Youth court" means the court established pursuant  
 21 to this chapter to hear all proceedings in which a youth is  
 22 alleged to be a delinquent youth, a youth in need of  
 23 supervision, or a youth in need of care and includes the  
 24 youth court judge and probation officers.

25 ~~{13}~~"Delinquent youth" means a youth:

1 ~~{a}~~--who has committed an offense which, if committed by  
 2 an adult, would constitute a criminal offense;

3 ~~{b}~~--who, having been placed on probation as a  
 4 delinquent youth or a youth in need of supervision, violates  
 5 any condition of his probation;

6 ~~{14}~~"Youth in need of supervision" means a youth who  
 7 commits an offense prohibited by law which, if committed by  
 8 an adult, would not constitute a criminal offense, including  
 9 but not limited to a youth who:

10 ~~{a}~~--violates any Montana municipal or state law  
 11 regarding use of alcoholic beverages by minors;

12 ~~{b}~~--habitually disobeys the reasonable and lawful  
 13 demands of his parents, foster parents, physical custodian,  
 14 or guardian or is ungovernable and beyond their control;

15 ~~{c}~~--being subject to compulsory school attendance, is  
 16 habitually truant from school, or

17 ~~{d}~~--has committed any of the acts of a delinquent youth  
 18 but whom the youth court in its discretion chooses to regard  
 19 as a youth in need of supervision.

20 ~~{15}~~"Youth in need of care" means a youth as defined in  
 21 41-3-102;

22 ~~{16}~~"Custodian" means a person other than a parent or  
 23 guardian to whom legal custody of the youth has been given  
 24 but does not include a person who has only physical custody;

25 ~~{17}~~"Necessary parties" include the youth, his parents,

1 guardian, custodian, or spouse.

2 {18} "State youth correctional facility" means a  
3 residential facility for the rehabilitation of delinquent  
4 youth such as Pine Hills school in Miles City, and Mountain  
5 View school in Helena.

6 {18} "Restitution" means payments in cash to the victim  
7 or with services to the victim or the general community when  
8 these payments are made pursuant to an informal adjustment,  
9 consent decree, or other youth court order.

10 {19} "Serious juvenile offender" means a youth who has  
11 committed an offense that would be considered a felony  
12 offense if committed by an adult and that is an offense  
13 against a person, an offense against property, or an offense  
14 involving dangerous drugs.

15 {19}{20} "Shelter care" means the temporary substitute  
16 care of youth in physically unrestricting facilities.

17 {21} "Shelter care facility" means a facility used for  
18 the shelter care of youth. The term is limited to the  
19 facilities enumerated in 41-5-306(1).

20 {20} "Detention" means the temporary substitute care of  
21 youth in physically restricting facilities.

22 {21} "Detention facility" means a physically restricting  
23 facility designed to prevent a youth from departing at will.

24 {22} "Restitution" means payments in cash to the victim  
25 or with services to the victim or the general community when

1 these payments are made pursuant to an informal adjustment,  
2 consent decree, or other youth court order.

3 {22} "State youth correctional facility" means a  
4 residential facility for the rehabilitation of delinquent  
5 youth, such as the Pine Hills school in Miles City and the  
6 Mountain View school in Helena.

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

13 {24} "Youth" means an individual who is less than 18  
14 years of age without regard to sex or emancipation.

15 {25} "Youth court" means the court established pursuant  
16 to this chapter to hear all proceedings in which a youth is  
17 alleged to be a delinquent youth, a youth in need of  
18 supervision, or a youth in need of care and includes the  
19 youth court judge and probation officers.

20 {24} "Serious juvenile offender" means a youth who has  
21 committed an offense against the person, an offense against  
22 property, or an offense involving dangerous drugs which  
23 would be considered a felony offense if committed by an  
24 adult.

25 {26} "Youth detention facility" means a detention

1 facility that:

2 (a) is operated, administered, and staffed separately  
3 and independently of a jail; and

4 (b) is used exclusively for the lawful detention of  
5 alleged or adjudicated delinquent youth.

6 (27) "Youth in need of care" has the meaning provided  
7 for in 41-3-102.

8 (28) "Youth in need of supervision" means a youth who  
9 commits an offense prohibited by law that, if committed by  
10 an adult, would not constitute a criminal offense, including  
11 but not limited to a youth who:

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

14 (b) habitually disobeys the reasonable and lawful  
15 demands of his parents, foster parents, physical custodian,  
16 or guardian or is beyond control;

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

19 (d) has committed any of the acts of a delinquent youth  
20 but whom the youth court, in its discretion, chooses to  
21 regard as a youth in need of supervision."

22 **Section 3.** Section 41-5-303, MCA, is amended to read:

23 **"41-5-303. (Temporary) Rights of youth taken into**  
24 **custody -- questioning -- hearing for probable cause --**  
25 **detention. (1) When a youth is taken into custody for**

1 questioning upon a matter which could result in a petition  
2 alleging that the youth is either delinquent or in need of  
3 supervision, the following requirements must be met:

4 (a) The youth shall be advised of his right against  
5 self-incrimination and his right to counsel.

6 (b) The youth may waive such rights under the following  
7 situations:

8 (i) when the youth is 16 years of age or older, the  
9 youth may make an effective waiver;

10 (ii) when the youth is under the age of 16 years and the  
11 youth and a parent or guardian agree, they may make an  
12 effective waiver; and

13 (iii) when the youth is under the age of 16 years and  
14 the youth and his parent or guardian do not agree, the youth  
15 may make an effective waiver only with advice of counsel.

16 (c) The investigating officer, probation officer, or  
17 person assigned to give notice shall immediately notify the  
18 parents, guardian, or legal custodian of the youth that the  
19 youth has been taken into custody, the reasons for taking  
20 the youth into custody, and where the youth is being held.  
21 If the parents, guardian, or legal custodian cannot be found  
22 through diligent efforts, a close relative or friend chosen  
23 by the youth must be notified.

24 (2) A youth who has been taken into custody may not be  
25 held longer than 24 hours, excluding weekends and legal

1 holidays, unless a hearing has been held by the court, a  
 2 justice of the peace, a municipal or city judge, or a  
 3 magistrate to determine whether there is probable cause to  
 4 believe he is a delinquent youth or a youth in need of  
 5 supervision. If a hearing under this subsection is held by a  
 6 justice of the peace, a municipal or city judge, or a  
 7 magistrate, a record of the hearing shall be made by a court  
 8 reporter or by a tape recording of the hearing.

9 (3) At the probable cause hearing, the youth shall be  
 10 informed of his constitutional rights and his rights under  
 11 this chapter.

12 (4) A parent, guardian, or legal custodian of the youth  
 13 may be held in contempt of court for failing to be present  
 14 at the probable cause hearing, unless he:

15 (a) cannot be located through diligent efforts of the  
 16 investigating peace officer or peace officers; or

17 (b) is excused by the court for good cause.

18 (5) At the probable cause hearing, a guardian ad litem  
 19 may be appointed as provided in 41-5-512.

20 (6) If it is determined that there is probable cause to  
 21 believe the youth is delinquent or is a youth in need of  
 22 supervision and if the youth meets the criteria in 41-5-305,  
 23 the youth may be placed in a shelter care facility or  
 24 detention facility as provided in 41-5-306. If probable  
 25 cause is not found, the youth must be immediately released.

1 41-5-303. (Effective July 1, 1991 1992) Rights of youth  
 2 taken into custody -- questioning -- hearing for probable  
 3 cause -- detention. (1) When a youth is taken into custody  
 4 for questioning upon a matter which that could result in a  
 5 petition alleging that the youth is either a delinquent  
 6 youth or a youth in need of supervision, the following  
 7 requirements must be met:

8 (a) The youth ~~shall~~ must be advised of his right  
 9 against self-incrimination and his right to counsel.

10 (b) The youth may waive such these rights under the  
 11 following situations:

12 (i) when the youth is 16 years of age or older, the  
 13 youth may make an effective waiver;

14 (ii) when the youth is under the age of 16 years and the  
 15 youth and a parent or guardian agree, they may make an  
 16 effective waiver; and

17 (iii) when the youth is under the age of 16 years and  
 18 the youth and his parent or guardian do not agree, the youth  
 19 may make an effective waiver only with advice of counsel.

20 (c) The investigating officer, probation officer, or  
 21 person assigned to give notice shall immediately notify the  
 22 parents, guardian, or legal custodian of the youth that the  
 23 youth has been taken into custody, the reasons for taking  
 24 the youth into custody, and where the youth is being held.  
 25 If the parents, guardian, or legal custodian cannot be found

1 through diligent efforts, a close relative or friend chosen  
2 by the youth must be notified.

3 (2) ~~A youth who has been taken into custody may not be~~  
4 ~~held longer than 24 hours, excluding weekends and legal~~  
5 ~~holidays, unless a hearing has been held by the court, a~~  
6 ~~justice of the peace, a municipal or city judge, or a~~  
7 ~~magistrate~~ Unless a youth has been released, a hearing must  
8 be held within 24 hours after the youth is taken into  
9 custody, excluding weekends and legal holidays, to determine  
10 whether there is probable cause to believe he that the youth  
11 is a delinquent youth or a youth in need of supervision.

12 (3) The probable cause hearing required under  
13 subsection (2) may be held by the youth court, a justice of  
14 the peace, a municipal or city judge, or a magistrate having  
15 jurisdiction in the case as provided in 41-5-203. If a the  
16 probable cause hearing under this subsection is held by a  
17 justice of the peace, a municipal or city judge, or a  
18 magistrate, a record of the hearing shall must be made by a  
19 court reporter or by a tape recording of the hearing.

20 {3}(4) At the probable cause hearing, the youth shall  
21 must be informed of his constitutional rights and his rights  
22 under this chapter.

23 {4}(5) A parent, guardian, or legal custodian of the  
24 youth may be held in contempt of court for failing to be  
25 present at or to participate in the probable cause hearing,

1 unless he:

2 (a) cannot be located through diligent efforts of the  
3 investigating peace officer or peace officers; or

4 (b) is excused by the court for good cause.

5 {5}(6) At the probable cause hearing, a guardian ad  
6 litem may be appointed as provided in 41-5-512.

7 {6}(7) If it is determined that there is probable cause  
8 to believe the youth is a delinquent youth or is a youth in  
9 need of supervision, the court having jurisdiction in the  
10 case shall determine whether the youth should be retained in  
11 custody. If the court determines that continued custody of  
12 the youth is necessary and if the youth meets the criteria  
13 in 41-5-305, the youth may be placed in a shelter--care  
14 facility--or detention facility or shelter care facility as  
15 provided in 41-5-306 but may not be placed in a jail or  
16 other facility used for the confinement of adults accused or  
17 convicted of criminal offenses.

18 (8) If probable cause is not found, or if a probable  
19 cause hearing is not held within the time specified in  
20 subsection (2), the youth must be immediately released from  
21 custody."

22 NEW SECTION. Section 4. Probable cause hearing --  
23 telephonic proceeding authorized. A probable cause hearing  
24 may be conducted by telephone if other means of conducting  
25 the hearing are impractical. All written orders and findings

1 of the court in a hearing conducted by telephone must bear  
2 the name of the judge or magistrate presiding in the case  
3 and the hour and date the order or findings were issued.

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

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

9 (a) a licensed youth foster home as defined in  
10 41-3-1102;

11 (b) a facility operated by a licensed child welfare  
12 agency; or

13 (c) a licensed youth group home as defined in  
14 41-3-1102.

15 (2) A youth alleged to be in need of care shall be  
16 placed only in the facilities stated in subsection (1) of  
17 this section and shall not be placed in a jail or other  
18 facility intended or used for the detention of adults  
19 charged with criminal offenses.

20 (3) After a probable cause hearing provided for in  
21 41-5-303, a youth alleged to be a delinquent youth may be  
22 placed only in the facilities described in subsection (1),  
23 in a detention facility, or in a jail or other facility for  
24 the detention of adults only if the facilities in subsection  
25 (1) are not available or do not provide adequate security

1 and the detention is in an area physically and visually  
2 separate and removed from that of adults. (Terminates July  
3 1, ~~1991~~ 1992--sec. 14, Ch. 434, L. 1989.)

4 **41-5-306. (Effective July 1, ~~1991~~ 1992) Place of**  
5 **shelter care or detention.** (1) After a probable cause  
6 hearing provided for in 41-5-303, a youth alleged to be a  
7 youth in need of supervision may be placed only in:

8 (a) a licensed youth foster home as defined in  
9 41-3-1102;

10 (b) a facility operated by a licensed child welfare  
11 agency; or

12 (c) a licensed youth group home as defined in  
13 41-3-1102.

14 (2) A youth alleged to be a youth in need of care ~~shall~~  
15 may be placed only in the facilities stated in subsection  
16 (1) ~~of this section~~ and ~~shall~~ may not be placed in a jail or  
17 other facility intended or used for the ~~detention~~  
18 confinement of adults ~~charged with~~ accused or convicted of  
19 criminal offenses.

20 (3) After a probable cause hearing provided for in  
21 41-5-303, a youth alleged to be a delinquent youth may be  
22 placed only in the facilities described in subsection (1) or  
23 in a youth detention facility ~~as defined in 41-5-103.~~"

24 **Section 6.** Section 41-5-206, MCA, is amended to read:

25 **"41-5-206. Transfer to criminal court.** (1) After a



1 petition has been filed alleging delinquency, the court may,  
2 upon motion of the county attorney, before hearing the  
3 petition on its merits, transfer the matter of prosecution  
4 to the district court if:

5 (a) (i) the youth charged was 12 years of age or more  
6 at the time of the conduct alleged to be unlawful and the  
7 unlawful act would constitute sexual intercourse without  
8 consent as defined in 45-5-503, deliberate homicide as  
9 defined in 45-5-102, or mitigated deliberate homicide as  
10 defined in 45-5-103, or the attempt, as defined in 45-4-103,  
11 of either deliberate or mitigated deliberate homicide if the  
12 act had been committed by an adult; or

13 (ii) the youth charged was 16 years of age or more at  
14 the time of the conduct alleged to be unlawful and the  
15 unlawful act is one or more of the following:

- 16 (A) negligent homicide as defined in 45-5-104;
- 17 (B) arson as defined in 45-6-103;
- 18 (C) aggravated or felony assault as defined in  
19 45-5-202;
- 20 (D) robbery as defined in 45-5-401;
- 21 (E) burglary or aggravated burglary as defined in  
22 45-6-204;
- 23 (F) aggravated kidnapping as defined in 45-5-303;
- 24 (G) possession of explosives as defined in 45-8-335;
- 25 (H) criminal sale of dangerous drugs as included in

1 45-9-101;

2 (I) attempt, as defined in 45-4-103, of any of the acts  
3 enumerated in subsections (1)(a)(ii)(A) through  
4 (1)(a)(ii)(H);

5 (b) a hearing on whether the transfer should be made is  
6 held in conformity with the rules on a hearing on a petition  
7 alleging delinquency, except that the hearing will be to  
8 conducted by the youth court without a jury;

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

13 (d) the court finds upon the hearing of all relevant  
14 evidence that there is probable cause to believe that:

- 15 (i) the youth committed the delinquent act alleged;
- 16 (ii) the seriousness of the offense and the protection  
17 of the community require treatment of the youth beyond that  
18 afforded by juvenile facilities; and
- 19 (iii) the alleged offense was committed in an  
20 aggressive, violent, or premeditated manner.

21 (2) In transferring the matter of prosecution to the  
22 district court, the court may also consider the following  
23 factors:

24 (a) the sophistication and maturity of the youth,  
25 determined by consideration of his home, environmental

1 situation, and emotional attitude and pattern of living;

2 (b) the record and previous history of the youth,  
3 including previous contacts with the youth court, law  
4 enforcement agencies, youth courts in other jurisdictions,  
5 prior periods of probation, and prior commitments to  
6 juvenile institutions. However, lack of a prior juvenile  
7 history with youth courts will not of itself be grounds for  
8 denying the transfer.

9 (3) The court shall grant the motion to transfer if the  
10 youth was 16 years old or older at the time of the conduct  
11 alleged to be unlawful and the unlawful act would constitute  
12 deliberate homicide as defined in 45-5-102, mitigated  
13 deliberate homicide as defined in 45-5-103, or the attempt,  
14 as defined in 45-4-103, of either deliberate or mitigated  
15 deliberate homicide if the act had been committed by an  
16 adult.

17 (4) Upon transfer to district court, the judge shall  
18 make written findings of the reasons why the jurisdiction of  
19 the youth court was waived and the case transferred to  
20 district court.

21 (5) The transfer terminates the jurisdiction of the  
22 youth court over the youth with respect to the acts alleged  
23 in the petition. No A youth may not be prosecuted in the  
24 district court for a criminal offense originally subject to  
25 the jurisdiction of the youth court unless the case has been

1 transferred as provided in this section.

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

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

8 (a) tried in youth court;

9 (b) transferred to district court with an offense  
10 enumerated in subsection (1), upon motion of the county  
11 attorney and order of the youth court judge.

12 (8) If a youth is found guilty in district court of any  
13 of the offenses transferred by the youth court and is  
14 sentenced to the state prison, his commitment ~~shall~~ must be  
15 to the department of institutions, which The department  
16 shall confine the youth in whatever institution it considers  
17 proper, including a state youth correctional facility under  
18 the procedures of 53-30-212; however, no youth under 16  
19 years of age may be confined in the state prison.

20 (9) A youth whose case is transferred to district court  
21 may not be detained or otherwise placed in an a jail or  
22 other adult detention facility before final disposition of  
23 the his case unless ~~the youth court judge determines that:~~

24 (a) ~~the--youth~~ alternative facilities do not provide  
25 adequate security; and

1 (b) ~~detention-in-the--adult--facility--is--in--an--area~~  
 2 ~~physically,--aurally,--and--visually--separate--from--that--of~~  
 3 ~~adults~~ the youth is kept in an area that provides physical,  
 4 as well as sight and sound, separation from adults accused  
 5 or convicted of criminal offenses."

6 **Section 7.** Section 41-5-307, MCA, is amended to read:

7 "41-5-307. Release or delivery from custody. (1)  
 8 Whenever a peace officer believes, on reasonable grounds,  
 9 that a youth can be released to a person who has custody of  
 10 the youth, then the peace officer may release the youth to  
 11 that person upon receiving a written promise from the person  
 12 to bring the youth before the probation officer at a time  
 13 and place specified in the written promise, or a peace  
 14 officer may release the youth under any other reasonable  
 15 circumstances.

16 (2) Whenever the peace officer believes, on reasonable  
 17 grounds, that the youth must be detained, the peace officer  
 18 ~~must~~ shall notify the probation officer immediately and  
 19 shall, as soon as practicable, provide the probation officer  
 20 with a written report of his reasons for holding ~~that~~ the  
 21 youth in custody detention. If it is necessary to hold the  
 22 youth pending appearance before the youth court, then the  
 23 youth must be held in ~~some a~~ a place ~~that--has--been~~ of  
 24 detention approved by the youth court ~~and--is--completely~~  
 25 ~~separated---from--adult--offenders~~. If the peace officer

1 believes that the youth must be sheltered, the peace officer  
 2 shall notify the probation officer immediately and shall  
 3 provide a written report of his reasons for placing the  
 4 youth in shelter care. If the youth is then held, the youth  
 5 must be ~~sheltered--in--a--place~~ placed in a shelter care  
 6 facility approved by the youth court."

7 **Section 8.** Section 41-5-309, MCA, is amended to read:

8 "41-5-309. Bail. A youth placed in a detention or  
 9 shelter care ~~facility~~ may be released on bail. The court  
 10 shall use the provisions of Title 46, chapter 9, as  
 11 guidance. In determining the amount of bail, the court shall  
 12 consider the financial ability of the youth and the parents  
 13 or legal custodian of the youth."

14 **Section 9.** Section 41-5-502, MCA, is amended to read:

15 "41-5-502. Summons. (1) After a petition has been  
 16 filed, summons ~~shall~~ must be served directly to:

17 (a) the youth;

18 (b) his parent or parents having actual custody of the  
 19 youth or his guardian or custodian, as the case may be; and

20 (c) ~~such~~ other persons as the court may direct.

21 (2) The summons ~~shall~~ must:

22 (a) require the parties to whom it is directed to  
 23 appear personally before the court at the time fixed by the  
 24 summons to answer the allegations of the petition;

25 (b) advise the parties of their right to counsel under

1 the Montana Youth Court Act; and

2 (c) have attached to it a copy of the petition.

3 (3) The court may endorse upon the summons an order  
4 directing the person or persons having the physical custody  
5 or control of the youth to bring the youth to the hearing.

6 (4) If it appears to the court that the youth needs to  
7 be placed in detention or shelter care, the judge may  
8 endorse on the summons an order directing the officer  
9 serving the summons to at once take the youth into custody  
10 and to take him to the place of detention or shelter care  
11 designated by the court, subject to the rights of the youth  
12 and parent or person having legal custody of the youth as  
13 set forth in the provisions of the Montana Youth Court Act  
14 relating to detention and shelter care criteria and  
15 postdetention proceedings.

16 (5) If any youth is placed in detention or shelter care  
17 ~~or-detained~~ under any provision of this chapter pending an  
18 adjudication, the court, ~~upon petition of the youth, his~~  
19 ~~parents or guardian, or his counsel,~~ shall, as soon as  
20 practicable, conduct a probable cause hearing ~~in order to~~  
21 ~~determine whether the circumstances of the case require such~~  
22 ~~detention or shelter care and the form the detention or~~  
23 ~~shelter care should take. All mentioned parties shall be~~  
24 ~~notified of such petition process at the time of initial~~  
25 ~~detention or shelter care~~ as provided in 41-5-303.

1 (6) The youth court judge may also admit the youth to  
2 bail in accordance with Title 46, chapter 9."

3 **Section 10.** Section 7-32-2244, MCA, is amended to read:

4 ~~"7-32-2244. Juvenile---detention---center---standards~~  
5 Detention of juveniles. ~~{1}~~ Juveniles may be held in a  
6 detention center only in accordance with [section 1],  
7 41-5-301 through 41-5-307, and 41-5-309.

8 ~~{2}--Detention-centers-that-hold-juveniles--must--comply~~  
9 ~~with---the---standards---for---the--detention--of--juveniles~~  
10 ~~promulgated-by-the-department-of-family-services."~~

11 **Section 11.** Section 53-30-229, MCA, is amended to read:

12 **"53-30-229.** Hearing on alleged violation of aftercare  
13 agreement -- right to appeal outcome. (1) When it is alleged  
14 by an aftercare counselor that a youth has violated the  
15 terms of his aftercare agreement, the youth ~~shall~~ must be  
16 granted a hearing at the site of the alleged violation or in  
17 the county where in which the youth is residing or is found  
18 within 10 days after notice has been served on the youth or  
19 the youth is detained, whichever is earlier. The purpose of  
20 the hearing is to determine whether the youth committed the  
21 violation and, if so, whether the violation is of such a  
22 nature that he should be returned to the youth correctional  
23 facility from which he was released or a different plan for  
24 treatment should be pursued by the department of family  
25 services.

1 (2) The youth, upon advice of an attorney, may waive  
2 his right to a hearing.

3 (3) With regard to this hearing, the youth ~~shall~~ must  
4 be given:

5 (a) written notice of the alleged violation of his  
6 aftercare agreement, including notice of the purpose of the  
7 hearing;

8 (b) disclosure of the evidence against him and the  
9 facts constituting the alleged violation;

10 (c) opportunity to be heard in person and to present  
11 witnesses and documentary evidence to controvert the  
12 evidence against him and to show that there are compelling  
13 reasons that justify or mitigate the violation;

14 (d) opportunity to have the referee subpoena witnesses;

15 (e) the right to confront and cross-examine adverse  
16 witnesses;

17 (f) the right to be represented by an attorney;

18 (g) a record of the hearing; and

19 (h) notice that a written statement as to the evidence  
20 relied upon in reaching the final decision and the reasons  
21 for the final decision will be provided by the referee.

22 (4) The department shall appoint a referee, who may not  
23 be an employee of the department, to conduct the hearing. In  
24 the conduct of the hearing, the department may request the  
25 county attorney's assistance as necessary. The department

1 shall adopt rules necessary to effect a prompt and full  
2 review.

3 (5) If the referee finds, by a preponderance of the  
4 evidence, that the youth did in fact commit the violation,  
5 he shall make a recommendation to the department for the  
6 placement of the youth. In making this recommendation, the  
7 referee may consider mitigating circumstances. Final  
8 approval rests with the department and must be made within  
9 10 days of the referee's recommendation.

10 (6) The youth may appeal from the decision at the  
11 hearing to the district court of the county in which the  
12 hearing was held by serving and filing a notice of appeal  
13 with the court within 10 days of the department's decision.  
14 The youth may obtain a written transcript of the hearing  
15 from the department by giving written notice of appeal. The  
16 district court, upon receipt of a notice of appeal, shall  
17 order the department to promptly certify to the court a  
18 record of all proceedings before the department and shall  
19 proceed to a prompt hearing on the appeal based upon the  
20 record on appeal. The decision of the department may not be  
21 altered except for abuse of discretion or manifest  
22 injustice.

23 (7) Pending the hearing on a violation and pending the  
24 department's decision, a youth may not be detained except  
25 when his detention or care is required to protect the person

1 or property of the youth or of others or he may abscond or  
 2 be removed from the community. The department shall  
 3 determine the place and manner of detention and is  
 4 responsible for the cost of the detention. Procedures for  
 5 taking into custody and detention of a youth charged with  
 6 violation of his aftercare agreement are as provided in  
 7 41-3-1111, 41-5-303~~(2)~~~~--through--(6)~~, 41-5-306, and ~~41-5-308~~  
 8 [section 1].

9 (8) If the decision is made to return the youth to the  
 10 youth correctional facility from which he was released and  
 11 the youth appeals that decision, he shall await the outcome  
 12 of the appeal at the facility."

13 **Section 12.** Section 14, Chapter 434, Laws of 1989, is  
 14 amended to read:

15 "Section 14. Section 16, Chapter 475, Laws of 1987, is  
 16 amended to read:

17 "Section 16. **Effective dates -- termination date.** (1)  
 18 Except as provided in subsections (2) and (3), sections 1  
 19 through 13 are effective October 1, 1987.

20 (2) The bracketed language in subsection (5) of section  
 21 1 is effective July 1, ~~1991~~ 1992.

22 (3) The bracketed language in subsection (3) of section  
 23 9 terminates July 1, ~~1991~~ 1992."

24 **Section 13.** Section 17, Chapter 434, Laws of 1989, is  
 25 amended to read:

1 "Section 17. **Effective date dates.** ~~{Sections 5 and 7 of~~  
 2 ~~this act}~~ are (1) [Section 7] is effective July 1, 1991.

3 (2) [Section 5] is effective July 1, 1992."

4 **NEW SECTION. Section 14.** Repealer. Section 41-5-308,  
 5 MCA, is repealed.

6 **NEW SECTION. Section 15.** Codification instruction. (1)  
 7 [Sections 1 and 4] are intended to be codified as an  
 8 integral part of Title 41, chapter 5, part 3, and the  
 9 provisions of Title 41, chapter 5, part 3, apply to  
 10 [sections 1 and 4].

11 (2) Section 41-3-1111, MCA, is intended to be  
 12 renumbered and codified as an integral part of Title 41,  
 13 chapter 5, part 3.

14 **NEW SECTION. Section 16.** **Effective dates.** (1)  
 15 [Sections 12, 13, 15, and this section] are effective July  
 16 1, 1991.

17 (2) [Sections 1 through 11 and 14] are effective July  
 18 1, 1992.

-End-

1                   SENATE BILL NO. 38  
2                   INTRODUCED BY HALLIGAN  
3                   BY REQUEST OF THE JOINT INTERIM SUBCOMMITTEE  
4                   ON ADULT AND JUVENILE DETENTION  
5  
6    A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE 24-HOUR  
7    STATUTORY PERIOD FOR HOLDING A YOUTH IN JAIL; TO PROHIBIT  
8    THE DETENTION OF A YOUTH IN JAIL EXCEPT UNDER CERTAIN  
9    CIRCUMSTANCES; TO ALLOW A 6-HOUR EXCEPTION FOR HOLDING A  
10   YOUTH IN JAIL FOR THE PURPOSE OF IDENTIFICATION, PROCESSING,  
11   OR TRANSFER OF THE YOUTH TO A DETENTION FACILITY OR SHELTER  
12   CARE FACILITY; TO PROVIDE A LIMITED 24-HOUR EXCEPTION FOR  
13   THE DETENTION OF A YOUTH IN JAIL PENDING A PROBABLE CAUSE  
14   HEARING; TO CLARIFY DETENTION PROCEDURES FOLLOWING A  
15   PROBABLE CAUSE HEARING; AMENDING SECTIONS 7-32-2244,  
16   41-5-103, 41-5-206, 41-5-303, 41-5-306, 41-5-307, 41-5-309,  
17   41-5-502, AND 53-30-229, MCA; AMENDING SECTIONS 14 AND 17,  
18   CHAPTER 434, LAWS OF 1989; REPEALING SECTION 41-5-308, MCA;  
19   AND PROVIDING EFFECTIVE DATES."  
20  
21   BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
22        NEW SECTION.   **Section 1.** Youth not to be detained in  
23   jail -- exceptions -- time limitations. (1) A youth may not  
24   be detained or otherwise placed in a jail or other adult  
25   detention facility except as provided in 41-5-206 and this

There are no changes in this bill,  
and will not be reprinted. Please  
refer to yellow copy for complete  
text.

THIRD READING

## 1 SENATE BILL NO. 38

2 INTRODUCED BY HALLIGAN

3 BY REQUEST OF THE JOINT INTERIM SUBCOMMITTEE

4 ON ADULT AND JUVENILE DETENTION

5  
6 A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE 24-HOUR  
7 STATUTORY PERIOD FOR HOLDING A YOUTH IN JAIL; TO PROHIBIT  
8 THE DETENTION OF A YOUTH IN JAIL EXCEPT UNDER CERTAIN  
9 CIRCUMSTANCES; TO ALLOW A 6-HOUR EXCEPTION FOR HOLDING A  
10 YOUTH IN JAIL FOR THE PURPOSE OF IDENTIFICATION, PROCESSING,  
11 OR TRANSFER OF THE YOUTH TO A DETENTION FACILITY OR SHELTER  
12 CARE FACILITY; TO PROVIDE A LIMITED 24-HOUR EXCEPTION FOR  
13 THE DETENTION OF A YOUTH IN JAIL PENDING A PROBABLE CAUSE  
14 HEARING; TO CLARIFY DETENTION PROCEDURES FOLLOWING A  
15 PROBABLE CAUSE HEARING; AMENDING SECTIONS 7-32-2244,  
16 41-5-103, 41-5-206, 41-5-303, 41-5-306, 41-5-307, 41-5-309,  
17 41-5-502, AND 53-30-229, MCA; AMENDING SECTIONS 14 AND 17,  
18 CHAPTER 434, LAWS OF 1989; REPEALING SECTION 41-5-308, MCA;  
19 AND PROVIDING EFFECTIVE DATES."

20  
21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

22 NEW SECTION. Section 1. Youth not to be detained in  
23 jail -- exceptions -- time limitations. (1) A youth may not  
24 be detained or otherwise placed in a jail or other adult  
25 detention facility except as provided in 41-5-206 and this

1 section.

2 (2) A youth who has allegedly committed an offense  
3 that, if committed by an adult, would constitute a criminal  
4 offense may be temporarily detained in a jail or other adult  
5 detention facility for a period not to exceed:

6 (a) 6 hours, but in no case overnight, for the purpose  
7 of identification, processing, or transfer of the youth to  
8 an appropriate detention facility or shelter care facility;  
9 or

10 (b) 24 hours, excluding weekends and legal holidays, if  
11 the youth is awaiting a probable cause hearing pursuant to  
12 41-5-303.

13 (3) The exception provided for in subsection (2)(b)  
14 applies only if:

15 (a) the court having jurisdiction over the youth is  
16 outside a standard metropolitan statistical area;

17 (b) alternative facilities are not available or  
18 alternative facilities do not provide adequate security; and

19 (c) the youth is kept in an area that provides  
20 physical, as well as sight and sound, separation from adults  
21 accused or convicted of criminal offenses.

22 (4) Whenever, despite all good faith efforts to comply  
23 with the time limitations specified in subsection (2), the  
24 limitations are exceeded, this circumstance does not serve  
25 as grounds for dismissal of the case nor does this

REFERENCE BILL



1 circumstance constitute a defense in a subsequent  
2 delinquency or criminal proceeding.

3 **Section 2.** Section 41-5-103, MCA, is amended to read:

4 "41-5-103. Definitions. ~~For the purposes of~~ As used in  
5 the Montana Youth Court Act, unless the context requires  
6 otherwise stated, the following definitions apply:

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

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

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

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

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

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

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

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

24 (5)(7) "Department" means the department of family  
25 services provided for in 2-15-2401.

1 (8) "Detention" means the holding or temporary  
2 placement of a youth IN THE YOUTH'S HOME UNDER HOME ARREST  
3 OR in a facility other than the youth's own home for the  
4 purpose of ensuring the continued custody of the youth at  
5 any time after the youth is taken into custody and before  
6 final disposition of his case.

7 (9) "Detention facility" means a physically restricting  
8 facility designed to prevent a youth from departing at will.

9 (10) "Final disposition" means the implementation of a  
10 court order for the disposition or placement of a youth as  
11 provided in 41-5-523.

12 (6)(11) "Foster home" means a private residence licensed  
13 by the department for placement of a youth.

14 (7)(12) "Guardianship" means the status created and  
15 defined by law between a youth and an adult with the  
16 reciprocal rights, duties, and responsibilities.

17 (13) "Jail" means a facility used for the confinement of  
18 adults accused or convicted of criminal offenses. The term  
19 includes a lockup or other facility used primarily for the  
20 temporary confinement of adults after arrest.

21 (8)(14) "Judge", when used without further  
22 qualification, means the judge of the youth court.

23 (9)(15) (a) "Legal custody" means the legal status  
24 created by order of a court of competent jurisdiction that  
25 gives a person the right and duty to:

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

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

10 {16} "Necessary parties" includes the youth, his  
 11 parents, guardian, custodian, or spouse.

12 ~~{10}~~{17} "Parent" means the natural or adoptive parent  
 13 but does not include a person whose parental rights have  
 14 been judicially terminated, nor does it include the putative  
 15 father of an illegitimate youth unless his paternity is  
 16 established by an adjudication or by other clear and  
 17 convincing proof.

18 ~~{11}~~ "Youth" means an individual who is less than 18  
 19 years of age without regard to sex or emancipation;

20 ~~{12}~~ "Youth court" means the court established pursuant  
 21 to this chapter to hear all proceedings in which a youth is  
 22 alleged to be a delinquent youth, a youth in need of  
 23 supervision, or a youth in need of care and includes the  
 24 youth court judge and probation officers;

25 ~~{13}~~ "Delinquent youth" means a youth:

1 ~~{a} who has committed an offense which, if committed by~~  
 2 ~~an adult, would constitute a criminal offense;~~

3 ~~{b} who, having been placed on probation as a~~  
 4 ~~delinquent youth or a youth in need of supervision, violates~~  
 5 ~~any condition of his probation;~~

6 ~~{14} "Youth in need of supervision" means a youth who~~  
 7 ~~commits an offense prohibited by law which, if committed by~~  
 8 ~~an adult, would not constitute a criminal offense, including~~  
 9 ~~but not limited to a youth who:~~

10 ~~{a} violates any Montana municipal or state law~~  
 11 ~~regarding use of alcoholic beverages by minors;~~

12 ~~{b} habitually disobeys the reasonable and lawful~~  
 13 ~~demands of his parents, foster parents, physical custodian,~~  
 14 ~~or guardian or is ungovernable and beyond their control;~~

15 ~~{c} being subject to compulsory school attendance, is~~  
 16 ~~habitually truant from school; or~~

17 ~~{d} has committed any of the acts of a delinquent youth~~  
 18 ~~but whom the youth court in its discretion chooses to regard~~  
 19 ~~as a youth in need of supervision;~~

20 ~~{15} "Youth in need of care" means a youth as defined in~~  
 21 ~~41-3-102;~~

22 ~~{16} "Custodian" means a person other than a parent or~~  
 23 ~~guardian to whom legal custody of the youth has been given~~  
 24 ~~but does not include a person who has only physical custody;~~

25 ~~{17} "Necessary parties" include the youth, his parents,~~

1 guardian, custodian, or spouse.

2 ~~{18}~~ "State youth correctional facility" means a  
3 residential facility for the rehabilitation of delinquent  
4 youth such as Pine Hills school in Miles City and Mountain  
5 View school in Helena.

6 {18} "Restitution" means payments in cash to the victim  
7 or with services to the victim or the general community when  
8 these payments are made pursuant to an informal adjustment,  
9 consent decree, or other youth court order.

10 {19} "Serious juvenile offender" means a youth who has  
11 committed an offense that would be considered a felony  
12 offense if committed by an adult and that is an offense  
13 against a person, an offense against property, or an offense  
14 involving dangerous drugs.

15 ~~{19}~~ {20} "Shelter care" means the temporary substitute  
16 care of youth in physically unrestricting facilities.

17 {21} "Shelter care facility" means a facility used for  
18 the shelter care of youth. The term is limited to the  
19 facilities enumerated in 41-5-306(1).

20 ~~{20}~~ "Detention" means the temporary substitute care of  
21 youth in physically restricting facilities.

22 ~~{21}~~ "Detention facility" means a physically restricting  
23 facility designed to prevent a youth from departing at will.

24 ~~{22}~~ "Restitution" means payments in cash to the victim  
25 or with services to the victim or the general community when

1 these payments are made pursuant to an informal adjustment,  
2 consent decree, or other youth court order.

3 {22} "State youth correctional facility" means a  
4 residential facility for the rehabilitation of delinquent  
5 youth, such as the Pine Hills school in Miles City and the  
6 Mountain View school in Helena.

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

13 {24} "Youth" means an individual who is less than 18  
14 years of age without regard to sex or emancipation.

15 {25} "Youth court" means the court established pursuant  
16 to this chapter to hear all proceedings in which a youth is  
17 alleged to be a delinquent youth, a youth in need of  
18 supervision, or a youth in need of care and includes the  
19 youth court judge and probation officers.

20 ~~{24}~~ "Serious juvenile offender" means a youth who has  
21 committed an offense against the person, an offense against  
22 property, or an offense involving dangerous drugs which  
23 would be considered a felony offense if committed by an  
24 adult.

25 {26} "Youth detention facility" means a detention

1 facility that:

2 (a) is operated, administered, and staffed separately  
3 and independently of a jail; and

4 (b) is used exclusively for the lawful detention of  
5 alleged or adjudicated delinquent youth.

6 (27) "Youth in need of care" has the meaning provided  
7 for in 41-3-102.

8 (28) "Youth in need of supervision" means a youth who  
9 commits an offense prohibited by law that, if committed by  
10 an adult, would not constitute a criminal offense, including  
11 but not limited to a youth who:

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

14 (b) habitually disobeys the reasonable and lawful  
15 demands of his parents, foster parents, physical custodian,  
16 or guardian or is beyond control;

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

19 (d) has committed any of the acts of a delinquent youth  
20 but whom the youth court, in its discretion, chooses to  
21 regard as a youth in need of supervision."

22 **Section 3.** Section 41-5-303, MCA, is amended to read:

23 "41-5-303. (Temporary) Rights of youth taken into  
24 custody -- questioning -- hearing for probable cause --  
25 detention. (1) When a youth is taken into custody for

1 questioning upon a matter which could result in a petition  
2 alleging that the youth is either delinquent or in need of  
3 supervision, the following requirements must be met:

4 (a) The youth shall be advised of his right against  
5 self-incrimination and his right to counsel.

6 (b) The youth may waive such rights under the following  
7 situations:

8 (i) when the youth is 16 years of age or older, the  
9 youth may make an effective waiver;

10 (ii) when the youth is under the age of 16 years and the  
11 youth and a parent or guardian agree, they may make an  
12 effective waiver; and

13 (iii) when the youth is under the age of 16 years and  
14 the youth and his parent or guardian do not agree, the youth  
15 may make an effective waiver only with advice of counsel.

16 (c) The investigating officer, probation officer, or  
17 person assigned to give notice shall immediately notify the  
18 parents, guardian, or legal custodian of the youth that the  
19 youth has been taken into custody, the reasons for taking  
20 the youth into custody, and where the youth is being held.  
21 If the parents, guardian, or legal custodian cannot be found  
22 through diligent efforts, a close relative or friend chosen  
23 by the youth must be notified.

24 (2) A youth who has been taken into custody may not be  
25 held longer than 24 hours, excluding weekends and legal

1 holidays, unless a hearing has been held by the court, a  
 2 justice of the peace, a municipal or city judge, or a  
 3 magistrate to determine whether there is probable cause to  
 4 believe he is a delinquent youth or a youth in need of  
 5 supervision. If a hearing under this subsection is held by a  
 6 justice of the peace, a municipal or city judge, or a  
 7 magistrate, a record of the hearing shall be made by a court  
 8 reporter or by a tape recording of the hearing.

9 (3) At the probable cause hearing, the youth shall be  
 10 informed of his constitutional rights and his rights under  
 11 this chapter.

12 (4) A parent, guardian, or legal custodian of the youth  
 13 may be held in contempt of court for failing to be present  
 14 at the probable cause hearing, unless he:

15 (a) cannot be located through diligent efforts of the  
 16 investigating peace officer or peace officers; or

17 (b) is excused by the court for good cause.

18 (5) At the probable cause hearing, a guardian ad litem  
 19 may be appointed as provided in 41-5-512.

20 (6) If it is determined that there is probable cause to  
 21 believe the youth is delinquent or is a youth in need of  
 22 supervision and if the youth meets the criteria in 41-5-305,  
 23 the youth may be placed in a shelter care facility or  
 24 detention facility as provided in 41-5-306. If probable  
 25 cause is not found, the youth must be immediately released.

1 41-5-303. (Effective July 1, ~~1991~~ 1992) Rights of youth  
 2 taken into custody -- questioning -- hearing for probable  
 3 cause -- detention. (1) When a youth is taken into custody  
 4 for questioning upon a matter which that could result in a  
 5 petition alleging that the youth is either a delinquent  
 6 youth or a youth in need of supervision, the following  
 7 requirements must be met:

8 (a) The youth ~~shall~~ must be advised of his right  
 9 against self-incrimination and his right to counsel.

10 (b) The youth may waive ~~such~~ these rights under the  
 11 following situations:

12 (i) when the youth is 16 years of age or older, the  
 13 youth may make an effective waiver;

14 (ii) when the youth is under the age of 16 years and the  
 15 youth and a parent or guardian agree, they may make an  
 16 effective waiver; and

17 (iii) when the youth is under the age of 16 years and  
 18 the youth and his parent or guardian do not agree, the youth  
 19 may make an effective waiver only with advice of counsel.

20 (c) The investigating officer, probation officer, or  
 21 person assigned to give notice shall immediately notify the  
 22 parents, guardian, or legal custodian of the youth that the  
 23 youth has been taken into custody, the reasons for taking  
 24 the youth into custody, and where the youth is being held.  
 25 If the parents, guardian, or legal custodian cannot be found

1 through diligent efforts, a close relative or friend chosen  
2 by the youth must be notified.

3 ~~(2) A youth who has been taken into custody may not be~~  
4 ~~held longer than 24 hours, excluding weekends and legal~~  
5 ~~holidays, unless a hearing has been held by the court, a~~  
6 ~~justice of the peace, a municipal or city judge, or a~~  
7 ~~magistrate~~ Unless a youth has been released, a hearing must  
8 be held within 24 hours after the youth is taken into  
9 custody, excluding weekends and legal holidays, to determine  
10 whether there is probable cause to believe he that the youth  
11 is a delinquent youth or a youth in need of supervision.

12 (3) The probable cause hearing required under  
13 subsection (2) may be held by the youth court, a justice of  
14 the peace, a municipal or city judge, or a magistrate having  
15 jurisdiction in the case as provided in 41-5-203. If a the  
16 probable cause hearing under this subsection is held by a  
17 justice of the peace, a municipal or city judge, or a  
18 magistrate, a record of the hearing shall must be made by a  
19 court reporter or by a tape recording of the hearing.

20 ~~(3)(4)~~ At the probable cause hearing, the youth shall  
21 must be informed of his constitutional rights and his rights  
22 under this chapter.

23 ~~(4)(5)~~ A parent, guardian, or legal custodian of the  
24 youth may be held in contempt of court for failing to be  
25 present at or to participate in the probable cause hearing,

1 unless he:

2 (a) cannot be located through diligent efforts of the  
3 investigating peace officer or peace officers; or

4 (b) is excused by the court for good cause.

5 ~~(5)(6)~~ At the probable cause hearing, a guardian ad  
6 litem may be appointed as provided in 41-5-512.

7 ~~(6)(7)~~ If it is determined that there is probable cause  
8 to believe the youth is a delinquent youth or is a youth in  
9 need of supervision, the court having jurisdiction in the  
10 case shall determine whether the youth should be retained in  
11 custody. If the court determines that continued custody of  
12 the youth is necessary and if the youth meets the criteria  
13 in 41-5-305, the youth may be placed in a shelter--care  
14 facility--or detention facility or shelter care facility as  
15 provided in 41-5-306 but may not be placed in a jail or  
16 other facility used for the confinement of adults accused or  
17 convicted of criminal offenses.

18 (8) If probable cause is not found, or if a probable  
19 cause hearing is not held within the time specified in  
20 subsection (2), the youth must be immediately released from  
21 custody."

22 NEW SECTION. Section 4. Probable cause hearing --  
23 telephonic proceeding authorized. A probable cause hearing  
24 may be conducted by telephone if other means of conducting  
25 the hearing are impractical. All written orders and findings

1 of the court in a hearing conducted by telephone must bear  
2 the name of the judge or magistrate presiding in the case  
3 and the hour and date the order or findings were issued.

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

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

9 (a) a licensed youth foster home as defined in  
10 41-3-1102;

11 (b) a facility operated by a licensed child welfare  
12 agency; or

13 (c) a licensed youth group home as defined in  
14 41-3-1102.

15 (2) A youth alleged to be in need of care shall be  
16 placed only in the facilities stated in subsection (1) of  
17 this section and shall not be placed in a jail or other  
18 facility intended or used for the detention of adults  
19 charged with criminal offenses.

20 (3) After a probable cause hearing provided for in  
21 41-5-303, a youth alleged to be a delinquent youth may be  
22 placed only in the facilities described in subsection (1),  
23 in a detention facility, or in a jail or other facility for  
24 the detention of adults only if the facilities in subsection  
25 (1) are not available or do not provide adequate security

1 and the detention is in an area physically and visually  
2 separate and removed from that of adults. (Terminates July  
3 1, 1991; 1992--sec. 14, Ch. 434, L. 1989.)

4 41-5-306. (Effective July 1, 1991; 1992) Place of  
5 shelter care or detention. (1) After a probable cause  
6 hearing provided for in 41-5-303, a youth alleged to be a  
7 youth in need of supervision may be placed only in:

8 (a) a licensed youth foster home as defined in  
9 41-3-1102;

10 (b) a facility operated by a licensed child welfare  
11 agency; or

12 (c) a licensed youth group home as defined in  
13 41-3-1102.

14 (2) A youth alleged to be a youth in need of care shall  
15 may be placed only in the facilities stated in subsection  
16 (1) ~~of this section~~ and shall may not be placed in a jail or  
17 other facility intended or used for the detention  
18 confinement of adults ~~charged with~~ accused or convicted of  
19 criminal offenses.

20 (3) After a probable cause hearing provided for in  
21 41-5-303, a youth alleged to be a delinquent youth may be  
22 placed only in the facilities described in subsection (1) or  
23 in a youth detention facility ~~as defined in 41-5-103.~~"

24 **Section 6.** Section 41-5-206, MCA, is amended to read:

25 "41-5-206. Transfer to criminal court. (1) After a

1 petition has been filed alleging delinquency, the court may,  
2 upon motion of the county attorney, before hearing the  
3 petition on its merits, transfer the matter of prosecution  
4 to the district court if:

5 (a) (i) the youth charged was 12 years of age or more  
6 at the time of the conduct alleged to be unlawful and the  
7 unlawful act would constitute sexual intercourse without  
8 consent as defined in 45-5-503, deliberate homicide as  
9 defined in 45-5-102, or mitigated deliberate homicide as  
10 defined in 45-5-103, or the attempt, as defined in 45-4-103,  
11 of either deliberate or mitigated deliberate homicide if the  
12 act had been committed by an adult; or

13 (ii) the youth charged was 16 years of age or more at  
14 the time of the conduct alleged to be unlawful and the  
15 unlawful act is one or more of the following:

16 (A) negligent homicide as defined in 45-5-104;

17 (B) arson as defined in 45-6-103;

18 (C) aggravated or felony assault as defined in  
19 45-5-202;

20 (D) robbery as defined in 45-5-401;

21 (E) burglary or aggravated burglary as defined in  
22 45-6-204;

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

24 (G) possession of explosives as defined in 45-8-335;

25 (H) criminal sale of dangerous drugs as included in

1 45-9-101;

2 (I) attempt, as defined in 45-4-103, of any of the acts  
3 enumerated in subsections (1)(a)(ii)(A) through  
4 (1)(a)(ii)(H);

5 (b) a hearing on whether the transfer should be made is  
6 held in conformity with the rules on a hearing on a petition  
7 alleging delinquency, except that the hearing will be to  
8 conducted by the youth court without a jury;

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

13 (d) the court finds upon the hearing of all relevant  
14 evidence that there is probable cause to believe that:

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

16 (ii) the seriousness of the offense and the protection  
17 of the community require treatment of the youth beyond that  
18 afforded by juvenile facilities; and

19 (iii) the alleged offense was committed in an  
20 aggressive, violent, or premeditated manner.

21 (2) In transferring the matter of prosecution to the  
22 district court, the court may also consider the following  
23 factors:

24 (a) the sophistication and maturity of the youth,  
25 determined by consideration of his home, environmental



1 situation, and emotional attitude and pattern of living;

2 (b) the record and previous history of the youth,  
3 including previous contacts with the youth court, law  
4 enforcement agencies, youth courts in other jurisdictions,  
5 prior periods of probation, and prior commitments to  
6 juvenile institutions. However, lack of a prior juvenile  
7 history with youth courts will not of itself be grounds for  
8 denying the transfer.

9 (3) The court shall grant the motion to transfer if the  
10 youth was 16 years old or older at the time of the conduct  
11 alleged to be unlawful and the unlawful act would constitute  
12 deliberate homicide as defined in 45-5-102, mitigated  
13 deliberate homicide as defined in 45-5-103, or the attempt,  
14 as defined in 45-4-103, of either deliberate or mitigated  
15 deliberate homicide if the act had been committed by an  
16 adult.

17 (4) Upon transfer to district court, the judge shall  
18 make written findings of the reasons why the jurisdiction of  
19 the youth court was waived and the case transferred to  
20 district court.

21 (5) The transfer terminates the jurisdiction of the  
22 youth court over the youth with respect to the acts alleged  
23 in the petition. No A youth may not be prosecuted in the  
24 district court for a criminal offense originally subject to  
25 the jurisdiction of the youth court unless the case has been

1 transferred as provided in this section.

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

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

8 (a) tried in youth court;

9 (b) transferred to district court with an offense  
10 enumerated in subsection (1), upon motion of the county  
11 attorney and order of the youth court judge.

12 (8) If a youth is found guilty in district court of any  
13 of the offenses transferred by the youth court and is  
14 sentenced to the state prison, his commitment shall must be  
15 to the department of institutions, which The department  
16 shall confine the youth in whatever institution it considers  
17 proper, including a state youth correctional facility under  
18 the procedures of 53-30-212; however, no youth under 16  
19 years of age may be confined in the state prison.

20 (9) A youth whose case is transferred to district court  
21 may not be detained or otherwise placed in an a jail or  
22 other adult detention facility before final disposition of  
23 the his case unless ~~the youth court judge determines that:~~

24 (a) ~~the youth~~ alternative facilities do not provide  
25 adequate security; and

1       (b) ~~detention-in-the--adult--facility--is--in--an--area~~  
 2 ~~physically,--aurally,--and--visually--separate--from--that--of~~  
 3 ~~adults the youth is kept in an area that provides physical,~~  
 4 ~~as well as sight and sound, separation from adults accused~~  
 5 ~~or convicted of criminal offenses."~~

6       **Section 7.** Section 41-5-307, MCA, is amended to read:

7       "41-5-307. Release or delivery from custody. (1)  
 8 Whenever a peace officer believes, on reasonable grounds,  
 9 that a youth can be released to a person who has custody of  
 10 the youth, then the peace officer may release the youth to  
 11 that person upon receiving a written promise from the person  
 12 to bring the youth before the probation officer at a time  
 13 and place specified in the written promise, or a peace  
 14 officer may release the youth under any other reasonable  
 15 circumstances.

16       (2) Whenever the peace officer believes, on reasonable  
 17 grounds, that the youth must be detained, the peace officer  
 18 ~~must shall~~ notify the probation officer immediately and  
 19 shall, as soon as practicable, provide the probation officer  
 20 with a written report of his reasons for holding that the  
 21 youth in custody detention. If it is necessary to hold the  
 22 youth pending appearance before the youth court, then the  
 23 youth must be held in some a place ~~that--has-been of~~  
 24 detention approved by the youth court ~~and--is--completely~~  
 25 ~~separated---from--adult--offenders~~. If the peace officer

1 believes that the youth must be sheltered, the peace officer  
 2 shall notify the probation officer immediately and shall  
 3 provide a written report of his reasons for placing the  
 4 youth in shelter care. If the youth is then held, the youth  
 5 must be ~~sheltered--in--a--place~~ placed in a shelter care  
 6 facility approved by the youth court."

7       **Section 8.** Section 41-5-309, MCA, is amended to read:

8       "41-5-309. Bail. A youth placed in a detention or  
 9 shelter care facility may be released on bail. The court  
 10 shall use the provisions of Title 46, chapter 9, as  
 11 guidance. In determining the amount of bail, the court shall  
 12 consider the financial ability of the youth and the parents  
 13 or legal custodian of the youth."

14       **Section 9.** Section 41-5-502, MCA, is amended to read:

15       "41-5-502. Summons. (1) After a petition has been  
 16 filed, summons ~~shall~~ must be served directly to:

- 17       (a) the youth;
- 18       (b) his parent or parents having actual custody of the  
 19 youth or his guardian or custodian, as the case may be; and
- 20       (c) such other persons as the court may direct.
- 21       (2) The summons ~~shall~~ must:
- 22       (a) require the parties to whom it is directed to  
 23 appear personally before the court at the time fixed by the  
 24 summons to answer the allegations of the petition;
- 25       (b) advise the parties of their right to counsel under

1 the Montana Youth Court Act; and

2 (c) have attached to it a copy of the petition.

3 (3) The court may endorse upon the summons an order  
4 directing the person or persons having the physical custody  
5 or control of the youth to bring the youth to the hearing.

6 (4) If it appears to the court that the youth needs to  
7 be placed in detention or shelter care, the judge may  
8 endorse on the summons an order directing the officer  
9 serving the summons to at once take the youth into custody  
10 and to take him to the place of detention or shelter care  
11 designated by the court, subject to the rights of the youth  
12 and parent or person having legal custody of the youth as  
13 set forth in the provisions of the Montana Youth Court Act  
14 relating to detention and shelter care criteria and  
15 postdetention proceedings.

16 (5) If any youth is placed in detention or shelter care  
17 ~~or-detained~~ under any provision of this chapter pending an  
18 adjudication, the court, ~~upon petition of the youth, his~~  
19 ~~parents or guardian, or his counsel,~~ shall, as soon as  
20 practicable, conduct a probable cause hearing ~~in order to~~  
21 ~~determine whether the circumstances of the case require such~~  
22 ~~detention or shelter care and the form the detention or~~  
23 ~~shelter care should take. All mentioned parties shall be~~  
24 ~~notified of such petition process at the time of initial~~  
25 ~~detention or shelter care~~ as provided in 41-5-303.

1 (6) The youth court judge may also admit the youth to  
2 bail in accordance with Title 46, chapter 9."

3 **Section 10.** Section 7-32-2244, MCA, is amended to read:

4 ~~"7-32-2244. Juvenile---detention---center---standards~~  
5 Detention of juveniles. (1) Juveniles may be held in a  
6 detention center only in accordance with [section 1],  
7 41-5-301 through 41-5-307, and 41-5-309.

8 ~~(2)---Detention-centers-that-hold-juveniles---must---comply~~  
9 ~~with---the---standards---for---the---detention---of---juveniles~~  
10 ~~promulgated-by-the-department-of-family-services."~~

11 **Section 11.** Section 53-30-229, MCA, is amended to read:

12 ~~"53-30-229. Hearing on alleged violation of aftercare~~  
13 ~~agreement -- right to appeal outcome. (1) When it is alleged~~  
14 ~~by an aftercare counselor that a youth has violated the~~  
15 ~~terms of his aftercare agreement, the youth shall must be~~  
16 ~~granted a hearing at the site of the alleged violation or in~~  
17 ~~the county where in which the youth is residing or is found~~  
18 ~~within 10 days after notice has been served on the youth or~~  
19 ~~the youth is detained, whichever is earlier. The purpose of~~  
20 ~~the hearing is to determine whether the youth committed the~~  
21 ~~violation and, if so, whether the violation is of such a~~  
22 ~~nature that he should be returned to the youth correctional~~  
23 ~~facility from which he was released or a different plan for~~  
24 ~~treatment should be pursued by the department of family~~  
25 ~~services.~~

1 (2) The youth, upon advice of an attorney, may waive  
2 his right to a hearing.

3 (3) With regard to this hearing, the youth shall must  
4 be given:

5 (a) written notice of the alleged violation of his  
6 aftercare agreement, including notice of the purpose of the  
7 hearing;

8 (b) disclosure of the evidence against him and the  
9 facts constituting the alleged violation;

10 (c) opportunity to be heard in person and to present  
11 witnesses and documentary evidence to controvert the  
12 evidence against him and to show that there are compelling  
13 reasons that justify or mitigate the violation;

14 (d) opportunity to have the referee subpoena witnesses;

15 (e) the right to confront and cross-examine adverse  
16 witnesses;

17 (f) the right to be represented by an attorney;

18 (g) a record of the hearing; and

19 (h) notice that a written statement as to the evidence  
20 relied upon in reaching the final decision and the reasons  
21 for the final decision will be provided by the referee.

22 (4) The department shall appoint a referee, who may not  
23 be an employee of the department, to conduct the hearing. In  
24 the conduct of the hearing, the department may request the  
25 county attorney's assistance as necessary. The department

1 shall adopt rules necessary to effect a prompt and full  
2 review.

3 (5) If the referee finds, by a preponderance of the  
4 evidence, that the youth did in fact commit the violation,  
5 he shall make a recommendation to the department for the  
6 placement of the youth. In making this recommendation, the  
7 referee may consider mitigating circumstances. Final  
8 approval rests with the department and must be made within  
9 10 days of the referee's recommendation.

10 (6) The youth may appeal from the decision at the  
11 hearing to the district court of the county in which the  
12 hearing was held by serving and filing a notice of appeal  
13 with the court within 10 days of the department's decision.  
14 The youth may obtain a written transcript of the hearing  
15 from the department by giving written notice of appeal. The  
16 district court, upon receipt of a notice of appeal, shall  
17 order the department to promptly certify to the court a  
18 record of all proceedings before the department and shall  
19 proceed to a prompt hearing on the appeal based upon the  
20 record on appeal. The decision of the department may not be  
21 altered except for abuse of discretion or manifest  
22 injustice.

23 (7) Pending the hearing on a violation and pending the  
24 department's decision, a youth may not be detained except  
25 when his detention or care is required to protect the person

1 or property of the youth or of others or he may abscond or  
 2 be removed from the community. The department shall  
 3 determine the place and manner of detention and is  
 4 responsible for the cost of the detention. Procedures for  
 5 taking into custody and detention of a youth charged with  
 6 violation of his aftercare agreement are as provided in  
 7 41-3-1111, 41-5-303~~(2)~~--through-~~(6)~~, 41-5-306, and ~~41-5-308~~  
 8 [section 1].

9 (8) If the decision is made to return the youth to the  
 10 youth correctional facility from which he was released and  
 11 the youth appeals that decision, he shall await the outcome  
 12 of the appeal at the facility."

13 **Section 12.** Section 14, Chapter 434, Laws of 1989, is  
 14 amended to read:

15 "Section 14. Section 16, Chapter 475, Laws of 1987, is  
 16 amended to read:

17 "Section 16. **Effective dates -- termination date.** (1)  
 18 Except as provided in subsections (2) and (3), sections 1  
 19 through 13 are effective October 1, 1987.

20 (2) The bracketed language in subsection (5) of section  
 21 1 is effective July 1, ~~1991~~ 1992.

22 (3) The bracketed language in subsection (3) of section  
 23 9 terminates July 1, ~~1991~~ 1992."

24 **Section 13.** Section 17, Chapter 434, Laws of 1989, is  
 25 amended to read:

1 "Section 17. **Effective date dates.** ~~{Sections 5 and 7 of~~  
 2 ~~this act}~~ are (1) [Section 7] is effective July 1, 1991.

3 (2) [Section 5] is effective July 1, 1992."

4 **NEW SECTION. Section 14. Repealer.** Section 41-5-308,  
 5 MCA, is repealed.

6 **NEW SECTION. Section 15. Codification instruction.** (1)  
 7 [Sections 1 and 4] are intended to be codified as an  
 8 integral part of Title 41, chapter 5, part 3, and the  
 9 provisions of Title 41, chapter 5, part 3, apply to  
 10 [sections 1 and 4].

11 (2) Section 41-3-1111, MCA, is intended to be  
 12 renumbered and codified as an integral part of Title 41,  
 13 chapter 5, part 3.

14 **NEW SECTION. Section 16. Effective dates.** (1)  
 15 [Sections 12, 13, 15, and this section] are effective July  
 16 1, 1991.

17 (2) [Sections 1 through 11 and 14] are effective July  
 18 1, 1992.

-End-

GOVERNOR'S AMENDMENTS  
TO SENATE BILL 38  
(REFERENCE COPY, AS AMENDED)  
February 26, 1991

1. Title, line 19  
Following: "DATES"  
Insert: "AND PROVIDING A COORDINATION INSTRUCTION"
  
2. Page 28, line 19.  
Following: "NEW SECTION. Section 17. Coordination  
instruction. If Senate Bill 37 is not passed and approved,  
then this act is void and without effect."

## 1 SENATE BILL NO. 38

2 INTRODUCED BY HALLIGAN

3 BY REQUEST OF THE JOINT INTERIM SUBCOMMITTEE

4 ON ADULT AND JUVENILE DETENTION

5  
6 A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE 24-HOUR  
7 STATUTORY PERIOD FOR HOLDING A YOUTH IN JAIL; TO PROHIBIT  
8 THE DETENTION OF A YOUTH IN JAIL EXCEPT UNDER CERTAIN  
9 CIRCUMSTANCES; TO ALLOW A 6-HOUR EXCEPTION FOR HOLDING A  
10 YOUTH IN JAIL FOR THE PURPOSE OF IDENTIFICATION, PROCESSING,  
11 OR TRANSFER OF THE YOUTH TO A DETENTION FACILITY OR SHELTER  
12 CARE FACILITY; TO PROVIDE A LIMITED 24-HOUR EXCEPTION FOR  
13 THE DETENTION OF A YOUTH IN JAIL PENDING A PROBABLE CAUSE  
14 HEARING; TO CLARIFY DETENTION PROCEDURES FOLLOWING A  
15 PROBABLE CAUSE HEARING; AMENDING SECTIONS 7-32-2244,  
16 41-5-103, 41-5-206, 41-5-303, 41-5-306, 41-5-307, 41-5-309,  
17 41-5-502, AND 53-30-229, MCA; AMENDING SECTIONS 14 AND 17,  
18 CHAPTER 434, LAWS OF 1989; REPEALING SECTION 41-5-308, MCA;  
19 AND PROVIDING EFFECTIVE DATES."

20  
21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

22 NEW SECTION. **Section 1.** Youth not to be detained in  
23 jail -- exceptions -- time limitations. (1) A youth may not  
24 be detained or otherwise placed in a jail or other adult  
25 detention facility except as provided in 41-5-206 and this

1 section.

2 (2) A youth who has allegedly committed an offense  
3 that, if committed by an adult, would constitute a criminal  
4 offense may be temporarily detained in a jail or other adult  
5 detention facility for a period not to exceed:

6 (a) 6 hours, but in no case overnight, for the purpose  
7 of identification, processing, or transfer of the youth to  
8 an appropriate detention facility or shelter care facility;  
9 or

10 (b) 24 hours, excluding weekends and legal holidays, if  
11 the youth is awaiting a probable cause hearing pursuant to  
12 41-5-303.

13 (3) The exception provided for in subsection (2)(b)  
14 applies only if:

15 (a) the court having jurisdiction over the youth is  
16 outside a standard metropolitan statistical area;

17 (b) alternative facilities are not available or  
18 alternative facilities do not provide adequate security; and

19 (c) the youth is kept in an area that provides  
20 physical, as well as sight and sound, separation from adults  
21 accused or convicted of criminal offenses.

22 (4) Whenever, despite all good faith efforts to comply  
23 with the time limitations specified in subsection (2), the  
24 limitations are exceeded, this circumstance does not serve  
25 as grounds for dismissal of the case nor does this



1 circumstance constitute a defense in a subsequent  
2 delinquency or criminal proceeding.

3 **Section 2.** Section 41-5-103, MCA, is amended to read:

4 **"41-5-103. Definitions.** ~~For-the-purposes-of~~ As used in  
5 the Montana Youth Court Act, unless the context requires  
6 otherwise stated, the following definitions apply:

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

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

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

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

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

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

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

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

24 †5†(7) "Department" means the department of family  
25 services provided for in 2-15-2401.

1 (8) "Detention" means the holding or temporary  
2 placement of a youth IN THE YOUTH'S HOME UNDER HOME ARREST  
3 OR in a facility other than the youth's own home for the  
4 purpose of ensuring the continued custody of the youth at  
5 any time after the youth is taken into custody and before  
6 final disposition of his case.

7 (9) "Detention facility" means a physically restricting  
8 facility designed to prevent a youth from departing at will.

9 (10) "Final disposition" means the implementation of a  
10 court order for the disposition or placement of a youth as  
11 provided in 41-5-523.

12 †6†(11) "Foster home" means a private residence licensed  
13 by the department for placement of a youth.

14 †7†(12) "Guardianship" means the status created and  
15 defined by law between a youth and an adult with the  
16 reciprocal rights, duties, and responsibilities.

17 (13) "Jail" means a facility used for the confinement of  
18 adults accused or convicted of criminal offenses. The term  
19 includes a lockup or other facility used primarily for the  
20 temporary confinement of adults after arrest.

21 †8†(14) "Judge", when used without further  
22 qualification, means the judge of the youth court.

23 †9†(15) (a) "Legal custody" means the legal status  
24 created by order of a court of competent jurisdiction that  
25 gives a person the right and duty to:



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

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

10 (16) "Necessary parties" includes the youth, his  
 11 parents, guardian, custodian, or spouse.

12 ~~(10)~~(17) "Parent" means the natural or adoptive parent  
 13 but does not include a person whose parental rights have  
 14 been judicially terminated, nor does it include the putative  
 15 father of an illegitimate youth unless his paternity is  
 16 established by an adjudication or by other clear and  
 17 convincing proof.

18 ~~(11)~~"Youth" means an individual who is less than 18  
 19 years of age without regard to sex or emancipation;

20 ~~(12)~~"Youth court" means the court established pursuant  
 21 to this chapter to hear all proceedings in which a youth is  
 22 alleged to be a delinquent youth, a youth in need of  
 23 supervision, or a youth in need of care and includes the  
 24 youth court judge and probation officers;

25 ~~(13)~~"Delinquent youth" means a youth:

1 ~~(a) who has committed an offense which, if committed by~~  
 2 ~~an adult, would constitute a criminal offense;~~

3 ~~(b) who, having been placed on probation as a~~  
 4 ~~delinquent youth or a youth in need of supervision, violates~~  
 5 ~~any condition of his probation;~~

6 ~~(14)~~"Youth in need of supervision" means a youth who  
 7 ~~commits an offense prohibited by law which, if committed by~~  
 8 ~~an adult, would not constitute a criminal offense, including~~  
 9 ~~but not limited to a youth who:~~

10 ~~(a) violates any Montana municipal or state law~~  
 11 ~~regarding use of alcoholic beverages by minors;~~

12 ~~(b) habitually disobeys the reasonable and lawful~~  
 13 ~~demands of his parents, foster parents, physical custodian,~~  
 14 ~~or guardian or is ungovernable and beyond their control;~~

15 ~~(c) being subject to compulsory school attendance, is~~  
 16 ~~habitually truant from school; or~~

17 ~~(d) has committed any of the acts of a delinquent youth~~  
 18 ~~but whom the youth court in its discretion chooses to regard~~  
 19 ~~as a youth in need of supervision;~~

20 ~~(15)~~"Youth in need of care" means a youth as defined in  
 21 ~~41-3-102;~~

22 ~~(16)~~"Custodian" means a person other than a parent or  
 23 ~~guardian to whom legal custody of the youth has been given~~  
 24 ~~but does not include a person who has only physical custody;~~

25 ~~(17)~~"Necessary parties" include the youth, his parents;

guardian, custodian, or spouse.

~~{18}~~ "State youth correctional facility" means a residential facility for the rehabilitation of delinquent youth such as Pine Hills school in Miles City, and Mountain View school in Helena.

{18} "Restitution" means payments in cash to the victim or with services to the victim or the general community when these payments are made pursuant to an informal adjustment, consent decree, or other youth court order.

{19} "Serious juvenile offender" means a youth who has committed an offense that would be considered a felony offense if committed by an adult and that is an offense against a person, an offense against property, or an offense involving dangerous drugs.

~~{19}~~ {20} "Shelter care" means the temporary substitute care of youth in physically unrestricting facilities.

{21} "Shelter care facility" means a facility used for the shelter care of youth. The term is limited to the facilities enumerated in 41-5-306(1).

~~{20}~~ "Detention" means the temporary substitute care of youth in physically restricting facilities.

~~{21}~~ "Detention facility" means a physically restricting facility designed to prevent a youth from departing at will.

~~{22}~~ "Restitution" means payments in cash to the victim or with services to the victim or the general community when

~~these payments are made pursuant to an informal adjustment, consent decree, or other youth court order.~~

{22} "State youth correctional facility" means a residential facility for the rehabilitation of delinquent youth, such as the Pine Hills school in Miles City and the Mountain View school in Helena.

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

{24} "Youth" means an individual who is less than 18 years of age without regard to sex or emancipation.

{25} "Youth court" means the court established pursuant to this chapter to hear all proceedings in which a youth is alleged to be a delinquent youth, a youth in need of supervision, or a youth in need of care and includes the youth court judge and probation officers.

~~{24}~~ "Serious juvenile offender" means a youth who has committed an offense against the person, an offense against property, or an offense involving dangerous drugs which would be considered a felony offense if committed by an adult.

{26} "Youth detention facility" means a detention

1 facility that:

2 (a) is operated, administered, and staffed separately  
3 and independently of a jail; and

4 (b) is used exclusively for the lawful detention of  
5 alleged or adjudicated delinquent youth.

6 (27) "Youth in need of care" has the meaning provided  
7 for in 41-3-102.

8 (28) "Youth in need of supervision" means a youth who  
9 commits an offense prohibited by law that, if committed by  
10 an adult, would not constitute a criminal offense, including  
11 but not limited to a youth who:

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

14 (b) habitually disobeys the reasonable and lawful  
15 demands of his parents, foster parents, physical custodian,  
16 or guardian or is beyond control;

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

19 (d) has committed any of the acts of a delinquent youth  
20 but whom the youth court, in its discretion, chooses to  
21 regard as a youth in need of supervision."

22 **Section 3.** Section 41-5-303, MCA, is amended to read:

23 "41-5-303. (Temporary) Rights of youth taken into  
24 custody -- questioning -- hearing for probable cause --  
25 detention. (1) When a youth is taken into custody for

1 questioning upon a matter which could result in a petition  
2 alleging that the youth is either delinquent or in need of  
3 supervision, the following requirements must be met:

4 (a) The youth shall be advised of his right against  
5 self-incrimination and his right to counsel.

6 (b) The youth may waive such rights under the following  
7 situations:

8 (i) when the youth is 16 years of age or older, the  
9 youth may make an effective waiver;

10 (ii) when the youth is under the age of 16 years and the  
11 youth and a parent or guardian agree, they may make an  
12 effective waiver; and

13 (iii) when the youth is under the age of 16 years and  
14 the youth and his parent or guardian do not agree, the youth  
15 may make an effective waiver only with advice of counsel.

16 (c) The investigating officer, probation officer, or  
17 person assigned to give notice shall immediately notify the  
18 parents, guardian, or legal custodian of the youth that the  
19 youth has been taken into custody, the reasons for taking  
20 the youth into custody, and where the youth is being held.  
21 If the parents, guardian, or legal custodian cannot be found  
22 through diligent efforts, a close relative or friend chosen  
23 by the youth must be notified.

24 (2) A youth who has been taken into custody may not be  
25 held longer than 24 hours, excluding weekends and legal

1 holidays, unless a hearing has been held by the court, a  
 2 justice of the peace, a municipal or city judge, or a  
 3 magistrate to determine whether there is probable cause to  
 4 believe he is a delinquent youth or a youth in need of  
 5 supervision. If a hearing under this subsection is held by a  
 6 justice of the peace, a municipal or city judge, or a  
 7 magistrate, a record of the hearing shall be made by a court  
 8 reporter or by a tape recording of the hearing.

9 (3) At the probable cause hearing, the youth shall be  
 10 informed of his constitutional rights and his rights under  
 11 this chapter.

12 (4) A parent, guardian, or legal custodian of the youth  
 13 may be held in contempt of court for failing to be present  
 14 at the probable cause hearing, unless he:

15 (a) cannot be located through diligent efforts of the  
 16 investigating peace officer or peace officers; or

17 (b) is excused by the court for good cause.

18 (5) At the probable cause hearing, a guardian ad litem  
 19 may be appointed as provided in 41-5-512.

20 (6) If it is determined that there is probable cause to  
 21 believe the youth is delinquent or is a youth in need of  
 22 supervision and if the youth meets the criteria in 41-5-305,  
 23 the youth may be placed in a shelter care facility or  
 24 detention facility as provided in 41-5-306. If probable  
 25 cause is not found, the youth must be immediately released.

1 41-5-303. (Effective July 1, ~~1991~~ 1992) Rights of youth  
 2 taken into custody -- questioning -- hearing for probable  
 3 cause -- detention. (1) When a youth is taken into custody  
 4 for questioning upon a matter which that could result in a  
 5 petition alleging that the youth is either a delinquent  
 6 youth or a youth in need of supervision, the following  
 7 requirements must be met:

8 (a) The youth ~~shall~~ must be advised of his right  
 9 against self-incrimination and his right to counsel.

10 (b) The youth may waive such these rights under the  
 11 following situations:

12 (i) when the youth is 16 years of age or older, the  
 13 youth may make an effective waiver;

14 (ii) when the youth is under the age of 16 years and the  
 15 youth and a parent or guardian agree, they may make an  
 16 effective waiver; and

17 (iii) when the youth is under the age of 16 years and  
 18 the youth and his parent or guardian do not agree, the youth  
 19 may make an effective waiver only with advice of counsel.

20 (c) The investigating officer, probation officer, or  
 21 person assigned to give notice shall immediately notify the  
 22 parents, guardian, or legal custodian of the youth that the  
 23 youth has been taken into custody, the reasons for taking  
 24 the youth into custody, and where the youth is being held.  
 25 If the parents, guardian, or legal custodian cannot be found

1 through diligent efforts, a close relative or friend chosen  
2 by the youth must be notified.

3 (2) ~~A youth who has been taken into custody may not be~~  
4 ~~held longer than 24 hours, excluding weekends and legal~~  
5 ~~holidays, unless a hearing has been held by the court, a~~  
6 ~~justice of the peace, a municipal or city judge, or a~~  
7 ~~magistrate~~ Unless a youth has been released, a hearing must  
8 be held within 24 hours after the youth is taken into  
9 custody, excluding weekends and legal holidays, to determine  
10 whether there is probable cause to believe he that the youth  
11 is a delinquent youth or a youth in need of supervision.

12 (3) The probable cause hearing required under  
13 subsection (2) may be held by the youth court, a justice of  
14 the peace, a municipal or city judge, or a magistrate having  
15 jurisdiction in the case as provided in 41-5-203. If a the  
16 probable cause hearing under this subsection is held by a  
17 justice of the peace, a municipal or city judge, or a  
18 magistrate, a record of the hearing ~~shall~~ must be made by a  
19 court reporter or by a tape recording of the hearing.

20 ~~(4)~~ (4) At the probable cause hearing, the youth ~~shall~~  
21 must be informed of his constitutional rights and his rights  
22 under this chapter.

23 ~~(5)~~ (5) A parent, guardian, or legal custodian of the  
24 youth may be held in contempt of court for failing to be  
25 present at or to participate in the probable cause hearing.

1 unless he:

2 (a) cannot be located through diligent efforts of the  
3 investigating peace officer or peace officers; or

4 (b) is excused by the court for good cause.

5 ~~(6)~~ (6) At the probable cause hearing, a guardian ad  
6 litem may be appointed as provided in 41-5-512.

7 ~~(7)~~ (7) If it is determined that there is probable cause  
8 to believe the youth is a delinquent youth or is a youth in  
9 need of supervision, the court having jurisdiction in the  
10 case shall determine whether the youth should be retained in  
11 custody. If the court determines that continued custody of  
12 the youth is necessary and if the youth meets the criteria  
13 in 41-5-305, the youth may be placed in a ~~shelter care~~  
14 facility or detention facility or shelter care facility as  
15 provided in 41-5-306 but may not be placed in a jail or  
16 other facility used for the confinement of adults accused or  
17 convicted of criminal offenses.

18 (8) If probable cause is not found, or if a probable  
19 cause hearing is not held within the time specified in  
20 subsection (2), the youth must be immediately released from  
21 custody."

22 **NEW SECTION. Section 4. Probable cause hearing --**  
23 **telephonic proceeding authorized.** A probable cause hearing  
24 may be conducted by telephone if other means of conducting  
25 the hearing are impractical. All written orders and findings

1 of the court in a hearing conducted by telephone must bear  
2 the name of the judge or magistrate presiding in the case  
3 and the hour and date the order or findings were issued.

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

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

9 (a) a licensed youth foster home as defined in  
10 41-3-1102;

11 (b) a facility operated by a licensed child welfare  
12 agency; or

13 (c) a licensed youth group home as defined in  
14 41-3-1102.

15 (2) A youth alleged to be in need of care shall be  
16 placed only in the facilities stated in subsection (1) of  
17 this section and shall not be placed in a jail or other  
18 facility intended or used for the detention of adults  
19 charged with criminal offenses.

20 (3) After a probable cause hearing provided for in  
21 41-5-303, a youth alleged to be a delinquent youth may be  
22 placed only in the facilities described in subsection (1),  
23 in a detention facility, or in a jail or other facility for  
24 the detention of adults only if the facilities in subsection  
25 (1) are not available or do not provide adequate security

1 and the detention is in an area physically and visually  
2 separate and removed from that of adults. (Terminates July  
3 1, 1991 1992--sec. 14, Ch. 434, L. 1989.)

4 **41-5-306. (Effective July 1, 1991 1992) Place of**  
5 **shelter care or detention.** (1) After a probable cause  
6 hearing provided for in 41-5-303, a youth alleged to be a  
7 youth in need of supervision may be placed only in:

8 (a) a licensed youth foster home as defined in  
9 41-3-1102;

10 (b) a facility operated by a licensed child welfare  
11 agency; or

12 (c) a licensed youth group home as defined in  
13 41-3-1102.

14 (2) A youth alleged to be a youth in need of care ~~shall~~  
15 may be placed only in the facilities stated in subsection  
16 (1) ~~of this section~~ and ~~shall~~ may not be placed in a jail or  
17 other facility intended or used for the ~~detention~~  
18 confinement of adults ~~charged with~~ accused or convicted of  
19 criminal offenses.

20 (3) After a probable cause hearing provided for in  
21 41-5-303, a youth alleged to be a delinquent youth may be  
22 placed only in the facilities described in subsection (1) or  
23 in a youth detention facility ~~as defined in 41-5-103.~~"

24 **Section 6.** Section 41-5-206, MCA, is amended to read:

25 **"41-5-206. Transfer to criminal court.** (1) After a

1 petition has been filed alleging delinquency, the court may,  
 2 upon motion of the county attorney, before hearing the  
 3 petition on its merits, transfer the matter of prosecution  
 4 to the district court if:

5 (a) (i) the youth charged was 12 years of age or more  
 6 at the time of the conduct alleged to be unlawful and the  
 7 unlawful act would constitute sexual intercourse without  
 8 consent as defined in 45-5-503, deliberate homicide as  
 9 defined in 45-5-102, ~~or~~ mitigated deliberate homicide as  
 10 defined in 45-5-103, or the attempt, as defined in 45-4-103,  
 11 of either deliberate or mitigated deliberate homicide if the  
 12 act had been committed by an adult; or

13 (ii) the youth charged was 16 years of age or more at  
 14 the time of the conduct alleged to be unlawful and the  
 15 unlawful act is one or more of the following:

16 (A) negligent homicide as defined in 45-5-104;

17 (B) arson as defined in 45-6-103;

18 (C) aggravated or felony assault as defined in  
 19 45-5-202;

20 (D) robbery as defined in 45-5-401;

21 (E) burglary or aggravated burglary as defined in  
 22 45-6-204;

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

24 (G) possession of explosives as defined in 45-8-335;

25 (H) criminal sale of dangerous drugs as included in

1 45-9-101;

2 (I) attempt, as defined in 45-4-103, of any of the acts  
 3 enumerated in subsections (1)(a)(ii)(A) through  
 4 (1)(a)(ii)(H);

5 (b) a hearing on whether the transfer should be made is  
 6 held in conformity with the rules on a hearing on a petition  
 7 alleging delinquency, except that the hearing will be to  
 8 conducted by the youth court without a jury;

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

13 (d) the court finds upon the hearing of all relevant  
 14 evidence that there is probable cause to believe that:

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

16 (ii) the seriousness of the offense and the protection  
 17 of the community require treatment of the youth beyond that  
 18 afforded by juvenile facilities; and

19 (iii) the alleged offense was committed in an  
 20 aggressive, violent, or premeditated manner.

21 (2) In transferring the matter of prosecution to the  
 22 district court, the court may also consider the following  
 23 factors:

24 (a) the sophistication and maturity of the youth,  
 25 determined by consideration of his home, environmental

1 situation, and emotional attitude and pattern of living;

2 (b) the record and previous history of the youth,  
3 including previous contacts with the youth court, law  
4 enforcement agencies, youth courts in other jurisdictions,  
5 prior periods of probation, and prior commitments to  
6 juvenile institutions. However, lack of a prior juvenile  
7 history with youth courts will not of itself be grounds for  
8 denying the transfer.

9 (3) The court shall grant the motion to transfer if the  
10 youth was 16 years old or older at the time of the conduct  
11 alleged to be unlawful and the unlawful act would constitute  
12 deliberate homicide as defined in 45-5-102, mitigated  
13 deliberate homicide as defined in 45-5-103, or the attempt,  
14 as defined in 45-4-103, of either deliberate or mitigated  
15 deliberate homicide if the act had been committed by an  
16 adult.

17 (4) Upon transfer to district court, the judge shall  
18 make written findings of the reasons why the jurisdiction of  
19 the youth court was waived and the case transferred to  
20 district court.

21 (5) The transfer terminates the jurisdiction of the  
22 youth court over the youth with respect to the acts alleged  
23 in the petition. No A youth may not be prosecuted in the  
24 district court for a criminal offense originally subject to  
25 the jurisdiction of the youth court unless the case has been

1 transferred as provided in this section.

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

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

8 (a) tried in youth court;

9 (b) transferred to district court with an offense  
10 enumerated in subsection (1), upon motion of the county  
11 attorney and order of the youth court judge.

12 (8) If a youth is found guilty in district court of any  
13 of the offenses transferred by the youth court and is  
14 sentenced to the state prison, his commitment shall must be  
15 to the department of institutions. which The department  
16 shall confine the youth in whatever institution it considers  
17 proper, including a state youth correctional facility under  
18 the procedures of 53-30-212; however, no youth under 16  
19 years of age may be confined in the state prison.

20 (9) A youth whose case is transferred to district court  
21 may not be detained or otherwise placed in an a jail or  
22 other adult detention facility before final disposition of  
23 the his case unless ~~the youth court judge determines that:~~

24 (a) ~~the--youth~~ alternative facilities do not provide  
25 adequate security; and



1 (b) ~~detention-in-the--adult--facility--is--in--an--area~~  
 2 ~~physically,--aurally,--and--visually--separate--from--that--of~~  
 3 ~~adults the youth is kept in an area that provides physical,~~  
 4 ~~as well as sight and sound, separation from adults accused~~  
 5 ~~or convicted of criminal offenses."~~

6 **Section 7.** Section 41-5-307, MCA, is amended to read:

7 "41-5-307. Release or delivery from custody. (1)  
 8 Whenever a peace officer believes, on reasonable grounds,  
 9 that a youth can be released to a person who has custody of  
 10 the youth, then the peace officer may release the youth to  
 11 that person upon receiving a written promise from the person  
 12 to bring the youth before the probation officer at a time  
 13 and place specified in the written promise, or a peace  
 14 officer may release the youth under any other reasonable  
 15 circumstances.

16 (2) Whenever the peace officer believes, on reasonable  
 17 grounds, that the youth must be detained, the peace officer  
 18 ~~must shall~~ notify the probation officer immediately and  
 19 shall, as soon as practicable, provide the probation officer  
 20 with a written report of his reasons for holding ~~that the~~  
 21 youth in ~~custody detention~~. If it is necessary to hold the  
 22 youth pending appearance before the youth court, then the  
 23 youth must be held in ~~some a place that--has-been of~~  
 24 ~~detention~~ approved by the youth court ~~and--is--completely~~  
 25 ~~separated--from--adult--offenders~~. If the peace officer

1 believes that the youth must be sheltered, the peace officer  
 2 shall notify the probation officer immediately and shall  
 3 provide a written report of his reasons for placing the  
 4 youth in shelter care. If the youth is then held, the youth  
 5 must be ~~sheltered--in--a--place~~ placed in a shelter care  
 6 facility approved by the youth court."

7 **Section 8.** Section 41-5-309, MCA, is amended to read:

8 "41-5-309. Bail. A youth placed in a detention or  
 9 shelter care ~~facility~~ may be released on bail. The court  
 10 shall use the provisions of Title 46, chapter 9, as  
 11 guidance. In determining the amount of bail, the court shall  
 12 consider the financial ability of the youth and the parents  
 13 or legal custodian of the youth."

14 **Section 9.** Section 41-5-502, MCA, is amended to read:

15 "41-5-502. Summons. (1) After a petition has been  
 16 filed, ~~summons shall~~ must be served directly to:

- 17 (a) the youth;
- 18 (b) his parent or parents having actual custody of the  
 19 youth or his guardian or custodian, as the case may be; and
- 20 (c) ~~such~~ other persons as the court may direct.
- 21 (2) The summons ~~shall~~ must:
- 22 (a) require the parties to whom it is directed to  
 23 appear personally before the court at the time fixed by the  
 24 summons to answer the allegations of the petition;
- 25 (b) advise the parties of their right to counsel under

1 the Montana Youth Court Act; and

2 (c) have attached to it a copy of the petition.

3 (3) The court may endorse upon the summons an order  
4 directing the person or persons having the physical custody  
5 or control of the youth to bring the youth to the hearing.

6 (4) If it appears to the court that the youth needs to  
7 be placed in detention or shelter care, the judge may  
8 endorse on the summons an order directing the officer  
9 serving the summons to at once take the youth into custody  
10 and to take him to the place of detention or shelter care  
11 designated by the court, subject to the rights of the youth  
12 and parent or person having legal custody of the youth as  
13 set forth in the provisions of the Montana Youth Court Act  
14 relating to detention and shelter care criteria and  
15 postdetention proceedings.

16 (5) If any youth is placed in detention or shelter care  
17 ~~or-detained~~ under any provision of this chapter pending an  
18 adjudication, the court, ~~--upon--petition-of-the-youth--his~~  
19 ~~parents-or-guardian--or--his--counsel,~~ shall, as soon as  
20 practicable, conduct a probable cause hearing ~~in-order-to~~  
21 ~~determine-whether-the-circumstances-of-the-case-require-such~~  
22 ~~detention-or-shelter-care-and--the--form--the--detention--or~~  
23 ~~shelter--care--shoud--take--All-mentioned-parties-shall-be~~  
24 ~~notified-of-such-petition-process-at--the--time--of--initial~~  
25 ~~detention-or-shelter-care~~ as provided in 41-5-303.

1 (6) The youth court judge may also admit the youth to  
2 bail in accordance with Title 46, chapter 9."

3 **Section 10.** Section 7-32-2244, MCA, is amended to read:

4 "~~7-32-2244. Juvenile---detention---center---standards~~  
5 Detention of juveniles. (1) Juveniles may be held in a  
6 detention center only in accordance with [section 1],  
7 41-5-301 through 41-5-307, and 41-5-309.

8 ~~(2)--Detention-centers-that-hold-juvenities--must--comply~~  
9 ~~with---the---standards---for---the--detention--of--juvenities~~  
10 ~~promulgated-by-the-department-of-family-services."~~

11 **Section 11.** Section 53-30-229, MCA, is amended to read:

12 "53-30-229. Hearing on alleged violation of aftercare  
13 agreement -- right to appeal outcome. (1) When it is alleged  
14 by an aftercare counselor that a youth has violated the  
15 terms of his aftercare agreement, the youth shall must be  
16 granted a hearing at the site of the alleged violation or in  
17 the county where in which the youth is residing or is found  
18 within 10 days after notice has been served on the youth or  
19 the youth is detained, whichever is earlier. The purpose of  
20 the hearing is to determine whether the youth committed the  
21 violation and, if so, whether the violation is of such a  
22 nature that he should be returned to the youth correctional  
23 facility from which he was released or a different plan for  
24 treatment should be pursued by the department of family  
25 services.

1 (2) The youth, upon advice of an attorney, may waive  
2 his right to a hearing.

3 (3) With regard to this hearing, the youth shall must  
4 be given:

5 (a) written notice of the alleged violation of his  
6 aftercare agreement, including notice of the purpose of the  
7 hearing;

8 (b) disclosure of the evidence against him and the  
9 facts constituting the alleged violation;

10 (c) opportunity to be heard in person and to present  
11 witnesses and documentary evidence to controvert the  
12 evidence against him and to show that there are compelling  
13 reasons that justify or mitigate the violation;

14 (d) opportunity to have the referee subpoena witnesses;

15 (e) the right to confront and cross-examine adverse  
16 witnesses;

17 (f) the right to be represented by an attorney;

18 (g) a record of the hearing; and

19 (h) notice that a written statement as to the evidence  
20 relied upon in reaching the final decision and the reasons  
21 for the final decision will be provided by the referee.

22 (4) The department shall appoint a referee, who may not  
23 be an employee of the department, to conduct the hearing. In  
24 the conduct of the hearing, the department may request the  
25 county attorney's assistance as necessary. The department

1 shall adopt rules necessary to effect a prompt and full  
2 review.

3 (5) If the referee finds, by a preponderance of the  
4 evidence, that the youth did in fact commit the violation,  
5 he shall make a recommendation to the department for the  
6 placement of the youth. In making this recommendation, the  
7 referee may consider mitigating circumstances. Final  
8 approval rests with the department and must be made within  
9 10 days of the referee's recommendation.

10 (6) The youth may appeal from the decision at the  
11 hearing to the district court of the county in which the  
12 hearing was held by serving and filing a notice of appeal  
13 with the court within 10 days of the department's decision.  
14 The youth may obtain a written transcript of the hearing  
15 from the department by giving written notice of appeal. The  
16 district court, upon receipt of a notice of appeal, shall  
17 order the department to promptly certify to the court a  
18 record of all proceedings before the department and shall  
19 proceed to a prompt hearing on the appeal based upon the  
20 record on appeal. The decision of the department may not be  
21 altered except for abuse of discretion or manifest  
22 injustice.

23 (7) Pending the hearing on a violation and pending the  
24 department's decision, a youth may not be detained except  
25 when his detention or care is required to protect the person

1 or property of the youth or of others or he may abscond or  
 2 be removed from the community. The department shall  
 3 determine the place and manner of detention and is  
 4 responsible for the cost of the detention. Procedures for  
 5 taking into custody and detention of a youth charged with  
 6 violation of his aftercare agreement are as provided in  
 7 41-3-1111, 41-5-303~~(2)~~--through-~~(6)~~, 41-5-306, and ~~41-5-308~~  
 8 [section 1].

9 (8) If the decision is made to return the youth to the  
 10 youth correctional facility from which he was released and  
 11 the youth appeals that decision, he shall await the outcome  
 12 of the appeal at the facility."

13 **Section 12.** Section 14, Chapter 434, Laws of 1989, is  
 14 amended to read:

15 "Section 14. Section 16, Chapter 475, Laws of 1987, is  
 16 amended to read:

17 "Section 16. **Effective dates -- termination date.** (1)  
 18 Except as provided in subsections (2) and (3), sections 1  
 19 through 13 are effective October 1, 1987.

20 (2) The bracketed language in subsection (5) of section  
 21 1 is effective July 1, ~~1991~~ 1992.

22 (3) The bracketed language in subsection (3) of section  
 23 9 terminates July 1, ~~1991~~ 1992."

24 **Section 13.** Section 17, Chapter 434, Laws of 1989, is  
 25 amended to read:

1 "Section 17. **Effective date dates.** ~~{Sections 5 and 7 of~~  
 2 ~~this act}~~ are (1) [Section 7] is effective July 1, 1991.

3 (2) [Section 5] is effective July 1, 1992."

4 **NEW SECTION. Section 14. Repealer.** Section 41-5-308,  
 5 MCA, is repealed.

6 **NEW SECTION. Section 15. Codification instruction.** (1)  
 7 [Sections 1 and 4] are intended to be codified as an  
 8 integral part of Title 41, chapter 5, part 3, and the  
 9 provisions of Title 41, chapter 5, part 3, apply to  
 10 [sections 1 and 4].

11 (2) Section 41-3-1111, MCA, is intended to be  
 12 renumbered and codified as an integral part of Title 41,  
 13 chapter 5, part 3.

14 **NEW SECTION. Section 16. Effective dates.** (1)  
 15 [Sections 12, 13, 15, and this section] are effective July  
 16 1, 1991.

17 (2) [Sections 1 through 11 and 14] are effective July  
 18 1, 1992.

19 **NEW SECTION. SECTION 17. COORDINATION INSTRUCTION. IF**  
 20 **SENATE BILL NO. 37 IS NOT PASSED AND APPROVED, THEN [THIS**  
 21 **ACT] IS VOID.**

-End-