

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.

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

1 or older.

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.

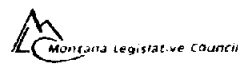
11 (6) "Custodian" means a person, other than a parent or
 12 guardian, to whom legal custody of the youth has been given
 13 but does not include a person who has only physical custody.

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 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 a facility other than the youth's
 24 own home for the purpose of ensuring the continued custody
 25 of the youth at any time after the youth is taken into



1 custody and before final disposition of his case.

2 {10} "Detention facility" means a physically restricting
3 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.

9 {7}{13} "Guardianship" means the status created and
10 defined by law between a youth and an adult with the
11 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.

18 {9}{16} (a) "Legal custody" means the legal status
19 created by order of a court of competent jurisdiction that
20 gives a person the right and duty to:

- 21 (i) have physical custody of the youth;
- 22 (ii) determine with whom the youth shall live and for
- 23 what period;
- 24 (iii) protect, train, and discipline the youth; and
- 25 (iv) provide the youth with food, shelter, education,

1 and ordinary medical care.

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

5 {17} "Necessary parties" includes the youth, his
6 parents, guardian, 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 (a) is used for the temporary placement of youth or
 2 individuals accused or convicted of criminal offenses; and

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.

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

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 facility that:

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 alleged or adjudicated delinquent youth.

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

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

22 (b) habitually disobeys the reasonable and lawful
 23 demands of his parents, foster parents, physical custodian,
 24 or guardian or is beyond control;

25 (c) being subject to compulsory school attendance, is

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}-"Delinquent-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,-having-been-placed-on-probation-as-a
 9 delinquent-youth-or-a-youth-in-need-of-supervision,-violates
 10 any-condition-of-his-probation;
 11 {14}-"Youth-in-need-of-supervision"-means-a-youth-who
 12 commits-an-offense-prohibited-by-law-which,-if-committed-by
 13 an-adult,-would-not-constitute-a-criminal-offense,-including
 14 but-not-limited-to-a-youth-who:
 15 {a)--violates-any-Montana-municipal-or-state-law
 16 regarding-use-of-alcoholic-beverages-by-minors;
 17 {b)--habitually-disobeys-the-reasonable-and-lawful
 18 demands-of-his-parents,-foster-parents,-physical-custodian,
 19 or-guardian-or-is-ungovernable-and-beyond-their-control;
 20 {c)--being-subject-to-compulsory-school-attendance,-is
 21 habitually-truant-from-school;-or
 22 {d)--has-committed-any-of-the-acts-of-a-delinquent-youth
 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}-"Eustodian"-means-a-person-other-than-a-parent-or
 3 guardian-to-whom-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 guardian,-custodian,-or-spouse;
 7 {18}-"State-youth-correctional-facility"-means-a
 8 residential-facility-for-the-rehabilitation-of-delinquent
 9 youth-such-as-Pine-Hills-school-in-Miles-City,-and-Mountain
 10 View-school-in-Heiema.
 11 {19}-"Shelter-care"-means-the-temporary-substitute-care
 12 of-youth-in-physically-unrestricting-facilities;
 13 {20}-"Detention"-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-informal-adjustment,
 20 consent-decree,-or-other-youth-court-order;
 21 {23}-"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
 25 without-the-care-and-supervision-of-their-parents-or

1 guardian;

2 ~~{24} "Serious--juvenile--offender" means a youth who has~~
3 ~~committed an offense against the person; an offense--against~~
4 ~~property;--or--an--offense--involving--dangerous--drugs--which~~
5 ~~would be considered a felony--offense--if--committed--by--an~~
6 ~~adult."~~

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

8 ~~"41-5-305. Detention and shelter care of youth Criteria~~
9 ~~for placement of youth in secure detention facilities or~~
10 ~~shelter care facilities. (1) After a probable cause hearing~~
11 ~~provided for in 41-5-303, a A youth may not be placed in a~~
12 ~~secure detention facility unless:~~

13 (a) he has allegedly committed an act ~~which~~ that if
14 committed by an adult would constitute a criminal offense
15 and the alleged offense is one specified in 41-5-206;

16 (b) he is alleged to be a delinquent youth and:

17 ~~{b}{i}~~ (i) he has escaped from a correctional facility or
18 secure detention facility;

19 ~~{c}{ii}~~ (ii) he has violated a valid court order or an
20 aftercare agreement;

21 ~~{d}{iii}~~ (iii) his detention is required to protect persons or
22 property;

23 ~~{e}--there is good reason to believe the youth will--not~~
24 ~~appear for court proceedings as ordered;~~

25 ~~{f}{iv}~~ (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;

3 ~~{g}{v}~~ (v) there are not adequate assurances that he will
4 appear for court when required; or

5 ~~{h}{vi}~~ (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;

19 (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:

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

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

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

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

(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 criminal offenses.

(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:

(a) the facilities described in subsection (1) ~~in~~;

(b) a youth detention facility ~~or in~~; or

(c) a jail or other facility for the ~~detention~~ confinement of adults but only if ~~the facilities in~~ subsection (1);

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

(ii) ~~the detention is in an area physically and visually 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 offenses. (Terminates July 1, 1991--sec. 14, Ch. 434, L. 1989.)"

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

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

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

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

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

(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 criminal offenses.

1 (3) After a probable cause hearing provided for in
2 41-5-303, a youth alleged to be a delinquent youth may be
3 placed only in the facilities described in subsection (1) or
4 in a youth detention facility ~~as defined in 41-5-103.~~"

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

6 "~~53-30-202. Establishment of state youth correctional~~
7 ~~facilities -- prohibitions. (1) The department of family~~
8 ~~services, within the annual or biennial budgetary~~
9 ~~appropriation, may establish, maintain, and operate~~
10 ~~facilities to properly diagnose, care for, train, educate,~~
11 ~~and rehabilitate children youth in need of these services.~~
12 ~~The children youth must be 10 years of age or older and~~
13 ~~under 19 years of age. The facilities include but are not~~
14 ~~limited to the state youth correctional facilities at the~~
15 ~~Mountain View school in Helena and the Pine Hills school in~~
16 ~~Miles City.~~

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

20 **NEW SECTION. Section 7.** Permitted acts -- detention of
21 youth in law enforcement facilities -- criteria. (1) Nothing
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:

25 (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
7 stationary object during the period of detention;

8 (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 care facility;

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
15 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
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 integral part of Title 41, chapter 5, part 3, and the

LC 0067/01

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 1-14-91



BILL YELLOWTAIL, PRIMARY SPONSOR DATE
Fiscal Note for SB0059, as introduced 1/15/91

SB 59

APPROVED BY COMMITTEE
ON JUDICIARY

SENATE BILL NO. 59

INTRODUCED BY YELLOWTAIL

BY REQUEST OF THE JOINT INTERIM SUBCOMMITTEE

ON ADULT AND JUVENILE DETENTION

A BILL FOR AN ACT ENTITLED: "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 A JAIL; AMENDING SECTIONS 41-5-103, 41-5-305,
41-5-306, AND 53-30-202, MCA; AND PROVIDING EFFECTIVE
DATES."

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

NEW SECTION. **Section 1.** Detention of youth in need of
supervision -- prohibitions. A youth alleged or found to be
a youth in need of supervision may not be placed in a jail,
secure detention facility, or correctional facility.

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

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

(1) "Adult" means an individual who is 18 years of age

or older.

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

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

(4) "Correctional facility" means a public or private
residential facility used for the placement of delinquent
youth or individuals convicted of criminal offenses.

~~(4)~~ (5) "Court", when used without further
qualification, means the youth court of the district court.

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

(7) "Delinquent youth" means a youth:

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

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

~~(5)~~ (8) "Department" means the department of family
services provided for in 2-15-2401.

(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

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.

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:

- 22 (i) have physical custody of the youth;
23 (ii) determine with whom the youth shall live and for
24 what period;
25 (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, guardian, custodian, or spouse.

8 ~~(10)~~(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"--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--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

1 private facility that:

2 (a) is used for the temporary placement of youth or
3 individuals accused or convicted of criminal offenses; and

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5 and activities of youth or other individuals held in lawful
6 custody of the facility.

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9 offense if committed by an adult and that is an offense
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13 of youth in physically unrestricting facilities.

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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

1 guardian.

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3 years of age without regard to sex or emancipation.

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5 to this chapter to hear all proceedings in which a youth is
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7 supervision, or a youth in need of care and includes the
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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 lawful
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}-"Delinquent youth"-means-a-youth:~~
7 ~~{a}-who-has-committed-an-offense-which,-if-committed-by~~
8 ~~an-adult,-would-constitute-a-criminal-offense;~~

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

12 ~~{14}-"Youth-in-need-of-supervision"-means-a-youth-who~~
13 ~~commits-an-offense-prohibited-by-law-which,-if-committed-by~~
14 ~~an-adult,-would-not-constitute-a-criminal-offense,-including~~
15 ~~but-not-limited-to-a-youth-who:~~

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

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

21 ~~{c}-being-subject-to-compulsory-school-attendance,-is~~
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 ~~as-a-youth-in-need-of-supervision.~~

1 ~~{15}-"Youth-in-need-of-care"-means-a-youth-as-defined-in~~
2 ~~41-3-102;~~

3 ~~{16}-"Eustodian"--means--a-person-other-than-a-parent-or~~
4 ~~guardian-to-whom-legal-custody-of-the-youth-has--been--given~~
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}-"State---youth---correctional---facility"--means--a~~
9 ~~residential-facility-for-the-rehabilitation-of--delinquent~~
10 ~~youth--such-as-Pine-Hills-school-in-Miles-City,-and-Mountain~~
11 ~~View-school-in-Helena;~~

12 ~~{19}-"Shelter-care"-means-the-temporary-substitute--care~~
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-the-victim~~
19 ~~or-with-services-to-the-victim-or-the-general-community-when~~
20 ~~these-payments-are-made-pursuant-to-an-informal-adjustment,~~
21 ~~consent-decree,-or-other-youth-court-order;~~

22 ~~{23}-"Substitute-care"-means-full-time-care-of-youth--in~~
23 ~~a--residential--setting--for--the-purpose-of-providing-food,~~
24 ~~shelter,-security-and-safety,-guidance,-direction,-and--if~~
25 ~~necessary,-treatment--to--youth--who--are--removed--from-or~~

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

3 {24}--"Serious--juvenile--offender"--means--a--youth--who--has
4 committed--an--offense--against--the--person,--an--offense--against
5 property,--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. 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 41-5-303,~~ 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 {b}(i) he has escaped from a correctional facility or
19 secure detention facility;

20 {c}(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;

24 {e}--there--is--good--reason--to--believe--the--youth--will--not
25 appear--for--court--proceedings--as--ordered;

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 {g}(v) there are not adequate assurances that he will
5 appear for court when required; or

6 {h}(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

9 (c) he has been adjudicated delinquent and is awaiting
10 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;

22 (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

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.

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

19 (3) After a probable cause hearing provided for in
20 41-5-303, a youth alleged to be a delinquent youth may be
21 placed only in:

22 (a) the facilities described in subsection (1) ~~7-in;~~

23 (b) a youth detention facility ~~7-or-in;~~ 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

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.)"

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
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

1 criminal offenses.

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."

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
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
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
23 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
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 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;

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
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

SB 0059/02

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
 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

1 or older.
 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 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



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.

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:

22 (i) have physical custody of the youth;

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

25 (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, guardian, custodian, or spouse.

8 ~~{10}~~{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" 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 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

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

1 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 lawful
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)-"Delinquent youth" means a youth:

7 (a)--who has committed an offense which, if committed by
 8 an adult, would constitute a criminal offense;

9 (b)--who, having been placed on probation as a
 10 delinquent youth or a youth in need of supervision, violates
 11 any condition of his probation;

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

16 (a)--violates any Montana municipal or state law
 17 regarding use of alcoholic beverages by minors;

18 (b)--habitually disobeys the reasonable and lawful
 19 demands of his parents, foster parents, physical custodian,
 20 or guardian or is ungovernable and beyond their control;

21 (c)--being subject to compulsory school attendance, is
 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 as a youth in need of supervision.

1 (15)-"Youth in need of care" means a youth as defined in
 2 41-3-102;

3 (16)-"Eustodian" means a person other than a parent or
 4 guardian to whom legal custody of the youth has been given
 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)-"State youth correctional facility" means a
 9 residential facility for the rehabilitation of delinquent
 10 youth such as Pine Hills school in Miles City, and Mountain
 11 View school in Helena;

12 (19)-"Shelter care" means the temporary substitute care
 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 the victim
 19 or with services to the victim or the general community when
 20 these payments are made pursuant to an informal adjustment,
 21 consent decree, or other youth court order;

22 (23)-"Substitute care" means full-time care of youth in
 23 a residential setting for the purpose of providing food,
 24 shelter, security and safety, guidance, direction, and if
 25 necessary, treatment to youth who are removed from or

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

3 {24}-"Serious-juvenile-offender"-means-a-youth--who--has
4 committed--an-offense-against-the-person,-an-offense-against
5 property,-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. 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-41-5-303,-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:

18 {b}{i} he has escaped from a correctional facility or
19 secure detention facility;

20 {c}{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;

24 {e}--there--is--good-reason-to-believe-the-youth-will-not
25 appear-for-court-proceedings-as-ordered;

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 {g}{v} there are not adequate assurances that he will
5 appear for court when required; or

6 {h}{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

9 (c) he has been adjudicated delinquent and is awaiting
10 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;

22 (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

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.

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

19 (3) After a probable cause hearing provided for in
20 41-5-303, a youth alleged to be a delinquent youth may be
21 placed only in:

22 (a) the facilities described in subsection (1) ~~7-in;~~

23 (b) a youth detention facility ~~7-or-in; 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

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.)"

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
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

1 criminal offenses.

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.~~"

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
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
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
23 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
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 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;

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
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

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-

SENATE BILL NO. 59

INTRODUCED BY YELLOWTAIL

BY REQUEST OF THE JOINT INTERIM SUBCOMMITTEE

ON ADULT AND JUVENILE DETENTION

A BILL FOR AN ACT ENTITLED: "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 A JAIL; AMENDING SECTIONS 41-5-103, 41-5-305, 41-5-306, AND 53-30-202, MCA; AND PROVIDING EFFECTIVE DATES."

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

NEW SECTION. Section 1. Detention of youth in need of supervision -- prohibitions. A youth alleged or found to be a youth in need of supervision may not be placed in a jail, secure detention facility, or correctional facility.

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

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

(1) "Adult" means an individual who is 18 years of age

or older.

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

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

(4) "Correctional facility" means a public or private residential facility used for the placement of delinquent youth or individuals convicted of criminal offenses.

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

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

(7) "Delinquent youth" means a youth:

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

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

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

(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



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.

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:

- 22 (i) have physical custody of the youth;
- 23 (ii) determine with whom the youth shall live and for
- 24 what period;
- 25 (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, guardian, custodian, or spouse.

8 {10}{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" 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 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

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

1 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 lawful
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}-"Delinquent youth"-means a youth:

7 (a)--who has committed an offense which, if committed by
8 an adult, would constitute a criminal offense;

9 (b)--who, having been placed on probation as a
10 delinquent youth or a youth in need of supervision, violates
11 any condition of his probation;

12 {14}-"Youth in need of supervision"-means a youth who
13 commits an offense prohibited by law which, if committed by
14 an adult, would not constitute a criminal offense, including
15 but not limited to a youth who:

16 (a)--violates any Montana municipal or state law
17 regarding use of alcoholic beverages by minors;

18 (b)--habitually disobeys the reasonable and lawful
19 demands of his parents, foster parents, physical custodian,
20 or guardian or is ungovernable and beyond their control;

21 (c)--being subject to compulsory school attendance, is
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 as a youth in need of supervision.

1 {15}-"Youth in need of care"-means a youth as defined in
2 §1-3-102;

3 {16}-"Custodian"--means a person other than a parent or
4 guardian to whom legal custody of the youth has been given
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}-"State youth correctional facility"-means a
9 residential facility for the rehabilitation of delinquent
10 youth such as Pine Hills school in Miles City, and Mountain
11 View school in Helena;

12 {19}-"Shelter care"-means the temporary substitute care
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 the victim
19 or with services to the victim or the general community when
20 these payments are made pursuant to an informal adjustment,
21 consent decree, or other youth court order;

22 {23}-"Substitute care"-means full-time care of youth in
23 a residential setting for the purpose of providing food,
24 shelter, security and safety, guidance, direction, and if
25 necessary, treatment to youth who are removed from or

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

3 ~~{24}-"Serious-juvenile-offender"-means-a-youth--who--has~~
 4 ~~committed--an-offense-against-the-person,-an-offense-against~~
 5 ~~property,-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. 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-41-5-303,-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:

18 {b}(i) he has escaped from a correctional facility or
 19 secure detention facility;

20 {c}(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;

24 ~~{e}-there--is-good-reason-to-believe-the-youth-will-not~~
 25 ~~appear-for-court-proceedings-as-ordered;~~

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 ~~{g}(v)~~ there are not adequate assurances that he will
 5 appear for court when required; or

6 ~~{h}(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

9 (c) he has been adjudicated delinquent and is awaiting
 10 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;

22 (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

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.

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

19 (3) After a probable cause hearing provided for in
20 41-5-303, a youth alleged to be a delinquent youth may be
21 placed only in:

22 (a) the facilities described in subsection (1) ~~and in;~~

23 (b) a youth detention facility ~~and in;~~ 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

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.)"

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
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

1 criminal offenses.

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."

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
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
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
23 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
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 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;

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
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

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."

GOV. Amend
SB 59

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

1 or older.

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 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

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.

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:

- 22 (i) have physical custody of the youth;
23 (ii) determine with whom the youth shall live and for
24 what period;
25 (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, guardian, custodian, or spouse.

8 ~~(10)~~(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"--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--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

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

1 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 lawful
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) "Delinquent youth" means a youth:
 7 (a) who has committed an offense which, if committed by
 8 an adult, would constitute a criminal offense;

9 (b) who, having been placed on probation as a
 10 delinquent youth or a youth in need of supervision, violates
 11 any condition of his probation;

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

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

18 (b) habitually disobeys the reasonable and lawful
 19 demands of his parents, foster parents, physical custodian,
 20 or guardian or is ungovernable and beyond their control;

21 (c) being subject to compulsory school attendance, is
 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 as a youth in need of supervision;

1 (15) "Youth in need of care" means a youth as defined in
 2 41-3-102;

3 (16) "Custodian" means a person other than a parent or
 4 guardian to whom legal custody of the youth has been given
 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) "State youth correctional facility" means a
 9 residential facility for the rehabilitation of delinquent
 10 youth such as Pine Hills school in Miles City, and Mountain
 11 View school in Helena;

12 (19) "Shelter care" means the temporary substitute care
 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 the victim
 19 or with services to the victim or the general community when
 20 these payments are made pursuant to an informal adjustment,
 21 consent decree, or other youth court order;

22 (23) "Substitute care" means full-time care of youth in
 23 a residential setting for the purpose of providing food,
 24 shelter, security and safety, guidance, direction, and if
 25 necessary, treatment to youth who are removed from or

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

3 ~~†24) "Serious juvenile offender" means a youth who has~~
4 ~~committed an offense against the person, an offense against~~
5 ~~property, 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. 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 41-5-303, 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:

18 ~~†b)(i)~~ he has escaped from a correctional facility or
19 secure detention facility;

20 ~~†c)(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;

24 ~~†e) there is good reason to believe the youth will not~~
25 ~~appear for court proceedings as ordered;~~

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 ~~†g)(v)~~ there are not adequate assurances that he will
5 appear for court when required; or

6 ~~†h)(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

9 (c) he has been adjudicated delinquent and is awaiting
10 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;

22 (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

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.

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

19 (3) After a probable cause hearing provided for in
20 41-5-303, a youth alleged to be a delinquent youth may be
21 placed only in:

22 (a) the facilities described in subsection (1) ~~7-10;~~

23 (b) a youth detention facility ~~7-er-in; 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

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.)"

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
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

1 criminal offenses.

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."

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
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
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
23 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
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 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;

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
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

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.

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-