### SENATE BILL NO. 59

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

	IN THE SENATE
JANUARY 8, 1991	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
JANUARY 18, 1991	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
JANUARY 21, 1991	PRINTING REPORT.
	PASS CONSIDERATION.
JANUARY 22, 1991	SECOND READING, DO PASS.
JANUARY 23, 1991	ENGROSSING REPORT.
	THIRD READING, PASSED. AYES, 50; NOES, 0.
	TRANSMITTED TO HOUSE.
	IN THE HOUSE
JANUARY 24, 1991	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	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, 86; NOES, 13.
	RETURNED TO SENATE.
	IN THE SENATE

RECEIVED FROM HOUSE.

SENT TO ENROLLING.

FEBRUARY 18, 1991

FEBRUARY 22, 1991	REPORTED CORRECTLY ENROLLED.
	SIGNED BY PRESIDENT.
FEBRUARY 23, 1991	SIGNED BY SPEAKER.
	DELIVERED TO GOVERNOR.
FEBRUARY 27, 1991	RETURNED FROM GOVERNOR WITH RECOMMENDED AMENDMENTS.
MARCH 23, 1991	SECOND READING, GOVERNOR'S AMENDMENTS CONCURRED IN.
MARCH 25, 1991	THIRD READING, GOVERNOR'S AMENDMENTS CONCURRED IN.
	IN THE HOUSE
APRIL 8, 1991	SECOND READING, GOVERNOR'S AMENDMENTS CONCURRED IN.
APRIL 9, 1991	THIRD READING, GOVERNOR'S AMENDMENTS CONCURRED IN.
	IN THE SENATE
APRIL 10, 1991	SENT TO ENROLLING.
	REPORTED CORRECTLY ENROLLED.

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1	BILL NO. 31
2	INTRODUCED BY Gellowtal
3	BY REQUEST OF THE JOINT INTERIM SUBCOMMITTEE
4	ON ADULT AND JUVENILE DETENTION
5	
6	A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING THE
7	PLACEMENT OF YOUTH IN NEED OF SUPERVISION IN A JAIL, SECURE
8	DETENTION FACILITY, OR CORRECTIONAL FACILITY; PROVIDING
9	CRITERIA FOR THE DETENTION OF YOUTH IN SECURE DETENTION
10	FACILITIES AND SHELTER CARE FACILITIES; PROVIDING CRITERIA
11	FOR THE DETENTION OF YOUTH IN LAW ENFORCEMENT FACILITIES
12	THAT INCLUDE A JAIL; AMENDING SECTIONS 41-5-103, 41-5-305,
13	41-5-306, AND 53-30-202, MCA; AND PROVIDING EFFECTIVE
14	DATES."
15	
16	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
17	NEW SECTION. Section 1. Detention of youth in need of
18	supervision prohibitions. A youth alleged or found to be
19	a youth in need of supervision may not be placed in a jail,
20	secure detention facility, or correctional facility.
21	Section 2. Section 41-5-103, MCA, is amended to read:
22	"41-5-103. Definitions. For-the-purposes-of As used in
23	the Montana Youth Court Act, unless the context requires
24	otherwise stated, the following definitions apply:
25	(1) "Adult" means an individual who is 18 years of age

2	(2) "Agency" means any entity of state or local
3	government authorized by law to be responsible for the care
4	or rehabilitation of youth.
5	(3) "Commit" means to transfer to legal custody.
б	(4) "Correctional facility" means a public or private
7	residential facility used for the placement of delinquent
8	youth or individuals convicted of criminal offenses.
9	<pre>f4)(5) "Court", when used without further</pre>
10	qualification, means the youth court of the district court.
11	(6) "Custodian" means a person, other than a parent or
12	quardian, to whom legal custody of the youth has been given
13	but does not include a person who has only physical custody.
14	(7) "Delinquent youth" means a youth:
15	(a) who has committed an offense that, if committed by
16	an adult, would constitute a criminal offense; or
17	(b) who, having been placed on probation as a
18	delinquent youth or a youth in need of supervision, violates
1.9	any condition of his probation.
20	(5)(8) "Department" means the department of family
21	services provided for in 2-15-2401.
22	(9) "Detention" means the holding or temporary
23	placement of a youth in a facility other than the youth's
24	own home for the purpose of ensuring the continued custody

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INTRODUCED BILL S8 59

of the youth at any time after the youth is taken into

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1	custody	and	before	final	disposition	of	his	case.

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- (10) "Detention facility" means a physically restricting facility designed to prevent a youth from departing at will.
- 4 (11) "Final disposition" means the implementation of a
  5 court order for the disposition or placement of a youth as
  6 provided in 41-5-523.
- 7 (6)(12) "Foster home" means a private residence licensed
   8 by the department for placement of a youth.
  - (7)(13) "Guardianship" means the status created and defined by law between a youth and an adult with the reciprocal rights, duties, and responsibilities.
- 12 (14) "Jail" means a facility used for the confinement of
  13 adults accused or convicted of criminal offenses. The term
  14 includes a lockup or other facility used primarily for the
  15 temporary confinement of adults after arrest.
- 16 (8)(15) "Judge", when used without further
  17 qualification, means the judge of the youth court.
  - (9)(16) (a) "Legal custody" means the legal status
    created by order of a court of competent jurisdiction that
    gives a person the right and duty to:
    - (i) have physical custody of the youth;
- (ii) determine with whom the youth shall live and for what period;
- 24 (iii) protect, train, and discipline the youth; and
- 25 (iv) provide the youth with food, shelter, education,

1 and ordinary medical care.

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- 2 (b) An individual granted legal custody of a youth
  3 shall personally exercise his rights and duties as guardian
  4 unless otherwise authorized by the court entering the order.
  - (17) "Necessary parties" includes the youth, his parents, quardian, custodian, or spouse.
- 7 (10)(18) "Parent" means the natural or adoptive parent
  8 but does not include a person whose parental rights have
  9 been judicially terminated, nor does it include the putative
  10 father of an illegitimate youth unless his paternity is
  11 established by an adjudication or by other clear and
  12 convincing proof.
- 13 (11)-"Youth"-means-an-individual-who--is--less--than--18
  14 years-of-age-without-regard-to-sex-or-emancipation-
- 15 (12)-"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 (19) "Restitution" means payments in cash to the victim
  21 or with services to the victim or the general community when
  22 these payments are made pursuant to an informal adjustment,
- 23 consent decree, or other youth court order.
- 24 (20) "Secure detention facility" means any public or
  25 private facility that:

1	<u>(a) is</u>	used for	the	temporar	Υ	placement	of	youth	_ 01
2	individuals	accused	or c	onvicted	of	criminal	offen	ses: a:	nd

- 3 (b) is designed to physically restrict the movements
  4 and activities of youth or other individuals held in lawful
  5 custody of the facility.
- 6 (21) "Serious juvenile offender" means a youth who has
  7 committed an offense that would be considered a felony
  8 offense if committed by an adult and that is an offense
  9 against a person, an offense against property, or an offense
  10 involving dangerous drugs.
- 11 (22) "Shelter care" means the temporary substitute care

  12 of youth in physically unrestricting facilities.
- 13 (23) "Shelter care facility" means a facility used for

  14 the shelter care of youth. The term is limited to the

  15 facilities enumerated in 41-5-306(1).
- 16 (24) "State youth correctional facility" means a

  17 residential facility used for the placement and

  18 rehabilitation of delinquent youth, such as the Pine Hills

  19 school in Miles City and the Mountain View school in Helena.
- school in Miles City and the Mountain View school in Helena.

  (25) "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

quardian.

- 1 (26) "Youth" means an individual who is less than 18
  2 years of age without regard to sex or emancipation.
- 3 (27) "Youth court" means the court established pursuant
- 4 to this chapter to hear all proceedings in which a youth is
- 5 alleged to be a delinquent youth, a youth in need of
- 6 supervision, or a youth in need of care and includes the
- 7 youth court judge and probation officers.
- 8 (28) "Youth detention facility" means a secure detention
- 9 <u>facility that:</u>
- 10 (a) is operated, administered, and staffed separately
- 11 and independently of a jail; and
- 12 (b) is used exclusively for the lawful detention of
- 13 <u>alleged or adjudicated delinquent youth.</u>
- 14 (29) "Youth in need of care" has the meaning provided
- 15 for in 41-3-102.
- 16 (30) "Youth in need of supervision" means a youth who
- 17 commits an offense prohibited by law that, if committed by
- an adult, would not constitute a criminal offense, including
- 19 but not limited to a youth who:
- 20 (a) violates any Montana municipal or state law
- 21 regarding use of alcoholic beverages by minors;
- 22 (b) habitually disobeys the reasonable and lawful
- 23 demands of his parents, foster parents, physical custodian,
- 24 or quardian or is beyond control;
- 25 (c) being subject to compulsory school attendance, is

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1	habitually truant from school; or
2	(d) has committed any of the acts of a delinquent youth
3	but whom the youth court, in its discretion, chooses to
4	regard as a youth in need of supervision.
5	(13)-"Belinquent-youth"-means-a-youth:
6	(a)who-has-committed-an-offense-which;-if-committed-by
7	an-adult;-would-constitute-a-criminal-offense;
8	(b)who;havingbeenplacedonprobationasa
9	delinquent-youth-or-a-youth-in-need-of-supervision,-violates
10	any-condition-of-his-probation.
11	(14)-"Youth-in-need-of-supervision"-meansayouthwho
12	commitsan-offense-prohibited-by-law-which;-if-committed-by
13	an-adulty-would-not-constitute-a-criminal-offensey-including
14	but-not-limited-to-a-youth-who:
15	(a)violatesanyMontanamunicipalorstatelaw
16	regarding-use-of-alcoholic-beverages-by-minors;
17	<pre>fb}habituallydisobeystheressonableandlawful</pre>
18	demands-of-his-parents;-foster-parents;-physicalcustodian;
19	or-guardian-or-is-ungovernable-and-beyond-their-control;
20	(c)beingsubjectto-compulsory-school-attendance;-is
21	habitually-truant-from-school;-or
22	<pre>(d)has-committed-any-of-the-acts-of-a-delinquent-youth</pre>
23	but-whom-the-youth-court-in-its-discretion-chooses-to-regard
24	as-a-youth-in-need-of-supervision-
25	(15)-"Youth-in-need-of-care"-means-a-youth-as-defined-in

1	41-3-102-
2	(16)-"Gustodian"-means-a-person-other-than-aparentor
3	guardiantowhom-legal-custody-of-the-youth-has-been-given
4	but-does-not-include-a-person-who-has-only-physical-custody-
5	(17)-"Necessary-parties"-include-the-youth;-his-parents;
6	guardiany-custodiany-or-spouse-
7	(10)-"Stateyouthcorrectionalfacility"meansa
8	residentialfacilityforthe-rehabilitation-of-delinquent
9	youth-such-as-Pine-Hills-school-in-Miles-City;-andMountain
10	View-school-in-Helena-
11	$(19)^{-1}$ Sheltercare -means-the-temporary-substitute-care
12	of-youth-in-physically-unrestricting-facilities.
13	$(20)^{-1}$ Detention $^{1}$ -means-the-temporary-substitute-care-of
14	youth-in-physically-restricting-facilities.
15	(21)-"Detention-facility"-means-a-physically-restricting
16	facility-designed-to-prevent-a-youth-from-departing-at-will-
17	(22)-"Restitution"means-payments-in-cash-to-the-victim
18	or-with-services-to-the-victim-or-the-general-community-when
19	these-payments-are-made-pursuant-to-an-informaladjustment;
20	consent-decree,-or-other-youth-court-order.
21	(23)-"Substitutecare"-means-full-time-care-of-youth-in
<b>2</b> 2	a-residential-setting-for-thepurposeofprovidingfood;
23	shelter;securityandsafety;-guidance;-direction;-and-if
24	necessary;-treatmenttoyouthwhoareremovedfromor
25	withoutthecareandsupervisionoftheirparentsor

1	quardian-

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- (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:"
- 7 Section 3. Section 41-5-305, MCA, is amended to read:
  - "41-5-305. Betention-and-shelter-care of-youth Criteria for placement of youth in secure detention facilities or shelter care facilities. (1) After-a-probable-cause--hearing provided--for--in-41-5-3037-a A youth may not be placed in a secure detention facility unless:
  - (a) he has allegedly committed an act which that if committed by an adult would constitute a criminal offense and the alleged offense is one specified in 41-5-206;
- (b) he is alleged to be a delinquent youth and:

- 25 (f)(iv) he has pending court or administrative action or

- 1 is awaiting a transfer to another jurisdiction and may
- 2 abscond or be removed from the jurisdiction of the court;
- $\frac{3}{\sqrt{(v)}}$  there are not adequate assurances that he will
- 4 appear for court when required; or
- 5 (h)(vi) he meets additional criteria for secure
- 6 detention established by the youth court in the judicial
- 7 district that has current jurisdiction over him; or
- 8 (c) he has been adjudicated delinquent and is awaiting
- 9 final disposition of his case.
- 10 (2) A youth may not be placed in a shelter care
- 11 facility unless:
- 12 (a) the youth and his family need shelter care to
- 13 address their problematic situation when it is not possible
- 14 for the youth to remain at home:
- 15 (b) the youth needs to be protected from physical or
- 16 emotional harm:
- 17 (c) the youth needs to be deterred or prevented from
- 18 immediate repetition of his troubling behavior;
- (d) shelter care is necessary to assess the youth and
- 20 his environment;
- 21 (e) shelter care is necessary to provide adequate time
- 22 for case planning and disposition; or
- 23 (f) shelter care is necessary to intervene in a crisis
- 24 situation and provide intensive services or attention that
- 25 might alleviate the problem and reunite the family."

- Section 4. Section 41-5-306, MCA, is amended to read:
- 2 "41-5-306. (Temporary) Place of shelter care or
- 3 detention. (1) After a probable cause hearing provided for
- 4 in 41-5-303, a youth alleged to be a youth in need of
- 5 supervision may be placed only in:
- 6 (a) a licensed youth foster home as defined in
- 7 41-3-1102;
- 8 (b) a facility operated by a licensed child welfare
- 9 agency; or
- 10 (c) a licensed youth group home as defined in
- 11 41-3-1102.
- 12 (2) A youth alleged to be a youth in need of care shall
- 13 may be placed only in the facilities stated in subsection
- 14 (1) of-this-section and shall may not be placed in a jail or
- 15 other facility intended or used for the detention
- 16 confinement of adults charged-with accused or convicted of
- 17 criminal offenses.
- 18 (3) After a probable cause hearing provided for in
- 19 41-5-303, a youth alleged to be a delinquent youth may be
- 20 placed only in:
- 21 (a) the facilities described in subsection (1)7-in;
- 22 (b) a youth detention facility, or
- 23 (c) a jail or other facility for the detention
- 24 confinement of adults but only if the--facilities--in
- 25 subsection-(1):

- 1 <u>(i) alternative facilities</u> are not available or 2 available facilities do not provide adequate security; and
- 3 (ii) the detention-is-in-an-area-physically-and-visually
- 4 separate-and-removed-from-that-of-adults youth is kept in an
- 5 area that provides physical, as well as sight and sound,
- separation from adults accused or convicted of criminal
- 7 <u>offenses</u>. (Terminates July 1, 1991--sec. 14, Ch. 434, L.
- 8 1989.}"
- 9 Section 5. Section 41-5-306, MCA, is amended to read:
- 10 "41-5-306. (Effective July 1, 1991) Place of shelter
- 11 care or detention. (1) After a probable cause hearing
- 12 provided for in 41-5-303, a youth alleged to be a youth in
- 13 need of supervision may be placed only in:
- 14 (a) a licensed youth foster home as defined in
  - 41-3-1102;

- (b) a facility operated by a licensed child welfare
- 17 agency; or
- 18 (c) a licensed youth group home as defined in
- 19 41-3-1102.
- 20 (2) A youth alleged to be a youth in need of care shall
- 21 may be placed only in the facilities stated in subsection
- 22 (1) of-this-section and shall may not be placed in a jail or
- 23 other facility intended or used for the detention
- 24 confinement of adults charged-with accused or convicted of
- 25 criminal offenses.

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

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Miles City.

- 5 Section 6. Section 53-30-202, MCA, is amended to read:
  - "53-30-202. Establishment of state youth correctional facilities -- prohibitions, (1) The department of family services, within the annual or biennial budgetary appropriation, may establish, maintain, and operate facilities to properly diagnose, care for, train, educate, and rehabilitate children youth in need of these services. The children youth must be 10 years of age or older and under 19 years of age. The facilities include but are not limited to the state youth correctional facilities at the Mountain View school in Helena and the Pine Hills school in
  - (2) A youth alleged or found to be a youth in need of supervision may not be placed in a state youth correctional facility as defined in 41-5-103."
- NEW SECTION. Section 7. Permitted acts -- detention of 20 youth in law enforcement facilities -- criteria. (1) Nothing 21 22 in this chapter precludes the detention of youth in a police 23 station or other law enforcement facility that is attached 24 to or part of a jail if:
- (a) the area where the youth is held is an unlocked, 25

- mul@ipurpose area, such as a lobby, office, interrogation
- room, or other area that is not designated or used as a
  - secure detention area or that is not part of a secure
- detention area, or, if part of such an area, that is used
- only for the purpose of processing, such as a booking room:
- (b) the youth is not secured to a cuffing rail or other 7 stationary object during the period of detention;
- (c) use of the area is limited to ensuring custody of
- 9 the youth for the purpose of identification, processing, or
- 10 transfer of the youth to an appropriate detention or shelter
  - care facility;

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- 12 (d) the area is not designed or intended to be used for 13 residential purposes: and
- 14 (e) the youth is under continuous visual supervision by
  - a law enforcement officer or by facility staff during the
- 16 period of time that the youth is held in detention.
- 17 (2) For purposes of this section, "secure detention"
- 18 means the detention of youth or confinement of adults
- 19 accused or convicted of criminal offenses in a physically
- restricting setting, including but not limited to a locked 20
- 21 room or set of rooms or a cell designed to prevent a youth
- 22 or adult from departing at will.
- 23 NEW SECTION. Section 8. Codification instruction.
- 24 (Sections 1 and 7) are intended to be codified as an
- 25 integral part of Title 41, chapter 5, part 3, and the

- 1 provisions of Title 41, chapter 5, part 3, apply to
- 2 [sections 1 and 7].
- 3 NEW SECTION. Section 9. Effective dates. (1) [Sections
- 4 1 through 4, 6 through 8, and this section] are effective on
- 5 passage and approval.
- 6 (2) [Section 5] is effective July 1, 1992.

-End-

#### STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0059, as introduced.

#### DESCRIPTION OF PROPOSED LEGISLATION:

An act prohibiting the placement of youth in need of supervision in a jail, secure detention facility, or correctional facility; providing criteria for the detention of youth in secure detention facilities and shelter care facilities; providing criteria for the detention of youth in law enforcement facilities that include jail; and providing effective dates.

#### ASSUMPTIONS:

- 1. The youth detention population is comprised of an average daily population (ADP) of 8.3 youth statewide.
- 2. 16% of the 8.3 ADP are status offenders.
- 3. The ADP of status offenders is 1.3 statewide.
- 4. Counties will have to find alternatives to secure detention for 1.3 ADP youth status offenders.

#### FISCAL IMPACT:

No fiscal impact on state expenditures or revenues.

#### EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

Counties will be required to find alternatives to secure detention for 1.3 ADP youth status offenders.

ROD SUNDSTED, BUDGET DIRECTOR

DATE

Office of Budget and Program Planning

ILL YELLOWTAIL PRIMARY SPONSOR

Fiscal Note for SBOONA, as introduced

CR 59

## APPROVED BY COMMITTEE ON JUDICIARY

1	SENATE BILL NO. 59
2	INTRODUCED BY YELLOWTAIL
3	BY REQUEST OF THE JOINT INTERIM SUBCOMMITTEE
4	ON ADULT AND JUVENILE DETENTION
5	
6	A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING THE
7	PLACEMENT OF YOUTH IN NEED OF SUPERVISION IN A JAIL, SECURE
8	DETENTION FACILITY, OR CORRECTIONAL FACILITY; PROVIDING
9	CRITERIA FOR THE DETENTION OF YOUTH IN SECURE DETENTION
10	FACILITIES AND SHELTER CARE FACILITIES; PROVIDING CRITERIA
11	FOR THE DETENTION OF YOUTH IN LAW ENFORCEMENT FACILITIES
12	THAT INCLUDE A JAIL; AMENDING SECTIONS 41-5-103, 41-5-305,
13	41-5-306, AND 53-30-202, MCA; AND PROVIDING EFFECTIVE
14	DATES."
15	
16	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
17	NEW SECTION. Section 1. Detention of youth in need of
18	supervision prohibitions. A youth alleged or found to be
19	a youth in need of supervision may not be placed in a jail,
20	secure detention facility, or correctional facility.
21	Section 2. Section 41-5-103, MCA, is amended to read:
22	*41-5-103. Definitions. For-the-purposes-of As used in
23	the Montana Youth Court Act, unless the context requires
24	otherwise stated, the following definitions apply:
25	(1) "Adult" means an individual who is 18 years of age

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- 2 (2) "Agency" means any entity of state or local
  3 government authorized by law to be responsible for the care
  4 or rehabilitation of youth.
- 5 (3) "Commit" means to transfer to legal custody.
- 6 (4) "Correctional facility" means a public or private
  7 residential facility used for the placement of delinquent
  8 youth or individuals convicted of criminal offenses.
- 9 (4)(5) "Court", when used without further
  10 qualification, means the youth court of the district court.
- 11 (6) "Custodian" means a person, other than a parent or
- 13 but does not include a person who has only physical custody.

guardian, to whom legal custody of the youth has been given

- 14 (7) "Delinquent youth" means a youth:
- 15 (a) who has committed an offense that, if committed by
  16 an adult, would constitute a criminal offense; or
- 17 (b) who, having been placed on probation as a
- 18 delinquent youth or a youth in need of supervision, violates
- 19 any condition of his probation.
- 20 (5)(8) "Department" means the department of family
- 21 services provided for in 2-15-2401.
- 22 (9) "Detention" means the holding or temporary
- 23 placement of a youth IN THE YOUTH'S HOME UNDER HOME ARREST
- 24 OR in a facility other than the youth's own home for the
- 25 purpose of ensuring the continued custody of the youth at

_	any time after the youth is taken into custody and before
2	final disposition of his case.
3	(10) "Detention facility" means a physically restricting
4	facility designed to prevent a youth from departing at will.
5	(11) "Final disposition" means the implementation of a
6	court order for the disposition or placement of a youth as
7	provided in 41-5-523.
8	(6)(12) "Foster home" means a private residence licensed
9	by the department for placement of a youth.
10	(7)(13) "Guardianship" means the status created and
11	defined by law between a youth and an adult with the
12	reciprocal rights, duties, and responsibilities.
13	(14) "Jail" means a facility used for the confinement of
14	adults accused or convicted of criminal offenses. The term
15	includes a lockup or other facility used primarily for the
16	temporary confinement of adults after arrest.
17	(8)(15) "Judge", when used without further
18	qualification, means the judge of the youth court.
19	$\{9\}$ (16) (a) "Legal custody" means the legal status
20	created by order of a court of competent jurisdiction that
21	gives a person the right and duty to:

(i) have physical custody of the youth;

(ii) determine with whom the youth shall live and for

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

1	(iv) provide the youth with food, shelter, education,
2	and ordinary medical care.
3	(b) An individual granted legal custody of a youth
4	shall personally exercise his rights and duties as guardian
5	unless otherwise authorized by the court entering the order.
6	(17) "Necessary parties" includes the youth, his
7	parents, quardian, custodian, or spouse.
8	(18) "Parent" means the natural or adoptive parent
9	but does not include a person whose parental rights have
10	been judicially terminated, nor does it include the putative
11	father of an illegitimate youth unless his paternity is
12	established by an adjudication or by other clear and
13	convincing proof.
14	(11)-"Youth"meansanindividualwho-is-less-than-18
15	years-of-age-without-regard-to-sex-or-emancipation-
16	(12)-"Youth-court"-means-the-court-establishedpursuant
17	to-this-chapter-to-hear-all-proceedings-in-which-a-youth-is
18	alleged-to-beadelinguentyouth,ayouthinneedof
19	supervision,orayouthin-need-of-care-and-includes-the
20	youth-court-judge-and-probation-officers-

(19) "Restitution" means payments in cash to the victim

(20) "Secure detention facility" means any public or

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.

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- (a) is used for the temporary placement of youth or
   individuals accused or convicted of criminal offenses; and
- 4 (b) is designed to physically restrict the movements
  5 and activities of youth or other individuals held in lawful
  6 custody of the facility.
- 7 (21) "Serious juvenile offender" means a youth who has
  8 committed an offense that would be considered a felony
  9 offense if committed by an adult and that is an offense
  10 against a person, an offense against property, or an offense
  11 involving dangerous drugs.
- 12 (22) "Shelter care" means the temporary substitute care

  13 of youth in physically unrestricting facilities.
- 14 (23) "Shelter care facility" means a facility used for
  15 the shelter care of youth. The term is limited to the
  16 facilities enumerated in 41-5-306(1).
- 17 (24) "State youth correctional facility" means a

  18 residential facility used for the placement and

  19 rehabilitation of delinquent youth, such as the Pine Hills

  20 school in Miles City and the Mountain View school in Helena.
  - (25) "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

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- 2 (26) "Youth" means an individual who is less than 18
  3 years of age without regard to sex or emancipation.
- 4 (27) "Youth court" means the court established pursuant
- 5 to this chapter to hear all proceedings in which a youth is
- 6 alleged to be a delinquent youth, a youth in need of
  7 supervision, or a youth in need of care and includes the
- 8 youth court judge and probation officers.
- 9 (28) "Youth detention facility" means a secure detention
- 10 facility that:
- 11 (a) is operated, administered, and staffed separately
- 12 and independently of a jail; and
- (b) is used exclusively for the lawful detention of
- 14 alleged or adjudicated delinquent youth.
- 15 (29) "Youth in need of care" has the meaning provided
- 16 for in 41-3-102.
- 17 (30) "Youth in need of supervision" means a youth who
- 18 commits an offense prohibited by law that, if committed by
- 19 an adult, would not constitute a criminal offense, including
- 20 but not limited to a youth who:
- 21 (a) violates any Montana municipal or state law
- 22 regarding use of alcoholic beverages by minors;
- 23 (b) habitually disobeys the reasonable and lawful
- 24 demands of his parents, foster parents, physical custodian,
- or guardian or is beyond control;

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L	tl5)-"Youth-in-need-of-care"-means-a-youth-as-defined-in
2	41-3-102-
3	(16)-"Enstodian"meansa-person-other-than-a-parent-or
4	guardian-to-whom-legal-custody-of-the-youth-hasbeengiven
5	but-does-not-include-a-person-who-has-only-physical-custody-
6	(17)-"Necessary-parties"-include-the-youthy-his-parents;
7	guardian;-custodian;-or-spouse;
8	(18)-#Stateyouthcorrectionalfacility#meanss
9	residential-facility-for-therehabilitationofdelinquent
0	youthsuch-as-Pine-Hills-school-in-Miles-City;-and-Mountair
1	View-school-in-Helena-
2	(19)-"Shelter-care"-means-the-temporary-substitutecare
3	of-youth-in-physically-unrestricting-facilities.
4	(20)-"Betention"means-the-temporary-substitute-care-of
5	youth-in-physically-restricting-facilities.
6	(21)-"Detention-facility"-means-a-physically-restriction
7	facility-designed-to-prevent-a-youth-from-departing-at-will
8	(22)-"Restitution"-means-payments-in-cash-to-thevicti
9	or-with-services-to-the-victim-or-the-general-community-whe
0	thesepayments-are-made-pursuant-to-an-informal-adjustment
1	consent-decree,-or-other-youth-court-order-
2	(23)-"Substitute-care"-means-full-time-care-of-youthi
3	aresidentialsettingforthe-purpose-of-providing-food
24	shelter;-security-and-safety;-guidance;direction;andi

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necessary,--treatment--to--youth--who--are--removed--from-or

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1	withoutthecareandsupervisionoftheirparentsor
2	guardian-
3	(24)-"Serious-juvenile-offender"-means-a-youthwhohas
4	committedan-offense-against-the-person;-an-offense-against
5	property;-or-anoffenseinvolvingdangerousdrugswhich
6	wouldbeconsideredafelonyoffense-if-committed-by-an
7	adult:"
8	Section 3. Section 41-5-305, MCA, is amended to read:
9	"41-5-305. Betention-and-shelter-care of-youth Criteria
10	for placement of youth in secure detention facilities or
11	shelter care facilities. (1) After-a-probable-cause-hearing
12	provided-for-in-41-5-3037-a $\underline{A}$ youth may not be placed in a
13	secure detention facility unless:
14	(a) he has allegedly committed an act which that if
15	committed by an adult would constitute a criminal offense
16	and the alleged offense is one specified in 41-5-206;
17	(b) he is alleged to be a delinquent youth and:
18	<pre>(b)(i) he has escaped from a correctional facility or</pre>
19	secure detention facility;
20	(e)(ii) he has violated a valid court order or an
21	aftercare agreement;
22	(d)(iii) his detention is required to protect persons or
23	property;

(c) he has been adjudicated delinquent and is awaiting 10 final disposition of his case. (2) A youth may not be placed in a shelter care 11 12 facility unless: (a) the youth and his family need shelter care to 13 address their problematic situation when it is not possible 14 for the youth to remain at home; 15 (b) the youth needs to be protected from physical or 16 17 emotional harm: (c) the youth needs to be deterred or prevented from 18 immediate repetition of his troubling behavior; 19 20 (d) shelter care is necessary to assess the youth and 21 his environment; (e) shelter care is necessary to provide adequate time 22 for case planning and disposition; or 23 24 (f) shelter care is necessary to intervene in a crisis 25 situation and provide intensive services or attention that

+f+(iv) he has pending court or administrative action or

(q)(v) there are not adequate assurances that he will

is awaiting a transfer to another jurisdiction and may

abscond or be removed from the jurisdiction of the court;

th)(vi) he meets additional criteria for

district that has current jurisdiction over him-; or

detention established by the youth court in the judicial

appear for court when required; or

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secure

appear-for-court-proceedings-as-ordered;

te) -- there -- is -good - reason - to - believe - the - youth - will - not

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- might alleviate the problem and reunite the family."
- Section 4. Section 41-5-306, MCA, is amended to read: 2
- "41-5-306. (Temporary) Place of shelter care or
- detention. (1) After a probable cause hearing provided for
- 5 in 41-5-303, a youth alleged to be a youth in need of
  - supervision may be placed only in:
- 7 (a) a licensed youth foster home as defined in
- 41-3-1102;

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- (b) a facility operated by a licensed child welfare 9
- 10 agency; or
- licensed youth group home as defined in 11 (c) a
- 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
- (1) of-this-section and shall may not be placed in a jail or 15
- 16 other facility intended or used for the detention
- confinement of adults charged-with accused or convicted of 17
- 18 criminal offenses.
- 19 (3) After a probable cause hearing provided for in
  - 41-5-303, a youth alleged to be a delinquent youth may be
- 21 placed only in:
- 22 (a) the facilities described in subsection (1)7-in;
- 23 (b) a youth detention facility, -or-in; or
- 24 (c) a jail or other facility for the detention
- confinement of adults but only if the--facilities---in 25

- subsection-(1):
- (i) alternative facilities are not available or 2
- available facilities do not provide adequate security; and 3
- (ii) the detention-is-in-an-area-physically-and-wisually đ
- separate-and-removed-from-that-of-adults youth is kept in an area that provides physical, as well as sight and sound,
- separation from adults accused or convicted of criminal 7
- offenses. (Terminates July 1, 1991--sec. 14, Ch. 434, L. 8
- 1989.)" 9

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- Section 5. Section 41-5-306, MCA, is amended to read: 10
- \*41-5-306. (Effective July 1, 1991) Place of shelter 11
- care or detention. (1) After a probable cause hearing 12
- provided for in 41-5-303, a youth alleged to be a youth in 13
- need of supervision may be placed only in: 14
- defined in (a) a licensed youth foster home as 15
  - 41-3-1102;
- (b) a facility operated by a licensed child welfare 17
- 18 agency; or
- (c) a licensed youth group home as defined in 19
- 20 41-3-1102.
- (2) A youth alleged to be a youth in need of care shall 21
- may be placed only in the facilities stated in subsection 22
- (1) of-this-section and shall may not be placed in a jail or 23
- other facility intended or used for the detention 24
- confinement of adults charged-with accused or convicted of

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- 1 criminal offenses.
- 2 (3) After a probable cause hearing provided for in 41-5-303, a youth alleged to be a delinquent youth may be placed only in the facilities described in subsection (1) or in a youth detention facility as-defined-in-41-5-103."
- 6 Section 6. Section 53-30-202, MCA, is amended to read:
- 7 "53-30-202. Establishment of state youth correctional 8 facilities -- prohibitions. (1) The department of family
- 9 services, within the annual or biennial budgetary
- 10 appropriation, may establish, maintain, and operate
- ll facilities to properly diagnose, care for, train, educate,
- 12 and rehabilitate children youth in need of these services.
- 13 The children youth must be 10 years of age or older and
  - under 19 years of age. The facilities include but are not
- 15 limited to the state youth correctional facilities at the
- 16 Mountain View school in Helena and the Pine Hills school in
- 17 Miles City.

- 18 (2) A youth alleged or found to be a youth in need of
- 19 supervision may not be placed in a state youth correctional
- 20 facility as defined in 41-5-103."
- 21 NEW SECTION. Section 7. Permitted acts -- detention of
- 22 youth in law enforcement facilities -- criteria. (1) Nothing
- in this chapter precludes the detention of youth in a police
- 24 station or other law enforcement facility that is attached
- 25 to or part of a jail if:

- 1 (a) the area where the youth is held is an unlocked,
- 2 multipurpose area, such as a lobby, office, interrogation
- 3 room, or other area that is not designated or used as a
- 4 secure detention area or that is not part of a secure
- detention area, or, if part of such an area, that is used
- 6 only for the purpose of processing, such as a booking room;
- 7 (b) the youth is not secured to a cuffing rail or other
- 8 stationary object during the period of detention;
- 9 (c) use of the area is limited to ensuring custody of
- 10 the youth for the purpose of identification, processing, or
- 11 transfer of the youth to an appropriate detention or shelter
- 12 care facility;
- (d) the area is not designed or intended to be used for
- 14 residential purposes; and
- 15 (e) the youth is under continuous visual supervision by
- 16 a law enforcement officer or by facility staff during the
- 17 period of time that the youth is held in detention.
- 18 (2) For purposes of this section, "secure detention"
- 19 means the detention of youth or confinement of adults
- 20 accused or convicted of criminal offenses in a physically
- 21 restricting setting, including but not limited to a locked
- 22 room or set of rooms or a cell designed to prevent a youth
- 23 or adult from departing at will.
- 24 NEW SECTION. Section 8. Codification instruction.
- 25 [Sections 1 and 7] are intended to be codified as an

- integral part of Title 41, chapter 5, part 3, and the
- 2 provisions of Title 41, chapter 5, part 3, apply to
- 3 [sections 1 and 7].
- 4 NEW SECTION, Section 9. Effective dates. (1) [Sections
- 5 1 through 4, 6 through 8, and this section) are effective on
- 6 passage and approval.
- 7 (2) [Section 5] is effective July 1, 1992.

-End-

SB 59

-	SENATE BILL NO. 39
2	INTRODUCED BY YELLOWTAIL
3	BY REQUEST OF THE JOINT INTERIM SUBCOMMITTEE
1	ON ADULT AND JUVENILE DETENTION
5	
5	A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING THE
7	PLACEMENT OF YOUTH IN NEED OF SUPERVISION IN A JAIL, SECURE
В	DETENTION FACILITY, OR CORRECTIONAL FACILITY; PROVIDING
9	CRITERIA FOR THE DETENTION OF YOUTH IN SECURE DETENTION
0	FACILITIES AND SHELTER CARE FACILITIES; PROVIDING CRITERIA
1	FOR THE DETENTION OF YOUTH IN LAW ENFORCEMENT FACILITIES
2	THAT INCLUDE A JAIL; AMENDING SECTIONS 41-5-103, 41-5-305,
3	41-5-306, AND 53-30-202, MCA; AND PROVIDING EFFECTIVE
4	DATES."
5	
6	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
7	NEW SECTION. Section 1. Detention of youth in need of
8	supervision prohibitions. A youth alleged or found to be
9	a youth in need of supervision may not be placed in a jail,
0	secure detention facility, or correctional facility.
21	Section 2. Section 41-5-103, MCA, is amended to read:
2	*41-5-103. Definitions. Por-the-purposes-of As used in
23	the Montana Youth Court Act, unless the context requires
24	otherwise stated, the following definitions apply:
25	(1) "Adult" means an individual who is 18 years of age

•	or order.
2	(2) "Agency" means any entity of state or local
3	government authorized by law to be responsible for the care
4	or rehabilitation of youth.
5	(3) "Commit" means to transfer to legal custody.
6	(4) "Correctional facility" means a public or private
7	residential facility used for the placement of delinquent
8	youth or individuals convicted of criminal offenses.
9	(4)(5) "Court", when used without further
10	qualification, means the youth court of the district court.
11	(6) "Custodian" means a person, other than a parent or
12	guardian, to whom legal custody of the youth has been given
13	but does not include a person who has only physical custody
14	(7) "Delinquent youth" means a youth:
15	(a) who has committed an offense that, if committed by
16	an adult, would constitute a criminal offense; or
17	(b) who, having been placed on probation as
18	delinquent youth or a youth in need of supervision, violate
19	any condition of his probation.
20	(5)(8) "Department" means the department of famil
21	services provided for in 2-15-2401.
22	(9) "Detention" means the holding or temporar
23	placement of a youth IN THE YOUTH'S HOME UNDER HOME ARRES
24	OR in a facility other than the youth's own home for th

purpose of ensuring the continued custody of the youth at

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1	any time after the youth is taken into custody and	before
2	final disposition of his case.	

- (10) "Detention facility" means a physically restricting
   facility designed to prevent a youth from departing at will.
- 5 (11) "Final disposition" means the implementation of a
  6 court order for the disposition or placement of a youth as
  7 provided in 41-5-523.
- t6†(12) "Foster home" means a private residence licensed
  by the department for placement of a youth.
- 10 (7)(13) "Guardianship" means the status created and
  11 defined by law between a youth and an adult with the
  12 reciprocal rights, duties, and responsibilities.
- 13 (14) "Jail" means a facility used for the confinement of

  14 adults accused or convicted of criminal offenses. The term

  15 includes a lockup or other facility used primarily for the

  16 temporary confinement of adults after arrest.
- 17 (8)(15) "Judge", when used without further

  18 qualification, means the judge of the youth court.
- 19 (9)(16) (a) "Legal custody" means the legal status
  20 created by order of a court of competent jurisdiction that
  21 gives a person the right and duty to:
  - (i) have physical custody of the youth;

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

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

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

- (b) An individual granted legal custody of a youth shall personally exercise his rights and duties as guardian unless otherwise authorized by the court entering the order.
- 6 (17) "Necessary parties" includes the youth, his 7 parents, quardian, custodian, or spouse.
- ti0)(18) "Parent" means the natural or adoptive parent but does not include a person whose parental rights have been judicially terminated, nor does it include the putative father of an illegitimate youth unless his paternity is established by an adjudication or by other clear and convincing proof.
- 14 (11)-"Youth"--means--an--individual--who-is-less-than-18

  15 years-of-age-without-regard-to-sex-or-emancipation:
- 16 (12)-"Youth-court"-means-the-court-established--pursuant
  17 to--this-chapter-to-hear-all-proceedings-in-which-a-youth-is
  18 alleged-to-be--a--delinquent--youthy--a--youth--in-need--of
  19 supervisiony--or--a--youth--in-need-of-care-and-includes-the
  20 youth-court-judge-and-probation-officers-
- 21 (19) "Restitution" means payments in cash to the victim
  22 or with services to the victim or the general community when
  23 these payments are made pursuant to an informal adjustment,
  24 consent decree, or other youth court order.
- 25 (20) "Secure detention facility" means any public or

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- (a) is used for the temporary placement of youth or
   individuals accused or convicted of criminal offenses; and
- 4 (b) is designed to physically restrict the movements
  5 and activities of youth or other individuals held in lawful
  6 custody of the facility.
- 7 (21) "Serious juvenile offender" means a youth who has
  8 committed an offense that would be considered a felony
  9 offense if committed by an adult and that is an offense
  10 against a person, an offense against property, or an offense
  11 involving dangerous drugs.
- 12 (22) "Shelter care" means the temporary substitute care
  13 of youth in physically unrestricting facilities.
- 14 (23) "Shelter care facility" means a facility used for
  15 the shelter care of youth. The term is limited to the
  16 facilities enumerated in 41-5-306(1).
  - (24) "State youth correctional facility" means a residential facility used for the placement and rehabilitation of delinquent youth, such as the Pine Hills school in Miles City and the Mountain View school in Helena.
  - (25) "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

- l guardian.
- 2 (26) "Youth" means an individual who is less than 18
- 3 years of age without regard to sex or emancipation.
- 4 (27) "Youth court" means the court established pursuant
- 5 to this chapter to hear all proceedings in which a youth is
- 6 alleged to be a delinquent youth, a youth in need of
- 7 supervision, or a youth in need of care and includes the
- 8 youth court judge and probation officers.
- 9 (28) "Youth detention facility" means a secure detention
- 10 facility that:
- 11 (a) is operated, administered, and staffed separately
- 12 and independently of a jail; and
- 13 (b) is used exclusively for the lawful detention of
- 14 alleged or adjudicated delinquent youth.
- 15 (29) "Youth in need of care" has the meaning provided
- 16 for in 41-3-102.
- 17 (30) "Youth in need of supervision" means a youth who
- 18 commits an offense prohibited by law that, if committed by
- 19 an adult, would not constitute a criminal offense, including
- 20 but not limited to a youth who:
- 21 (a) violates any Montana municipal or state law
- 22 regarding use of alcoholic beverages by minors;
- 23 (b) habitually disobeys the reasonable and lawfu
- 24 demands of his parents, foster parents, physical custodian,
- 25 or guardian or is beyond control;

1	(c) being subject to compulsory school attendance, is
2	habitually truant from school; or
3	(d) has committed any of the acts of a delinquent youth
4	but whom the youth court, in its discretion, chooses to
5	regard as a youth in need of supervision.
6	(13)-"Belinquent-youth"-means-a-youth:
7	<pre>fa;who-has-committed-an-offense-which; -if-committed-by</pre>
8	an-adult;-would-constitute-a-criminal-offense;
9	<pre>fb;who;havingbeenplacedonprobationasa</pre>
LO	delinquent-youth-or-a-youth-in-need-of-supervision,-violates
11	any-condition-of-his-probation-
L <b>2</b>	<pre>+14}-#Youthinneedof-supervision#-means-a-youth-who</pre>
L <b>3</b>	commits-an-offense-prohibited-by-law-which;-if-committedby
L <b>4</b>	an-adulty-would-not-constitute-a-criminal-offensey-including
:5	but-not-limited-to-a-youth-who:
.6	ta)violatesanyMontanamunicipalorstatelaw
17	regarding-use-of-alcoholic-beverages-by-minors;
LB	<pre>fb;habituallydisobeysthereasonableandlawful</pre>
19	demandsof-his-parents;-foster-parents;-physical-custodian;
20	or-guardian-or-is-ungovernable-and-beyond-their-control;
21	<pre>fc}being-subject-to-compulsory-schoolattendance;is</pre>
22	habitually-truant-from-school;-or
23	(d)has-committed-any-of-the-acts-of-a-delinguent-youth
24	but-whom-the-youth-court-in-its-discretion-chooses-to-regard
25	as-a-youth-in-need-of-supervision-

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1	+15)-"Youth-in-need-of-care"-means-a-youth-as-defined-in
2	41-3-102-
3	(16)-"Custodian"meansa-person-other-than-a-parent-or
4	guardian-to-whom-legal-custody-of-the-youth-hasbeengiven
5	but-does-not-include-a-person-who-has-only-physical-custody:
6	(17)-"Necessary-parties"-include-the-youthy-his-parentsy
7	guardiany-custodiany-or-spouser
8	(18)-#Stateyouthcorrectionalfacility#meansa
9	residential-facility-for-therehabilitationofdelinquent
1,0	youthsuch-as-Pine-Hills-school-in-Miles-Cityand-Mountain
11	View-achool-in_Helena-
12	(19)-"Shelter-care"-means-the-temporary-substitutecare
13	of-youth-in-physically-unrestricting-facilities.
14	(20)-"Betention"means-the-temporary-substitute-care-of
15	youth-in-physically-restricting-facilities:
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18	(22)-"Restitution"-means-payments-in-cash-to-theyictin
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20	thesepayments-are-made-pursuant-to-an-informal-adjustment
21	consent-decreey-or-other-youth-court-orders
22	(23)-"Substitute-care"-means-full-time-care-of-youthi
23	aresidentialsettingforthe-purpose-of-providing-food
24	shelter;-security-and-safety;-guidance;direction;andi
25	necessary;treatmenttoyouthwhoareremovedfrom-o

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withoutthe	careandsupervisionoftheirparentsor
guardian.	

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- (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:"
- Section 3. Section 41-5-305, MCA, is amended to read:
- 9 "41-5-305. Betention-and-shelter-care of-youth Criteria
  10 for placement of youth in secure detention facilities or
  11 shelter care facilities. (1) After-a-probable-cause-hearing
  12 provided-for-in-41-5-3037-a A youth may not be placed in a
  13 secure detention facility unless:
- 14 (a) he has allegedly committed an act which that if 15 committed by an adult would constitute a criminal offense 16 and the alleged offense is one specified in 41-5-206;
- 17 (b) he is alleged to be a delinquent youth and:

4 tg)(v) there are not adequate assurances that he will appear for court when required; or

6 thy (vi) he meets additional criteria for secure
7 detention established by the youth court in the judicial
8 district that has current jurisdiction over him; or

- (c) he has been adjudicated delinquent and is awaiting
   final disposition of his case.
- 11 (2) A youth may not be placed in a shelter care 12 facility unless:
- 13 (a) the youth and his family need shelter care to
  14 address their problematic situation when it is not possible
  15 for the youth to remain at home;
- (b) the youth needs to be protected from physical or emotional harm;
- (c) the youth needs to be deterred or prevented from immediate repetition of his troubling behavior;
- 20 (d) shelter care is necessary to assess the youth and 21 his environment:
- (e) shelter care is necessary to provide adequate timefor case planning and disposition; or
- 24 (f) shelter care is necessary to intervene in a crisis

25 situation and provide intensive services or attention that

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- 1 might alleviate the problem and reunite the family."
- Section 4. Section 41-5-306, MCA, is amended to read:
- \*41-5-306. (Temporary) Place of shelter care or
   detention. (1) After a probable cause hearing provided for
- 5 in 41-5-303, a youth alleged to be a youth in need of
- 6 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
  - 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:
- 22 (a) the facilities described in subsection (1)7-in;
- 23 (b) a youth detention facility; or
- 24 (c) a jail or other facility for the detention
- 25 confinement of adults but only if the-facilities---in

- 1 subsection-{1}:
- 2 (i) alternative facilities are not available or
- 3 available facilities do not provide adequate security; and
  - (ii) the detention-is-in-an-area-physically-and-visually
- 5 separate-and-removed-from-that-of-adults youth is kept in an
- 6 area that provides physical, as well as sight and sound,
- 7 separation from adults accused or convicted of criminal
- offenses. (Terminates July 1, 1991--sec. 14, Ch. 434, L.
- 9 1989.)"

4

- 10 Section 5. Section 41-5-306, MCA, is amended to read:
- 11 \*41-5-306. (Effective July 1, 1991) Place of shelter
- 12 care or detention. (1) After a probable cause hearing
  - provided for in 41-5-303, a youth alleged to be a youth in
- 14 need of supervision may be placed only in:
- 15 (a) a licensed youth foster home as defined in
- 16 41-3-1102:
- 17 (b) a facility operated by a licensed child welfare
- 18 agency; or
- 19 (c) a licensed youth group home as defined in
- 20 41-3-1102.
- 21 (2) A youth alleged to be a youth in need of care shall
- 22 may be placed only in the facilities stated in subsection
- 23 (1) of-this-section and shall may not be placed in a jail or
- 24 other facility intended or used for the detention
- 25 confinement of adults charged-with accused or convicted of

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1 criminal offenses.

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

Section 6. Section 53-30-202, MCA, is amended to read:

\*53-30-202. Establishment of state youth correctional facilities -- prohibitions. (1) The department of family services, within the annual or biennial budgetary appropriation, may establish, maintain, and operate facilities to properly diagnose, care for, train, educate, and rehabilitate ehildren youth in need of these services. The ehildren youth must be 10 years of age or older and under 19 years of age. The facilities include but are not limited to the state youth correctional facilities at the Mountain View school in Helena and the Pine Hills school in Miles City.

(2) A youth alleged or found to be a youth in need of supervision may not be placed in a state youth correctional facility as defined in 41-5-103."

NEW SECTION. Section 7. Permitted acts -- detention of youth in law enforcement facilities -- criteria. (1) Nothing in this chapter precludes the detention of youth in a police station or other law enforcement facility that is attached to or part of a jail if:

- 1 (a) the area where the youth is held is an unlocked,
  2 multipurpose area, such as a lobby, office, interrogation
  3 room, or other area that is not designated or used as a
  4 secure detention area or that is not part of a secure
  5 detention area, or, if part of such an area, that is used
  6 only for the purpose of processing, such as a booking room;
- 7 (b) the youth is not secured to a cuffing rail or other8 stationary object during the period of detention;
- 9 (c) use of the area is limited to ensuring custody of
  10 the youth for the purpose of identification, processing, or
  11 transfer of the youth to an appropriate detention or shelter
  12 care facility;
- (d) the area is not designed or intended to be used forresidential purposes; and
- 15 (e) the youth is under continuous visual supervision by 16 a law enforcement officer or by facility staff during the 17 period of time that the youth is held in detention.
- 18 (2) For purposes of this section, "secure detention"
  19 means the detention of youth or confinement of adults
  20 accused or convicted of criminal offenses in a physically
  21 restricting setting, including but not limited to a locked
  22 room or set of rooms or a cell designed to prevent a youth
  23 or adult from departing at will.
- 24 NEW SECTION. Section 8. Codification instruction.
- 25 [Sections 1 and 7] are intended to be codified as an

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- 1 integral part of Title 41, chapter 5, part 3, and the
- 2 provisions of Title 41, chapter 5, part 3, apply to
- 3 [sections 1 and 7].
- 4 NEW SECTION. Section 9. Effective dates. (1) (Sections
- 5 1 through 4, 6 through 8, and this section) are effective on
- 6 passage and approval.
- 7 (2) [Section 5] is effective July 1, 1992.

-End-

1	SENATE BILL NO. 59
2	INTRODUCED BY YELLOWTAIL
3	BY REQUEST OF THE JOINT INTERIM SUBCOMMITTEE
4	ON ADULT AND JUVENILE DETENTION
5	
6	A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING THE
7	PLACEMENT OF YOUTH IN NEED OF SUPERVISION IN A JAIL, SECURE
8	DETENTION FACILITY, OR CORRECTIONAL FACILITY; PROVIDING
9	CRITERIA FOR THE DETENTION OF YOUTH IN SECURE DETENTION
10	FACILITIES AND SHELTER CARE FACILITIES; PROVIDING CRITERIA
11	FOR THE DETENTION OF YOUTH IN LAW ENFORCEMENT FACILITIES
12	THAT INCLUDE A JAIL; AMENDING SECTIONS 41-5-103, 41-5-305,
13	41-5-306, AND 53-30-202, MCA; AND PROVIDING EFFECTIVE
14	DATES."
15	
16	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
17	NEW SECTION. Section 1. Detention of youth in need of
10	supervision prohibitions. A youth alleged or found to be
19	a youth in need of supervision may not be placed in a jail,
20	secure detention facility, or correctional facility.
21	Section 2. Section 41-5-103, MCA, is amended to read:
22	*41-5-103. Definitions. Por-the-purposes-of As used in
23	the Montana Youth Court Act, unless the context requires
24	otherwise stated, the following definitions apply:
25	(1) "Adult" means an individual who is 18 years of age

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2	(2) "Agency" means any entity of state or local
3	government authorized by law to be responsible for the care
4	or rehabilitation of youth.
5	(3) "Commit" means to transfer to legal custody.
6	(4) "Correctional facility" means a public or private
7	residential facility used for the placement of delinquent
8	youth or individuals convicted of criminal offenses.
9	(4)(5) "Court", when used without further
.0	qualification, means the youth court of the district court.
. 1	(6) "Custodian" means a person, other than a parent or
2	guardian, to whom legal custody of the youth has been given
3	but does not include a person who has only physical custody.
4	(7) "Delinquent youth" means a youth:
15	(a) who has committed an offense that, if committed by
6	an adult, would constitute a criminal offense; or
17	(b) who, having been placed on probation as
В	delinquent youth or a youth in need of supervision, violate:
19	any condition of his probation.
20	(5)(8) "Department" means the department of famil
21	services provided for in 2-15-2401.
22	(9) "Detention" means the holding or temporar
23	placement of a youth IN THE YOUTH'S HOME UNDER HOME ARRES
24	OR in a facility other than the youth's own home for th
25	purpose of ensuring the continued sustady of the wouth a

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1	any time after the youth is taken into custody and before
2	final disposition of his case.

- (10) "Detention facility" means a physically restricting
   facility designed to prevent a youth from departing at will.
- 5 (11) "Final disposition" means the implementation of a court order for the disposition or placement of a youth as provided in 41-5-523.
- 8 (6)(12) "Foster home" means a private residence licensed
   9 by the department for placement of a youth.
- 10 (7)(13) "Guardianship" means the status created and
  11 defined by law between a youth and an adult with the
  12 reciprocal rights, duties, and responsibilities.
- 13 (14) "Jail" means a facility used for the confinement of

  14 adults accused or convicted of criminal offenses. The term

  15 includes a lockup or other facility used primarily for the

  16 temporary confinement of adults after arrest.
- 17 (8)(15) "Judge", when used without further

  18 qualification, means the judge of the youth court.
- 19 (9)(16) (a) "Legal custody" means the legal status
  20 created by order of a court of competent jurisdiction that
  21 gives a person the right and duty to:
  - (i) have physical custody of the youth;

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- (ii) determine with whom the youth shall live and forwhat period;
- 25 (iii) protect, train, and discipline the youth; and

- (iv) provide the youth with food, shelter, education,and ordinary medical care.
- 3 (b) An individual granted legal custody of a youth
  4 shall personally exercise his rights and duties as guardian
  5 unless otherwise authorized by the court entering the order.
- 6 (17) "Necessary parties" includes the youth, his
  7 parents, guardian, custodian, or spouse.
  - (10)(18) "Parent" means the natural or adoptive parent but does not include a person whose parental rights have been judicially terminated, nor does it include the putative father of an illegitimate youth unless his paternity is established by an adjudication or by other clear and convincing proof.
  - (11)-"Youth"--means--an--individual--who-is-less-than-18
    years-of-age-without-regard-to-sex-or-emancipation=
- 16 (12)-"Youth-court"-means-the-court-established--pursuant
  17 to--this-chapter-to-hear-all-proceedings-in-which-a-youth-is
  18 alleged-to-be--a--delinquent--youth;--a--youth--in-need--of
  19 supervision;--or--a--youth--in-need-of-care-and-includes-the
  20 youth-court-judge-and-probation-officers;
- 21 (19) "Restitution" means payments in cash to the victim
  22 or with services to the victim or the general community when
  23 these payments are made pursuant to an informal adjustment,
  24 consent decree, or other youth court order.
- 25 (20) "Secure detention facility" means any public or

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- 1 private facility that:
- 2 (a) is used for the temporary placement of youth or
- 3 individuals accused or convicted of criminal offenses; and
- 4 (b) is designed to physically restrict the movements
- 5 and activities of youth or other individuals held in lawful
- 6 custody of the facility.
- 7 (21) "Serious juvenile offender" means a youth who has
- 8 committed an offense that would be considered a felony
- 9 offense if committed by an adult and that is an offense
- 10 against a person, an offense against property, or an offense
- 11 involving dangerous drugs.
- 12 (22) "Shelter care" means the temporary substitute care
- 13 of youth in physically unrestricting facilities.
- 14 (23) "Shelter care facility" means a facility used for
- 15 the shelter care of youth. The term is limited to the
- 16 facilities enumerated in 41-5-306(1).
- 17 (24) "State youth correctional facility" means a
- 18 residential facility used for the placement and
- 19 rehabilitation of delinquent youth, such as the Pine Hills
- 20 school in Miles City and the Mountain View school in Helena.
- 21 (25) "Substitute care" means full-time care of youth in
- 22 a residential setting for the purpose of providing food,
- 23 shelter, security and safety, guidance, direction, and, if
- 24 necessary, treatment to youth who are removed from or are
- 25 without the care and supervision of their parents or

- l guardian.
- 2 (26) "Youth" means an individual who is less than 18
- 3 years of age without regard to sex or emancipation.
- 4 (27) "Youth court" means the court established pursuant
- 5 to this chapter to hear all proceedings in which a youth is
- 6 alleged to be a delinquent youth, a youth in need of
- 7 supervision, or a youth in need of care and includes the
- 8 youth court judge and probation officers.
- 9 (28) "Youth detention facility" means a secure detention
- 10 facility that:
- (a) is operated, administered, and staffed separately
- 12 and independently of a jail; and
- 13 (b) is used exclusively for the lawful detention of
- 14 alleged or adjudicated delinquent youth.
- 15 (29) "Youth in need of care" has the meaning provided
- 16 for in 41-3-102.
- 17 (30) "Youth in need of supervision" means a youth who
- 18 commits an offense prohibited by law that, if committed by
- 19 an adult, would not constitute a criminal offense, including
- 20 but not limited to a youth who:
- 21 (a) violates any Montana municipal or state law
- 22 regarding use of alcoholic beverages by minors;
- (b) habitually disobeys the reasonable and lawful
- 24 demands of his parents, foster parents, physical custodian,
- 25 or guardian or is beyond control;

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1	(c) being subject to computarry school attendance, is
2	habitually truant from school; or
3	(d) has committed any of the acts of a delinquent youth
4	but whom the youth court, in its discretion, chooses to
5	regard as a youth in need of supervision.
6	(13)-"Belinquent-youth"-means-a-youth:
7	(a)who-has-committed-an-offense-which $_7$ -if-committed-by
8	an-adult;-would-constitute-a-criminal-offense;
9	(b)who;havingbeenplacedonprobationasa
10	delinquent-youth-or-a-youth-in-need-of-supervision,-violates
11	any-condition-of-his-probation:
12	(14)-"Youthinneedof-supervision"-means-a-youth-who
13	commits-an-offense-prohibited-by-law-which,-if-committedby
14	an-adulty-would-not-constitute-a-criminal-offensey-including
15	but-not-limited-to-a-youth-who:
16	(a)violatesanyMontanamunicipalorstatelaw
17	regarding-use-of-alcoholic-beverages-by-minors;
18	<pre>fb}habituallydisobeysthereasonableandlawfu</pre>
19	demandsof-his-parents;-foster-parents;-physical-custodian;
20	or-gmardian-or-is-ungovernable-and-beyond-their-control;
21	(c)being-subject-to-compulsory-schoolattendance;i
22	habitually-truant-from-school;-or
23	{d}has-committed-any-of-the-acts-of-a-delinguent-yout
24	but-whom-the-youth-court-in-its-discretion-chooses-to-regard
25	no-a-vanth-in-mand-af-sumervisian-

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2	41-3-102 <del>.</del>
3	(16)-"Gustodian"meansa-person-other-than-a-parent-or
4	guardian-to-whom-legal-custody-of-the-youth-hasbeengiven
5	but-does-not-include-a-person-who-has-only-physical-custody:
6	f17)-"Necessary-parties"-include-the-youthy-his-parentsy
7	guardian,-custodian,-or-spouse:
8	(18)-"Stateyouthcorrectionalfacility"meansa
9	residential-facility-for-therehabilitationofdelinquent
10	youthsuch-as-Pine-Hills-school-in-Miles-City,-and-Mountain
11	View-school-in-Helens.
12	(19)-"Shelter-care"-means-the-temporary-substitutecare
13	of-youth-in-physically-unrestricting-facilities:
14	(20)-"Detention"means-the-temporary-substitute-care-of
15	youth-in-physically-restricting-facilities:
16	(21)-#Detention-facility#-means-a-physically-restricting
17	facility-designed-to-prevent-a-youth-from-departing-at-will:
18	(22)-"Restitution"-means-payments-in-cash-to-thevictim
19	or-with-services-to-the-victim-or-the-general-community-wher
20	thesepayments-are-made-pursuant-to-an-informal-adjustment;
21	consent-decree;-or-other-youth-court-order:
22	(23)-"Substitute-care"-means-full-time-care-of-youthi
23	aresidentialsettingforthe-purpose-of-providing-food
24	sheltery-security-and-safetyy-guidanceydirectionyandi

(15)-"Youth-in-need-of-care"-means-a-youth-as-defined-in

necessary;--treatment--to--youth--who--are--removed--from-or

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without--the--care--and--supervision--of--their--parents--or
guardian;

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†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:"

8 Section 3. Section 41-5-305, MCA, is amended to read:

- 9 "41-5-305. Detention-and-shelter-care of-youth Criteria
  10 for placement of youth in secure detention facilities or
  11 shelter care facilities. (1) After-a-probable-cause-hearing
  12 provided-for-in-41-5-3037-a A youth may not be placed in a
  13 secure detention facility unless:
- (a) he has allegedly committed an act which that if committed by an adult would constitute a criminal offense and the alleged offense is one specified in 41-5-206;
- 17 (b) he is alleged to be a delinquent youth and:
- 20 (e)(ii) he has violated a valid court order or an
  21 aftercare agreement;

1 (f)(iv) he has pending court or administrative action or 2 is awaiting a transfer to another jurisdiction and may 3 abscond or be removed from the jurisdiction of the court;

4 (9)(v) there are not adequate assurances that he will appear for court when required; or

6 th; (vi) he meets additional criteria for secure
7 detention established by the youth court in the judicial
8 district that has current jurisdiction over him; or

- (c) he has been adjudicated delinquent and is awaiting
   final disposition of his case.
- 11 (2) A youth may not be placed in a shelter care
  12 facility unless:
- 13 (a) the youth and his family need shelter care to
  14 address their problematic situation when it is not possible
  15 for the youth to remain at home;
- 16 (b) the youth needs to be protected from physical or 17 emotional harm;
- (c) the youth needs to be deterred or prevented fromimmediate repetition of his troubling behavior;
- 20 (d) shelter care is necessary to assess the youth and
  21 his environment:
- 22 (e) shelter care is necessary to provide adequate time 23 for case planning and disposition; or
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- 3 "41-5-306. (Temporary) Place of shelter care or detention. (1) After a probable cause hearing provided for 5 in 41-5-303, a youth alleged to be a youth in need of
- supervision may be placed only in:
- 7 (a) a licensed youth foster home as defined in 41-3-1102: 8
- 9 (b) a facility operated by a licensed child welfare 10 agency; or
- 11 youth group home as defined in (c) a licensed 41-3-1102. 12
  - (2) A youth alleged to be a youth in need of care shall may be placed only in the facilities stated in subsection (1) of-this-section and shall may not be placed in a jail or other facility intended or used for the detention confinement of adults charged-with accused or convicted of
- 18 criminal offenses.

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- 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:
- 22 (a) the facilities described in subsection (1);-in;
- 23 (b) a youth detention facility, or in; or
- 24 (c) a jail or other facility for the detention confinement of adults but only if the--facilities---in 25

- subsection-(1):
- (i) alternative facilities are not available or 2 available facilities do not provide adequate security; and 3
- (ii) the detention-is-in-an-area-physically-and-visually 4 separate-and-removed-from-that-of-adults youth is kept in an
- area that provides physical, as well as sight and sound,
- separation from adults accused or convicted of criminal 7
- offenses. (Terminates July 1, 1991--sec. 14, Ch. 434, L.
- 1989.1" 9

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- Section 5. Section 41-5-306, MCA, is amended to read: 10
- "41-5-306. (Effective July 1, 1991) Place of shelter 11
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- provided for in 41-5-303, a youth alleged to be a youth in 13
- need of supervision may be placed only in: 14
- (a) a licensed youth foster home as defined in 15
- 16 41-3-1102;
- (b) a facility operated by a licensed child welfare 17
- 18 agency; or
- defined in (c) a licensed youth group home as 19
- 20 41-3-1102.
- (2) A youth alleged to be a youth in need of care shall 21
- may be placed only in the facilities stated in subsection 22
- (1) of-this-section and shall may not be placed in a jail or 23
- other facility intended or used for the detention 24
- confinement of adults charged-with accused or convicted of 25

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

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7 \*53-30-202. Establishment of state youth correctional 8 facilities -- prohibitions. (1) The department of family 9 services, within the annual or biennial budgetary 10 appropriation, may establish, maintain, and operate 11 facilities to properly diagnose, care for, train, educate, 12 and rehabilitate children youth in need of these services. 13 The children youth must be 10 years of age or older and 14 under 19 years of age. The facilities include but are not limited to the state youth correctional facilities at the 15 16 Mountain View school in Helena and the Pine Hills school in Miles City. 17

18 [2] A youth alleged or found to be a youth in need of 19 supervision may not be placed in a state youth correctional 20 facility as defined in 41-5-103."

NEW SECTION. Section 7. Permitted acts -- detention of youth in law enforcement facilities -- criteria. (1) Nothing in this chapter precludes the detention of youth in a police station or other law enforcement facility that is attached to or part of a jail if:

(a) the area where the youth is held is an unlocked, 1 multipurpose area, such as a lobby, office, interrogation 2 room, or other area that is not designated or used as a 3 secure detention area or that is not part of a secure 4 detention area, or, if part of such an area, that is used 5 only for the purpose of processing, such as a booking room; 6

- (b) the youth is not secured to a cuffing rail or other stationary object during the period of detention;
- (c) use of the area is limited to ensuring custody of 9 the youth for the purpose of identification, processing, or 10 transfer of the youth to an appropriate detention or shelter 11 12 care facility:
- (d) the area is not designed or intended to be used for 13 residential purposes; and 14
  - (e) the youth is under continuous visual supervision by a law enforcement officer or by facility staff during the period of time that the youth is held in detention.
- (2) For purposes of this section, "secure detention" means the detention of youth or confinement of adults 19 accused or convicted of criminal offenses in a physically 20 restricting setting, including but not limited to a locked 21 room or set of rooms or a cell designed to prevent a youth 22 or adult from departing at will. 23
- NEW SECTION. Section 8. Codification instruction. 24
- [Sections 1 and 7] are intended to be codified as an 25

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- 1 integral part of Title 41, chapter 5, part 3, and the
- 2 provisions of Title 41, chapter 5, part 3, apply to
- 3 [sections 1 and 7].
- 4 NEW SECTION. Section 9. Effective dates. (1) [Sections
- 5 1 through 4, 6 through 8, and this section] are effective on
- 6 passage and approval.
- 7 (2) [Section 5] is effective July 1, 1992.

-End-

# GOVERNOR'S AMENDMENTS TO SENATE BILL 59 (REFERENCE COPY, AS AMENDED) February 27, 1991

1. Title, line 13
Following: "AND 53-30-202, MCA;"
Delete: "AND"

2. Title, line 14
Following: "DATES"
Insert: "AND PROVIDING A COORDINATION INSTRUCTION"

3. Page 15, line 8
Following: line 7
Insert: "NEW SECTION. Section 20. Coordination
instruction. If Senate Bill 37 is not passed and approved,
then this act is void and without effect."

1	SENATE BILL NO. 59
2	INTRODUCED BY YELLOWTAIL
3	BY REQUEST OF THE JOINT INTERIM SUBCOMMITTEE
4	ON ADULT AND JUVENILE DETENTION
5	
6	A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING THE
7	PLACEMENT OF YOUTH IN NEED OF SUPERVISION IN A JAIL, SECURE
8	DETENTION FACILITY, OR CORRECTIONAL FACILITY; PROVIDING
9	CRITERIA FOR THE DETENTION OF YOUTH IN SECURE DETENTION
0	FACILITIES AND SHELTER CARE FACILITIES; PROVIDING CRITERIA
11	FOR THE DETENTION OF YOUTH IN LAW ENFORCEMENT FACILITIES
L 2	THAT INCLUDE A JAIL; AMENDING SECTIONS 41-5-103, 41-5-305,
1.3	41-5-306, AND 53-30-202, MCA; AND PROVIDING EFFECTIVE
L 4	DATES."
15	
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20	secure detention facility, or correctional facility.
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23	the Montana Youth Court Act, unless the context requires
24	otherwise stated, the following definitions apply:
25	(1) "Adult" means an individual who is 18 years of age

3	government authorized by law to be responsible for the care
4	or rehabilitation of youth.
5	(3) "Commit" means to transfer to legal custody.
6	(4) "Correctional facility" means a public or private
7	residential facility used for the placement of delinquen
8	youth or individuals convicted of criminal offenses.
9	(4)(5) "Court", when used without furthe
0	qualification, means the youth court of the district court.
1	(6) "Custodian" means a person, other than a parent o
2	guardian, to whom legal custody of the youth has been give
3	but does not include a person who has only physical custody
4	(7) "Delinquent youth" means a youth:
5	(a) who has committed an offense that, if committed b
б	an adult, would constitute a criminal offense; or
7	(b) who, having been placed on probation as
8	delinquent youth or a youth in need of supervision, violate
9	any condition of his probation.
0	(5) "Department" means the department of famil

(9) "Detention" means the holding or temporary placement of a youth IN THE YOUTH'S HOME UNDER HOME ARREST

OR in a facility other than the youth's own home for the

purpose of ensuring the continued custody of the youth at

services provided for in 2-15-2401.

(2) "Agency" means any entity of state or local

or older.

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1	any time after the youth is taken into custody and before
2	final disposition of his case.
3	(10) "Detention facility" means a physically restricting
4	facility designed to prevent a youth from departing at will.
5	(11) "Final disposition" means the implementation of a
6	court order for the disposition or placement of a youth as
7	provided in 41-5-523.
8	(6)(12) "Foster home" means a private residence licensed
9	by the department for placement of a youth.
LO	†7†(13) "Guardianship" means the status created and
11	defined by law between a youth and an adult with the
L 2	reciprocal rights, duties, and responsibilities.
13	(14) "Jail" means a facility used for the confinement of
1.4	adults accused or convicted of criminal offenses. The term
15	includes a lockup or other facility used primarily for the
16	temporary confinement of adults after arrest.
17	(0)(15) "Judge", when used without further
18	qualification, means the judge of the youth court.
19	<pre> †9†(16) (a) "Legal custody" means the legal status</pre>
20	created by order of a court of competent jurisdiction that
21	gives a person the right and duty to:
22	(i) have physical custody of the youth;
<b>-</b> -	(ii) determine with when the wouth shall live and for

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

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what period:

1	(iv) provide the youth with rood, shelter, education,
2	and ordinary medical care.
3	(b) An individual granted legal custody of a youth
4	shall personally exercise his rights and duties as guardian
5	unless otherwise authorized by the court entering the order.
6	(17) "Necessary parties" includes the youth, his
7	parents, quardian, custodian, or spouse.
8	(18) "Parent" means the natural or adoptive parent
9	but does not include a person whose parental rights have
10	been judicially terminated, nor does it include the putative
11	father of an illegitimate youth unless his paternity is
12	established by an adjudication or by other clear and
13	convincing proof.
14	(11)-"Youth"meansanindividualwho-is-less-than-18
15	years-of-age-without-regard-to-sex-or-emancipation-

+12)-"Youth-court"-means-the-court-established--pursuant

(19) "Restitution" means payments in cash to the victim

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

or with services to the victim or the general community when these payments are made pursuant to an informal adjustment,

youth-court-judge-and-probation-officers-

consent decree, or other youth court order.

1	private	facility	that:
1	private	racitity	LIIOL.

- 2 (a) is used for the temporary placement of youth or
- 3 individuals accused or convicted of criminal offenses; and
- 4 (b) is designed to physically restrict the movements
- 5 and activities of youth or other individuals held in lawful
- 6 custody of the facility.
- 7 (21) "Serious juvenile offender" means a youth who has
- 8 committed an offense that would be considered a felony
- 9 offense if committed by an adult and that is an offense
- 10 against a person, an offense against property, or an offense
- ll involving dangerous drugs.

residential

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- 12 (22) "Shelter care" means the temporary substitute care
- 13 of youth in physically unrestricting facilities.
- 14 (23) "Shelter care facility" means a facility used \_for
- 15 the shelter care of youth. The term is limited to the
- 16 facilities enumerated in 41-5-306(1).
- 17 (24) "State youth correctional facility" means a
- 19 rehabilitation of delinquent youth, such as the Pine Hills

facility used for the placement

school in Miles City and the Mountain View school in Helena.

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

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- l guardian.
- 2 (26) "Youth" means an individual who is less than 18
- years of age without regard to sex or emancipation.
- 4 (27) "Youth court" means the court established pursuant
- 5 to this chapter to hear all proceedings in which a youth is
- 6 alleged to be a delinquent youth, a youth in need of
- 7 supervision, or a youth in need of care and includes the
- 8 youth court judge and probation officers.
- 9 (28) "Youth detention facility" means a secure detention
- 10 facility that:
- 11 (a) is operated, administered, and staffed separately
- 12 and independently of a jail; and
- 13 (b) is used exclusively for the lawful detention of
- 14 alleged or adjudicated delinquent youth.
- 15 (29) "Youth in need of care" has the meaning provided
- 16 <u>for</u> in 41-3-102.
- 17 (30) "Youth in need of supervision" means a youth who
- 18 commits an offense prohibited by law that, if committed by
- an adult, would not constitute a criminal offense, including
- 20 but not limited to a youth who:
- 21 (a) violates any Montana municipal or state law
- 22 regarding use of alcoholic beverages by minors:
- 23 (b) habitually disobeys the reasonable and lawful
- 24 demands of his parents, foster parents, physical custodian,
- 25 or quardian or is beyond control;

1	(c) being subject to compulsory school attendance, is
2	habitually truant from school; or
3	(d) has committed any of the acts of a delinquent youth
4	but whom the youth court, in its discretion, chooses to
5	regard as a youth in need of supervision.
6	(13)-"Delinquent-youth"-means-a-youth:
7	(a)who-has-committed-an-offense-which,-if-committed-by
8	an-adulty-would-constitute-a-criminal-offense;
9	<pre>tb;who;havingbeenplacedonprobationasa</pre>
10	delinquent-youth-or-a-youth-in-need-of-supervision,-violates
11	any-condition-of-his-probation-
12	(14)-"Youthinneedof-supervision"-means-a-youth-who
13	commits-an-offense-prohibited-by-law-which;-if-committedby
14	an-adulty-would-not-constitute-a-criminal-offensey-including
15	but-not-limited-to-a-youth-who:
16	(a)violatesanyMontanamunicipalorstatelaw
17	regarding-use-of-alcoholic-beverages-by-minors?
18	<pre>fb)habituallydisobeysthereasonableandlawful</pre>
19	demandsof-his-parents;-foster-parents;-physical-custodian;
20	or-guardian-or-is-ungovernable-and-beyond-their-control;
21	<pre>te)being-subject-to-compulsory-schoolattendance;is</pre>
22	habitually-truant-from-school;-or
23	(d)has-committed-any-of-the-acts-of-a-delinquent-youth
24	but-whom-the-youth-court-in-its-discretion-chooses-to-regard
25	ns-a-youth-in-need-of-supervision-

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1	(15)-"Youth-in-need-of-care"-means-a-youth-as-defined-in
2	41-3-102-
3	+16}-"Custodian"meansa-person-other-than-a-parent-or
4	guardian-to-whom-legal-custody-of-the-youth-hasbeengiven
5	but-does-not-include-a-person-who-has-only-physical-custody-
6	(17)-"Necessary-parties"-include-the-youth;-his-parents;
7	guardian,-custodian,-or-spouse,
8	(18)-"Stateyouthcorrectionalfacility"meansa
9	residential-facility-for-therehabilitationofdelinquent
10	youthsuch-as-Pine-Hills-school-in-Miles-City7-and-Mountain
11	View-school-in-Helena-
12	(19)-"Shelter-care"-means-the-temporary-substitutecare
13	of-youth-in-physically-unrestricting-facilities.
14	(28)-"Betention"means-the-temporary-substitute-care-of
15	youth-in-physically-restricting-facilities.
16	(21)-"Detention-facility"-means-a-physically-restricting
17	facility-designed-to-prevent-a-youth-from-departing-at-will:
18	(22)-"Restitution"-means-payments-in-cash-to-thevictim
19	or-with-services-to-the-victim-or-the-general-community-when
20	thesepayments-are-made-pursuant-to-an-informal-adjustment
21	consent-decree;-or-other-youth-court-order:
22	(23)-"Substitute-care"-means-full-time-care-of-youthi
23	aresidentialsettingforthe-purpose-of-providing-food
24	shelter,-security-and-safety,-guidance,direction,andi
25	necessary;treatmenttoyouthwhoareremovedfrom-o

- without--the--care--and--supervision--of--their--parents--or
  quardian;
- 3 (24)-"Serious-juvenile-offender"-means-a-youth--who--has
  4 committed--an-offense-against-the-person7-an-offense-against
  5 property7-or-an--offense--involving--dangerous--drugs--which
  6 would--be--considered--a--felony--offense-if-committed-by-an
  7 adult:"
- 8 Section 3. Section 41-5-305, MCA, is amended to read:
- 9 "41-5-305. Betention-and-shelter-care of-youth Criteria
  10 for placement of youth in secure detention facilities or
  11 shelter care facilities. (1) After-a-probable-cause-hearing
  12 provided-for-in-41-5-3837-a A youth may not be placed in a
  13 secure detention facility unless:
  - (a) he has allegedly committed an act which that if committed by an adult would constitute a criminal offense and the alleged offense is one specified in 41-5-206;
    - (b) he is alleged to be a delinquent youth and:

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- 3 abscond or be removed from the jurisdiction of the court:
- (v) there are not adequate assurances that he will
- 5 appear for court when required; or
- 6 th)(vi) he meets additional criteria for secure
- 7 decention established by the youth court in the judicial
- 8 district that has current jurisdiction over him; or
- 9 (c) he has been adjudicated delinquent and is awaiting
- final disposition of his case.
- 11 (2) A youth may not be placed in a shelter care
- 12 facility unless:
- 13 (a) the youth and his family need shelter care to
- 14 address their problematic situation when it is not possible
- 15 for the youth to remain at home;
- 16 (b) the youth needs to be protected from physical or
- 17 emotional harm:
- 18 (c) the youth needs to be deterred or prevented from
- 19 immediate repetition of his troubling behavior;
- 20 (d) shelter care is necessary to assess the youth and
- 21 his environment:
- (e) shelter care is necessary to provide adequate time
- 23 for case planning and disposition; or
- 24 (f) shelter care is necessary to intervene in a crisis
- 25 situation and provide intensive services or attention that

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- 1 might alleviate the problem and reunite the family."
- 2 Section 4. Section 41-5-306, MCA, is amended to read:
- 3 "41-5-306. (Temporary) Place of shelter care or
- 4 detention. (1) After a probable cause hearing provided for
- 5 in 41-5-303, a youth alleged to be a youth in need of
- 6 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.

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- (2) A youth alleged to be a youth in need of care shall
  - 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:
- 22 (a) the facilities described in subsection (1)<sub>7</sub>-in;
- 23 (b) a youth detention facility--or-in; or
- 24 (c) a jail or other facility for the detention
- 25 <u>confinement</u> of adults <u>but</u> only if the--facilities---in

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- 1 subsection-(1):
- 2 (i) alternative facilities are not available or
- 3 available facilities do not provide adequate security; and
- 4 (ii) the detention-is-in-an-area-physically-and-visually
- 5 separate-and-removed-from-that-of-adults youth is kept in an
- 6 area that provides physical, as well as sight and sound,
- 7 separation from adults accused or convicted of criminal
- 8 offenses. (Terminates July 1, 1991--sec. 14, Ch. 434, L.
- 9 1989.)"
- Section 5. Section 41-5-306, MCA, is amended to read:
- 11 "41-5-306. (Effective July 1, 1991) Place of shelter
- 12 care or detention. (1) After a probable cause hearing
- 13 provided for in 41-5-303, a youth alleged to be a youth in
- 14 need of supervision may be placed only in:
- 15 (a) a licensed youth foster home as defined in
- 16 41-3-1102;
- 17 (b) a facility operated by a licensed child welfare
- 18 agency; or
- 19 (c) a licensed youth group home as defined in
- 20 41-3-1102.
- 21 (2) A youth alleged to be a youth in need of care shall
- 22 may be placed only in the facilities stated in subsection
- 23 (1) of-this-section and shall may not be placed in a jail or
- 24 other facility intended or used for the detention
- 25 confinement of adults charged-with accused or convicted of

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1 criminal offenses.

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- 2 (3) After a probable cause hearing provided for in
  3 41-5-303, a youth alleged to be a delinquent youth may be
  4 placed only in the facilities described in subsection (1) or
  5 in a youth detention facility as-defined-in-41-5-103."
  - Section 6. Section 53-30-202, MCA, is amended to read:
    - "53-30-202. Establishment of state youth correctional facilities -- prohibitions. (1) The department of family services, within the annual or biennial budgetary appropriation, may establish, maintain, and operate facilities to properly diagnose, care for, train, educate, and rehabilitate children youth in need of these services. The children youth must be 10 years of age or older and under 19 years of age. The facilities include but are not limited to the state youth correctional facilities at the Mountain View school in Helena and the Pine Hills school in Miles City.
    - (2) A youth alleged or found to be a youth in need of supervision may not be placed in a state youth correctional facility as defined in 41-5-103."
  - NEW SECTION. Section 7. Permitted acts -- detention of youth in law enforcement facilities -- criteria. (1) Nothing in this chapter precludes the detention of youth in a police station or other law enforcement facility that is attached to or part of a jail if:

- 1 (a) the area where the youth is held is an unlocked,
  2 multipurpose area, such as a lobby, office, interrogation
- 3 room, or other area that is not designated or used as a
- 4 secure detention area or that is not part of a secure
- 5 detention area, or, if part of such an area, that is used
- 6 only for the purpose of processing, such as a booking room;
- 7 (b) the youth is not secured to a cuffing rail or other8 stationary object during the period of detention;
- 9 (c) use of the area is limited to ensuring custody of
- the youth for the purpose of identification, processing, or
- 11 transfer of the youth to an appropriate detention or shelter
- 12 care facility;

- 13 (d) the area is not designed or intended to be used for
- 14 residential purposes; and
- 15 (e) the youth is under continuous visual supervision by
- 16 a law enforcement officer or by facility staff during the
  - period of time that the youth is held in detention.
- 18 (2) For purposes of this section, "secure detention"
- 19 means the detention of youth or confinement of adults
- 20 accused or convicted of criminal offenses in a physically
- 21 restricting setting, including but not limited to a locked
- 22 room or set of rooms or a cell designed to prevent a youth
- 23 or adult from departing at will.
- NEW SECTION. Section 8. Codification instruction.
- 25 [Sections 1 and 7] are intended to be codified as an

- l integral part of Title 41, chapter 5, part 3, and the
- 2 provisions of Title 41, chapter 5, part 3, apply to
- 3 [sections 1 and 7].
- 4 NEW SECTION. Section 9. Effective dates. (1) [Sections
- 5 1 through 4, 6 through 8, and this section] are effective on
- 6 passage and approval.
- 7 (2) [Section 5] is effective July 1, 1992.
- 8 NEW SECTION. SECTION 10. COORDINATION INSTRUCTION. IF
- 9 SENATE BILL NO. 37 IS NOT PASSED AND APPROVED, THEN [THIS
- 10 ACT | IS VOID.

-End-

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