CHAPTER NO. 246

SENATE BILL NO. 293

INTRODUCED BY THOMAS

IN THE SENATE

January 30, 1979	Introduced and referred to Committee on Judiciary.
February 10, 1979	Committee recommend bill do pass as amended. Report adopted.
February 13, 1979	Printed and placed on members' desks.
February 14, 1979	Motion pass consideration.
February 15, 1979	Second reading, do pass.
February 16, 1979	Considered correctly engrossed.
February 17, 1979	Third reading, passed. Transmitted to second house.

IN THE HOUSE

February 19, 1979	Introduced and referred to Committee on Judiciary.
March 6, 1979	Committee recommend bill be concurred in. Report adopted.
March 7, 1979	Second reading, concurred in.
March 9, 1979	Third reading, concurred in.

IN THE SENATE

March 10, 1979	Returned from second house. Concurred in. Sent to enrolling.
	Reported correctly enrolled.

1	Senate BILL NO. 293
2	INTRODUCED BY Thomas

A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE MONTANA YOUTH COURT ACT TO PROVIDE FOR RESTITUTION AS A PERMISSIBLE DISPOSITION OF A CASE; AMENDING SECTIONS 41-5-102, 41-5-103, 41-5-403, 41-5-522, AND 41-5-523, MCA."

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

Section 1. Section 41-5-102, MCA, is amended to read:
#41-5-102. Declaration of purpose. The Montana Youth
Court Act shall be interpreted and construed to effectuate
the following express legislative purposes:

- (1) to preserve the unity and welfare of the family whenever possible and to provide for the care, protection, and wholesome mental and physical development of a youth coming within the provisions of the Montana Youth Court Act;
- (2) to remove from youth committing violations of the law the element of retribution and to substitute therefor a program of supervision, care, and rehabilitation, and in appropriate cases, restitution as ordered by the youth court;
- (3) to achieve the purposes of (1) and (2) of this section in a family environment whenever possible, separating the youth from his parents only when necessary

for the welfare of the youth or for the safety and protection of the community;

- 3 (4) to provide judicial procedures in which the
 4 parties are assured a fair hearing and recognition and
 5 enforcement of their constitutional and statutory rights.**
 6 Section 2. Section 41-5-103, MCA, is amended to read:
 7 **41-5-103. Definitions. For the purposes of the
 8 Montana Youth Court Act, unless otherwise stated the
 9 following definitions apply:
- 10 (1) "Adult" means an individual who is 18 years of age 11 or older.
- 12 (2) "Agency" means the department of institutions, the
 13 department of social and rehabilitation services, and any
 14 division or department of either.
 - (3) "Commit" means to transfer to legal custody.
- 16 (4) "Court", when used without further qualification,
 17 means the youth court of the district court.

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- 18 (5) "Foster home" means a private residence approved

 19 by the court for placement of a youth.
- 20 (6) "Guardianship" means the status created and
 21 defined by law between a youth and an adult with the
 22 reciprocal rights, duties, and responsibilities.
- (7) "Judge": when used without further qualifications
 means the judge of the youth court.
 - (8) (a) "Legal custody" means the legal status created

 $\begin{array}{ccc} -2- & SB & 273 \\ & \text{INTRODUCED BILL} \end{array}$

by order of a court of competent jurisdiction that	gives	а
person the right and duty to:		

(i) have physical custody of the youth;

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- (ii) determine with whom the youth shall live and for 4 5 what period;
 - (iii) protect, train, and discipline the youth; and
 - (iv) provide the youth with foods shelters educations and ordinary medical care.
 - (b) An individual granted legal custody of a youth shall personally exercise his rights and duties as guardian unless otherwise authorized by the court entering the order.
 - (9) "Parent" means the natural or adoptive parent but does not include a person whose parental rights have been judicially terminated, nor does it include the putative father of an illegitimate youth unless his paternity is established by an adjudication or by other clear and convincing proof.
 - (10) "Youth" means an individual who is less than 18 years of age without regard to sex or emancipation.
 - (11) "Youth court" means the court established pursuant to this chapter to hear all proceedings in which a youth is alleged to be a delinquent youth, a youth in need of supervision, or a youth in need of care and includes the youth court, the judge, and probation officers.
 - (12) "Delinquent youth" means a youth:

1	(a)	who has	committed	an offense	which:	if	committed
2	by an adu	lt. would	d constitut	e a crimin	al offen	se;	

- 3 (b) who, having been placed on probation as a delinquent youth or a youth in need of supervision, violates 5 any condition of his probation.
- (13) "Youth in need of supervision" means a youth who 6 7 commits an offense prohibited by law which, if committed by an adult, would not constitute a criminal offense, including but not limited to a youth who:
- 10 (a) violates any Montana municipal or state law 11 regarding use of alcoholic beverages by minors;
- 12 (b) habitually disobeys the reasonable and lawful demands of his parents or quardian or is unqovernable and beyond their control: 14

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- (c) being subject to compulsory school attendance, is habitually truant from school; or
- (d) has committed any of the acts of a delinquent 17 youth but whom the youth court in its discretion chooses to 18 regard as a youth in need of supervision. 19
- (14) "Youth in need of care" means a youth as defined 20 21 in 41-3-102.
- 22 (15) "Custodian" means a person other than a parent or guardian to whom legal custody of the youth has been given 23 but does not include a person who has only physical custody. 24
- 25 (16) "Necessary parties" include the youth, his

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1	parents, quardian, custodian, or spouse.	
2	(17) "State youth correctional facility"	means a
3	residential facility for the rehabilitation o	f delinquent

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tation of delinquent youth such as Pine Hills school in Miles City, and Mountain View school in Helena, and Swan River youth forest camp.

(18) "Shelter care" means the temporary care of youth in physically unrestricting facilities.

(19) "Detention" means the temporary care of youth in physically restricting facilities.

(20) "District youth quidance home" means a family-oriented residence established in a judicial district of the state of Montana as an alternative to existing state youth correctional facilities, the function of which is to provide a home and quidance through adult supervision for delinquent youths and youths in need of supervision.

1211 "Bestitution" means payments in cash to the victim or with services to the victim or the general community when these payments are made under the jurisdiction of a youth Court proceeding."

Section 3. Section 41-5-403, MCA, is amended to read: "41-5-403. Disposition permitted under informal adjustment. (1) The following dispositions may be imposed by informal adjustment:

titlal probation;

25 (2)(b) placement of the youth in a licensed foster

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2 (3) (c) placement of the youth in a private agency responsible for the care and rehabilitation of such a youth, including but not limited to a district youth guidance home; 5 ffidl transfer of legal custody of the youth to the department of institutions, provided that such commitment does not authorize the department of institutions to place 7 the youth in a state youth correctional facility, and such 9 commitment may not exceed a period of 6 months without a subsequent order of the court, after notice and hearingwi

11 (e) restitution upon approval of the youth court 12 iudce.

[2] In determining whether restitution is appropriate 13 14 in a particular case, the following factors may be considered in addition to any other evidence: 15

16 (a) age of the youth;

17 (b) ability of the youth to pay:

18 (c) ability of the parents or legal guardian to pay:

19 (d) amount of damage to the victim; and

20 (e) legal remedies of the victime"

Section 4. Section 41-5-522. MCA, is amended to read: 21

22 #41-5-522. Dispositional hearing. (1) As soon as

23 practicable after a youth is found to be a delinquent youth

or a youth in need of supervision, the court shall conduct a 24

dispositional hearing.

(2) Refere conducting the disconitional hearing, the court shall direct that a social summary or predisposition report be made in writing by a probation officer concerning the youth, his family, his environment, and other matters relevant to the need for care or rehabilitation or disposition of the case. The youth court may have the youth examined, and the results of the examination shall be made available to the court as part of the social summary or predisposition report. The court may order the examination of a parent or guardian who gives his consent and whose ability to care for or supervise a youth is at issue before the court. The results of such examination shall be included in the social summary or predisposition report. The youth. his parents, guardian, or counsel shall have the right to subpoena all persons who have prepared any portion of the social summary or predisposition report and shall have the right to cross-examine said parties at the dispositional hearing.

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- (3) Defense counsel shall be furnished with a copy of the social summary or predisposition report and psychological report prior to the dispositional hearing.
- (4) The dispositional hearing shall be conducted in the manner set forth in subsections (3), (4), and (5) of 41-5-521. The court shall hear all evidence relevant to a proper disposition of the case best serving the interests of

- the youth and the public. Such evidence shall include, but not be limited to: the social summary and predisposition report provided for in subsection (2) of this section.
- (5) If the court finds that it is in the best interest of the youth, the youth, his parents, or guardian may be temporarily excluded from the hearing during the taking of evidence on the issues of need for treatment and rehabilitation.
- 9 (6) In determining whether restitution, as authorized
 10 by 41-5-523(1)(f), is appropriate in a particular case, the
 11 following factors may be considered in addition to any other
 12 evidence:
- 13 (a) age of the youth:

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- 14 (b) ability of the youth to pay:
- 15 (c) ability of the parents or legal guardian to pay:
- 16 (d) amount of damage to the victim; and
- 17 (e) legal remedies of the victime"
- 18 Section 5. Section 41-5-523, MCA, is amended to read:
- 19 #41-5-523. Disposition of delinquent youth and youth
- 20 in need of supervision. (1) If a youth is found to be
- 21 delinquent or in need of supervision, the court may enter
- 22 its judgment making the following disposition:
- 23 (a) place the youth on probation;
- 24 (b) place in a licensed foster home or a home approved
 25 by the court;

(c) place the youth in a private agency responsible for the care and rehabilitation of such a youth, including but not limited to a district youth guidance home;

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- (d) transfer legal custody to the department of institutions; provided, however, that in the case of a youth in need of supervision, such transfer of custody shall not authorize the department of institutions to place the youth in a state youth correctional facility and such custody shall not continue for a period of more than 6 months without a subsequent court order after notice and hearing;
- (e) such further care and treatment or evaluation that
 the court deems beneficial to the youth, consistent with
 subsection (d) of this sections;
- or legal quardian of the youth in an amount not to exceed
- (2) At any time after the youth has been taken into custody, the court may, with the consent of the youth in the manner provided in 41-5-303 for consent by a youth to waiver of his constitutional rights or after the youth has been adjudicated delinquent or in need of supervision:
- (a) order the youth to be evaluated for a period not to exceed 45 days of evaluation at a reception and evaluation center for youths; or
- 25 (b) in the case of a delinquent youth 16 years or

at a youth forest camp, notify the director of the department of institutions of the finding. The director of 3 the department of institutions shall then designate to the court the facility to which the youth shall be delivered for evaluation. The court may then commit the youth to the 7 department of institutions for a period not to exceed 45 days for the purpose of evaluation as to the youth's 9 suitability for placement and order the youth delivered for evaluation to the youth facility designated by the director. 10 If after the evaluation the department of institutions 11 12 reports to the court that such child is suitable for placement in a youth forest camp and if there is space 13 14 available at a camp, the court may then commit such child directly to the youth forest camp under the terms of 15 16 commitment of this chapter. If the department of institutions reports and states the reasons to the court why 17 18 the youth is not suitable for placement, the youth shall be 19 returned to the court for such further disposition as the 20 court may deem advisable under the provisions of this 21 chapter. The costs of transporting the youth to 22 designated youth facility for evaluation and cost of 23 returning the youth to the court shall be borne by the 24 county of residence of the youth.

older whom the court deems a suitable person for placement

(3) No youth shall be committed or transferred to a

1	penal institution or other facility used for the execution
2	of sentence of adult persons convicted of crimes except as
3	provided by subsection (2)(b).

- 4 (4) Any order of the court may be modified at any 5 time.
 - (5) Whenever the court vests legal custody in an agency, institution, or department, it must transmit with the dispositional judgment copies of a medical report and such other clinical, predisposition, or other reports and information pertinent to the care and treatment of the youth.
 - (6) The order of commitment to the department of institutions shall read as follows:

ORDER OF COMMITMENT

State of Montana, County of ss:

In the district court for the judicial district.

On the day of 19... a minor of this

county, years of age, was brought before me charged

with **** Upon due proof I find that *** is a suitable

person to be committed to the department of institutions.

21 It is ordered that be committed to the department

22 of institutions until

The names, addresses, and occupations of the parents

24 are:

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25 Name Address

Occupation

2	••••••••
3	The names and addresses of their nearest relatives are
4	••••••••
5	••••••
6	Witness my hand this day of A.D. 19
7	***************************************
8	Judge
	-End-

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46th Legislature

58 0293/02

Approved by Committee on Judiciary

1	SENATE BILL NO. 293
2	INTRODUCED BY THOMAS
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4	A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE MONTANA
5	YOUTH COURT ACT TO PROVIDE FOR RESTITUTION AS A PERMISSIBLE
6	DISPOSITION OF A CASE; AMENDING SECTIONS 41-5-102, 41-5-103,
7	41-5-403, 41-5-522, AND 41-5-523, MCA.*
8	
9	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
10	Section 1. Section 41-5-102, MCA, is amended to read:
11	*41-5-102. Declaration of purpose. The Montana Youth
12	Court Act shall be interpreted and construed to effectuate
13	the following express legislative purposes:
14	(1) to preserve the unity and welfare of the family
15	whenever possible and to provide for the care, protection,
16	and wholesome mental and physical development of a youth
17	coming within the provisions of the Montana Youth Court Act:
18	(2) to remove from youth committing violations of the
19	law the element of retribution and to substitute therefor a
20	program of supervision, care, and rehabilitation, and in
21	appropriate cases: restitution as ordered by the youth
22	court;
23	(3) to achieve the purposes of (1) and (2) of this
24	section in a family environment whenever possible.
25	separating the youth from his parents only when necessary

L	for	the	welfare	of	the	youth	OF	for	the	safety	and
?	prot	ectio	n of the	COMM	unity	;					

- 3 (4) to provide judicial procedures in which the
 4 parties are assured a fair hearing and recognition and
 5 enforcement of their constitutional and statutory rights.**
 6 Section 2. Section 41-5-103, MCA, is amended to read:
 7 "41-5-103. Definitions. For the purposes of the
 8 Montana Youth Court Act, unless otherwise stated the
 9 following definitions apply:
- 10 (1) "Adult" means an individual who is 18 years of age
- 12 (2) "Agency" means the department of institutions, the 13 department of social and rehabilitation services, and any 14 division or department of either.

- (3) "Commit" means to transfer to legal custody.
- 16 (4) "Court", when used without further qualification,
 17 means the youth court of the district court.
- 18 (5) "Foster home" means a private residence approved
 19 by the court for placement of a youth.
- 20 (6) "Guardianship" means the status created and 21 defined by law between a youth and an adult with the 22 reciprocal rights, duties, and responsibilities.
- 23 (7) "Judge", when used without further qualification,
 24 means the judge of the youth court.
- 25 (8) (a) "Legal custody" means the legal status created

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by order of a court of competent jurisdiction that	gives	a
person the right and duty to:		

(i) have physical custody of the youth;

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- {ii} determine with whom the youth shall live and for what period:
 - (iii) protect, train, and discipline the youth; and
 - (iv) provide the youth with food, shelter, education, and ordinary medical care.
 - (b) An individual granted legal custody of a youth shall personally exercise his rights and duties as guardian unless otherwise authorized by the court entering the order.
 - (9) "Parent" means the natural or adoptive parent but does not include a person whose parental rights have been judicially terminated, nor does it include the putative father of an illegitimate youth unless his paternity is established by an adjudication or by other clear and convincing proof.
 - (10) "Youth" means an individual who is less than 18 years of age without regard to sex or emancipation.
 - (11) "Youth court" means the court established pursuant to this chapter to hear all proceedings in which a youth is alleged to be a delinquent youth, a youth in need of supervision, or a youth in need of care and includes the youth court, the judge, and probation officers.
 - (12) "Delinquent youth" means a youth:

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1	(a) who has committed an offense which∗ if	committed
2	by an adult, would constitute a criminal offense;	

- 3 (b) who, having been placed on probation as a 4 delinquent youth or a youth in need of supervision, violates 5 any condition of his probation.
- (13) "Youth in need of supervision" means a youth who commits an offense prohibited by law which, if committed by an adult, would not constitute a criminal offense, including but not limited to a youth who:
- (a) violates any Montana municipal or state law regarding use of alcoholic beverages by minors;
- (b) habitually disobeys the reasonable and lawful demands of his parents or guardian or is ungovernable and beyond their control;
- (c) being subject to compulsory school attendance, is habitually truant from school; or
- 17 (d) has committed any of the acts of a delinquer

 18 youth but whom the youth court in its discretion chooses to

 19 regard as a youth in need of supervision.
- 20 (14) "Youth in need of care" means a youth as defined
 21 in 41-3-102.
- 22 (15) "Custodian" means a person other than a parent or 23 guardian to whom legal custody of the youth has been given 24 but does not include a person who has only physical custody.
- 25 (16) "Necessary parties" include the youth. his

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1	parents, quardian, custodian, or spouse.
2	(17) "State youth correctional facility" means
3	residential facility for the rehabilitation of delinquen
4	youth such as Pine Hills school in Miles City, and Mountai
5	View school in Helena, and Swan River youth forest camp.
6	(18) "Shelter care" means the temporary care of yout
7	in physically unrestricting facilities.
8	(19) "Detention" means the temporary care of youth i
9	physically restricting facilities.
10	(20) "District youth guidance home" means
11	family-oriented residence established in a judicial distric
12	of the state of Montana as an alternative to existing state
13	youtn correctional facilities, the function of which is to
14	provide a home and guidance through adult supervision for
15	delinquent youths and youths in need of supervision.
16	(21) "Restitution" means payments in cash to the victim
17	or with services to the victim or the general community when
18	these payments are made under the jurisdiction of a youth
19	court proceeding."
20	Section 3. Section 41-5-403. MCA. is amended to read:
21	"41-5-403. Disposition permitted under informa
22	adjustment. (1) The following dispositions may be imposed by
23	informal adjustment:
24	(±)(a) probation:

1	home or other home approved by the court;
2	(3)(c) placement of the youth in a private agency
3	responsible for the care and rehabilitation of such a youth.
4	including but not limited to a district youth guidance home;
5	<pre>f47(d) transfer of legal custody of the youth to the</pre>
6	department of institutions, provided that such commitment
7	does not authorize the department of institutions to place
8	the youth in a state youth correctional facility, and such
9	 commitment may not exceed a period of 6 months without a
10	subsequent order of the court, after notice and hearings;
11	(e) restitution upon approval of the youth court
12	indde
13	121 <u>lo determining whether restitution is appropriate</u>
14	in a particular cases the following factors may be
15	considered in addition to any other evidence:
16	<pre>fal_age_of_the_xouth:</pre>
17	<pre>1b) ability of the youth to pax:</pre>
18	<pre>(c) ability of the parents or legal quardian to pay:</pre>
19	<pre>(d) amount of damage to the victim: and</pre>
20	<pre>fel_legal_remedies_of_the_victima*</pre>
21	Section 4. Section 41-5-522, MCA, is amended to read:
22	M41-5-52?. Dispositional hearing. (1) As soon as
23	practicable after a youth is found to be a delinquent youth
24	or a youth in need of supervision, the court shall conduct a
25	dispositional hearing.

t2t1bl placement of the youth in a licensed foster

(2) Before conducting the dispositional hearing, the
court shall direct that a social summary or predisposition
report be made in writing by a probation officer concerning
the youth, his family, his environment, and other matters
relevant to the need for care or rehabilitation or
disposition of the case. The youth court may have the youth
examined, and the results of the examination shall be made
available to the court as part of the social summary or
predisposition report. The court may order the examination
of a parent or guardian who gives his consent and whose
ability to care for or supervise a youth is at issue before
the court. The results of such examination shall be included
in the social summary or predisposition report. The youth.
his parents, guardian, or counsel shall have the right to
subpoena all persons who have prepared any portion of the
social summary or predisposition report and shall have the
right to cross-examine said parties at the dispositional
hearing.

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- (3) Defense counsel shall be furnished with a copy of the Social summary or predisposition report and psychological report prior to the dispositional hearing.
- (4) The dispositional hearing shall be conducted in the manner set forth in subsections (3)+ (4)+ and (5) of 41-5-521. The court shall hear all evidence relevant to a proper disposition of the case best serving the interests of

- the youth and the public. Such evidence shall include, but not be limited to, the social summary and predisposition report provided for in subsection (2) of this section.
- 4 (5) If the court finds that it is in the best interest of the youth, the youth, his parents, or guardian may be temporarily excluded from the hearing during the taking of evidence on the issues of need for treatment and rehabilitation.
- 9 161 In determining whether restitutions as authorized
 10 by 41-5-523(1)(f): is appropriate in a particular case: the
 11 following factors may be considered in addition to any other
 12 evidence:
- 13 <u>fal_age_of_the_youth:</u>
- 14 (b) ability of the youth to pay:
- 15 (c) ability of the parents or legal guardian to pay:
- 16 (d) amount of damage to the victim; and
- 17 (e) legal remedies of the victime"
- 18 Section 5. Section 41-5-523, MCA, is amended to read:
- 19 #41-5-523. Disposition of delinquent youth and youth
- 20 in need of supervision. (1) If a youth is found to be
- 21 delinquent or in need of supervision, the court may enter
- 22 its judoment making the following disposition:
- 23 (a) place the youth on probation;
- 24 (b) place in a licensed foster home or a home approved
- 25 by the court;

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(c) place the youth in a private agency responsible for the care and rehabilitation of such a youth, including but not limited to a district youth guidance home;

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- (d) transfer legal custody to the department of institutions; provided, however, that in the case of a youth in need of supervision, such transfer of custody shall not authorize the department of institutions to place the youth in a state youth correctional facility and such custody shall not continue for a period of more than 6 months without a subsequent court order after notice and hearing;
- (e) such further care and treatment or evaluation that the court deems beneficial to the youth, consistent with subsection (d) of this section.
- [f]_order_restitution_by_the_youth or=by==the==parents
 or==legal==guardien==of=the=youth=in=an=amount=not=to=exceed
 fix500.
- (2) At any time after the youth has been taken into custody, the court may, with the consent of the youth in the manner provided in 41-5-303 for consent by a youth to waiver of his constitutional rights or after the youth has been adjudicated delinquent or in need of supervision:
- (a) order the youth to be evaluated for a period not to exceed 45 days of evaluation at a reception and evaluation center for youths; or
- 25 (b) in the case of a delinquent youth 16 years or

older whom the court deems a suitable person for placement 2 at a youth forest camp, notify the director of the department of institutions of the finding. The director of the department of institutions shall then designate to the court the facility to which the youth shall be delivered for evaluation. The court may then commit the youth to the department of institutions for a period not to exceed 45 days for the purpose of evaluation as to the youth's suitability for placement and order the youth delivered for 10 evaluation to the youth facility designated by the director-If after the evaluation the department of institutions 11 reports to the court that such child is suitable for 12 placement in a youth forest camp and if there is space 13 available at a camp, the court may then commit such child 14 directly to the youth forest camp under the terms of 15 commitment of this Chapter. If the department of 17 institutions reports and states the reasons to the court why 18 the youth is not suitable for placement, the youth shall be 19 returned to the court for such further disposition as the 20 court may deem advisable under the provisions of this 21 chapter. The costs of transporting the youth to the 22 designated youth facility for evaluation and cost of 23 returning the youth to the court shall be borne by the 24 county of residence of the youth.

25 (3) No youth shall be committed or transferred to a

1	penal institution or other facility used for the execution
2	of sentence of adult persons convicted of crimes except as
3	provided by subsection (2)(b).
4	(4) Any order of the court may be modified at any
5	time.
6	(5) Whenever the court vests legal custody in an
7	agency, institution, or department, it must transmit with
8	the dispositional judgment copies of a medical report and
9	such other clinical, predisposition, or other reports and
10	information pertinent to the care and treatment of the
11	youth.
12	(6) The order of commitment to the department of
13	institutions shall read as follows:
14	ORDER OF COMMITMENT
15	State of Montana+ County of **** ss:
16	In the district court for the judicial district.
17	On the day of 19 a minor of this
18	county years of age. was brought before me charged
19	with Upon due proof I find that is a suitable
20	person to be committed to the department of institutions.
21	It is ordered that be committed to the department
22	of institutions until
23	The names, addresses, and occupations of the parents
24	are:
25	Name Address Occupation

1	***************************************
2	***************************************
3	The names and addresses of their nearest relatives are
4	***************************************
5	
6	Witness my hand this **** day of **** A*D* 19***
7	***************************************
8	Judge

-End-

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SENATE	BILL	NO	293
INTRODU	JCED	BY	THOMAS

A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE MONTANA
YOUTH COURT ACT TO PROVIDE FOR RESTITUTION AS A PERMISSIBLE
DISPOSITION OF A CASE; AMENDING SECTIONS 41-5-102. 41-5-103.
41-5-403. 41-5-522. AND 41-5-523. MCA."

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

Section 1. Section 41-5-102, MCA, is amended to read:
#41-5-102. Declaration of purpose. The Montana Youth
Court Act shall be interpreted and construed to effectuate
the following express legislative purposes:

- (1) to preserve the unity and welfare of the family whenever possible and to provide for the care, protection, and wholesome mental and physical development of a youth coming within the provisions of the Montana Youth Court Act:
- (2) to remove from youth committing violations of the law the element of retribution and to substitute therefor a program of supervision. care. and rehabilitations. ands in appropriate cases: restitution as ordered by the youth court:
- (3) to achieve the purposes of (1) and (2) of this section in a family environment whenever possible. separating the youth from his parents only when necessary

1 for the welfare of the youth or for the safety and 2 protection of the community;

- 4 parties are assured a fair hearing and recognition and enforcement of their constitutional and statutory rights.**

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

 "41-5-103. Definitions. For the purposes of the Montana Youth Court Act, unless otherwise stated the following definitions apply:
- 10 (1) "Adult" means an individual who is 18 years of age
- 12 (2) "Agency" means the department of institutions, the 13 department of social and rehabilitation services, and any 14 division or department of either.
 - (3) "Commit" means to transfer to legal custody.
- 16 (4) "Court", when used without further qualification,
 17 means the youth court of the district court.
- 16 (5) "Foster home" means a private residence approved

 19 by the court for placement of a youth.
- 20 (6) "Guardianship" means the status created and
 21 defined by law between a youth and an adult with the
 22 reciprocal rights, duties, and responsibilities.
- 23 (7) "Judge". when used without further qualification.
 24 means the judge of the youth court.
- 25 (8) (a) "Legal custody" means the legal status created

by order of a court of competent jur	isdiction that gives a
person the right and duty to:	

(i) have physical custody of the youth;

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- (ii) determine with whom the youth shall live and for shat period;
 - (iii) protect, train, and discipline the youth; and
 - (iv) provide the youth with food, shelter, education, and ordinary medical care.
 - (b) An individual granted legal custody of a youth shall personally exercise his rights and duties as guardian unless otherwise authorized by the court entering the order-
 - (9) "Parent" means the natural or adoptive parent but does not include a person whose parental rights have been judicially terminated nor does it include the putative father of an illegitimate youth unless his paternity is established by an adjudication or by other clear and convincing proof.
 - (10) "Youth" means an individual who is less than 18 years of age without regard to sex or emancipation.
 - (11) "Youth court" means the court established pursuant to this chapter to hear all proceedings in which a youth is alleged to be a delinquent youth, a youth in need of supervision, or a youth in need of care and includes the youth court, the judge, and probation officers.
 - {12} "Delinquent youth" means a youth:

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1	(a) who has committed an offense which if	committed
2	by an adult. would constitute a criminal offense;	

- 3 (b) who, having been placed on probation as a 4 delinquent youth or a youth in need of supervision, violates 5 any condition of his probation.
 - (13) "Youth in need of supervision" means a youth who commits an offense prohibited by law which, if committed by an adult, would not constitute a criminal offense, including but not limited to a youth who:
- 10 (a) violates any Montana municipal or state law
 11 regarding use of alcoholic beverages by minors:
 - (b) habitually disobeys the reasonable and lawful demands of his parents or guardian or is ungovernable and beyond their control;
 - (c) being subject to compulsory school attendance, is habitually truant from school; or
- 17 (d) has committed any of the acts of a delinquent

 18 youth but whom the youth court in its discretion chooses to

 19 regard as a youth in need of supervision.
- 20 (14) "Youth in need of care" means a youth as defined in 41-3-102.
- 22 (15) "Custodian" means a person other than a parent or 23 guardian to whom legal custody of the youth has been given 24 but does not include a person who has only physical custody.
- 25 (16) "Necessary parties" include the youth, his

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1	parents. quardian. custodian. or spouse.
2	(17) "State youth correctional facility" means
3	residential facility for the rehabilitation of delinquen
4	youth such as Pine Hills school in Miles City, and Mountai
5	View school in Helena, and Swan River youth forest camp.
6	(18) "Shelter care" means the temporary care of yout
7	in physically unrestricting facilities.
8	(19) "Detention" means the temporary care of youth i
9	physically restricting facilities.
10	(20) "District youth guidance home" means
11	family-oriented residence established in a judicial distric
12	of the state of Montana as an alternative to existing state
13	youtn correctional facilities, the function of which is to
14	provide a home and guidance through adult supervision for
15	delinquent youths and youths in need of supervision.
16	(21) "Restitution" means payments in cash to the viction
17	or with services to the victim or the general community when
18	these payments are made under the jurisdiction of a youth
19	court_proceeding."
20	Section 3. Section 41-5-403, MCA, is amended to read:
21	"41-5-403. Disposition permitted under informal
22	adjustment. (1) The following dispositions may be imposed by
23	informal adjustment:
24	fit(a) probation;

1	home or other home approved by the court;
2	(3) (<u>c)</u> placement of the youth in a private agency
3	responsible for the care and rehabilitation of such a youth+
4	including but not limited to a district youth guidance home;
5	++1(d) transfer of legal custody of the youth to the
6	department of institutions, provided that such commitment
7	does not authorize the department of institutions to place
8	the youth in a state youth correctional facility, and such
9	commitment way not exceed a period of 6 months without a
10	subsequent order of the court, after notice and hearing,
11	<u>iel_cestitution_upon_approval_of_the_youth_court</u>
12	iudgea
13	(2) In determining whether restitution is appropriate
14	inaparticular_cases_the_following_factors_may_be
15	considered in addition to any other evidence:
16	(a)_age_of_the_youth:
17	(bl_ability_of_the_youth_to_pay:
18	(c) ability of the parents or legal quardian to pay:
19	(d) amount of damage to the victim; and
20	<pre>fel_legal_remedies_of_the_victime"</pre>
21	Section 4. Section 41-5-522, MCA, is amended to read:
55	#41-5-522. Dispositional hearing. (1) As soon as
23	practicable after a youth is found to be a delinquent youth
24	or a youth in need of supervision, the court shall conduct a
25	dispositional hearing.

t2)(b) placement of the youth in a licensed foster

(2) Before conducting the dispositional hearing, the court shall direct that a social summary or predisposition report be made in writing by a probation officer concerning the youth, his family, his environment, and other matters relevant to the need for care or rehabilitation or disposition of the case. The youth court may have the youth examined, and the results of the examination shall be made available to the court as part of the social summary or predisposition report. The court may order the examination of a parent or quardian who gives his consent and whose ability to care for or supervise a youth is at issue before the court. The results of such examination shall be included in the social summary or predisposition report. The youth. his parents, guardian, or counsel shall have the right to subpoena all persons who have prepared any portion of the social summary or predisposition report and shall have the right to cross-examine said parties at the dispositional hearing.

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- (3) Defense counsel shall be furnished with a copy of the social summary or predisposition report and psychological report prior to the dispositional hearing.
- (4) The dispositional hearing shall be conducted in the manner set forth in subsections (3), (4), and (5) of 41-5-521. The court shall hear all evidence relevant to a proper disposition of the case best serving the interests of

- the youth and the public. Such evidence shall include, but not be limited to, the social summary and predisposition report provided for in subsection (2) of this section.
- 4 (5) If the court finds that it is in the best interest
 5 of the youth, the youth, his parents, or guardian may be
 6 temporarily excluded from the hearing during the taking of
 7 evidence on the issues of need for treatment and
 8 rehabilitation.
- 9 (6) In determining whether restitutions as authorized
 10 by 41-5-523(1)(f), is appropriate in a particular cases the
 11 following factors may be considered in addition to any other
 12 evidence:
- 13 (a) age of the youth:
- 14 (b) ability of the youth to pay:
- 15 icl ability of the parents or legal quardian to pay:
- 16 (d) amount of damage to the victim; and
- 17 (e) legal remedies of the victime"
- 18 Section 5. Section 41-5-523, MCA, is amended to read:
- 19 #41-5-523. Disposition of delinquent youth and youth
- 20 in need of supervision. (1) If a youth is found to be
- 21 delinquent or in need of supervision, the court may enter
- 22 its judgment making the following disposition:
- 23 (a) place the youth on probation;
- (b) place in a licensed foster home or a home approved
- 25 by the court;

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(c) place the youth in a private agency responsible for the care and rehabilitation of such a youth, including but not limited to a district youth guidance home;

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- (d) transfer legal custody to the department of institutions; provided, however, that in the case of a youth in need of supervision, such transfer of custody shall not authorize the department of institutions to place the youth in a state youth correctional facility and such custody shall not continue for a period of more than 6 months without a subsequent court order after notice and hearing;
- (e) such further care and treatment or evaluation that the court deems beneficial to the youth, consistent with subsection (d) of this section.
- if) order restitution by the youth or:by:the::perents
 er::legal::guardien::of:the:youth:in:en:assount::not:to:exceed
 tix580.
- (2) At any time after the youth has been taken into custody, the court may, with the consent of the youth in the manner provided in 41-5-303 for consent by a youth to waiver of his constitutional rights or after the youth has been adjudicated delinquent or in need of supervision:
- (a) order the youth to be evaluated for a period not to exceed 45 days of evaluation at a reception and evaluation center for youths; or
 - (b) in the case of a delinquent youth 16 years or

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older whom the court deems a suitable person for placement at a youth forest camp, notify the director of the department of institutions of the finding. The director of the department of institutions shall then designate to the court the facility to which the youth shall be delivered for evaluation. The court may then commit the youth to the department of institutions for a period not to exceed 45 days for the purpose of evaluation as to the youth's suitability for placement and order the youth delivered for evaluation to the youth facility designated by the director-If after the evaluation the department of institutions reports to the court that such child is suitable for placement in a youth forest camp and if there is space available at a camp, the court may then commit such child directly to the youth forest camp under the terms of commitment of this chapter. If the department of institutions reports and states the reasons to the court why the youth is not suitable for placement, the youth shall be returned to the court for such further disposition as the court may deem advisable under the provisions of this chapter. The costs of transporting the youth to designated youth facility for evaluation and cost of returning the youth to the court shall be borne by the county of residence of the youth.

(3) No youth shall be committed or transferred to a

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1	penal institution or other facility used for the execution
2	of sentence of adult persons convicted of crimes except as
3	provided by subsection (2)(b).
41	(4) Any order of the court may be modified at any
5	tiae.
6	(5) Whenever the court vests legal custody in an
7	agency, institution, or department, it must transmit with
8	the dispositional judgment copies of a medical report and
9	such other clinical, predisposition, or other reports and
10	information pertinent to the care and treatment of the
11	youth.
12	(6) The order of commitment to the department of
13	institutions shall read as follows:
14	ORDER OF COMMITMENT
15	State of Montana, County of ss:
16	In the district court for the judicial district.
17	On the day of 19 a minor of this
18	county, years of age, was brought before me charged
19	with ••••• Upon due proof I find that •••• is a suitable
20	person to be committed to the department of institutions.
21	It is ordered that be committed to the department
22	of institutions until
23	The names, addresses, and occupations of the parents
24	are:
25	Name Address Occupation

1	***************************************
2	***************************************
3	The names and addresses of their nearest relatives are:
4	***************************************
5	•••••••••••
6	Witness my hand this day of A.D. 19
7	***************************************
8	Judge **

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46th Legislature

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1	SENATE BILL NO. 293
5	INTRODUCED BY THOMAS
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4	A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE MONTANA
5	YOUTH COURT ACT TO PROVIDE FOR RESTITUTION AS A PERMISSIBLE
6	DISPOSITION OF A CASE; AMENDING SECTIONS 41-5-102. 41-5-103.
7	41-5-403, 41-5-522, AND 41-5-523, MCA."
R	
9	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
10	Section 1. Section 41-5-102, MCA, is amended to read:
11	#41-5-102. Declaration of purpose. The Montana Youth
12	Court Act shall be interpreted and construed to effectuate
13	the following express legislative purposes:
14	(1) to preserve the unity and welfare of the family
15	whenever possible and to provide for the care, protection,
16	and wholesome mental and physical development of a youth
17	coming within the provisions of the Montana Youth Court Act:
18	(2) to remove from youth committing violations of the
, 19	law the element of retribution and to substitute therefor a
20	program of supervision, care, and rehabilitation, and in
21	appropriate_cases:_restitution_as_ordered_by_the_youth
22	court:
23	(3) to achieve the purposes of (1) and (2) of this
2 4	section in a family environment whenever possible.

separating the youth from his parents only when necessary

1	for the welfare of the youth or for the safety and
2	protection of the community:
3	(4) to provide judicial procedures in which the
4	parties are assured a fair hearing and recognition and
5	enforcement of their constitutional and statutory rights."
6	Section 2. Section 41-5-103, MCA; is amended to read:
7	#41-5-103. Definitions. For the purposes of the
9	Montana Youth Court Act, unless otherwise stated the
9	following definitions apply:
10	(1) "Adult" means an individual who is 18 years of age
11	or older.
12	(2) "Agency" means the department of institutions: the
13	department of social and rehabilitation services, and any
14	division or department of either.
15	(3) "Commit" means to transfer to legal custody.
16	(4) "Court", when used without further qualification,
17	means the youth court of the district court.
18	(5) "Foster home" means a private residence approved
19	by the court for placement of a youth.
20	(6) "Guardianship" means the status created and
21	defined by law between a youth and an adult with the

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ı	for the welfare of the youth or for the safety and
2	protection of the community;
3	(4) to provide judicial procedures in which the
•	parties are assured a fair hearing and recognition and
5	enforcement of their constitutional and statutory rights."
5	Section 2. Section 41-5-103, MCA, is amended to read:
7	#41-5-103. Definitions. For the purposes of the
•	Montana Youth Court Act, unless otherwise stated the
•	following definitions apply:
)	(1) "Adult" means an individual who is 18 years of age
ı	ar older.
?	(2) "Agency" means the department of institutions: the
3	department of social and rehabilitation services, and any
•	division or department of either.
5	(3) "Commit" means to transfer to legal custody.
5	(4) "Court", when used without further qualification,
7	means the youth court of the district court.

reciprocal rights, duties, and responsibilities.

means the judge of the youth court.

(7) "Judge": when used without further qualification:

(a) "Lenal custody" means the legal status created

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by order of a court of competent jurisdiction that gives a person the right and duty to:

(i) have physical custody of the youth;

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- (ii) determine with whom the youth shall live and for what period:
 - (iii) protect, train, and discipline the youth; and
- (iv) provide the youth with food, shelter, education, and ordinary medical care.
 - (b) An individual granted legal custody of a youth shall personally exercise his rights and duties as guardian unless otherwise authorized by the court entering the order-
 - (9) "Parent" means the natural or adoptive parent but does not include a person whose parental rights have been judicially terminated, nor does it include the putative father of an illegitimate youth unless his paternity is established by an adjudication or by other clear and convincing proof.
- (10) "Youth" means an individual who is less than 18 years of age without regard to sex or emancipation.
- (11) "Youth court" means the court established pursuant to this chapter to hear all proceedings in which a youth is alleged to be a delinquent youth, a youth in need of supervision, or a youth in need of care and includes the youth court, the judge, and probation officers.
 - (12) "Delinquent youth" means a youth:

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

- (b) who, having been placed on probation as a delinquent youth or a youth in need of supervision, violates any condition of his probation.
- (13) "Youth in need of supervision" means a youth who commits an offense prohibited by law which, if committed by an adult, would not constitute a criminal offense, including but not limited to a youth who:
- (a) violates any Montana municipal or state law regarding use of alcoholic beverages by minors;
- (b) habitually disobeys the reasonable and lawful demands of his parents or guardian or is ungovernable and beyond their control;
- (c) being subject to computsory school attendance, is habitually truant from school; or
- 17 (d) has committed any of the acts of a delinquent
 18 youth but whom the youth court in its discretion chooses to
 19 regard as a youth in need of supervision.
 - (14) "Youth in need of care" means a youth as defined in 41-3-102.
- 22 (15) "Custodian" means a person other than a parent or 23 guardian to whom legal custody of the youth has been given 24 but does not include a person who has only physical custody.
- 5 (16) "Necessary parties" include the youth, ai

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home or other home approved by the court;

1	parents, guardian, custodian, or spouse.
2	(17) "State youth correctional facility" means
3	residential facility for the rehabilitation of delinquen
4	youth such as Pine Hills school in Miles City, and Mountai
5	View school in Helena, and Swan River youth forest camp.
6	(18) "Shelter care" means the temporary care of yout
7	in physically unrestricting facilities.
8	(19) "Detention" means the temporary care of youth i
9	physically restricting facilities.
0	(20) "District youth guidance home" means
1	family-oriented residence established in a judicial distric
12	of the state of Montana as an alternative to existing stat
13	youth correctional facilities, the function of which is t
4	provide a home and guidance through adult supervision fo
15	delinquent youths and youths in need of supervision.
16	(21) "Restitution" means payments in cash to the victi
17	or with services to the victim or the general community whe
18	these payments are made under the jurisdiction of a yout
19	court_proceeding."
20	Section 3. Section 41-5-403, MCA, is amended to read
21	441-5-403. Disposition permitted under informa
2?	adjustment. [11] The following dispositions may be imposed b
23	informal adjustment:

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t+)(a) probation;

2	<pre>f3f1Cl placement of the youth in a private agency</pre>
3	responsible for the care and rehabilitation of such a youth,
4	including but not limited to a district youth guidance home;
5	<pre>f4)(d) transfer of legal custody of the youth to the</pre>
6	department of institutions, provided that such commitment
7	does not authorize the department of institutions to place
8	the youth in a state youth correctional facility, and such
9	commitment may not exceed a period of 6 months without a
10	subsequent order of the court, after notice and hearings:
11	iel restitution upon approval of the youth court
12	Triqūe™
13	121 In determining whether restitution is appropriate
14	in a particular case, the following factors may be
15	considered in addition to any other evidence:
16	(a) age of the youth:
17	fbl_ability_of_the_youth_to_pay:
18	icl ability of the parents or legal guardian to pay:
19	(d) amount of damage to the victimi and
20	<pre>fel_legal_remedies_of_the_victim="</pre>
21	Section 4. Section 41-5-522, MCA, is amended to read:
22	#41-5-522. Dispositional hearing. (1) As soon as
23	practicable after a youth is found to be a delinquent youth
24	or a youth in need of supervision, the court shall conduct a
25	dispositional hearing.

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t2)1b1 placement of the youth in a licensed foster

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(2) Before conducting the dispositional hearing, the court shall direct that a social summary or predisposition report be made in writing by a probation officer concerning the youth, his family, his environment, and other matters relevant to the need for care or rehabilitation or disposition of the case. The youth court may have the youth examined, and the results of the examination shall be made available to the court as part of the social summary or predisposition report. The court may order the examination of a parent or quardian who gives his consent and whose ability to care for or supervise a youth is at issue before the court. The results of such examination shall be included in the social summary or predisposition report. The youth, his parents, quardian, or counsel shall have the right to subpoena all persons who have prepared any portion of the social summary or predisposition report and shall have the right to cross-examine said parties at the dispositional hearing.

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- (3) Defense counsel shall be furnished with a copy of the social summary or predisposition report and psychological report prior to the dispositional hearing.
- (4) The dispositional hearing shall be conducted in the manner set forth in subsections (3), (4), and (5) of 41-5-521. The court shall hear all evidence relevant to a proper disposition of the case best serving the interests of

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the youth and the public. Such evidence shall includes but not be limited to: the social summary and predisposition report provided for in subsection (2) of this section.

- (5) If the court finds that it is in the best interest of the youth, the youth, his parents, or guardian may be temporarily excluded from the hearing during the taking of evidence on the issues of need for treatment and rehabilitation.
- 9 161 In determining whether restitutions as authorized
 10 by 41-5-523(1)(f): is appropriate in a particular case: the
 11 following factors may be considered in addition to any other
 12 evidence:
- 13 (a) age of the youth:

 14 (b) ability of the youth to pay:
- 15 (c) ability of the parents or legal guardian to pay:
- 16 Idl amount of damage to the victim: and
- 17 <u>(e) legal remedies of the victime"</u>
- 18 Section 5. Section 41-5-523. MCA: is amended to read:
- 19 #41-5-523. Disposition of delinquent youth and youth
- 20 in need of supervision. (1) If a youth is found to be
- 21 delinquent or in need of supervision, the court may enter
- 22 its judgment making the following disposition:
- 23 (a) place the youth on probation;
- 24 (b) place in a licensed foster home or a home approved
- 25 by the court;

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(c) place the youth in a private agency responsible for the care and rehabilitation of such a youth, including but not limited to a district youth guidance home;

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- (d) transfer legal custody to the department of institutions; provided, however, that in the case of a youth in need of supervision, such transfer of custody shall not authorize the department of institutions to place the youth in a state youth correctional facility and such custody shall not continue for a period of more than 6 months without a subsequent court order after notice and hearing:
- (e) such further care and treatment or evaluation that the court deems beneficial to the youth, consistent with subsection (d) of this sections:
- ifl_order_restitution_by_the_youth or=by:=the=:parents
 or==legal==guardian==of=the=youth=in=an=auount=not=to=exceed
 \$tv500.
- (2) At any time after the youth has been taken into custody, the court may, with the consent of the youth in the manner provided in 41-5-303 for consent by a youth to waiver of his constitutional rights or after the youth has been adjudicated delinquent or in need of supervision:
- (a) order the youth to be evaluated for a period not to exceed 45 days of evaluation at a reception and evaluation center for youths; or
 - (b) in the case of a delinquent youth 16 years or

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older whom the court deems a suitable person for placement 2 at a youth forest camo, notify the director of the 3 department of institutions of the finding. The director of the department of institutions shall then designate to the court the facility to which the youth shall be delivered for evaluation. The court may then commit the youth to the 7 department of institutions for a period not to exceed 45 days for the purpose of evaluation as to the youth's 8 suitability for placement and order the youth delivered for 10 evaluation to the youth facility designated by the director. 11 If after the evaluation the department of institutions 12 reports to the court that such child is suitable for 13 placement in a youth forest camp and if there is space 14 available at a camp, the court may then commit such child 15 directly to the youth forest camp under the terms of 16 commitment of this chapter. If the department of 17 institutions reports and states the reasons to the court why the youth is not suitable for placement, the youth shall be 18 returned to the court for such further disposition as the 19 20 court may deem advisable under the provisions of this 21 chapter. The costs of transporting the youth to the 22 designated youth facility for evaluation and cost of 23 returning the youth to the court shall be borne by the 24 county of residence of the youth.

(3) No youth shall be committed or transferred to a

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1	penal institution or other facility used for the execution
2	of sentence of adult persons convicted of crimes except as
3	provided by subsection (2)(b).
4	(4) Any order of the court may be modified at any
5	time.
6	(5) Whenever the court vests legal custody in an
7	agency, institution, or department, it must transmit with
8	the dispositional judgment copies of a medical report and
9	such other clinical, predisposition, or other reports and
łO	information pertinent to the care and treatment of the
11	youth.
12	(6) The order of commitment to the department of
13	institutions shall read as follows:
14	ORDER OF COMMITMENT
15	State of Montana, County of, ss:
16	In the district court for the judicial district.
17	On the **** day of **** 19*** **** a minor of this
18	county, years of age, was brought before me charged
19	with Upon due proof I find that is a suitable
20	person to be committed to the department of institutions.
21	It is ordered that **** be committed to the department
22	of institutions until
23	The names, addresses, and occupations of the parents

1	***************************************
2	***************************************
3	The names and addresses of their nearest relatives are:
4	•••••••••••••••••
5	***************************************
6	Witness my hand this day of A.D. 19
7	***************************************
-8	• epbut

-End-

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Occupation

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Address

25

Name