

SENATE BILL NO. 432

INTRODUCED BY PINSONEAULT, STRIZICH  
BY REQUEST OF THE DEPARTMENT  
OF FAMILY SERVICES

IN THE SENATE

FEBRUARY 18, 1991           INTRODUCED AND REFERRED TO COMMITTEE  
                                  ON JUDICIARY.

FEBRUARY 19, 1991           FIRST READING.

FEBRUARY 22, 1991           COMMITTEE RECOMMEND BILL  
                                  DO PASS. REPORT ADOPTED.

                                  PRINTING REPORT.

FEBRUARY 25, 1991           SECOND READING, DO PASS.

FEBRUARY 26, 1991           ENGROSSING REPORT.

                                  THIRD READING, PASSED.  
                                  AYES, 49; NOES, 0.

                                  TRANSMITTED TO HOUSE.

IN THE HOUSE

MARCH 4, 1991                INTRODUCED AND REFERRED TO COMMITTEE  
                                  ON JUDICIARY.

                                  FIRST READING.

MARCH 14, 1991               COMMITTEE RECOMMEND BILL BE  
                                  CONCURRED IN. REPORT ADOPTED.

                                  POSTED ON CONSENT CALENDAR.

MARCH 15, 1991                CONSENT CALENDAR, QUESTIONS AND ANSWERS.

MARCH 16, 1991               THIRD READING, CONCURRED IN.  
                                  AYES, 97; NOES, 0.

                                  RETURNED TO SENATE.

IN THE SENATE

MARCH 18, 1991               RECEIVED FROM HOUSE.

                                  SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 *Senate* BILL NO. *432*  
 2 INTRODUCED BY *Prisneault*  
 3 BY REQUEST OF THE DEPARTMENT  
 4 OF FAMILY SERVICES

5  
 6 A BILL FOR AN ACT ENTITLED: "AN ACT TO CLARIFY THE  
 7 RESPONSIBILITY OF THE DEPARTMENT OF FAMILY SERVICES AND OF  
 8 YOUTH PROBATION OFFICERS REGARDING THE SUPERVISION OF YOUTH  
 9 IN PLACEMENT FACILITIES; TO CLARIFY THE APPLICABILITY OF AN  
 10 AFTERCARE AGREEMENT IF A DELINQUENT YOUTH IS TRANSFERRED  
 11 FROM A STATE YOUTH CORRECTIONAL FACILITY TO A MENTAL HEALTH  
 12 FACILITY AND SUBSEQUENTLY RELEASED; AMENDING SECTIONS  
 13 41-5-523 AND 53-30-226, MCA; AND PROVIDING AN EFFECTIVE  
 14 DATE."  
 15

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

17 **Section 1.** Section 41-5-523, MCA, is amended to read:  
 18 "41-5-523. (Temporary) Disposition of delinquent youth  
 19 and youth in need of supervision. (1) If a youth is found to  
 20 be delinquent or in need of supervision, the youth court may  
 21 enter its judgment making any of the following dispositions:  
 22 (a) place the youth on probation;  
 23 (b) commit the youth to the department if the court  
 24 determines that the youth is in need of placement in other  
 25 than the youth's own home; provided, however, that:

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

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

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

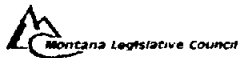
14 (d) impose a fine as authorized by law if the violation  
 15 alleged would constitute a criminal offense if committed by  
 16 an adult;

17 (e) require the performance of community service;

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

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

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



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 INTRODUCED BILL  
 SB 432

1 as the court may designate;

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

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

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

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

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

10 (c) No youth may be placed in or transferred to a penal  
11 institution or other facility used for the execution of  
12 sentence of adults convicted of crimes.

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

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

1 (5) No evaluation of a youth may be performed at the  
2 Montana state hospital unless such youth is transferred to  
3 the district court under 41-5-206.

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

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

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

18 (a) place the youth on probation;

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

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

1 the need for removal of the youth from his home. The court  
2 shall include such determination in the order committing the  
3 youth to the department.

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

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

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

13 (e) require the performance of community service;

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

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

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

23 (i) order such further care, treatment, evaluation, or  
24 relief that the court considers beneficial to the youth and  
25 the community and that does not obligate funding from the

1 department without the department's approval, except that a  
 2 youth may not be placed by a youth court in a residential  
 3 treatment facility as defined in 50-5-101. Only the  
 4 department may, pursuant to subsection (1)(b), place a youth  
 5 in a residential treatment facility.

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

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

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

24 (b) A youth may not be held in a state youth  
 25 correctional facility for a period of time in excess of the

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

7 (c) No youth may be placed in or transferred to a penal  
 8 institution or other facility used for the execution of  
 9 sentence of adults convicted of crimes.

10 (3) A youth placed by the department in a state youth  
 11 correctional facility must be supervised by the department.  
 12 A youth placed in any other placement must be supervised by  
 13 the youth probation officer of the youth court having  
 14 jurisdiction over the youth whether or not the youth is  
 15 committed to the department. Supervision by the youth  
 16 probation officer includes but is not limited to:

17 (a) submitting information and documentation necessary  
 18 for the person, committee, or team that is making the  
 19 placement recommendation to determine an appropriate  
 20 placement for the youth;

21 (b) securing approval for payment of special education  
 22 costs from the youth's school district of residence or the  
 23 office of public instruction, as required in Title 20,  
 24 chapter 7, part 4;

25 (c) submitting an application to a facility in which

1 the youth may be placed; and

2 (d) case management of the youth.

3 (4) At any time after the youth has been taken into  
4 custody and before final disposition, the court may, with  
5 the consent of the youth in the manner provided in 41-5-303  
6 for consent by a youth to a waiver of his constitutional  
7 rights or after the youth has been adjudicated delinquent or  
8 in need of supervision, order the youth to be evaluated for  
9 a period not to exceed 45 days. The county commissioners are  
10 responsible for the cost of the evaluation and may contract  
11 with the department or other public or private agencies to  
12 obtain evaluation services.

13 (5) No evaluation of a youth may be performed at the  
14 Montana state hospital unless such youth is transferred to  
15 the district court under 41-5-206.

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

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

25 **Section 2.** Section 53-30-226, MCA, is amended to read:

1 \*53-30-226. Youth aftercare agreement. (1) A youth  
2 released by the department of family services from one of  
3 the state youth correctional facilities to the supervision,  
4 custody, and control of the department shall, before his  
5 release, sign an aftercare agreement containing:

6 ~~(1)~~(a) a statement of the terms and conditions of his  
7 release, including a list of the acts which, if committed by  
8 the youth, may result in his return to the facility; and

9 ~~(2)~~(b) a statement that if the department or any person  
10 alleges any violation of the terms and conditions of the  
11 agreement, the youth is entitled to a hearing as provided  
12 for in 53-30-229 before he may be returned to the facility.

13 (2) A youth who is released from a state youth  
14 correctional facility for commitment to a mental health  
15 facility pursuant to Title 53, chapter 21, part 1, shall  
16 sign an aftercare agreement that will remain in effect until  
17 the youth is returned to the court for further disposition  
18 as provided in 41-5-523(1)(j). If the youth is not returned  
19 to a state youth correctional facility following the hearing  
20 for further disposition, the aftercare agreement becomes  
21 void unless amended or extended by the department or the  
22 court."

23 **NEW SECTION. Section 3.** Effective date. [This act] is  
24 effective July 1, 1991.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0432, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:


An act to clarify the responsibility of the Department of Family Services and of youth probation officers regarding the supervision of youth in placement facilities; to clarify the applicability of an aftercare agreement if a delinquent youth is transferred from a state youth correctional facility to a mental health facility and subsequently released; amending Sections 41-5-523 and 53-30-226, MCA; and providing an effective date.


ASSUMPTIONS:

1. The purpose of the proposed bill is clarification of current law and procedural change only.

FISCAL IMPACT:

None.

  
ROD SUNDSTED, BUDGET DIRECTOR      DATE  
Office of Budget and Program Planning      2-22-91

      2/23/91  
RICHARD J. "DICK" PINSONNEAULT, PRIMARY SPONSOR      DATE  
Fiscal Note for SB0432, as introduced      **SB 432**



APPROVED BY COMMITTEE  
ON JUDICIARY

1 INTRODUCED BY Sen. P. Senechal BILL NO. 432  
2  
3 BY REQUEST OF THE DEPARTMENT  
4 OF FAMILY SERVICES  
5

6 A BILL FOR AN ACT ENTITLED: "AN ACT TO CLARIFY THE  
7 RESPONSIBILITY OF THE DEPARTMENT OF FAMILY SERVICES AND OF  
8 YOUTH PROBATION OFFICERS REGARDING THE SUPERVISION OF YOUTH  
9 IN PLACEMENT FACILITIES; TO CLARIFY THE APPLICABILITY OF AN  
10 AFTERCARE AGREEMENT IF A DELINQUENT YOUTH IS TRANSFERRED  
11 FROM A STATE YOUTH CORRECTIONAL FACILITY TO A MENTAL HEALTH  
12 FACILITY AND SUBSEQUENTLY RELEASED; AMENDING SECTIONS  
13 41-5-523 AND 53-30-226, MCA; AND PROVIDING AN EFFECTIVE  
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- 22 (a) place the youth on probation;
- 23 (b) commit the youth to the department if the court
- 24 determines that the youth is in need of placement in other
- 25 than the youth's own home; provided, however, that:

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

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

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

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

17 (e) require the performance of community service;

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

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

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



1 as the court may designate;

2 (i) order such further care, treatment, evaluation, or  
3 relief that the court considers beneficial to the youth and  
4 the community and that does not obligate funding from the  
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8 department may, pursuant to subsection (1)(b), place a youth  
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16 youth must be returned to the court for further disposition  
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18 expired or the court no longer retains jurisdiction under  
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20 (2) When a youth is committed to the department, the  
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5 period of imprisonment that could be imposed on an adult  
6 convicted of the offense or offenses that brought the youth  
7 under the jurisdiction of the youth court. Nothing in this  
8 section limits the power of the department to enter into an  
9 aftercare agreement with the youth pursuant to 53-30-226.

10 (c) No youth may be placed in or transferred to a penal  
11 institution or other facility used for the execution of  
12 sentence of adults convicted of crimes.

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

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

1 (5) No evaluation of a youth may be performed at the  
2 Montana state hospital unless such youth is transferred to  
3 the district court under 41-5-206.

4 (6) Any order of the court may be modified at any time.  
5 In the case of a youth committed to the department, an order  
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1 the need for removal of the youth from his home. The court  
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4 (ii) in the case of a delinquent youth who is determined  
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8 is necessary for the protection of the public;

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

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

13 (e) require the performance of community service;

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

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

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

23 (i) order such further care, treatment, evaluation, or  
24 relief that the court considers beneficial to the youth and  
25 the community and that does not obligate funding from the

1 department without the department's approval, except that a  
 2 youth may not be placed by a youth court in a residential  
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6 (j) commit the youth to a mental health facility if,  
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22 (a) A youth in need of supervision may not be placed in  
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1 maximum period of imprisonment that could be imposed on an  
 2 adult convicted of the offense or offenses that brought the  
 3 youth under the jurisdiction of the youth court. Nothing in  
 4 this section limits the power of the department to enter  
 5 into an aftercare agreement with the youth pursuant to  
 6 53-30-226.

7 (c) No youth may be placed in or transferred to a penal  
 8 institution or other facility used for the execution of  
 9 sentence of adults convicted of crimes.

10 (3) A youth placed by the department in a state youth  
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 12 A youth placed in any other placement must be supervised by  
 13 the youth probation officer of the youth court having  
 14 jurisdiction over the youth whether or not the youth is  
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 16 probation officer includes but is not limited to:

17 (a) submitting information and documentation necessary  
 18 for the person, committee, or team that is making the  
 19 placement recommendation to determine an appropriate  
 20 placement for the youth;

21 (b) securing approval for payment of special education  
 22 costs from the youth's school district of residence or the  
 23 office of public instruction, as required in Title 20,  
 24 chapter 7, part 4;

25 (c) submitting an application to a facility in which

1 the youth may be placed; and

2 (d) case management of the youth.

3 (4) At any time after the youth has been taken into  
4 custody and before final disposition, the court may, with  
5 the consent of the youth in the manner provided in 41-5-303  
6 for consent by a youth to a waiver of his constitutional  
7 rights or after the youth has been adjudicated delinquent or  
8 in need of supervision, order the youth to be evaluated for  
9 a period not to exceed 45 days. The county commissioners are  
10 responsible for the cost of the evaluation and may contract  
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17 In the case of a youth committed to the department, an order  
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20 (7) Whenever the court commits a youth to the  
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22 copies of a medical report and such other clinical,  
23 predisposition, or other reports and information pertinent  
24 to the care and treatment of the youth."

25 **Section 2.** Section 53-30-226, MCA, is amended to read:

1 "53-30-226. Youth aftercare agreement. (1) A youth  
2 released by the department of family services from one of  
3 the state youth correctional facilities to the supervision,  
4 custody, and control of the department shall, before his  
5 release, sign an aftercare agreement containing:

6 {1}(a) a statement of the terms and conditions of his  
7 release, including a list of the acts which, if committed by  
8 the youth, may result in his return to the facility; and

9 {2}(b) a statement that if the department or any person  
10 alleges any violation of the terms and conditions of the  
11 agreement, the youth is entitled to a hearing as provided  
12 for in 53-30-229 before he may be returned to the facility.

13 (2) A youth who is released from a state youth  
14 correctional facility for commitment to a mental health  
15 facility pursuant to Title 53, chapter 21, part 1, shall  
16 sign an aftercare agreement that will remain in effect until  
17 the youth is returned to the court for further disposition  
18 as provided in 41-5-523(1)(j). If the youth is not returned  
19 to a state youth correctional facility following the hearing  
20 for further disposition, the aftercare agreement becomes  
21 void unless amended or extended by the department or the  
22 court."

23 **NEW SECTION. Section 3.** Effective date. (This act) is  
24 effective July 1, 1991.

-End-

1  
2 INTRODUCED BY SEN. SANDERSON BILL NO. 432  
3 BY REQUEST OF THE DEPARTMENT  
4 OF FAMILY SERVICES  
5

6 A BILL FOR AN ACT ENTITLED: "AN ACT TO CLARIFY THE  
7 RESPONSIBILITY OF THE DEPARTMENT OF FAMILY SERVICES AND OF  
8 YOUTH PROBATION OFFICERS REGARDING THE SUPERVISION OF YOUTH  
9 IN PLACEMENT FACILITIES; TO CLARIFY THE APPLICABILITY OF AN  
10 AFTERCARE AGREEMENT IF A DELINQUENT YOUTH IS TRANSFERRED  
11 FROM A STATE YOUTH CORRECTIONAL FACILITY TO A MENTAL HEALTH  
12 FACILITY AND SUBSEQUENTLY RELEASED; AMENDING SECTIONS  
13 41-5-523 AND 53-30-226, MCA; AND PROVIDING AN EFFECTIVE  
14 DATE."  
15

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

17 **Section 1.** Section 41-5-523, MCA, is amended to read:

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

22 (a) place the youth on probation;

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

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

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

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

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

17 (e) require the performance of community service;

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

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

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

1 as the court may designate;

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

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

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

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

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

10 (c) No youth may be placed in or transferred to a penal  
11 institution or other facility used for the execution of  
12 sentence of adults convicted of crimes.

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

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

1 (5) No evaluation of a youth may be performed at the  
2 Montana state hospital unless such youth is transferred to  
3 the district court under 41-5-206.

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

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

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

18 (a) place the youth on probation;

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

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

1 the need for removal of the youth from his home. The court  
2 shall include such determination in the order committing the  
3 youth to the department.

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

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

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

13 (e) require the performance of community service;

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

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

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

23 (i) order such further care, treatment, evaluation, or  
24 relief that the court considers beneficial to the youth and  
25 the community and that does not obligate funding from the



1 department without the department's approval, except that a  
2 youth may not be placed by a youth court in a residential  
3 treatment facility as defined in 50-5-101. Only the  
4 department may, pursuant to subsection (1)(b), place a youth  
5 in a residential treatment facility.

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

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

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

24 (b) A youth may not be held in a state youth  
25 correctional facility for a period of time in excess of the

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

7 (c) No youth may be placed in or transferred to a penal  
8 institution or other facility used for the execution of  
9 sentence of adults convicted of crimes.

10 (3) A youth placed by the department in a state youth  
11 correctional facility must be supervised by the department.  
12 A youth placed in any other placement must be supervised by  
13 the youth probation officer of the youth court having  
14 jurisdiction over the youth whether or not the youth is  
15 committed to the department. Supervision by the youth  
16 probation officer includes but is not limited to:

17 (a) submitting information and documentation necessary  
18 for the person, committee, or team that is making the  
19 placement recommendation to determine an appropriate  
20 placement for the youth;

21 (b) securing approval for payment of special education  
22 costs from the youth's school district of residence or the  
23 office of public instruction, as required in Title 20,  
24 chapter 7, part 4;

25 (c) submitting an application to a facility in which

1 the youth may be placed; and

2 (d) case management of the youth.

3 (4) At any time after the youth has been taken into  
4 custody and before final disposition, the court may, with  
5 the consent of the youth in the manner provided in 41-5-303  
6 for consent by a youth to a waiver of his constitutional  
7 rights or after the youth has been adjudicated delinquent or  
8 in need of supervision, order the youth to be evaluated for  
9 a period not to exceed 45 days. The county commissioners are  
10 responsible for the cost of the evaluation and may contract  
11 with the department or other public or private agencies to  
12 obtain evaluation services.

13 (5) No evaluation of a youth may be performed at the  
14 Montana state hospital unless such youth is transferred to  
15 the district court under 41-5-206.

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

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

25 **Section 2.** Section 53-30-226, MCA, is amended to read:

1 "53-30-226. Youth aftercare agreement. (1) A youth  
2 released by the department of family services from one of  
3 the state youth correctional facilities to the supervision,  
4 custody, and control of the department shall, before his  
5 release, sign an aftercare agreement containing:

6 {1}(a) a statement of the terms and conditions of his  
7 release, including a list of the acts which, if committed by  
8 the youth, may result in his return to the facility; and

9 {2}(b) a statement that if the department or any person  
10 alleges any violation of the terms and conditions of the  
11 agreement, the youth is entitled to a hearing as provided  
12 for in 53-30-229 before he may be returned to the facility.

13 {2} A youth who is released from a state youth  
14 correctional facility for commitment to a mental health  
15 facility pursuant to Title 53, chapter 21, part 1, shall  
16 sign an aftercare agreement that will remain in effect until  
17 the youth is returned to the court for further disposition  
18 as provided in 41-5-523(1)(j). If the youth is not returned  
19 to a state youth correctional facility following the hearing  
20 for further disposition, the aftercare agreement becomes  
21 void unless amended or extended by the department or the  
22 court."

23 **NEW SECTION. Section 3.** Effective date. [This act] is  
24 effective July 1, 1991.

-End-

## 1 SENATE BILL NO. 432

2 INTRODUCED BY PINSONEAULT, STRIZICH

3 BY REQUEST OF THE DEPARTMENT

4 OF FAMILY SERVICES

5  
6 A BILL FOR AN ACT ENTITLED: "AN ACT TO CLARIFY THE  
7 RESPONSIBILITY OF THE DEPARTMENT OF FAMILY SERVICES AND OF  
8 YOUTH PROBATION OFFICERS REGARDING THE SUPERVISION OF YOUTH  
9 IN PLACEMENT FACILITIES; TO CLARIFY THE APPLICABILITY OF AN  
10 AFTERCARE AGREEMENT IF A DELINQUENT YOUTH IS TRANSFERRED  
11 FROM A STATE YOUTH CORRECTIONAL FACILITY TO A MENTAL HEALTH  
12 FACILITY AND SUBSEQUENTLY RELEASED; AMENDING SECTIONS  
13 41-5-523 AND 53-30-226, MCA; AND PROVIDING AN EFFECTIVE  
14 DATE."

15  
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

17 **Section 1.** Section 41-5-523, MCA, is amended to read:

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

22 (a) place the youth on probation;

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

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

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

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

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

17 (e) require the performance of community service;

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

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

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

1 as the court may designate;

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

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

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

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

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

10 (c) No youth may be placed in or transferred to a penal  
11 institution or other facility used for the execution of  
12 sentence of adults convicted of crimes.

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

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

1 (5) No evaluation of a youth may be performed at the  
2 Montana state hospital unless such youth is transferred to  
3 the district court under 41-5-206.

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

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

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

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

1 the need for removal of the youth from his home. The court  
2 shall include such determination in the order committing the  
3 youth to the department.

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

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

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

13 (e) require the performance of community service;

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

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

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

23 (i) order such further care, treatment, evaluation, or  
24 relief that the court considers beneficial to the youth and  
25 the community and that does not obligate funding from the

1 department without the department's approval, except that a  
 2 youth may not be placed by a youth court in a residential  
 3 treatment facility as defined in 50-5-101. Only the  
 4 department may, pursuant to subsection (1)(b), place a youth  
 5 in a residential treatment facility.

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

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

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

24 (b) A youth may not be held in a state youth  
 25 correctional facility for a period of time in excess of the

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

7 (c) No youth may be placed in or transferred to a penal  
 8 institution or other facility used for the execution of  
 9 sentence of adults convicted of crimes.

10 (3) A youth placed by the department in a state youth  
 11 correctional facility must be supervised by the department.  
 12 A youth placed in any other placement must be supervised by  
 13 the youth probation officer of the youth court having  
 14 jurisdiction over the youth whether or not the youth is  
 15 committed to the department. Supervision by the youth  
 16 probation officer includes but is not limited to:

17 (a) submitting information and documentation necessary  
 18 for the person, committee, or team that is making the  
 19 placement recommendation to determine an appropriate  
 20 placement for the youth;

21 (b) securing approval for payment of special education  
 22 costs from the youth's school district of residence or the  
 23 office of public instruction, as required in Title 20,  
 24 chapter 7, part 4;

25 (c) submitting an application to a facility in which

1 the youth may be placed; and

2 (d) case management of the youth.

3 (4) At any time after the youth has been taken into  
4 custody and before final disposition, the court may, with  
5 the consent of the youth in the manner provided in 41-5-303  
6 for consent by a youth to a waiver of his constitutional  
7 rights or after the youth has been adjudicated delinquent or  
8 in need of supervision, order the youth to be evaluated for  
9 a period not to exceed 45 days. The county commissioners are  
10 responsible for the cost of the evaluation and may contract  
11 with the department or other public or private agencies to  
12 obtain evaluation services.

13 (5) No evaluation of a youth may be performed at the  
14 Montana state hospital unless such youth is transferred to  
15 the district court under 41-5-206.

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

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

25 **Section 2.** Section 53-30-226, MCA, is amended to read:

1 **"53-30-226. Youth aftercare agreement. (1)** A youth  
2 released by the department of family services from one of  
3 the state youth correctional facilities to the supervision,  
4 custody, and control of the department shall, before his  
5 release, sign an aftercare agreement containing:

6 ~~††~~(a) a statement of the terms and conditions of his  
7 release, including a list of the acts which, if committed by  
8 the youth, may result in his return to the facility; and

9 ~~†2~~(b) a statement that if the department or any person  
10 alleges any violation of the terms and conditions of the  
11 agreement, the youth is entitled to a hearing as provided  
12 for in 53-30-229 before he may be returned to the facility.

13 (2) A youth who is released from a state youth  
14 correctional facility for commitment to a mental health  
15 facility pursuant to Title 53, chapter 21, part 1, shall  
16 sign an aftercare agreement that will remain in effect until  
17 the youth is returned to the court for further disposition  
18 as provided in 41-5-523(1)(j). If the youth is not returned  
19 to a state youth correctional facility following the hearing  
20 for further disposition, the aftercare agreement becomes  
21 void unless amended or extended by the department or the  
22 court."

23 **NEW SECTION. Section 3.** Effective date. [This act] is  
24 effective July 1, 1991.

-End-