

1                    HOUSE    BILL NO. 39  
2    INTRODUCED BY KVAALEN

3  
4    A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND  
5    CLARIFY THE LAW RELATING TO MINORS."

6  
7    BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

8            Section 1. Section 10-204, R.C.M. 1947, is amended to  
9    read as follows:

10           "10-204. Age certificates. Upon ~~obtaining~~ attaining  
11    the age of ~~sixteen 16~~ years any child may make application  
12    to the commissioner of labor and industry for an age  
13    certificate, which must be presented to any employer with  
14    whom ~~such the child may seek~~ seeks employment. The employer,  
15    if such employment be given, must countersign the  
16    certificate and return ~~the same it~~ to the commissioner of  
17    ~~said--bureau~~, who shall keep ~~the--same it~~ on file in his  
18    office. Any person, firm, company, association, or  
19    corporation who employs or permits to be employed in any  
20    occupation prohibited by ~~section~~ 10-201, any child without  
21    such certificate showing the child to be at least ~~sixteen 16~~  
22    years of age, ~~--shall--be~~ is guilty of a misdemeanor and  
23    punishable as hereinafter provided, should such child prove  
24    to be less than ~~sixteen 16~~ years of age."

25            Section 2. Section 10-205, R.C.M. 1947, is amended to

1    read as follows:

2            "10-205. Enforcement of act. To enforce this act the  
3    commissioner of labor and industry, ~~the bureau of child and~~  
4    ~~animal protection~~, and ~~at each county attorneys~~ attorney  
5    shall, each upon ~~their~~ his own volition, or upon the sworn  
6    complaint of any reputable citizen that this act is being  
7    violated, make prosecutions for such violations."

8            Section 3. Section 10-1206, R.C.M. 1947, is amended to  
9    read as follows:

10           "10-1206. Jurisdiction of the court. (1) The court has  
11    exclusive original jurisdiction of all proceedings under the  
12    Montana Youth Court Act in which a youth is alleged to be a  
13    delinquent youth, a youth in need of supervision, or a  
14    youth in need of care, or concerning any person under  
15    ~~twenty-one (21)~~ years of age charged with having violated  
16    any law of the state or ordinance of any city or town prior  
17    to having become ~~eighteen (18)~~ years of age.

18           (2) Justice, municipal, and ~~police city~~ courts shall  
19    have concurrent jurisdiction with the youth court over all  
20    traffic and fish and game violations alleged to have been  
21    committed by a youth, except that the following alleged  
22    violations are under the exclusive jurisdiction of the  
23    court:

24           (a) driving while intoxicated as defined in ~~section~~  
25    32-2142, R.C.M., 1947;

1 (b) failing to stop at an accident as defined in  
2 section 32-1202~~y-R.C.M.-1947~~; and

3 (c) driving without a valid license or permit as  
4 defined in sections 31-125 and 31-127~~y-R.C.M.-1947~~, after  
5 having been previously convicted of the same offense."

6 Section 4. Section 10-1210, R.C.M. 1947, is amended to  
7 read as follows:

8 "10-1210. Consent adjustment without petition. (1)  
9 Before a petition is filed, the probation officer may enter  
10 into an informal adjustment, and give counsel and advice to  
11 the youth and other interested parties, if it appears:

12 (a) the admitted facts bring the case within the  
13 jurisdiction of the court;

14 (b) counsel and advice without filing a petition would  
15 be in the best interests of the child and the public.

16 (2) Any probation or other disposition imposed under  
17 this section against any youth must conform to the following  
18 procedures:

19 (a) Every consent adjustment shall be reduced to  
20 writing, and signed by the youth and his parents or the  
21 person having legal custody of the youth.

22 (b) Approval by the youth court judge shall ~~be~~ is  
23 required ~~where if~~ the complaint alleges commission of a  
24 felony or ~~where if~~ the youth has been or will be in any way  
25 detained.

1 (3) An incriminating statement relating to any act or  
2 omission constituting delinquency or need of supervision  
3 made by the participant to the person giving counsel or  
4 advice in the discussions or conferences incident thereto  
5 shall may not be used against the declarant in any  
6 proceeding under this act, nor shall may the incriminating  
7 statement be admissible in any criminal proceeding against  
8 the declarant.

9 (4) The following dispositions may be imposed by  
10 informal adjustment:

11 (a) Probation ~~probation~~;

12 (b) Placement ~~placement~~ of the youth in a licensed  
13 foster home or other home approved by the court;

14 (c) Placement ~~placement~~ of the youth in a private  
15 agency responsible for the care and rehabilitation of such a  
16 youth, including but not limited to a district youth  
17 guidance home;

18 (d) Transfer ~~transfer~~ of legal custody of the youth to  
19 the department of institutions, provided ~~however~~ that such  
20 commitment shall does not authorize the department of  
21 institutions to place the youth in a detention facility, as  
22 defined ~~by this act~~ and such commitment shall may not exceed  
23 a period of six ~~(6)~~ months without a subsequent order of the  
24 court, after notice and hearing."

25 Section 5. Section 10-1217, R.C.M. 1947, is amended to

1 read as follows:

2       "10-1217. Service of summons. (1) Any youth who is the  
3 subject of a proceeding under this act must be personally  
4 served with summons at least ~~five~~ {5} days before the time  
5 stated for appearance.

6       (2) Service of summons on all other persons designated  
7 in ~~subsection (1) of section 10-1216(1)~~ shall be made in  
8 accordance with Rule ~~4(D)~~ of the Montana ~~Rules~~ rules of  
9 ~~Civil Procedure~~ civil procedure, except that in all cases  
10 service shall be completed at least ~~five~~ {5} days before the  
11 time stated for appearance.

12       (3) If a party referred to in subsection (2) herein is  
13 not personally served before a hearing and has not secluded  
14 himself with an attempt to delay or disrupt any proceeding  
15 ~~under this act~~, such party may appear within a reasonable  
16 time subsequent to the hearing and, on motion to the court,  
17 request a rehearing. The motion may be granted at the  
18 discretion of the judge if a rehearing would be in the best  
19 interest of the youth.

20       (4) The court may authorize payment from county funds  
21 of costs of service and necessary travel expenses incurred  
22 by persons summoned or otherwise required to appear at the  
23 hearing.

24       (5) An actual abandonment of a youth by his parent or  
25 parents shall constitute a waiver of summons and notice

1 requirements ~~in this act~~ by the parent or parents. A return  
2 endorsed upon the summons showing inability to serve summons  
3 ~~in compliance with section 10-1216(2) of this act~~ constitutes  
4 prima facie evidence of actual abandonment.

5       (6) The youth court may, in the interests of justice,  
6 shorten the notice requirements contained herein, and such  
7 notice of shortened time shall be endorsed on the summons.

8       (7) A party, other than the youth, may waive service  
9 of summons on himself by written stipulation or by voluntary  
10 appearance at the hearing. If the youth is present at the  
11 hearing, his counsel may waive service of summons in his  
12 behalf."

13       Section 6. Section 10-1218, R.C.M. 1947, is amended to  
14 read as follows:

15       "10-1218. Basic legal rights. (1) When a youth alleged  
16 to be a delinquent youth or a youth in need of supervision  
17 is taken into custody, the following requirements must be  
18 met:

19       (a) the the youth shall be immediately and effectively  
20 advised of his constitutional rights and his rights under  
21 this act.

22       (b) the the youth may waive such rights under the  
23 following situations:

24       (i) when the youth is under the age of ~~twelve~~ {12}  
25 years, the parents of the youth may make an effective

1 waiver;

2 (ii) when the youth is over the age of ~~twelve~~(12)  
3 years, and the youth and his parent parents agree, they may  
4 make an effective waiver; and

5 (iii) when the youth is over the age of ~~twelve~~(12)  
6 years and the youth and his parents do not agree, the youth  
7 may make an effective waiver only with advice of counsel.

8 (c) In a proceeding alleging a youth to be a  
9 delinquent youth:

10 (i) ~~An an extra-judicial~~ extrajudicial statement that  
11 would be constitutionally inadmissible in a criminal matter  
12 ~~shall may~~ not be received in evidence;

13 (ii) ~~Evidence evidence~~ illegally seized or obtained  
14 ~~shall may~~ not be received in evidence to establish the  
15 allegations of a petition against a youth; and

16 (iii) ~~An extra-judicial~~ an extrajudicial admission or  
17 confession made by the youth out of court is insufficient to  
18 support a finding that the youth committed the acts alleged  
19 in the petition unless it is corroborated by other evidence.

20 (2) Title 95~~r-R.C.M.-1947~~, shall apply to all law  
21 enforcement investigations relating to a complaint alleging  
22 a delinquent youth or youth in need of supervision, except  
23 that:

24 (a) No ~~no~~ youth ~~shall may~~ be fingerprinted or  
25 photographed for criminal identification purposes except by

1 order of the youth court judge~~s~~.

2 (b) ~~No no~~ fingerprint records or photographs ~~shall may~~  
3 be filed with the federal bureau of investigation, state of  
4 Montana identification bureau, or any other than the  
5 originating agency, except for sending the fingerprints or  
6 photographs to any law enforcement agency for comparison  
7 purposes in the original investigation~~s~~.

8 (c) ~~At at~~ such time as the proceedings in the matter~~s~~,  
9 including appeals, are complete, the fingerprint records and  
10 photographs shall be destroyed~~s~~, ~~except that However~~, such  
11 fingerprint records and photographs may be retained by the  
12 originating agency for a specific period when ordered by the  
13 court for good cause shown.

14 (3) In all proceedings on a petition alleging a  
15 delinquent youth or youth in need of supervision ~~as set~~  
16 ~~forth in subsection (1) of this section~~, the youth and the  
17 parents ~~and or~~ guardian of the youth shall be advised by the  
18 court or, in the absence of the court, by its representative  
19 that the youth may be represented by counsel at all stages  
20 of the proceedings. If counsel is not retained, or if it  
21 appears that counsel will not be retained, counsel shall be  
22 appointed for the youth, unless the right to appointed  
23 counsel is waived by the youth and the parents or guardian.  
24 Neither the youth nor his parent or guardian may waive  
25 counsel if commitment to a detention facility or a youth

1 forest camp or to the department of institutions for a  
2 period of more than six--~~(6)~~ months may result from  
3 adjudication.

4 (4) The court, at any stage of a proceeding on a  
5 petition under this act, may appoint a guardian ad litem for  
6 a youth if the youth has no parent or guardian appearing in  
7 his behalf, or if their interests conflict with those of the  
8 youth. A party to the proceeding or an employee or  
9 representative of a party ~~shall~~ may not be appointed as  
10 guardian ad litem.

11 (5) In a proceeding on a petition, a party is entitled  
12 to:

13 (a) the opportunity to introduce evidence and  
14 otherwise be heard on the party's own behalf;

15 (b) confront and cross-examine witnesses testifying  
16 against the party; and

17 (c) admit or deny the allegations against the party in  
18 the petition.

19 (6) Persons afforded rights under this act shall be  
20 advised of those rights and any other rights existing under  
21 law at the time of their first appearance in a proceeding on  
22 a petition under the Montana Youth Court Act and at any  
23 other time specified in ~~the Youth Court Act that act~~ or  
24 other law.

25 (7) All ~~post-trial~~ posttrial motions and other

1 remedies available to an adult in a criminal proceeding  
2 under the Montana Code of Criminal Procedure ~~shall be~~ are  
3 available to a youth proceeded against under this act."

4 Section 7. Section 10-1220, R.C.M. 1947, is amended to  
5 read as follows:

6 "10-1220. Adjudicatory hearing. (1) Prior to any  
7 adjudicatory hearing, the court shall determine whether the  
8 youth admits or denies the offenses alleged in the petition.  
9 If the youth denies all offenses alleged in the petition,  
10 the youth, his parent, guardian, or attorney may demand a  
11 jury trial on such contested offenses. ~~in~~ In the absence of  
12 such demand, a jury trial is waived. If the youth denies  
13 some offenses and admits others, the contested offenses may  
14 be dismissed in the discretion of the youth court judge. The  
15 adjudicatory ~~hearings~~ hearing shall be set forthwith and  
16 accorded a preferential priority.

17 (2) An adjudicatory hearing shall be held to determine  
18 whether the contested offenses are supported by proof beyond  
19 a reasonable doubt in cases involving a youth alleged to be  
20 delinquent or in need of supervision. If the hearing is  
21 before a jury, the jury's function shall be to determine  
22 whether the youth committed the contested offenses. ~~if~~ If  
23 the hearing is before the youth court judge without a jury,  
24 the judge shall make and record his findings on all issues.  
25 If the allegations of the petitions are not established at

1 the hearing, the youth court shall dismiss the petition and  
2 discharge the youth from custody.

3 (3) An adjudicatory hearing shall be recorded verbatim  
4 by whatever means the court ~~deems~~ considers appropriate.

5 (4) The youth charged in a petition must be present at  
6 the hearing and, if brought from detention to the hearing,  
7 ~~shall~~ may not appear clothed in institutional clothing.

8 (5) In a hearing on a petition under this section, the  
9 general public shall be excluded and only such persons  
10 ~~admitted~~ as have a direct interest in the case may be  
11 admitted,<sup>†</sup> except that when a hearing in the court is held  
12 on a written petition charging the commission of a felony,  
13 persons with a legitimate interest in the proceeding,  
14 including representatives of public information media, ~~shall~~  
15 may not be excluded from the hearing.

16 (6) ~~If the court finds~~ on the basis of a valid  
17 admission by a youth of the allegations of the petition or  
18 ~~if after the hearing required by this section,~~ a youth is  
19 found to be a delinquent youth or a youth in need of  
20 supervision, the court shall schedule a dispositional  
21 hearing under this act.

22 (7) When a jury trial is required in a case, it may be  
23 held before the regular trial panel. If the regular panel is  
24 not in attendance, the court may draw a jury from jury box  
25 No. 3."

1 Section 8. Section 10-1224, R.C.M. 1947, is amended to  
2 read as follows:

3 "10-1224. Consent decree with petition. (1) At any  
4 time after the filing of a petition alleging delinquency or  
5 need of supervision and before the entry of a judgment, the  
6 court may, on motion of counsel for the youth or on the  
7 court's own motion, suspend the proceedings and continue the  
8 youth under supervision under terms and conditions  
9 negotiated with probation services and agreed to by all  
10 necessary parties. The court's order continuing the child  
11 under supervision under this section shall be known as a  
12 "consent decree". The procedures used and dispositions  
13 permitted ~~when~~ under this section shall conform to the  
14 procedure and disposition specified in section 10-1210,  
15 R.C.M.--1947, relating to consent adjustments without  
16 petition.

17 (2) If the youth or his counsel objects to a consent  
18 decree, the court shall proceed to findings, adjudication,  
19 and disposition of the case.

20 (3) If, either prior to discharge by probation  
21 services, or expiration of the consent decree, a new  
22 petition alleging delinquency or need of supervision is  
23 filed against the youth, or if the youth fails to fulfill  
24 the expressed terms and conditions of the consent decree,  
25 the petition under which the youth was continued under

1 supervision may be reinstated in the discretion of the  
2 county attorney in consultation with probation services. In  
3 the event of reinstatement, the proceeding on the petition  
4 shall be continued to conclusion, as if the consent decree  
5 had never been entered.

6 (4) A youth who is discharged by probation services or  
7 who completes a period under supervision without  
8 reinstatement of the original petition shall ~~may~~ not again  
9 be proceeded against in any court for the same offense  
10 alleged in the petition, and the original petition shall be  
11 dismissed with prejudice. Nothing in this subsection  
12 precludes a civil suit against the youth for damages arising  
13 from his conduct.

14 (5) In all cases where the terms of the consent decree  
15 shall extend for a period in excess of ~~six-(6)~~ months, the  
16 probation officer shall ~~submit a report~~ at the end of each  
17 ~~six-(6)-month~~ 6-month period ~~submit a report~~ which shall be  
18 reviewed by the court."

19 Section 9. Section 10-1229, R.C.M. 1947, is amended to  
20 read as follows:

21 "10-1229. Transfer to criminal court. (1) After a  
22 petition has been filed alleging delinquency, the court may,  
23 upon motion of the county attorney, before hearing the  
24 petition on its merits, transfer the matter of prosecution  
25 to the district court if:

1 (a) the youth charged was ~~sixteen-(16)~~ years of age or  
2 more at the time of the conduct alleged to be unlawful and  
3 the unlawful act is one or more of the following:

4 (i) criminal homicide as defined in ~~section 94-5-101y~~  
5 ~~RvEvMs-1947~~;

6 (ii) arson as defined in ~~section 94-6-104y-RvEvMs-1947~~;

7 (iii) aggravated assault as defined in ~~section~~  
8 ~~94-5-202y-RvEvMs--1947~~;

9 (iv) robbery as defined in ~~section 94-5-401y-RvEvMs~~  
10 ~~1947~~;

11 (v) burglary or aggravated burglary as defined in  
12 ~~section 94-6-204y-RvEvMs-1947~~;

13 (vi) sexual intercourse without consent as defined in  
14 ~~section 94-5-503y-RvEvMs-1947~~;

15 (vii) aggravated kidnapping as defined in ~~section~~  
16 ~~94-5-303y-RvEvMs--1947~~;

17 (viii) possession of explosives as defined in ~~section~~  
18 ~~94-6-105y-RvEvMs-1947~~;

19 (ix) criminal sale of dangerous drugs for profit as  
20 included in ~~section 54-132y-RvEvMs-1947~~;

21 (b) a hearing on whether the transfer should be made  
22 is held in conformity with the rules on a hearing on a  
23 petition alleging delinquency, except that the hearing will  
24 be to the youth court without a jury; and

25 (c) notice in writing of the time, place, and purpose

1 of the hearing is given to the youth, his counsel, and his  
2 parents, guardian, or custodian at least ~~ten~~ {10} days  
3 before the hearing; and

4 (d) the court finds upon the hearing of all relevant  
5 evidence that there are reasonable grounds to believe that:

6 (i) the youth committed the delinquent act alleged;  
7 and

8 (ii) the seriousness of the offense and the protection  
9 of the community requires require treatment of the youth  
10 beyond that afforded by juvenile facilities; and

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

13 (2) In transferring the matter of prosecution to the  
14 district court, the court shall also consider the following  
15 factors:

16 (a) the sophistication and maturity of the youth,  
17 determined by consideration of his home, environmental  
18 situation, and emotional attitude and pattern of living;

19 (b) the record and previous history of the youth,  
20 including previous contacts with the youth court, law  
21 enforcement agencies, youth courts in other jurisdictions,  
22 prior periods of probation, and prior commitments to  
23 juvenile institutions;

24 (c) the prospects for adequate protection of the  
25 public and the likelihood of reasonable rehabilitation of

1 the youth by the use of procedures, services, and facilities  
2 currently available to the youth court.

3 (3) Upon transfer to district court, the judge shall  
4 make written findings of the reasons why the jurisdiction of  
5 the court was waived and the case transferred to district  
6 court.

7 (4) The transfer terminates the jurisdiction of the  
8 court over the youth with respect to the acts alleged in the  
9 petition. No youth shall ~~may~~ be prosecuted in the district  
10 court for a criminal offense originally subject to the  
11 jurisdiction of the youth court unless the case has been  
12 transferred as provided in this section.

13 (5) Upon order of the court transferring the case to  
14 the district court, the county attorney shall file the  
15 information against the youth without unreasonable delay.

16 (6) If a youth is found guilty in district court of  
17 any of the offenses enumerated in subsection ~~(2)~~ (1)(a) of  
18 this section and is sentenced to the state prison, his  
19 commitment shall be to the department of institutions which  
20 shall confine the youth in whatever institution it ~~deems~~  
21 considers proper."

22 Section 10. Section 10-1230, R.C.M. 1947, is amended  
23 to read as follows:

24 "10-1230. Law enforcement records. (1) ~~At~~ No law  
25 enforcement records concerning a youth, except traffic



1 records, ~~shall not~~ may be open to public inspection nor ~~or~~  
2 their contents disclosed to the public unless so ordered by  
3 the court.

4 (2) Inspection of law enforcement records concerning a  
5 youth is permitted prior to the sealing of the records by:

6 (a) a youth court having the youth currently before it  
7 in any proceeding;

8 (b) the officers of agencies having legal custody of  
9 the youth and those responsible for his supervision after  
10 release;

11 (c) any other person, by order of the court, having a  
12 legitimate interest in the case or in the work of the law  
13 enforcement agency;

14 (d) ~~Montana~~ law enforcement officers of Montana, when  
15 necessary for the discharge of their immediate duties;

16 (e) a district court in which the youth is convicted  
17 of a criminal offense<sub>2</sub> for the purpose of a presentence  
18 investigation;

19 (f) the county attorney; or

20 (g) the youth, his parent, guardian<sub>2</sub> or counsel."

21 Section 11. Section 10-1236, R.C.M. 1947, is amended  
22 to read as follows:

23 "10-1236. Foster homes. (1) The youth court may  
24 establish procedures for finding, maintaining<sub>2</sub> and  
25 administering temporary and permanent ~~licensed~~ foster homes

1 or other homes approved by the court for youth within the  
2 provisions of this act.

3 ~~(2) The licensed foster homes established under this~~  
4 ~~section shall be funded at a rate consistent with other~~  
5 ~~foster homes established for other purposes under law.~~

6 ~~(3)~~(2) All foster homes established by the youth court  
7 which are licensed by the department of social and  
8 rehabilitation services, established shall be financed by  
9 the ~~department of social and rehabilitation services~~ as set  
10 forth in ~~section 71-210(b)~~, R.C.M. 1947.

11 (3) The licensed foster homes established under this  
12 section shall be funded at a rate consistent with other  
13 foster homes established for other purposes under law."

14 Section 12. Section 10-1242, R.C.M. 1947, is amended  
15 to read as follows:

16 "10-1242. Establishment of district youth guidance  
17 home program. The ~~legislative assembly legislature~~, in  
18 recognition of the wide and varied needs of delinquent  
19 youths and youths in need of supervision of this state and  
20 of the desirability of meeting these needs on a community  
21 level to the fullest extent possible, and in order to reduce  
22 the need for custodial care in existing state institutions,  
23 establishes by ~~this act 10-1242 through 10-1252~~ a district  
24 youth guidance home program to provide facilities and  
25 services for the rehabilitation of delinquent youths and

1 youths in need of supervision and establishes a program to  
2 provide such facilities and services through local nonprofit  
3 corporations and the department of institutions."

4 Section 13. Section 10-1246, R.C.M. 1947, is amended  
5 to read as follows:

6 "10-1246. Authority of youth court judge to commit  
7 delinquent youths and youths in need of supervision. A youth  
8 court judge is hereby authorized in his discretion to place  
9 a delinquent youth or a youth in need of supervision ~~to said~~  
10 in a district youth guidance home for any period of time up  
11 to the child's ~~twenty-first 21st~~ birthday subject to the  
12 approval of its sponsoring nonprofit corporation or  
13 association."

14 Section 14. Section 10-1248, R.C.M. 1947, is amended  
15 to read as follows:

16 "10-1248. Continuing jurisdiction of youth court over  
17 youths. The youth court placing a delinquent youth or a  
18 youth in need of supervision to in a district youth guidance  
19 home shall retain continuing jurisdiction over ~~said the~~  
20 youth until ~~said the~~ youth becomes ~~twenty-one (21)~~ years of  
21 age or is otherwise discharged by order of the court."

22 Section 15. Section 10-1249, R.C.M. 1947, is amended  
23 to read as follows:

24 "10-1249. Per diem charge to financially able parents.  
25 A youth court judge placing a delinquent youth or a youth in

1 need of supervision in a district youth guidance home may,  
2 if the parent or parents of the youth are financially able,  
3 without undue hardship, require the parents or parent to pay  
4 to the district youth guidance home ~~a such~~ per diem charge  
5 ~~not-to-exceed-the-per-diem-charge-established-by-the~~  
6 ~~department-of-institutions-for-each-youth-placed-in-the~~  
7 Montana children's center as the judge may determine."

8 Section 16. Section 10-1251, R.C.M. 1947, is amended  
9 to read as follows:

10 "10-1251. Rules ~~and regulations~~. The director of the  
11 department of institutions ~~shall have power to~~ may adopt  
12 reasonable rules ~~regulations~~ and standards to carry out the  
13 administration and purposes of ~~this act~~ 10-1242 through  
14 10-1252."

15 Section 17. Section 10-1252, R.C.M. 1947, is amended  
16 to read as follows:

17 "10-1252. Federal assistance. The department of  
18 institutions ~~is hereby authorized to~~ may make application  
19 for and to receive federal-aid money or other assistance  
20 which might ~~now or hereafter~~ become available for programs  
21 in the nature of the one created by ~~this act~~ 10-1242 through  
22 10-1252."

23 Section 18. Section 10-1301, R.C.M. 1947, is amended  
24 to read as follows:

25 "10-1301. Definitions. (1) "Child" or "youth,"1 for

1 purposes of this act, means any person under ~~eighteen~~(18)  
2 years of age.

3 (2) "Abuse" or "neglect" means:

4 (a) ~~The~~ the commission or omission of any act or acts  
5 which materially affect the normal physical or emotional  
6 development of a youth, ~~any~~ Any excessive physical injury,  
7 sexual assault, or failure to thrive, taking into account  
8 the age and medical history of the youth, shall be  
9 ~~presumptive of "material effect" and non-accidental; or~~  
10 ~~presumed to be nonaccidental and to "materially affect" the~~  
11 normal development of the youth.

12 (b) ~~The~~ the commission or omission of any act or acts  
13 by any person in the status of parent, guardian, or  
14 custodian who thereby and by reason of physical or mental  
15 incapacity or other cause, refuses, or, with state and  
16 private aid and assistance is unable, to discharge the  
17 duties and responsibilities for proper and necessary  
18 subsistence, education, medical, or any other care necessary  
19 for ~~his~~ the youth's physical, moral, and emotional  
20 well-being.

21 (3) "Dependent youth" means a youth who is abandoned,  
22 dependent upon the public for support, ~~and who is~~ destitute,  
23 ~~or is~~ without parents or guardian or under the care and  
24 supervision of a suitable adult, or who has no proper  
25 guidance to provide for his necessary physical, moral, and

1 emotional well-being. A child may be considered dependent  
2 and legal custody transferred to a licensed agency if the  
3 parent or parents voluntarily relinquish custody of ~~said~~ the  
4 child.

5 (4) "Youth in need of care" means a youth who is  
6 dependent or is suffering from abuse or neglect within the  
7 meaning of this act."

8 Section 19. Section 10-1309, R.C.M. 1947, is amended  
9 to read as follows:

10 "10-1309. Emergency protective service. [1] Any social  
11 worker of the department of social and rehabilitation  
12 services, the county welfare department, a peace officer, or  
13 county attorney who has reason to believe any youth is in  
14 immediate or apparent danger of violence or serious injury  
15 ~~shall have the authority to~~ may immediately remove the youth  
16 and place him in a protective facility. The department may  
17 make a request for further assistance from the law  
18 enforcement agency or take such legal action as may be  
19 appropriate.

20 [2] A petition shall be filed within ~~forty-eight~~(48)  
21 hours of emergency placement of a child unless arrangements  
22 acceptable to the agency for the care of the child have been  
23 made by the parents.

24 [3] The department of social and rehabilitation  
25 services and the county welfare department shall comply with

1 the ~~judicial-procedures~~ procedure set forth in section  
2 10-1305, ~~R.C.M. 1947.~~

3 (4) The department of social and rehabilitation  
4 services and the county welfare department shall make such  
5 necessary arrangements for the youth's well-being as are  
6 required prior to the court hearing."

7 Section 20. Section 10-1310, R.C.M. 1947, is amended  
8 to read as follows:

9 "10-1310. Petitions. (1) The county attorney shall be  
10 responsible for filing all petitions alleging abuse,  
11 neglect, ~~and~~ or dependency. He may require all state,  
12 county, and municipal agencies, including law enforcement  
13 agencies, to conduct such investigations and furnish such  
14 reports as may be necessary.

15 (2) Such petitions shall be given preference by the  
16 court in setting hearing dates.

17 (3) A petition alleging abuse, neglect, or dependency  
18 is a civil action brought in the name of the state of  
19 Montana. The rules of civil procedure shall apply except as  
20 herein modified. Proceedings under a petition ~~shall not be~~  
21 are not a bar to criminal prosecution.

22 (4) The parents or parent, guardian, or other person  
23 or agency having legal custody of the youth named in the  
24 petition, if residing in the state, shall be served  
25 personally with a copy of the petition and summons at least

1 ~~five~~ (5) days prior to the date set for hearing, ~~if~~ if such  
2 person or agency resides out of state or is not found within  
3 the state, the rules of civil procedure relating to service  
4 of process in such cases shall apply.

5 (5) In the event service cannot be made upon the  
6 parents or parent, guardian, or other person or agency  
7 having legal custody, the court shall appoint an attorney to  
8 represent the unavailable party where in the opinion of the  
9 court the interests of justice require.

10 (6) ~~Where~~ If a parent of the child is a minor, notice  
11 shall be given to the minor parent's parents or guardian,  
12 and if there is no guardian the court shall appoint one.

13 (7) Any person interested in any cause under this act  
14 ~~shall have~~ has the right to appear.

15 (8) Except where the proceeding is instituted or  
16 commenced by a representative of the department of social  
17 and rehabilitation services, a citation shall be issued and  
18 served upon a representative of ~~social and rehabilitation~~  
19 services the department prior to the court hearing.

20 (9) The petition shall:

21 (a) state the nature of the alleged abuse, neglect, or  
22 dependency;

23 (b) state the full name, age, and address of the  
24 youth, and the name and address of his parents or guardian  
25 or person having legal custody of the youth;

1 (c) state the names, addresses, and relationship to  
2 the youth and of all persons who are necessary parties to  
3 the action.

4 (10) The petition may ask for the following relief:

5 (a) temporary investigative authority and protective  
6 services;

7 (b) temporary legal custody;

8 (c) limited legal custody;

9 (d) permanent legal custody, including the right to  
10 consent to adoption;

11 (e) appointment of guardian ad litem;

12 (f) any combination of the above or such other relief  
13 as may be required for the best interest of the youth.

14 (11) The petition may be modified for different relief  
15 at any time within the discretion of the court.

16 (12) The court may at any time on its own motion or  
17 the motion of any party appoint a guardian ad litem for the  
18 youth or counsel for any indigent party.

19 (13) This section ~~shall~~ does not apply to a petition  
20 for temporary investigative authority and protective  
21 services."

22 Section 21. Section 10-1311, R.C.M. 1947, is amended  
23 to read as follows:

24 "10-1311. Petition ~~and~~ ~~order~~ for temporary  
25 investigative authority and protective services. (1) In

1 cases where it appears that a youth is abused or neglected  
2 or is in danger of being abused or neglected, the county  
3 attorney may file a petition for temporary investigative  
4 authority and protective services.

5 (2) A petition for temporary investigative authority  
6 and protective services shall state the specific authority  
7 requested and the facts establishing probable cause that a  
8 youth is abused or neglected or is in danger of being abused  
9 or neglected.

10 (3) The petition for temporary investigative authority  
11 and protective services shall be supported by an affidavit  
12 signed by the county attorney or a department of social and  
13 rehabilitation services report stating in detail the facts  
14 upon which the request is based.

15 (4) ~~(a)~~ Upon the filing of a petition for temporary  
16 investigative authority and protective services, the court  
17 may issue an order ~~to~~ granting such relief as may be  
18 required for the immediate protection of the youth.

19 (b) The order shall be served by a peace officer or a  
20 representative of the state department of social and  
21 rehabilitation services on the person or persons named  
22 therein.

23 (c) The order shall require the person served to  
24 ~~immediately~~ immediately comply with the terms thereof or  
25 upon failure to so comply, to appear before the court

1 issuing the order on the date specified and show cause why  
 2 he has not complied with the order. Except as otherwise  
 3 provided herein, the rules of civil procedure shall apply.

4 (d) Upon a failure to comply or show cause the court  
 5 may hold the person in contempt or place temporary legal  
 6 custody of the youth with the state department of social and  
 7 rehabilitation services until further order.

8 ~~(e)(5)~~ The court may grant the following kinds of  
 9 relief:

10 ~~(i)(a)~~ right of entry by a peace officer or state  
 11 department of social and rehabilitation services worker;

12 ~~(i)(b)~~ medical and psychological evaluation of youth  
 13 or parents, guardians, or person having legal custody;

14 ~~(i)(c)~~ require the youth, parents, guardians, or  
 15 person having legal custody to receive counseling services;

16 ~~(i)(d)~~ place the youth in temporary medical facility  
 17 or facility for protection of the youth;

18 ~~(i)(e)~~ require the parents, guardian, or other person  
 19 having custody to furnish such services as the court may  
 20 designate;

21 ~~(i)(f)~~ such other temporary disposition as may be  
 22 required in the best interest of the youth."

23 Section 22. Section 10-1320, R.C.M. 1947, is amended  
 24 to read as follows:

25 \*10-1320. Payment for ~~board, clothing, personal needs,~~

1 ~~and--room support~~ of dependent and neglected children --  
 2 reimbursement by county. ~~(1)~~ Whenever agreements are entered  
 3 into by the state department of social and rehabilitation  
 4 services for placing dependent and neglected children in  
 5 approved family foster homes or licensed private  
 6 institutions, it--shall--be--the--duty--of the state department  
 7 to shall pay by its check or draft, each month, from any  
 8 funds appropriated for that purpose, the entire amount  
 9 agreed upon for board, clothing, personal needs, and room of  
 10 such children.

11 ~~(2)~~ On or before the twentieth 20th of each month the  
 12 state department shall present a claim to the county of  
 13 residence of such children for one-half the payments so made  
 14 during the month. The county must make reimbursement to the  
 15 state department within twenty 20 days after such claim is  
 16 presented."

17 Section 23. Section 69-6101, R.C.M. 1947, is amended  
 18 to read as follows:

19 \*69-6101. Consent Validity of consent of minor for  
 20 health services--~~when--valid~~. ~~(1)~~ The consent to the  
 21 provision of medical or surgical care or services by a  
 22 hospital, public clinic, or the performance of medical or  
 23 surgical care or services by a physician, licensed to  
 24 practice medicine in this state may be given by a minor who  
 25 professes or is found to meet any of the following

1 descriptions:

2 ~~(1)(a)~~ \* a minor who is or was ever married, or has  
3 had a child, or graduated from high school, or is  
4 emancipated; or

5 ~~(2)(b)~~ \* a minor who has been separated from his  
6 parent, parents, or legal guardian for whatever reason and  
7 is supporting himself by whatever means; or

8 ~~(3)(c)~~ \* a minor who professes or is found to be  
9 pregnant, or afflicted with any reportable communicable  
10 disease, including venereal disease, or drug and substance  
11 abuse, including alcohol. This self-consent only applies to  
12 the prevention, diagnosis, and treatment of those conditions  
13 specified in this subsection. The self-consent in the case  
14 of pregnancy, venereal disease, and drug and substance abuse  
15 also obliges the health professional, if he accepts the  
16 responsibility for treatment, to counsel the minor by  
17 himself or by referral to another health professional for  
18 counseling, or

19 ~~(4)(d)~~ \* a minor who needs emergency care, including  
20 transfusions, without which his health will be jeopardized.  
21 ~~The if emergency care is rendered, the~~ parent, parents, or  
22 legal guardian shall be informed as soon as practical except  
23 ~~in conditions under the circumstances~~ mentioned in  
24 subsections (1), (2), (3), or (4) of this section, or

25 ~~(5)(2)~~ A minor who has had a child may give effective

1 consent to health service for his child, or

2 ~~(6)(3)~~ A minor may give consent for health care for  
3 his spouse if his spouse is unable to give consent by reason  
4 of physical or mental incapacity."

5 Section 24. Section 69-6106, R.C.M. 1947, is amended  
6 to read as follows:

7 "69-6106. ~~Consent of minor to psychiatric~~ Psychiatric  
8 or psychological counseling valid under urgent  
9 circumstances. ~~The when executed by a minor, the~~ consent to  
10 the providing of psychiatric or psychological counseling by  
11 a physician or psychologist licensed to practice in this  
12 state, under circumstances where when the need for such  
13 counseling is urgent in the opinion of the physician or  
14 psychologist involved, because of danger to the life,  
15 safety, or property of a minor or of other person or  
16 persons, and the consent of the spouse, parent, custodian,  
17 or guardian of the ~~said~~ minor cannot be obtained within a  
18 reasonable time to offset the ~~said~~ danger to life or safety,  
19 ~~when-executed-by-the-said-minor~~ shall be as valid and  
20 binding as if the ~~said~~ minor has had achieved his-or-her  
21 majority, ~~that that~~ is, such minor ~~shall-be-deemed-to-have~~  
22 ~~and--shall--have~~ has the same legal capacity to act, and the  
23 same legal obligations with regard to the giving of such  
24 consent, as a person of full legal age and capacity, ~~the~~  
25 ~~infancy-of-said-minor-and-any--contrary--provisions--of--law~~

1 notwithstanding and such consent shall ~~may~~ not be subject  
2 to later disaffirmance by reason of such minority~~2~~ and--the  
3 ~~the~~ consent of no other person or persons (including~~v~~ but  
4 not limited to a spouse, parent, custodian~~2~~ or guardian)  
5 shall--be is necessary in order to authorize the psychiatric  
6 or psychological counseling to of such minor~~2~~ provided~~v~~  
7 however--that ~~However~~~~2~~ no parent shall ~~may~~ be obligated for  
8 the cost of such counseling without his consent."

9 Section 25. Repealer. Sections 10-207, 10-208, 10-209,  
10 and 10-210, R.C.M. 1947, are repealed.

-End-



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LC 0036

1977 Legislature  
Code Commissioner Bill - Summary

House Bill No. 39

TO GENERALLY REVISE AND CLARIFY THE LAW RELATING TO MINORS.

(This summary does not include discussion of routine form or grammatical changes.)

Section 1. 10-204. Changed "obtaining..." to "attaining the age of..." to correct apparent grammatical error.

Section 2. 10-205. Deleted reference to "bureau of child and animal protection". This bureau was abolished many years ago, according to Norma Cutone, head of the social services bureau of the department of social and rehabilitation services. She said the enforcement function in this section was not transferred to any other bureau per se.

Section 3. 10-1206(2). Changed "police court" to "city court" in accordance with 93-411.

Section 4. 10-1210(1). Added "and" in first sentence to correct apparent grammatical error.

Section 5. 10-1217(5). Deleted "in this act" in first sentence as redundant. Deleted reference to "section 18(2) of this act" as an incorrect and unnecessary reference. (Section 18(2) [R.C.M. 1947, 10-1218(2)] has nothing to do with service of summons.

Section 6. 10-1218(3). In (2) and (4) changed "shall" to "may" when used with negative. In (3) deleted the reference to "subsection (1) of this section" as an apparently erroneous reference. Subsection (1) deals only incidentally with proceeding on a petition, the primary provisions being found in 10-1215. It seems that no reference at all would be preferable, however, to a reference to 10-1215. Added "and" and "or" and deleted "and" for clarification.

Section 7. 10-1220. Subsection (1) changed "hearings" to "hearing" in the last sentence to correct apparent error. Subsection (6) - This subsection is grammatically incorrect and has questionable meaning. It has been rewritten for clarity.

Section 8. 10-1224(1). Changed "when" to "under" in the last sentence of this subsection to clarify meaning.

Section 9. 10-1229(6). Changed apparent incorrect reference to "subsection (2) (a) of this section" to "subsection (1) (a) of this section", the correct reference.

Section 10. 10-1230. Subsection (1) rewritten for grammatical clarity. Added "investigation" at end of subsection (2) (e) as it appears a "presentence investigation" was intended. "Hearing" might also be a proper alternative.

Section 11. 10-1236(3). This subsection is meaningless. After considering conflicting recommendations from the social services bureau of the department of social and rehabilitation services and from several of the district probation officers, the proper wording appears to be as stated in the amendment. The youth court clearly has power to establish foster homes for its charges, but the department is not bound to license such homes. If it does license a home, this section requires that it provide the funds to operate the home.

Section 12. 10-1242. Changed "this act" to "sections 10-1242 through 10-1252". It is a primary objective of recodification to replace "this act" with the proper code reference. Beginning with 10-1242, the Youth Court Act incorporates a previous 1971 act establishing district youth guidance homes. That act had references to "this act", which language was carried over into the Youth Court Act. By a common rule of statutory construction "this act" means the latest amended version of the act. Hence, the references in 10-1242, 10-1251, and 10-1252, concerning rule-making power of the department of institutions and federal assistance authorization, thus would appear to apply to the entire Youth Court Act, rather than merely the act concerning district youth guidance homes, as originally intended. It appears doubtful that this intended, particularly the extension of the rule-making authority of the department of institutions. It appears rather that the 1971 district youth guidance home act was merely transferred, with no thought given to the effect of the words "this act". The sections comprising "this act" should be specified by the legislature.

Section 13. 10-1246. Changed "to" to "in" for grammatical reasons.

Section 14. 10-1248. Changed "to" to "in" for grammatical reasons.

Section 15. 10-1249. Allows a youth court to charge financially able parents a per diem charge equal to the charge established for the Montana Children's Center. However, there is no charge established for the children's center because there are no children there. Hence, there is no per diem charge which can be collected from parents of youths in a youth guidance home. Changed "not to exceed the per diem charge established by the department of institutions for each youth placed in the Montana Children's Center" to "...as the judge may determine".

Section 16. 10-1251. Same change as for 10-1242.

Section 17. 10-1252. Same change as for 10-1242.

Section 18. 10-1301. Reworded subsection (2)(a) for grammatical clarity. Reworded subsection (3) for grammatical clarity.

Section 19. 10-1309. Changed reference in 3rd paragraph to "judicial procedures set forth in section 10-1305" to "procedure set forth. . .", since there is no judicial procedure outlined in 10-1305. That section does, however, outline the action to be taken by the social worker and the department.

Section 20. 10-1310. In subsection (1), sentence 1, changed "and" to "or" for clarification. In subsection (6), added "parents" of the minor parent. The subsection apparently inadvertently included the minor parent's guardian but not his or her parent(s). Both should be included. In subsection (9)(c), changed "and" to "of" for clarification.

Section 21. 10-1311. Added "department of" preceding "social and rehabilitation services".

Section 22. 10-1320. Changed "with" to "within" to correct apparent grammatical error.

Section 23. 69-6101(4). Rewritten for clarity.

Section 24. 69-6106. Rewritten for clarity.

Section 25. Repeals 10-207 through 10-210. Employment of children in mines. There are three separate acts of the legislature codified in Chapter 2 of Title 10, all of which are redundant and directed toward the same objective. Sections 10-207 through 10-210 comprise the two earlier acts, and are repealed in this bill, since the latest act supersedes the earlier two.

Approved by Committee  
on Judiciary

1                    HOUSE    BILL NO. 39  
2    INTRODUCED BY KVAALEN

3  
4    A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND  
5    CLARIFY THE LAW RELATING TO MINORS."

6  
7    BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

8            Section 1. Section 10-204, R.C.M. 1947, is amended to  
9    read as follows:

10           "10-204. Age certificates. Upon ~~obtaining~~ attaining  
11    the age of ~~sixteen~~ 16 years any child may make application  
12    to the commissioner of labor and industry for an age  
13    certificate, which must be presented to any employer with  
14    whom ~~such the child may seek~~ seeks employment. The employer,  
15    if such employment be given, must countersign the  
16    certificate and return ~~the same it~~ to the commissioner of  
17    ~~said--bureau~~, who shall keep ~~the--same it~~ on file in his  
18    office. Any person, firm, company, association, or  
19    corporation who employs or permits to be employed in any  
20    occupation prohibited by ~~section~~ 10-201, any child without  
21    such certificate showing the child to be at least ~~sixteen~~ 16  
22    years of age, ~~shall be~~ is guilty of a misdemeanor and  
23    punishable as hereinafter provided, should such child prove  
24    to be less than ~~sixteen~~ 16 years of age."

25           Section 2. Section 10-205, R.C.M. 1947, is amended to

There are no changes in HB 39, & will not be re-run.

Please refer to white copy for complete text.

1    read as follows:

2           "10-205. Enforcement of act. To enforce this act the  
3    commissioner of labor and industry, ~~the bureau of child and~~  
4    ~~animal protection~~, and ~~all~~ each county ~~attorneys~~ attorney  
5    shall, each upon ~~their~~ his own volition, or upon the sworn  
6    complaint of any reputable citizen that this act is being  
7    violated, make prosecutions for such violations."

8           Section 3. Section 10-1206, R.C.M. 1947, is amended to  
9    read as follows:

10           "10-1206. Jurisdiction of the court. (1) The court has  
11    exclusive original jurisdiction of all proceedings under the  
12    Montana Youth Court Act in which a youth is alleged to be a  
13    delinquent youth, a youth in need of supervision, or a  
14    youth in need of care, or concerning any person under  
15    ~~twenty-one~~ (21) years of age charged with having violated  
16    any law of the state or ordinance of any city or town prior  
17    to having become ~~eighteen~~ (18) years of age.

18           (2) Justice, municipal, and ~~police city~~ courts shall  
19    have concurrent jurisdiction with the youth court over all  
20    traffic and fish and game violations alleged to have been  
21    committed by a youth, except that the following alleged  
22    violations are under the exclusive jurisdiction of the  
23    court:

24           (a) driving while intoxicated as defined in section  
25    32-2142, ~~R.C.M. 1947~~;

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1 (b) failing to stop at an accident as defined in  
2 section 32-1202~~v-R.C.M.-1947~~; and

3 (c) driving without a valid license or permit as  
4 defined in sections 31-125 and 31-127~~v-R.C.M.-1947~~, after  
5 having been previously convicted of the same offense."

6 Section 4. Section 10-1210, R.C.M. 1947, is amended to  
7 read as follows:

8 "10-1210. Consent adjustment without petition. (1)  
9 Before a petition is filed, the probation officer may enter  
10 into an informal adjustment, and give counsel and advice to  
11 the youth and other interested parties, if it appears:

12 (a) the admitted facts bring the case within the  
13 jurisdiction of the court;

14 (b) counsel and advice without filing a petition would  
15 be in the best interests of the child and the public.

16 (2) Any probation or other disposition imposed under  
17 this section against any youth must conform to the following  
18 procedures:

19 (a) Every consent adjustment shall be reduced to  
20 writing, and signed by the youth and his parents or the  
21 person having legal custody of the youth.

22 (b) Approval by the youth court judge ~~shall--be is~~  
23 required ~~where if~~ the complaint alleges commission of a  
24 felony or ~~where if~~ the youth has been or will be in any way  
25 detained.

1 (3) An incriminating statement relating to any act or  
2 omission constituting delinquency or need of supervision  
3 made by the participant to the person giving counsel or  
4 advice in the discussions or conferences incident thereto  
5 ~~shall~~ may not be used against the declarant in any  
6 proceeding under this act, nor ~~shall~~ may the incriminating  
7 statement be admissible in any criminal proceeding against  
8 the declarant.

9 (4) The following dispositions may be imposed by  
10 informal adjustment:

11 (a) Probation ~~probation~~;

12 (b) Placement ~~placement~~ of the youth in a licensed  
13 foster home or other home approved by the court;

14 (c) Placement ~~placement~~ of the youth in a private  
15 agency responsible for the care and rehabilitation of such a  
16 youth, including but not limited to a district youth  
17 guidance home;

18 (d) Transfer ~~transfer~~ of legal custody of the youth to  
19 the department of institutions, provided~~v-however~~ that such  
20 commitment ~~shall~~ does not authorize the department of  
21 institutions to place the youth in a detention facility, as  
22 ~~defined by this act~~ and such commitment ~~shall~~ may not exceed  
23 a period of ~~six-(6)~~ months without a subsequent order of the  
24 court, after notice and hearing."

25 Section 5. Section 10-1217, R.C.M. 1947, is amended to

1                    HOUSE    BILL NO. 39  
2    INTRODUCED BY KVAALEN

3  
4    A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND  
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6  
7    BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
8        Section 1. Section 10-204, R.C.M. 1947, is amended to  
9    read as follows:

10        "10-204. Age certificates. Upon ~~obtaining~~ attaining  
11    the age of ~~sixteen 16~~ years any child may make application  
12    to the commissioner of labor and industry for an age  
13    certificate, which must be presented to any employer with  
14    whom such ~~the~~ child may ~~seek~~ seeks employment. The employer,  
15    if such employment be given, must countersign the  
16    certificate and return ~~the same it~~ to the commissioner of  
17    ~~said--bureau,~~ who shall keep ~~the--same it~~ on file in his  
18    office. Any person, firm, company, association, or  
19    corporation who employs or permits to be employed in any  
20    occupation prohibited by ~~section 10-201,~~ any child without  
21    such certificate showing the child to be at least ~~sixteen 16~~  
22    years of age, ~~shall--be~~ is guilty of a misdemeanor and  
23    punishable as hereinafter provided, should such child prove  
24    to be less than ~~sixteen 16~~ years of age."

25        Section 2. Section 10-205, R.C.M. 1947, is amended to  
There are no changes in HB 39, & will not be re-run.

Please refer to white copy for complete text.

THIRD READING

1    read as follows:  
2        "10-205. Enforcement of ~~act.~~ To enforce this act the  
3    commissioner of labor and industry, ~~the bureau of child and~~  
4    ~~animal protection,~~ and ~~at~~ each county ~~attorneys~~ attorney  
5    shall, each upon ~~their~~ his own volition, or upon the sworn  
6    complaint of any reputable citizen that this act is being  
7    violated, make prosecutions for such violations."

8        Section 3. Section 10-1206, R.C.M. 1947, is amended to  
9    read as follows:

10        "10-1206. Jurisdiction of the court. (1) The court has  
11    exclusive original jurisdiction of all proceedings under the  
12    Montana Youth Court Act in which a youth is alleged to be a  
13    delinquent youth, a youth in need of supervision, a or a  
14    youth in need of care, or concerning any person under  
15    ~~twenty-one {21}~~ years of age charged with having violated  
16    any law of the state or ordinance of any city or town prior  
17    to having become ~~eighteen {18}~~ years of age.

18        (2) Justice, municipal, and ~~po~~lice city courts shall  
19    have concurrent jurisdiction with the youth court over all  
20    traffic and fish and game violations alleged to have been  
21    committed by a youth, except that the following alleged  
22    violations are under the exclusive jurisdiction of the  
23    court:

24        (a) driving while intoxicated as defined in ~~section~~  
25    32-2142~~y-R.C.M.---~~1947;

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1 (b) failing to stop at an accident as defined in  
2 section 32-1202~~v-RvEvMv-1947~~; and

3 (c) driving without a valid license or permit as  
4 defined in sections 31-125 and 31-127~~v-RvEvMv-1947~~, after  
5 having been previously convicted of the same offense."

6 Section 4. Section 10-1210, R.C.M. 1947, is amended to  
7 read as follows:

8 "10-1210. Consent adjustment without petition. (1)  
9 Before a petition is filed, the probation officer may enter  
10 into an informal adjustment, and give counsel and advice to  
11 the youth and other interested parties, if it appears:

12 (a) the admitted facts bring the case within the  
13 jurisdiction of the court;

14 (b) counsel and advice without filing a petition would  
15 be in the best interests of the child and the public.

16 (2) Any probation or other disposition imposed under  
17 this section against any youth must conform to the following  
18 procedures:

19 (a) Every consent adjustment shall be reduced to  
20 writing, and signed by the youth and his parents or the  
21 person having legal custody of the youth.

22 (b) Approval by the youth court judge shall ~~be~~ is  
23 required ~~where if~~ the complaint alleges commission of a  
24 felony or ~~where if~~ the youth has been or will be in any way  
25 detained.

1 (3) An incriminating statement relating to any act or  
2 omission constituting delinquency or need of supervision  
3 made by the participant to the person giving counsel or  
4 advice in the discussions or conferences incident thereto  
5 shall ~~may~~ not be used against the declarant in any  
6 proceeding under this act, nor shall ~~may~~ the incriminating  
7 statement be admissible in any criminal proceeding against  
8 the declarant.

9 (4) The following dispositions may be imposed by  
10 informal adjustment:

11 (a) ~~Probation~~ probation;

12 (b) ~~Placement~~ placement of the youth in a licensed  
13 foster home or other home approved by the court;

14 (c) ~~Placement~~ placement of the youth in a private  
15 agency responsible for the care and rehabilitation of such a  
16 youth, including but not limited to a district youth  
17 guidance home;

18 (d) ~~Transfer~~ transfer of legal custody of the youth to  
19 the department of institutions, provided~~v-however~~ that such  
20 commitment shall ~~does~~ not authorize the department of  
21 institutions to place the youth in a detention facility, ~~as~~  
22 ~~defined by this act~~ and such commitment shall ~~may~~ not exceed  
23 a period of ~~six~~ six months without a subsequent order of the  
24 court, after notice and hearing."

25 Section 5. Section 10-1217, R.C.M. 1947, is amended to

March 2, 1977

STANDING COMMITTEE REPORT  
Senate Committee on Judiciary

That House Bill No. 39 be amended as follows:

1. Amend page 29, section 23, line 24.

Following: line 23

Strike: "subsection (1), (2), (3), or (4) of this section"

Insert: "this subsection (1)"



1 HOUSE BILL NO. 39

2 INTRODUCED BY KVAALEN

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND  
5 CLARIFY THE LAW RELATING TO MINORS."

6  
7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

8 Section 1. Section 10-204, R.C.M. 1947, is amended to  
9 read as follows:

10 "10-204. Age certificates. Upon ~~obtaining~~ attaining  
11 the age of ~~sixteen~~ 16 years any child may make application  
12 to the commissioner of labor and industry for an age  
13 certificate, which must be presented to any employer with  
14 whom such ~~the~~ child may ~~seek~~ seeks employment. The employer,  
15 if such employment be given, must countersign the  
16 certificate and return ~~the same~~ it to the commissioner of  
17 ~~said--bureau~~, who shall keep ~~the--same~~ it on file in his  
18 office. Any person, firm, company, association, or  
19 corporation who employs or permits to be employed in any  
20 occupation prohibited by ~~section~~ 10-201, any child without  
21 such certificate showing the child to be at least ~~sixteen~~ 16  
22 years of age ~~--shall--be~~ is guilty of a misdemeanor and  
23 punishable as hereinafter provided, should such child prove  
24 to be less than ~~sixteen~~ 16 years of age."

25 Section 2. Section 10-205, R.C.M. 1947, is amended to

1 read as follows:

2 "10-205. Enforcement of ~~act~~. To enforce this act the  
3 commissioner of labor and industry, ~~the bureau of child and~~  
4 ~~animal protection~~, and ~~at~~ each county ~~attorneys~~ attorney  
5 shall, each upon ~~their~~ his own volition, or upon the sworn  
6 complaint of any reputable citizen that this act is being  
7 violated, make prosecutions for such violations."

8 Section 3. Section 10-1206, R.C.M. 1947, is amended to  
9 read as follows:

10 "10-1206. Jurisdiction of the court. (1) The court has  
11 exclusive original jurisdiction of all proceedings under the  
12 Montana Youth Court Act in which a youth is alleged to be a  
13 delinquent youth<sub>1</sub>, a youth in need of supervision<sub>1</sub>, or a  
14 youth in need of care, or concerning any person under  
15 ~~twenty-one~~ {21} years of age charged with having violated  
16 any law of the state or ordinance of any city or town prior  
17 to having become ~~eighteen~~ {18} years of age.

18 (2) Justice, municipal<sub>1</sub>, and police city courts shall  
19 have concurrent jurisdiction with the youth court over all  
20 traffic and fish and game violations alleged to have been  
21 committed by a youth<sub>1</sub>, except that the following alleged  
22 violations are under the exclusive jurisdiction of the  
23 court:

24 (a) driving while intoxicated as defined in section  
25 ~~32-2142~~ R.C.M. 1947;

REFERENCE BILL

1 (b) failing to stop at an accident as defined in  
2 ~~section 32-1202~~~~--R.C.M.--1947~~; and

3 (c) driving without a valid license or permit as  
4 defined in ~~sections 31-125 and 31-127~~~~--R.C.M.--1947~~, after  
5 having been previously convicted of the same offense."

6 Section 4. Section 10-1210, R.C.M. 1947, is amended to  
7 read as follows:

8 "10-1210. Consent adjustment without petition. (1)  
9 Before a petition is filed, the probation officer may enter  
10 into an informal adjustment~~v~~ and give counsel and advice to  
11 the youth and other interested parties~~v~~ if it appears:

12 (a) the admitted facts bring the case within the  
13 jurisdiction of the court;

14 (b) counsel and advice without filing a petition would  
15 be in the best interests of the child and the public.

16 (2) Any probation or other disposition imposed under  
17 this section against any youth must conform to the following  
18 procedures:

19 (a) Every consent adjustment shall be reduced to  
20 writing~~v~~ and signed by the youth and his parents or the  
21 person having legal custody of the youth.

22 (b) Approval by the youth court judge ~~shall--be~~ is  
23 required ~~where if~~ the complaint alleges commission of a  
24 felony or ~~where if~~ the youth has been or will be in any way  
25 detained.

1 (3) An incriminating statement relating to any act or  
2 omission constituting delinquency or need of supervision  
3 made by the participant to the person giving counsel or  
4 advice in the discussions or conferences incident thereto  
5 ~~shall~~ may not be used against the declarant in any  
6 proceeding under this act, nor ~~shall~~ may the incriminating  
7 statement be admissible in any criminal proceeding against  
8 the declarant.

9 (4) The following dispositions may be imposed by  
10 informal adjustment:

11 (a) ~~Probation~~ probation;

12 (b) ~~Placement~~ placement of the youth in a licensed  
13 foster home or other home approved by the court;

14 (c) ~~Placement~~ placement of the youth in a private  
15 agency responsible for the care and rehabilitation of such a  
16 youth, including but not limited to~~v~~ a district youth  
17 guidance home;

18 (d) ~~Transfer~~ transfer of legal custody of the youth to  
19 the department of institutions, provided~~--however~~ that such  
20 commitment ~~shall~~ does not authorize the department of  
21 institutions to place the youth in a detention facility~~2~~ as  
22 defined~~by this act~~ and such commitment ~~shall~~ may not exceed  
23 a period of ~~six-(6)~~ months without a subsequent order of the  
24 court, after notice and hearing."

25 Section 5. Section 10-1217, R.C.M. 1947, is amended to

1 read as follows:

2 "10-1217. Service of summons. (1) Any youth who is the  
3 subject of a proceeding under this act must be personally  
4 served with summons at least ~~five~~(5) days before the time  
5 stated for appearance.

6 (2) Service of summons on all other persons designated  
7 in ~~subsection (1) of section 10-1216(1)~~ shall be made in  
8 accordance with Rule ~~4(D)~~ of the Montana Rules ~~rules~~ of  
9 ~~Civil Procedure~~ civil procedure, except that in all cases  
10 service shall be completed at least ~~five~~(5) days before the  
11 time stated for appearance.

12 (3) If a party referred to in subsection (2) herein is  
13 not personally served before a hearing and has not secluded  
14 himself with an attempt to delay or disrupt any proceeding  
15 ~~under this act~~, such party may appear within a reasonable  
16 time subsequent to the hearing and, on motion to the court,  
17 request a rehearing. The motion may be granted at the  
18 discretion of the judge if a rehearing would be in the best  
19 interest of the youth.

20 (4) The court may authorize payment from county funds  
21 of costs of service and necessary travel expenses incurred  
22 by persons summoned or otherwise required to appear at the  
23 hearing.

24 (5) An actual abandonment of a youth by his parent or  
25 parents shall constitute a waiver of summons and notice

1 requirements ~~in this act~~ by the parent or parents. A return  
2 endorsed upon the summons showing inability to serve summons  
3 ~~in compliance with section 10(2) of this act~~ constitutes  
4 prima facie evidence of actual abandonment.

5 (6) The youth court may, in the interests of justice,  
6 shorten the notice requirements contained herein, and such  
7 notice of shortened time shall be endorsed on the summons.

8 (7) A party, other than the youth, may waive service  
9 of summons on himself by written stipulation or by voluntary  
10 appearance at the hearing. If the youth is present at the  
11 hearing, his counsel may waive service of summons in his  
12 behalf."

13 Section 6. Section 10-1218, R.C.M. 1947, is amended to  
14 read as follows:

15 "10-1218. Basic legal rights. (1) When a youth alleged  
16 to be a delinquent youth or a youth in need of supervision  
17 is taken into custody, the following requirements must be  
18 met:

19 (a) the ~~the~~ youth shall be immediately and effectively  
20 advised of his constitutional rights and his rights under  
21 this ~~act~~.

22 (b) the ~~the~~ youth may waive such rights under the  
23 following situations:

24 (i) when the youth is under the age of ~~twelve~~(12)  
25 years, the parents of the youth may make an effective

1 waiver;

2 (ii) when the youth is over the age of ~~twelve-(12)~~  
3 years, and the youth and his parent parents agree, they may  
4 make an effective waiver; and

5 (iii) when the youth is over the age of ~~twelve-(12)~~  
6 years and the youth and his parents do not agree, the youth  
7 may make an effective waiver only with advice of counsel.

8 (c) In a proceeding alleging a youth to be a  
9 delinquent youth:

10 (i) ~~An an extro-judicial~~ extrajudicial statement that  
11 would be constitutionally inadmissible in a criminal matter  
12 shall ~~may~~ not be received in evidence;

13 (ii) ~~Evidence evidence~~ illegally seized or obtained  
14 shall ~~may~~ not be received in evidence to establish the  
15 allegations of a petition against a youth; and

16 (iii) ~~An-extro-judicial~~ an extrajudicial admission or  
17 confession made by the youth out of court is insufficient to  
18 support a finding that the youth committed the acts alleged  
19 in the petition unless it is corroborated by other evidence.

20 (2) Title 95~~-R-6-M-1947~~, shall apply to all law  
21 enforcement investigations relating to a complaint alleging  
22 a delinquent youth or youth in need of supervision, except  
23 that:

24 (a) ~~No no~~ youth shall ~~may~~ be fingerprinted or  
25 photographed for criminal identification purposes except by

1 order of the youth court judge;

2 (b) ~~No no~~ fingerprint records or photographs shall ~~may~~  
3 be filed with the federal bureau of investigation, state of  
4 Montana identification bureau, or any other than the  
5 originating agency, except for sending the fingerprints or  
6 photographs to any law enforcement agency for comparison  
7 purposes in the original investigation;

8 (c) ~~At at~~ such time as the proceedings in the matter,  
9 including appeals, are complete, the fingerprint records and  
10 photographs shall be destroyed, ~~except-that~~ however, such  
11 fingerprint records and photographs may be retained by the  
12 originating agency for a specific period when ordered by the  
13 court for good cause shown.

14 (3) In all proceedings on a petition alleging a  
15 delinquent youth or youth in need of supervision ~~as-set~~  
16 ~~forth-in-subsection-(1)-of-this-section~~, the youth and the  
17 parents ~~and of~~ guardian of the youth shall be advised by the  
18 court or, in the absence of the court, by its representative  
19 that the youth may be represented by counsel at all stages  
20 of the proceedings. If counsel is not retained, or if it  
21 appears that counsel will not be retained, counsel shall be  
22 appointed for the youth, unless the right to appointed  
23 counsel is waived by the youth and the parents or guardian.  
24 Neither the youth nor his parent or guardian may waive  
25 counsel if commitment to a detention facility or a youth

1 forest camp or to the department of institutions for a  
2 period of more than ~~six--(6)~~ months may result from  
3 adjudication.

4 (4) The court at any stage of a proceeding on a  
5 petition under this act may appoint a guardian ad litem for  
6 a youth if the youth has no parent or guardian appearing in  
7 his behalf or if their interests conflict with those of the  
8 youth. A party to the proceeding or an employee or  
9 representative of a party ~~shall~~ may not be appointed as  
10 guardian ad litem.

11 (5) In a proceeding on a petition, a party is entitled  
12 to:

13 (a) the opportunity to introduce evidence and  
14 otherwise be heard on the party's own behalf;

15 (b) confront and cross-examine witnesses testifying  
16 against the party; and

17 (c) admit or deny the allegations against the party in  
18 the petition.

19 (6) Persons afforded rights under this act shall be  
20 advised of those rights and any other rights existing under  
21 law at the time of their first appearance in a proceeding on  
22 a petition under the Montana Youth Court Act and at any  
23 other time specified in ~~the--Youth-Court-Act~~ that act or  
24 other law.

25 (7) All ~~post--trial~~ posttrial motions and other

1 remedies available to an adult in a criminal proceeding  
2 under the Montana Code of Criminal Procedure ~~shall--be~~ are  
3 available to a youth proceeded against under this act."

4 Section 7. Section 10-1220, R.C.M. 1947, is amended to  
5 read as follows:

6 "10-1220. Adjudicatory hearing. (1) Prior to any  
7 adjudicatory hearing, the court shall determine whether the  
8 youth admits or denies the offenses alleged in the petition.  
9 If the youth denies all offenses alleged in the petition,  
10 the youth, his parent, guardian, or attorney may demand a  
11 jury trial on such contested offenses ~~in~~ in the absence of  
12 such demand, a jury trial is waived. If the youth denies  
13 some offenses and admits others, the contested offenses may  
14 be dismissed in the discretion of the youth court judge. The  
15 adjudicatory ~~hearings~~ hearing shall be set forthwith and  
16 accorded a preferential priority.

17 (2) An adjudicatory hearing shall be held to determine  
18 whether the contested offenses are supported by proof beyond  
19 a reasonable doubt in cases involving a youth alleged to be  
20 delinquent or in need of supervision. If the hearing is  
21 before a jury, the jury's function shall be to determine  
22 whether the youth committed the contested offenses ~~if~~ if If  
23 the hearing is before the youth court judge without a jury,  
24 the judge shall make and record his findings on all issues.  
25 If the allegations of the petitions are not established at

1 the hearing, the youth court shall dismiss the petition and  
2 discharge the youth from custody.

3 (3) An adjudicatory hearing shall be recorded verbatim  
4 by whatever means the court ~~deems~~ considers appropriate.

5 (4) The youth charged in a petition must be present at  
6 the hearing and, if brought from detention to the hearing,  
7 ~~shall~~ may not appear clothed in institutional clothing.

8 (5) In a hearing on a petition under this section, the  
9 general public shall be excluded and only such persons  
10 ~~admitted~~ as have a direct interest in the case may be  
11 ~~admitted,~~ except that when a hearing in the court is held  
12 on a written petition charging the commission of a felony,  
13 persons with a legitimate interest in the proceeding,  
14 including representatives of public information media, ~~shall~~  
15 may not be excluded from the hearing.

16 (6) ~~If the court finds~~ on the basis of a valid  
17 admission by a youth of the allegations of the petition or  
18 ~~if after the hearing required by this section,~~ a youth is  
19 found to be a delinquent youth or a youth in need of  
20 supervision, the court shall schedule a dispositional  
21 hearing under this act.

22 (7) When a jury trial is required in a case, it may be  
23 held before the regular trial panel. If the regular panel is  
24 not in attendance, the court may draw a jury from jury box  
25 No. 3."

1 Section 8. Section 10-1224, R.C.M. 1947, is amended to  
2 read as follows:

3 "10-1224. Consent decree with petition. (1) At any  
4 time after the filing of a petition alleging delinquency or  
5 need of supervision, and before the entry of a judgment, the  
6 court may, on motion of counsel for the youth or on the  
7 court's own motion, suspend the proceedings and continue the  
8 youth under supervision under terms and conditions  
9 negotiated with probation services and agreed to by all  
10 necessary parties. The court's order continuing the child  
11 under supervision under this section shall be known as a  
12 "consent decree". The procedures used and dispositions  
13 permitted ~~when~~ under this section shall conform to the  
14 procedure and disposition specified in ~~section 10-1210,~~  
15 ~~R.C.M. 1947~~ relating to consent adjustments without  
16 petition.

17 (2) If the youth or his counsel objects to a consent  
18 decree, the court shall proceed to findings, adjudication,  
19 and disposition of the case.

20 (3) If, either prior to discharge by probation  
21 services or expiration of the consent decree, a new  
22 petition alleging delinquency or need of supervision is  
23 filed against the youth, or if the youth fails to fulfill  
24 the expressed terms and conditions of the consent decree,  
25 the petition under which the youth was continued under

1 supervision may be reinstated in the discretion of the  
2 county attorney in consultation with probation services. In  
3 the event of reinstatement, the proceeding on the petition  
4 shall be continued to conclusion, as if the consent decree  
5 had never been entered.

6 (4) A youth who is discharged by probation services or  
7 who completes a period under supervision without  
8 reinstatement of the original petition shall not again  
9 be proceeded against in any court for the same offense  
10 alleged in the petition, and the original petition shall be  
11 dismissed with prejudice. Nothing in this subsection  
12 precludes a civil suit against the youth for damages arising  
13 from his conduct.

14 (b) In all cases where the terms of the consent decree  
15 shall extend for a period in excess of ~~six-(6)~~ months, the  
16 probation officer shall ~~submit a report~~ at the end of each  
17 ~~six-(6)-month 6-month~~ period submit a report which shall be  
18 reviewed by the court."

19 Section 9. Section 10-1229, R.C.M. 1947, is amended to  
20 read as follows:

21 "10-1229. Transfer to criminal court. (1) After a  
22 petition has been filed alleging delinquency, the court may,  
23 upon motion of the county attorney, before hearing the  
24 petition on its merits, transfer the matter of prosecution  
25 to the district court if:

1 (a) the youth charged was ~~sixteen-(16)~~ years of age or  
2 more at the time of the conduct alleged to be unlawful and  
3 the unlawful act is one or more of the following:

4 (i) criminal homicide as defined in ~~section 94-5-101y~~  
5 ~~R.C.M. 1947;~~

6 (ii) arson as defined in ~~section 94-6-104y-R.C.M. 1947;~~

7 (iii) aggravated assault as defined in ~~section~~  
8 ~~94-5-202y-R.C.M. 1947;~~

9 (iv) robbery as defined in ~~section 94-5-401y-R.C.M.~~  
10 ~~1947;~~

11 (v) burglary or aggravated burglary as defined in  
12 ~~section 94-6-204y-R.C.M. 1947;~~

13 (vi) sexual intercourse without consent as defined in  
14 ~~section 94-5-503y-R.C.M. 1947;~~

15 (vii) aggravated kidnapping as defined in ~~section~~  
16 ~~94-5-303y-R.C.M. 1947;~~

17 (viii) possession of explosives as defined in ~~section~~  
18 ~~94-6-105y-R.C.M. 1947;~~

19 (ix) criminal sale of dangerous drugs for profit as  
20 included in ~~section 54-132y-R.C.M. 1947;~~

21 (b) a hearing on whether the transfer should be made  
22 is held in conformity with the rules on a hearing on a  
23 petition alleging delinquency, except that the hearing will  
24 be to the youth court without a jury; and

25 (c) notice in writing of the time, place, and purpose

1 of the hearing is given to the youth, his counsel, and his  
 2 parents, guardian, or custodian at least ~~ten--(10)~~ days  
 3 before the hearing; and

4 (d) the court finds upon the hearing of all relevant  
 5 evidence that there are reasonable grounds to believe that:

6 (i) the youth committed the delinquent act alleged;  
 7 and

8 (ii) the seriousness of the offense and the protection  
 9 of the community requires ~~require~~ treatment of the youth  
 10 beyond that afforded by juvenile facilities; and

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

13 (2) In transferring the matter of prosecution to the  
 14 district court, the court shall also consider the following  
 15 factors:

16 (a) the sophistication and maturity of the youth,  
 17 determined by consideration of his home, environmental  
 18 situation, and emotional attitude and pattern of living;

19 (b) the record and previous history of the youth,  
 20 including previous contacts with the youth court, law  
 21 enforcement agencies, youth courts in other jurisdictions,  
 22 prior periods of probation, and prior commitments to  
 23 juvenile institutions;

24 (c) the prospects for adequate protection of the  
 25 public and the likelihood of reasonable rehabilitation of

1 the youth by the use of procedures, services, and facilities  
 2 currently available to the youth court.

3 (3) Upon transfer to district court, the judge shall  
 4 make written findings of the reasons why the jurisdiction of  
 5 the court was waived and the case transferred to district  
 6 court.

7 (4) The transfer terminates the jurisdiction of the  
 8 court over the youth with respect to the acts alleged in the  
 9 petition. No youth shall ~~may~~ be prosecuted in the district  
 10 court for a criminal offense originally subject to the  
 11 jurisdiction of the youth court unless the case has been  
 12 transferred as provided in this section.

13 (5) Upon order of the court transferring the case to  
 14 the district court, the county attorney shall file the  
 15 information against the youth without unreasonable delay.

16 (6) If a youth is found guilty in district court of  
 17 any of the offenses enumerated in subsection ~~(2)(11)(a)~~ of  
 18 this section and is sentenced to the state prison, his  
 19 commitment shall be to the department of institutions which  
 20 shall confine the youth in whatever institution it ~~deems~~  
 21 considers proper.\*

22 Section 10. Section 10-1230, R.C.M. 1947, is amended  
 23 to read as follows:

24 "10-1230. Law enforcement records. (1) ~~All~~ No law  
 25 enforcement records concerning a youth, except traffic



1 records, ~~shall not~~ may be open to public inspection ~~nor~~ or  
2 their contents disclosed to the public unless so ordered by  
3 the court.

4 (2) Inspection of law enforcement records concerning a  
5 youth is permitted prior to the sealing of the records by:

6 (a) a youth court having the youth currently before it  
7 in any proceeding;

8 (b) the officers of agencies having legal custody of  
9 the youth and those responsible for his supervision after  
10 release;

11 (c) any other person, by order of the court, having a  
12 legitimate interest in the case or in the work of the law  
13 enforcement agency;

14 (d) ~~Montana~~ law enforcement officers of Montana when  
15 necessary for the discharge of their immediate duties;

16 (e) a district court in which the youth is convicted  
17 of a criminal offense<sub>2</sub> for the purpose of a presentence  
18 investigation;

19 (f) the county attorney; or

20 (g) the youth, his parent, guardian<sub>2</sub> or counsel.\*

21 Section 11. Section 10-1236, R.C.M. 1947, is amended  
22 to read as follows:

23 "10-1236. Foster homes. (1) The youth court may  
24 establish procedures for finding, maintaining<sub>2</sub> and  
25 administering temporary and permanent ~~licensed~~ foster homes

1 or other homes approved by the court for youth within the  
2 provisions of this act.

3 ~~(2) The licensed foster homes established under this~~  
4 ~~section shall be funded at a rate consistent with other~~  
5 ~~foster homes established for other purposes under law.~~

6 (3)(2) All foster homes established by the youth court  
7 which are licensed by the department of social and  
8 rehabilitation services, established shall be financed by  
9 the department ~~of social and rehabilitation services~~ as set  
10 forth in section 71-210(b), ~~R.C.M. 1947.~~

11 (3) The licensed foster homes established under this  
12 section shall be funded at a rate consistent with other  
13 foster homes established for other purposes under law."

14 Section 12. Section 10-1242, R.C.M. 1947, is amended  
15 to read as follows:

16 "10-1242. Establishment of district youth guidance  
17 home program. The ~~legislative assembly~~ legislature, in  
18 recognition of the wide and varied needs of delinquent  
19 youths and youths in need of supervision of this state and  
20 of the desirability of meeting these needs on a community  
21 level to the fullest extent possible, and in order to reduce  
22 the need for custodial care in existing state institutions,  
23 establishes by ~~this act 10-1242 through 10-1252~~ a district  
24 youth guidance home program to provide facilities and  
25 services for the rehabilitation of delinquent youths and

1 youths in need of supervision and establishes a program to  
 2 provide such facilities and services through local nonprofit  
 3 corporations and the department of institutions."

4 Section 13. Section 10-1246, R.C.M. 1947, is amended  
 5 to read as follows:

6 "10-1246. Authority of youth court judge to commit  
 7 delinquent youths and youths in need of supervision. A youth  
 8 court judge is hereby authorized in his discretion to place  
 9 a delinquent youth or a youth in need of supervision ~~to said~~  
 10 in a district youth guidance home for any period of time up  
 11 to the child's ~~twenty-first 21st~~ birthday subject to the  
 12 approval of its sponsoring nonprofit corporation or  
 13 association."

14 Section 14. Section 10-1248, R.C.M. 1947, is amended  
 15 to read as follows:

16 "10-1248. Continuing jurisdiction of youth court over  
 17 youths. The youth court placing a delinquent youth or a  
 18 youth in need of supervision ~~to in~~ a district youth guidance  
 19 home shall retain continuing jurisdiction over ~~said the~~  
 20 youth until ~~said the~~ youth becomes ~~twenty-one~~ {21} years of  
 21 age or is otherwise discharged by order of the court."

22 Section 15. Section 10-1249, R.C.M. 1947, is amended  
 23 to read as follows:

24 "10-1249. Per diem charge to financially able parents.  
 25 A youth court judge placing a delinquent youth or a youth in

1 need of supervision in a district youth guidance home may,  
 2 if the parent or parents of the youth are financially able,  
 3 without undue hardship, require the parents or parent to pay  
 4 to the district youth guidance home a such per diem charge  
 5 ~~not to exceed the per diem charge established by the~~  
 6 ~~department of institutions for each youth placed in the~~  
 7 ~~montana children's center as the judge may determine."~~

8 Section 16. Section 10-1251, R.C.M. 1947, is amended  
 9 to read as follows:

10 "10-1251. Rules ~~and regulations~~. The director of the  
 11 department of institutions ~~shall have power to~~ may adopt  
 12 reasonable rules, ~~regulations~~ and standards to carry out the  
 13 administration and purposes of ~~this act~~ 10-1242 through  
 14 10-1252."

15 Section 17. Section 10-1252, R.C.M. 1947, is amended  
 16 to read as follows:

17 "10-1252. Federal assistance. The department of  
 18 institutions ~~is hereby authorized to~~ may make application  
 19 for and ~~to~~ receive federal-aid money or other assistance  
 20 which might ~~now or hereafter~~ become available for programs  
 21 in the nature of the one created by ~~this act~~ 10-1242 through  
 22 10-1252."

23 Section 18. Section 10-1301, R.C.M. 1947, is amended  
 24 to read as follows:

25 "10-1301. Definitions. (1) "Child" or "youth", for

1 purposes of this act, means any person under ~~eighteen~~(18)  
2 years of age.

3 (2) "Abuse" or "neglect" means:

4 (a) ~~the~~ the commission or omission of any act or acts  
5 which materially affect the normal physical or emotional  
6 development of a youth, ~~any~~ any excessive physical injury,  
7 sexual assault, or failure to thrive, taking into account  
8 the age and medical history of the youth, shall be  
9 ~~presumptive of "material effect" and non-accidental or~~  
10 ~~presumed to be nonaccidental and to "materially affect" the~~  
11 normal development of the youth.

12 (b) ~~the~~ the commission or omission of any act or acts  
13 by any person in the status of parent, guardian, or  
14 custodian who thereby and by reason of physical or mental  
15 incapacity or other cause, refuses, or, with state and  
16 private aid and assistance is unable, to discharge the  
17 duties and responsibilities for proper and necessary  
18 subsistence, education, medical, or any other care necessary  
19 for his ~~the~~ the youth's physical, moral, and emotional  
20 well-being.

21 (3) "Dependent youth" means a youth who is abandoned,  
22 dependent upon the public for support, ~~and who is~~ destitute,  
23 ~~or is~~ without parents or guardian or under the care and  
24 supervision of a suitable adult, or who has no proper  
25 guidance to provide for his necessary physical, moral, and

1 emotional well-being. A child may be considered dependent  
2 and legal custody transferred to a licensed agency if the  
3 parent or parents voluntarily relinquish custody of ~~and the~~  
4 child.

5 (4) "Youth in need of care" means a youth who is  
6 dependent or is suffering from abuse or neglect within the  
7 meaning of this act."

8 Section 19. Section 10-1309, R.C.M. 1947, is amended  
9 to read as follows:

10 "10-1309. Emergency protective service. (1) Any social  
11 worker of the department of social and rehabilitation  
12 services, the county welfare department, a peace officer, or  
13 county attorney who has reason to believe any youth is in  
14 immediate or apparent danger of violence or serious injury  
15 ~~shall have the authority to~~ may immediately remove the youth  
16 and place him in a protective facility. The department may  
17 make a request for further assistance from the law  
18 enforcement agency or take such legal action as may be  
19 appropriate.

20 (2) A petition shall be filed within ~~forty-eight~~(48)  
21 hours of emergency placement of a child unless arrangements  
22 acceptable to the agency for the care of the child have been  
23 made by the parents.

24 (3) The department of social and rehabilitation  
25 services and the county welfare department shall comply with

1 the ~~judicial~~ procedure set forth in section  
2 10-1305, ~~R.C.M. 1947.~~

3 (4) The department of social and rehabilitation  
4 services and the county welfare department shall make such  
5 necessary arrangements for the youth's well-being as are  
6 required prior t the court hearing."

7 Section 20. Section 10-1310, R.C.M. 1947, is amended  
8 to read as follows:

9 "10-1310. Petitions. (1) The county attorney shall be  
10 responsible for filing all petitions alleging abuse,  
11 neglect, ~~and or~~ dependency. He may require all state,  
12 county, and municipal agencies, including law enforcement  
13 agencies, to conduct such investigations and furnish such  
14 reports as may be necessary.

15 (2) Such petitions shall be given preference by the  
16 court in setting hearing dates.

17 (3) A petition alleging abuse, neglect, or dependency  
18 is a civil action brought in the name of the state of  
19 Montana. The rules of civil procedure shall apply except as  
20 herein modified. Proceedings under a petition ~~shall not be~~  
21 are not a bar to criminal prosecution.

22 (4) The parents or parent, guardian, or other person  
23 or agency having legal custody of the youth named in the  
24 petition, if residing in the state, shall be served  
25 personally with a copy of the petition and summons at least

1 five-~~(5)~~ days prior to the date set for hearing, ~~if~~ If such  
2 person or agency resides out of state or is not found within  
3 the state, the rules of civil procedure relating to service  
4 of process in such cases shall apply.

5 (5) In the event service cannot be made upon the  
6 parents or parent, guardian, or other person or agency  
7 having legal custody, the court shall appoint an attorney to  
8 represent the unavailable party where in the opinion of the  
9 court the interests of justice require.

10 (6) ~~Where~~ If a parent of the child is a minor, notice  
11 shall be given to the minor parent's parents or guardian  
12 and if there is no guardian the court shall appoint one.

13 (7) Any person interested in any cause under this act  
14 ~~shall have~~ has the right to appear.

15 (8) Except where the proceeding is instituted or  
16 commenced by a representative of the department of social  
17 and rehabilitation services, a citation shall be issued and  
18 served upon a representative of ~~social and rehabilitation~~  
19 services the department prior to the court hearing.

20 (9) The petition shall:

21 (a) state the nature of the alleged abuse, neglect, or  
22 dependency;

23 (b) state the full name, age, and address of the  
24 youth, and the name and address of his parents or guardian  
25 or person having legal custody of the youth;

1 (c) state the names, addresses, and relationship to  
 2 the youth and of all persons who are necessary parties to  
 3 the action.

4 (10) The petition may ask for the following relief:

5 (a) temporary investigative authority and protective  
 6 services;

7 (b) temporary legal custody;

8 (c) limited legal custody;

9 (d) permanent legal custody, including the right to  
 10 consent to adoption;

11 (e) appointment of guardian ad litem;

12 (f) any combination of the above or such other relief  
 13 as may be required for the best interest of the youth.

14 (11) The petition may be modified for different relief  
 15 at any time within the discretion of the court.

16 (12) The court may at any time on its own motion or  
 17 the motion of any party, appoint a guardian ad litem for the  
 18 youth, or counsel for any indigent party.

19 (13) This section ~~shall~~ does not apply to a petition  
 20 for temporary investigative authority and protective  
 21 services."

22 Section 21. Section 10-1311, R.C.M. 1947, is amended  
 23 to read as follows:

24 "10-1311. Petition ~~and~~ order for temporary  
 25 investigative authority and protective services. (1) In

1 cases where it appears that a youth is abused or neglected  
 2 or is in danger of being abused or neglected, the county  
 3 attorney may file a petition for temporary investigative  
 4 authority and protective services.

5 (2) A petition for temporary investigative authority  
 6 and protective services shall state the specific authority  
 7 requested and the facts establishing probable cause that a  
 8 youth is abused or neglected or is in danger of being abused  
 9 or neglected.

10 (3) The petition for temporary investigative authority  
 11 and protective services shall be supported by an affidavit  
 12 signed by the county attorney or a department of social and  
 13 rehabilitation services report stating in detail the facts  
 14 upon which the request is based.

15 (4) ~~(a)~~ Upon the filing of a petition for temporary  
 16 investigative authority and protective services, the court  
 17 may issue an order ~~for~~ granting such relief as may be  
 18 required for the immediate protection of the youth.

19 (b) The order shall be served by a peace officer or a  
 20 representative of the state department of social and  
 21 rehabilitation services on the person or persons named  
 22 therein.

23 (c) The order shall require the person served to  
 24 immediately comply immediately with the terms thereof or  
 25 upon failure to so comply, to appear before the court

1 issuing the order on the date specified and show cause why  
2 he has not complied with the order. Except as otherwise  
3 provided herein, the rules of civil procedure shall apply.

4 (d) Upon a failure to comply or show cause the court  
5 may hold the person in contempt or place temporary legal  
6 custody of the youth with the ~~state department of~~ social and  
7 rehabilitation services until further order.

8 ~~(e)(5)~~ The court may grant the following kinds of  
9 relief:

10 ~~(i)(a)~~ right of entry by a peace officer or ~~state~~  
11 ~~department of~~ social and rehabilitation services worker;

12 ~~(i)(b)~~ medical and psychological evaluation of youth  
13 or parents, guardians, or person having legal custody;

14 ~~(i)(c)~~ require the youth, parents, guardians, or  
15 person having legal custody to receive counseling services;

16 ~~(i)(d)~~ place the youth in temporary medical facility  
17 or facility for protection of the youth;

18 ~~(i)(e)~~ require the parents, guardian, or other person  
19 having custody to furnish such services as the court may  
20 designate;

21 ~~(i)(f)~~ such other temporary disposition as may be  
22 required in the best interest of the youth."

23 Section 22. Section 10-1320, R.C.M. 1947, is amended  
24 to read as follows:

25 "10-1320. Payment for ~~board, clothing, personal needs,~~

1 ~~and--room support~~ of dependent and neglected children --  
2 reimbursement by county. (1) Whenever agreements are entered  
3 into by the state department of social and rehabilitation  
4 services for placing dependent and neglected children in  
5 approved family foster homes or licensed private  
6 institutions, ~~it--shall--be--the--duty--of~~ the state department  
7 ~~to~~ shall pay by its check or draft, each month, from any  
8 funds appropriated for that purpose, the entire amount  
9 agreed upon for board, clothing, personal needs, and room of  
10 such children.

11 (2) On or before the ~~twentieth~~ 20th of each month the  
12 state department shall present a claim to the county of  
13 residence of such children for one-half the payments so made  
14 during the month. The county must make reimbursement to the  
15 state department within ~~twenty~~ 20 days after such claim is  
16 presented."

17 Section 23. Section 69-6101, R.C.M. 1947, is amended  
18 to read as follows:

19 "69-6101. ~~Consent~~ Validity of consent of minor for  
20 health services--~~when--valid~~. (1) The consent to the  
21 provision of medical or surgical care or services by a  
22 hospital, public clinic, or the performance of medical or  
23 surgical care or services by a physician, licensed to  
24 practice medicine in this state may be given by a minor who  
25 professes or is found to meet any of the following

1 descriptions:

2 ~~(1)(a)~~ A minor who is or was ever married, or has  
3 had a child, or graduated from high school, or is  
4 emancipated; or

5 ~~(1)(b)~~ A minor who has been separated from his  
6 parent, parents, or legal guardian for whatever reason and  
7 is supporting himself by whatever means; or

8 ~~(1)(c)~~ A minor who professes or is found to be  
9 pregnant, or afflicted with any reportable communicable  
10 disease, including venereal disease, or drug and substance  
11 abuse, including alcohol. This self-consent only applies to  
12 the prevention, diagnosis, and treatment of those conditions  
13 specified in this subsection. The self-consent in the case  
14 of pregnancy, venereal disease, and drug and substance abuse  
15 also obliges the health professional, if he accepts the  
16 responsibility for treatment, to counsel the minor by  
17 himself or by referral to another health professional for  
18 counseling, or

19 ~~(1)(d)~~ A minor who needs emergency care, including  
20 transfusions, without which his health will be jeopardized.  
21 ~~It emergency care is rendered, the~~ parent, parents, or  
22 legal guardian shall be informed as soon as practical except  
23 ~~in conditions under the circumstances~~ mentioned in  
24 ~~subsections (1)(v)-(3)(v)-or-(4)-of-this-section~~ THIS  
25 SUBSECTION (1)(a) or

1 ~~(5)(2)~~ A minor who has had a child may give effective  
2 consent to health service for his child, or

3 ~~(6)(3)~~ A minor may give consent for health care for  
4 his spouse if his spouse is unable to give consent by reason  
5 of physical or mental incapacity."

6 Section 24. Section 69-6106, R.C.M. 1947, is amended  
7 to read as follows:

8 "69-6106. ~~Consent-of-minor-to-psychiatric~~ Psychiatric  
9 or psychological counseling ~~valid~~ under urgent  
10 circumstances. ~~The~~ When executed by a minor, the consent to  
11 the providing of psychiatric or psychological counseling by  
12 a physician or psychologist licensed to practice in this  
13 state, under circumstances where ~~when~~ the need for such  
14 counseling is urgent in the opinion of the physician or  
15 psychologist involved, because of danger to the life,  
16 safety, or property of a minor or of other person or  
17 persons, and the consent of the spouse, parent, custodian,  
18 or guardian of the ~~said~~ minor cannot be obtained within a  
19 reasonable time to offset the ~~said~~ danger to life or safety,  
20 ~~when-executed-by-the-said-minor~~ shall be as valid and  
21 binding as if the ~~said~~ minor has had achieved his--or--her  
22 majority, that ~~that~~ is, such minor ~~shall-be-deemed-to-have~~  
23 ~~and-should-have~~ has the same legal capacity to act, and the  
24 same legal obligations with regard to the giving of such  
25 consent, as a person of full legal age and capacity, the

1 ~~infancy--of--said--minor--and--any--contrary--provisions--of--law~~  
2 ~~notwithstanding~~ and such consent ~~shall~~ may not be subject  
3 to later disaffirmance by reason of such minority; ~~and--the~~  
4 ~~The~~ consent of no other person or persons (including, but  
5 not limited to a spouse, parent, custodian, or guardian)  
6 ~~shall--be~~ is necessary in order to authorize the psychiatric  
7 or psychological counseling to of such minor; ~~provided~~  
8 ~~however--that~~ However, no parent ~~shall~~ may be obligated for  
9 the cost of such counseling without his consent."

10 Section 25. Repealer. Sections 10-207, 10-208, 10-209,  
11 and 10-210, R.C.M. 1947, are repealed.

-End-