

SENATE BILL 443

Introduced by Keating

2/19	Introduced
2/19	First Reading
2/19	Fiscal Note Requested
2/19	Referred to Judiciary
2/21	Hearing
2/22	Committee Report--Bill Not Passed
2/22	Adverse Committee Report Adopted
2/25	Fiscal Note Received

1 *Senate* BILL NO. *443*  
2 INTRODUCED BY *Hattery*

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE LAWS  
5 RELATING TO DISPOSITION OF YOUTH BY THE YOUTH COURT; TO  
6 RESTRICT THE AUTHORITY OF THE YOUTH COURT TO ORDER PLACEMENT  
7 OF A YOUTH IN OUT-OF-HOME CARE; TO ALLOW THE YOUTH COURT TO  
8 ORDER PARENTS TO PARTICIPATE IN A YOUTH'S PROGRAM OF  
9 TREATMENT; AMENDING SECTION 41-5-523, MCA; AND PROVIDING AN  
10 EFFECTIVE DATE."

11  
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13 **Section 1.** Section 41-5-523, MCA, is amended to read:  
14 **"41-5-523. (Temporary) Disposition of delinquent youth**  
15 **and youth in need of supervision.** (1) If a youth is found to  
16 be delinquent or in need of supervision, the youth court may  
17 enter its judgment making any of the 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 youth correctional  
7 facility if the judge finds that such placement is necessary  
8 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 youth correctional facility.

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

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

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

9 (3) A youth placed by the department in a youth  
 10 correctional facility must be supervised by the department.  
 11 A youth placed in any other placement must be supervised by  
 12 the youth probation officer of the youth court having  
 13 jurisdiction over the youth.

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

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

25 (6) Any order of the court may be modified at any time.

1 In the case of a youth committed to the department, an order  
2 pertaining to the youth may be modified only upon notice to  
3 the department and subsequent hearing.

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

9 41-5-523. (Effective July 1, 1991) Disposition of  
10 delinquent youth and youth in need of supervision. (1) If a  
11 youth is found to be delinquent or in need of supervision,  
12 the youth court may enter its judgment making any of the  
13 following dispositions:

14 (a) place the youth on probation;

15 (b) commit the youth to the department ~~if--the--court~~  
16 ~~determines--that--the--youth--is--in--need--of--placement--in--other~~  
17 ~~than--the--youth's--own---home;---provided;---however; for~~  
18 determination of placement, except that:

19 (i) ~~in--the--case--of--a--youth--in--need--of--supervision; the~~  
20 court shall determine whether the department may not place  
21 the youth in a facility or place other than the youth's own  
22 home unless:

23 (A) the department determines that continuation in the  
24 home would be contrary to the welfare of the youth; and  
25 whether

1 (B) reasonable efforts have been made to prevent or  
2 eliminate the need for removal of the youth from his home;  
3 ~~The court shall include--such--determination--in--the--order~~  
4 ~~committing the youth to the department;~~

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

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

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

14 (e) require the performance of community service;

15 (f) require the youth, his parents, his guardians, or  
16 the persons having legal custody of the youth to receive  
17 counseling services as directed by the department;

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

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

24 (i) order such further care, treatment, evaluation, or  
25 relief that the court considers beneficial to the youth and

1 the community and that does not obligate funding from the  
 2 department without the department's approval, except that a  
 3 youth may not be placed by a youth court in a residential  
 4 treatment facility, as defined in 50-5-101, or in a youth  
 5 care facility as defined in 41-3-1102. Only the department  
 6 may, pursuant to subsection (1)(b), place a youth in a  
 7 residential treatment facility or in a youth care facility.

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

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

1 limitations:

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

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

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

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

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

1 responsible for the cost of the evaluation and may contract  
2 with the department or other public or private agencies to  
3 obtain evaluation services.

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

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

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

16 NEW SECTION. **Section 2.** Effective date. [This act] is  
17 effective July 1, 1991.

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