

HOUSE BILL NO. 480

INTRODUCED BY MATSKO, KEYSER, SCHULTZ, DEVLIN, MOORE,  
HEMSTAD, J. O'HARA, NILSON, GOODOVER, BRIGGS, KEEDY

IN THE HOUSE

January 26, 1981	Introduced and referred to Committee on Judiciary.
February 3, 1981	Committee recommend bill do pass as amended. Report adopted.
February 4, 1981	Bill printed and placed on members' desks.
February 6, 1981	Second reading, do pass as amended.
February 9, 1981	Correctly engrossed.
February 11, 1981	Third reading, passed. Ayes, 80; Noes, 17. Transmitted to Senate.

IN THE SENATE

February 12, 1981	Introduced and referred to Committee on Judiciary.
March 25, 1981	Committee recommend bill be concurrred in as amended. Report adopted.
March 26, 1981	Second reading, concurrred in.
March 28, 1981	Third reading, concurrred in as amended. Ayes, 47; Noes, 2.

IN THE HOUSE

March 28, 1981	Returned from Senate with amendments.
April 8, 1981	Second reading, amendments concurrred in.

April 9, 1981

Third reading, amendments  
concurrent in. Ayes, 95;  
Nays, 0. Sent to enrolling.

Reported correctly enrolled.

1 *House* BILL NO. *480* *House*  
 2 INTRODUCED BY *Walt Keffer, Duane Berlin*  
 3 *Senator J. O'Hara, Wilson Gordon, Briggs Keedy*

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE YOUTH  
 5 COURT ACT; CHANGING THE CRITERIA FOR TRANSFER TO DISTRICT  
 6 COURT; ALLOWING 10 WORKING DAYS FOR FILING A PETITION;  
 7 CHANGING THE PROVISIONS FOR RETAINING FINGERPRINT AND  
 8 PHOTOGRAPHIC RECORDS; PROHIBITING CONSIDERATION OF INSURANCE  
 9 COMPENSATION TO A VICTIM; PROVIDING FOR APPOINTED COUNSEL  
 10 WHEN THE YOUTH AND HIS PARENTS ARE UNABLE TO RETAIN COUNSEL;  
 11 ALLOWING LAW ENFORCEMENT OFFICERS ACCESS TO YOUTH COURT  
 12 RECORDS; AMENDING SECTIONS 41-5-206, 41-5-301, 41-5-304,  
 13 41-5-403, 41-5-511, 41-5-522, 41-5-603, AND 41-5-805, MCA."

14  
 15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

16 Section 1. Section 41-5-206, MCA, is amended to read:

17 "41-5-206. Transfer to criminal court. (1) After a  
 18 petition has been filed alleging delinquency, the court ~~may~~  
 19 shall, upon motion of the county attorney, before hearing  
 20 the petition on its merits, transfer the matter of  
 21 prosecution to the district court if:

22 (a) the youth charged was 16 years of age or more at  
 23 the time of the conduct alleged to be unlawful and the  
 24 unlawful act is one or more of the following:

25 (i) criminal homicide as defined in 45-5-101;

- 1 (ii) arson as defined in 45-6-103;
- 2 (iii) aggravated assault as defined in 45-5-202;
- 3 (iv) robbery as defined in 45-5-401;
- 4 (v) burglary or aggravated burglary as defined in
- 5 45-6-204;
- 6 (vi) sexual intercourse without consent as defined in
- 7 45-5-503;
- 8 (vii) aggravated kidnapping as defined in 45-5-303;
- 9 (viii) possession of explosives as defined in 45-8-335;
- 10 (ix) criminal sale of dangerous drugs for profit as
- 11 included in 45-9-101;
- 12 ~~(x) attempt as defined in 45-4-103 of any of the acts~~
- 13 ~~enumerated in subsections (1)(a)(i) through (1)(a)(ix);~~
- 14 (b) a hearing on whether the transfer should be made
- 15 is held in conformity with the rules on a hearing on a
- 16 petition alleging delinquency, except that the hearing will
- 17 be to the youth court without a jury;
- 18 (c) notice in writing of the time, place, and purpose
- 19 of the hearing is given to the youth, his counsel, and his
- 20 parents, guardian, or custodian at least 10 days before the
- 21 hearing; and
- 22 (d) the court finds upon the hearing of all relevant
- 23 evidence that there are reasonable grounds to believe that:
- 24 (i) the youth committed the delinquent act alleged;
- 25 (ii) the seriousness of the offense and the protection

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1 of the community require treatment of the youth beyond that  
2 afforded by juvenile facilities; and

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

5 (2) In transferring the matter of prosecution to the  
6 district court, the court ~~shall~~ ~~may~~ also consider the  
7 following factors:

8 (a) the sophistication and maturity of the youth,  
9 determined by consideration of his home, environmental  
10 situation, and emotional attitude and pattern of living;

11 (b) the record and previous history of the youth,  
12 including previous contacts with the youth court, law  
13 enforcement agencies, youth courts in other jurisdictions,  
14 prior periods of probation, and prior commitments to  
15 juvenile institutions; ~~However, lack of a prior juvenile~~  
16 ~~history will not of itself be grounds for denying the~~  
17 ~~transfer.~~

18 ~~(c) the severity of the offense;~~

19 ~~(d) the prospects for adequate protection of the~~  
20 ~~public and the likelihood of reasonable rehabilitation of~~  
21 ~~the youth by the use of procedures, services, and facilities~~  
22 ~~currently available to the youth court.~~

23 (3) Upon transfer to district court, the judge shall  
24 make written findings of the reasons why the jurisdiction of  
25 the court was waived and the case transferred to district

1 court.

2 (4) The transfer terminates the jurisdiction of the  
3 court over the youth with respect to the acts alleged in the  
4 petition. No youth may be prosecuted in the district court  
5 for a criminal offense originally subject to the  
6 jurisdiction of the youth court unless the case has been  
7 transferred as provided in this section.

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

11 ~~(6) Any offense not enumerated in subsection (1)(a)~~  
12 ~~that arises during the commission of a crime enumerated in~~  
13 ~~subsection (1)(a) may be:~~

14 ~~(a) tried in youth court;~~

15 ~~(b) transferred to district court with an offense~~  
16 ~~enumerated in subsection (1)(a), upon motion of the county~~  
17 ~~attorney and acceptance by the district court judge.~~

18 ~~(6)(7) If a youth is found guilty in district court of~~  
19 ~~any of the offenses enumerated in subsection (1)(a) of this~~  
20 ~~section and is sentenced to the state prison, his commitment~~  
21 ~~shall be to the department of institutions which shall~~  
22 ~~confine the youth in whatever institution it considers~~  
23 ~~proper."~~

24 Section 2. Section 41-5-301, MCA, is amended to read:  
25 "41-5-301. Preliminary investigation and disposition.

1 (1) Whenever the court receives information from any agency  
2 or person, based upon reasonable grounds, that a youth is or  
3 appears to be a delinquent youth or a youth in need of  
4 supervision or, being subject to a court order or consent  
5 order, has violated the terms thereof, the probation officer  
6 shall make a preliminary inquiry into the matter.

7 (2) The probation officer may:

8 (a) require the presence of any person relevant to the  
9 inquiry;

10 (b) request subpoenas from the judge to accomplish  
11 this purpose;

12 (c) require investigation of the matter by any law  
13 enforcement agency or any other appropriate state or local  
14 agency.

15 (3) If the probation officer determines that the facts  
16 indicate a youth in need of care, the matter shall be  
17 immediately referred to the department of social and  
18 rehabilitation services.

19 (4) (a) The probation officer in the conduct of the  
20 preliminary inquiry shall:

21 (i) advise the youth of the youth's rights under this  
22 chapter and the constitutions of the state of Montana and  
23 the United States;

24 (ii) determine whether the matter is within the  
25 jurisdiction of the court;

1 (iii) determine, if the youth is in detention or  
2 shelter care, whether such detention or shelter care should  
3 be continued based upon criteria set forth in 41-5-305.

4 (b) Once relevant information is secured, the  
5 probation officer shall:

6 (i) determine whether the interest of the public or  
7 the youth requires that further action be taken;

8 (ii) terminate the inquiry upon the determination that  
9 no further action be taken;

10 (iii) release the youth immediately upon the  
11 determination that the filing of a petition is not  
12 authorized.

13 (5) The probation officer upon determining that  
14 further action is required may:

15 (a) provide counseling, refer the youth and his  
16 parents to another agency providing appropriate services, or  
17 take any other action or make any informal adjustment that  
18 does not involve probation or detention;

19 (b) provide for treatment or adjustment involving  
20 probation or other disposition authorized under 41-5-401  
21 through 41-5-403, provided such treatment or adjustment is  
22 voluntarily accepted by the youth's parents or guardian and  
23 the youth, and provided further that said matter is referred  
24 immediately to the county attorney for review and that the  
25 probation officer proceed no further unless authorized by

1 the county attorney;

2 (c) refer the matter to the county attorney for filing  
3 a petition charging the youth to be a delinquent youth or a  
4 youth in need of supervision.

5 (6) A petition charging a youth held in detention must  
6 be filed within 5 10 working days from the date the youth  
7 was first detained or the petition shall be dismissed and  
8 the youth released unless good cause is shown to further  
9 detain such youth.

10 (7) If no petition is filed under this section, the  
11 complainant and victim, if any, shall be informed by the  
12 probation officer of the action and the reasons therefor and  
13 shall be advised of the right to submit the matter to the  
14 county attorney for review. The county attorney, upon  
15 receiving a request for review, shall consider the facts,  
16 consult with the probation officer, and make the final  
17 decision as to whether a petition shall or shall not be  
18 filed."

19 Section 3. Section 41-5-304, MCA, is amended to read:

20 "41-5-304. Fingerprints and photographs. (1) Title 46  
21 shall apply to all law enforcement investigations relating  
22 to a complaint alleging a delinquent youth or youth in need  
23 of supervision, except that:

24 (a) no youth may be fingerprinted or photographed for  
25 criminal identification purposes except by order of the

1 youth court judge;

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

8 ~~(2) At such time as the proceedings in the matter~~  
9 ~~including appeals, are complete, the fingerprint records and~~  
10 ~~photographs shall be destroyed. However, such fingerprint~~  
11 ~~Fingerprint records and photographs may shall be retained by~~  
12 ~~the originating agency for a specific period when ordered by~~  
13 ~~the court for good cause shown until the youth reaches the~~  
14 ~~age of majority or until the judge orders the records~~  
15 ~~destroyed."~~

16 Section 4. Section 41-5-403, MCA, is amended to read:

17 "41-5-403. Disposition permitted under informal  
18 adjustment. (1) The following dispositions may be imposed by  
19 informal adjustment:

20 (a) probation;  
21 (b) placement of the youth in a licensed foster home  
22 or other home approved by the court;

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

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1 (d) transfer of legal custody of the youth to the  
2 department of institutions, provided that such commitment  
3 does not authorize the department of institutions to place  
4 the youth in a state youth correctional facility, and such  
5 commitment may not exceed a period of 6 months without a  
6 subsequent order of the court, after notice and hearing;

7 (e) restitution upon approval of the youth court  
8 judge.

9 (2) In determining whether restitution is appropriate  
10 in a particular case, the following factors may be  
11 considered in addition to any other evidence:

12 (a) age of the youth;

13 (b) ability of the youth to pay;

14 (c) ability of the parents or legal guardian to pay;

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

16 (e) legal remedies of the victim, however the ability  
17 of the victim or his insurer to stand any loss may not be  
18 considered in any case."

19 Section 5. Section 41-5-511, MCA, is amended to read:

20 "41-5-511. Right to counsel. In all proceedings  
21 following the filing of a petition alleging a delinquent  
22 youth or youth in need of supervision, the youth and the  
23 parents or guardian of the youth shall be advised by the  
24 court or, in the absence of the court, by its representative  
25 that the youth may be represented by counsel at all stages

1 of the proceedings. If counsel is not retained or if it  
2 appears that counsel will not be retained, counsel ~~shall~~ may  
3 be appointed for the youth if the parents and the youth are  
4 unable to provide counsel unless the right to appointed  
5 counsel is waived by the youth and the parents or guardian.  
6 Neither the youth nor his parent or guardian may waive  
7 counsel after a petition has been filed if commitment to a  
8 state correctional facility or to the department of  
9 institutions for a period of more than 6 months may result  
10 from adjudication."

11 Section 6. Section 41-5-522, MCA, is amended to read:

12 "41-5-522. Dispositional hearing. (1) As soon as  
13 practicable after a youth is found to be a delinquent youth  
14 or a youth in need of supervision, the court shall conduct a  
15 dispositional hearing. The dispositional hearing may involve  
16 a determination of financial liability as provided in  
17 41-5-805 and 41-5-806.

18 (2) Before conducting the dispositional hearing, the  
19 court shall direct that a social summary or predisposition  
20 report be made in writing by a probation officer concerning  
21 the youth, his family, his environment, and other matters  
22 relevant to the need for care or rehabilitation or  
23 disposition of the case. The youth court may have the youth  
24 examined, and the results of the examination shall be made  
25 available to the court as part of the social summary or

1 predisposition report. The court may order the examination  
 2 of a parent or guardian who gives his consent and whose  
 3 ability to care for or supervise a youth is at issue before  
 4 the court. The results of such examination shall be included  
 5 in the social summary or predisposition report. The youth,  
 6 his parents, guardian, or counsel shall have the right to  
 7 subpoena all persons who have prepared any portion of the  
 8 social summary or predisposition report and shall have the  
 9 right to cross-examine said parties at the dispositional  
 10 hearing.

11 (3) Defense counsel shall be furnished with a copy of  
 12 the social summary or predisposition report and  
 13 psychological report prior to the dispositional hearing.

14 (4) The dispositional hearing shall be conducted in  
 15 the manner set forth in subsections (3), (4), and (5) of  
 16 41-5-521. The court shall hear all evidence relevant to a  
 17 proper disposition of the case best serving the interests of  
 18 the youth and the public. Such evidence shall include, but  
 19 not be limited to, the social summary and predisposition  
 20 report provided for in subsection (2) of this section.

21 (5) If the court finds that it is in the best interest  
 22 of the youth, the youth, his parents, or guardian may be  
 23 temporarily excluded from the hearing during the taking of  
 24 evidence on the issues of need for treatment and  
 25 rehabilitation.

1 (6) In determining whether restitution, as authorized  
 2 by 41-5-523(1)(f), is appropriate in a particular case, the  
 3 following factors may be considered in addition to any other  
 4 evidence:

- 5 (a) age of the youth;
- 6 (b) ability of the youth to pay;
- 7 (c) ability of the parents or legal guardian to pay;
- 8 (d) amount of damage to the victim; and
- 9 (e) legal remedies of the victim, however the ability  
 10 of the victim or his insurer to stand any loss may not be  
 11 considered in any case."

12 Section 7. Section 41-5-603, MCA, is amended to read:

13 "41-5-603. Youth court records. (1) Youth court  
 14 records, including social, medical, and psychological  
 15 records, reports of preliminary inquiries, predispositional  
 16 studies, and supervision records of probationers, are open  
 17 to inspection prior to the sealing of the records only to  
 18 the following:

- 19 (a) the youth court and its professional staff;
- 20 (b) representatives of any agency providing  
 21 supervision and having legal custody of a youth;
- 22 (c) any other person, by order of the court, having a  
 23 legitimate interest in the case or in the work of the court;
- 24 (d) any court and its probation and other professional  
 25 staff or the attorney for a convicted party who had been a



1 party to proceedings in the youth court when considering the  
2 sentence to be imposed upon such party;

3 (a) the county attorney;

4 ~~(f) law enforcement officers of Montana, when~~  
5 ~~necessary for the discharge of their immediate duties and~~  
6 ~~when approved by the youth court judge;~~

7 ~~(g) the youth who is the subject of the report or~~  
8 ~~record, after he has been emancipated or reaches the age of~~  
9 ~~majority.~~

10 (2) All or any part of records information secured  
11 from records listed in subsection (1) of this section, when  
12 presented to and used by the court in a proceeding under  
13 this chapter, shall also be made available to the counsel  
14 for the parties to the proceedings.

15 (3) All other court records, including docket,  
16 petitions, motions, and other papers filed in a case,  
17 transcripts of testimony, findings, verdicts, orders, and  
18 decrees, shall be open to inspection by those persons and  
19 agencies listed in subsection (1) of this section and the  
20 parties to the proceedings and their counsel.

21 (4) All information obtained in discharge of an  
22 official duty by any officer or other employee of the youth  
23 court shall be privileged and shall not be disclosed to  
24 anyone other than the judge and others entitled under this  
25 chapter to receive such information, unless otherwise

1 ordered by the judge.

2 (5) After youth court records, reports of preliminary  
3 inquiries, predispositional studies, and supervision records  
4 of probationers are sealed, they are not open to inspection  
5 except, upon order of the youth court, for good cause to:

6 (a) those persons and agencies listed in subsection  
7 (1); and

8 (b) adult probation professional staff preparing a  
9 presentence report on a youth who has reached the age of  
10 majority."

11 Section 8. Section 41-5-805, MCA, is amended to read:

12 "41-5-805. Financial investigation by county welfare  
13 department. (1) Whenever a disposition under 41-5-403,  
14 41-5-523, or 41-5-524 involves placement in a foster home,  
15 child care agency, group home, or private treatment facility  
16 and the department of social and rehabilitation services ~~or~~  
17 ~~any branch of the youth court~~ is responsible for all or part  
18 of the cost of such placement, the probation officer or the  
19 court shall notify the department of social and  
20 rehabilitation services and order the county welfare  
21 department ~~or any branch of the youth court~~ in the youth's  
22 county of residence to conduct an investigation of the  
23 financial status of the youth's parents or guardianship  
24 assets. Following an adjudicatory hearing in which a youth  
25 is determined to be a delinquent youth or a youth in need of

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1 supervision, the court may order the county welfare  
2 department to conduct a financial status investigation.

3 (2) Upon receipt of the order, the county welfare  
4 department ~~or any branch of the youth court~~ shall make an  
5 investigation for the purpose of ascertaining the residence  
6 of the parents or guardian of the youth and the financial  
7 ability of the parents or the adequacy of the guardianship  
8 assets to pay the cost of supporting the youth in the foster  
9 home, child care agency, group home, or private treatment  
10 facility. A written report of the investigation shall be  
11 filed with the court having jurisdiction, the department of  
12 social and rehabilitation services, and the department of  
13 institutions, and a copy shall be sent to the parents or  
14 guardian of the youth or to any other party to the  
15 proceeding.\*

-End-

Approved by Committee  
on Judiciary

1 HOUSE BILL NO. 480  
 2 INTRODUCED BY MATSKO, KEYSER, SCHULTZ, DEVLIN, MOORE,  
 3 HEMSTAD, J. O'HARA, NILSON, GOODOVER, BRIGGS, KEEDY  
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 5 A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE YOUTH  
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 20 shall, upon motion of the county attorney, before hearing  
 21 the petition on its merits, transfer the matter of  
 22 prosecution to the district court if:  
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 24 the time of the conduct alleged to be unlawful and the  
 25 unlawful act is one or more of the following:

1 (i) criminal homicide as defined in 45-5-101;  
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 14 enumerated in subsections (1)(a)(i) through (1)(a)(ix);  
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 16 is held in conformity with the rules on a hearing on a  
 17 petition alleging delinquency, except that the hearing will  
 18 be to the youth court without a jury;  
 19 (c) notice in writing of the time, place, and purpose  
 20 of the hearing is given to the youth, his counsel, and his  
 21 parents, guardian, or custodian at least 10 days before the  
 22 hearing; and  
 23 (d) the court finds upon the hearing of all relevant  
 24 evidence that there are reasonable grounds to believe that:  
 25 (i) the youth committed the delinquent act alleged;

1 (ii) the seriousness of the offense and the protection  
2 of the community require treatment of the youth beyond that  
3 afforded by juvenile facilities; and

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

6 (2) In transferring the matter of prosecution to the  
7 district court, the court ~~shall~~ may also consider the  
8 following factors:

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10 determined by consideration of his home, environmental  
11 situation, and emotional attitude and pattern of living;

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13 including previous contacts with the youth court, law  
14 enforcement agencies, youth courts in other jurisdictions,  
15 prior periods of probation, and prior commitments to  
16 juvenile institutions. However, lack of a prior juvenile  
17 history will not of itself be grounds for denying the  
18 transfer.

19 (c) the severity of the offense;

20 ~~(c)(d)~~ the prospects for adequate protection of the  
21 public and ~~the~~ likelihood of reasonable rehabilitation of  
22 the youth by the use of procedures, services, and facilities  
23 currently available to the youth court.

24 (3) Upon transfer to district court, the judge shall  
25 make written findings of the reasons why the jurisdiction of

1 the court was waived and the case transferred to district  
2 court.

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4 court over the youth with respect to the acts alleged in the  
5 petition. No youth may be prosecuted in the district court  
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7 jurisdiction of the youth court unless the case has been  
8 transferred as provided in this section.

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

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13 that arises during the commission of a crime enumerated in  
14 subsection (1)(a) may be:

15 (a) tried in youth court;

16 (b) transferred to district court with an offense  
17 enumerated in subsection (1)(a), upon motion of the county  
18 attorney and acceptance by the district court judge.

19 ~~(6)(7)~~ If a youth is found guilty in district court of  
20 any of the offenses enumerated in subsection (1)(a) of this  
21 section and is sentenced to the state prison, his commitment  
22 shall be to the department of institutions which shall  
23 confine the youth in whatever institution it considers  
24 proper."

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6 order, has violated the terms thereof, the probation officer  
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15 agency.

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17 indicate a youth in need of care, the matter shall be  
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19 rehabilitation services.

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1 jurisdiction of the court;

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3 shelter care, whether such detention or shelter care should  
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6 probation officer shall:

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12 determination that the filing of a petition is not  
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17 parents to another agency providing appropriate services, or  
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19 does not involve probation or detention;

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21 probation or other disposition authorized under 41-5-401  
22 through 41-5-403, provided such treatment or adjustment is  
23 voluntarily accepted by the youth's parents or guardian and  
24 the youth, and provided further that said matter is referred  
25 immediately to the county attorney for review and that the

1 probation officer proceed no further unless authorized by  
2 the county attorney;

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4 a petition charging the youth to be a delinquent youth or a  
5 youth in need of supervision.

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7 be filed within ~~5 to 5~~ 5 working days from the date the youth  
8 was first detained or the petition shall be dismissed and  
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15 county attorney for review. The county attorney, upon  
16 receiving a request for review, shall consider the facts,  
17 consult with the probation officer, and make the final  
18 decision as to whether a petition shall or shall not be  
19 filed."

20 Section 3. Section 41-5-304, MCA, is amended to read:

21 "41-5-304. Fingerprints and photographs. (1) Title 46  
22 shall apply to all law enforcement investigations relating  
23 to a complaint alleging a delinquent youth or youth in need  
24 of supervision, except that:

25 (a) no youth may be fingerprinted or photographed for

1 criminal identification purposes except by order of the  
2 youth court judge;

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

9 (2) ~~At such time as the proceedings in the matter~~  
10 ~~including appeals, are complete, the fingerprint records and~~  
11 ~~photographs shall be destroyed. However, such fingerprint~~  
12 Fingerprint records and photographs may shall be retained by  
13 the originating agency ~~for a specific period when ordered by~~  
14 ~~the court for good cause shown until the youth reaches the~~  
15 age of majority or until the judge orders the records  
16 destroyed."

17 Section 4. Section 41-5-403, MCA, is amended to read:

18 "41-5-403. Disposition permitted under informal  
19 adjustment. (1) The following dispositions may be imposed by  
20 informal adjustment:

21 (a) probation;  
22 (b) placement of the youth in a licensed foster home  
23 or other home approved by the court;  
24 (c) placement of the youth in a private agency  
25 responsible for the care and rehabilitation of such a youth,

1 including but not limited to a district youth guidance home;

2 (d) transfer of legal custody of the youth to the  
3 department of institutions, provided that such commitment  
4 does not authorize the department of institutions to place  
5 the youth in a state youth correctional facility, and such  
6 commitment may not exceed a period of 6 months without a  
7 subsequent order of the court, after notice and hearing;

8 (e) restitution upon approval of the youth court  
9 judge.

10 (2) In determining whether restitution is appropriate  
11 in a particular case, the following factors may be  
12 considered in addition to any other 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 (d) amount of damage to the victim; and
- 17 (e) legal remedies of the victim, however the ability

18 of the victim or his insurer to stand any loss may not be  
19 considered in any case."

20 Section 5. Section 41-5-511, MCA, is amended to read:

21 "41-5-511. Right to counsel. In all proceedings  
22 following the filing of a petition alleging a delinquent  
23 youth or youth in need of supervision, the youth and the  
24 parents or guardian of the youth shall be advised by the  
25 court or, in the absence of the court, by its representative

1 that the youth may be represented by counsel at all stages  
2 of the proceedings. If counsel is not retained or if it  
3 appears that counsel will not be retained, counsel ~~shall~~ may  
4 SHALL be appointed for the youth if the parents and the  
5 youth are unable to provide counsel unless the right to  
6 appointed counsel is waived by the youth and the parents or  
7 guardian. Neither the youth nor his parent or guardian may  
8 waive counsel after a petition has been filed if commitment  
9 to a state correctional facility or to the Department of  
10 institutions for a period of more than 6 months may result  
11 from adjudication."

12 Section 6. Section 41-5-522, MCA, is amended to read:

13 "41-5-522. Dispositional hearing. (1) As soon as  
14 practicable after a youth is found to be a delinquent youth  
15 or a youth in need of supervision, the court shall conduct a  
16 dispositional hearing. The dispositional hearing may involve  
17 a determination of financial liability as provided in  
18 41-5-805 and 41-5-806.

19 (2) Before conducting the dispositional hearing, the  
20 court shall direct that a social summary or predisposition  
21 report be made in writing by a probation officer concerning  
22 the youth, his family, his environment, and other matters  
23 relevant to the need for care or rehabilitation or  
24 disposition of the case. The youth court may have the youth  
25 examined, and the results of the examination shall be made

1 available to the court as part of the social summary or  
 2 predisposition report. The court may order the examination  
 3 of a parent or guardian who gives his consent and whose  
 4 ability to care for or supervise a youth is at issue before  
 5 the court. The results of such examination shall be included  
 6 in the social summary or predisposition report. The youth,  
 7 his parents, guardian, or counsel shall have the right to  
 8 subpoena all persons who have prepared any portion of the  
 9 social summary or predisposition report and shall have the  
 10 right to cross-examine said parties at the dispositional  
 11 hearing.

12 (3) Defense counsel shall be furnished with a copy of  
 13 the social summary or predisposition report and  
 14 psychological report prior to the dispositional hearing.

15 (4) The dispositional hearing shall be conducted in  
 16 the manner set forth in subsections (3), (4), and (5) of  
 17 41-5-521. The court shall hear all evidence relevant to a  
 18 proper disposition of the case best serving the interests of  
 19 the youth and the public. Such evidence shall include, but  
 20 not be limited to, the social summary and predisposition  
 21 report provided for in subsection (2) of this section.

22 (5) If the court finds that it is in the best interest  
 23 of the youth, the youth, his parents, or guardian may be  
 24 temporarily excluded from the hearing during the taking of  
 25 evidence on the issues of need for treatment and

1 rehabilitation.

2 (b) In determining whether restitution, as authorized  
 3 by 41-5-523(1)(f), is appropriate in a particular case, the  
 4 following factors may be considered in addition to any other  
 5 evidence:

- 6 (a) age of the youth;
- 7 (b) ability of the youth to pay;
- 8 (c) ability of the parents or legal guardian to pay;
- 9 (d) amount of damage to the victim; and
- 10 (e) legal remedies of the victim, however the ability  
 11 of the victim or his insurer to stand any loss may not be  
 12 considered in any case."

13 Section 7. Section 41-5-603, MCA, is amended to read:

14 "41-5-603. Youth court records. (1) Youth court  
 15 records, including social, medical, and psychological  
 16 records, reports of preliminary inquiries, predispositional  
 17 studies, and supervision records of probationers, are open  
 18 to inspection prior to the sealing of the records only to  
 19 the following:

- 20 (a) the youth court and its professional staff;
- 21 (b) representatives of any agency providing  
 22 supervision and having legal custody of a youth;
- 23 (c) any other person, by order of the court, having a  
 24 legitimate interest in the case or in the work of the court;
- 25 (d) any court and its probation and other professional



1 staff or the attorney for a convicted party who had been a  
2 party to proceedings in the youth court when considering the  
3 sentence to be imposed upon such party;

4 (e) the county attorney;

5 (f) law enforcement officers of Montana, when  
6 necessary for the discharge of their immediate duties and  
7 when approved by the youth court judge;

8 ~~ff~~(g) the youth who is the subject of the report or  
9 record, after he has been emancipated or reaches the age of  
10 majority.

11 (2) All or any part of records information secured  
12 from records listed in subsection (1) of this section, when  
13 presented to and used by the court in a proceeding under  
14 this chapter, shall also be made available to the counsel  
15 for the parties to the proceedings.

16 (3) All other court records, including docket,  
17 petitions, motions, and other papers filed in a case,  
18 transcripts of testimony, findings, verdicts, orders, and  
19 decrees, shall be open to inspection by those persons and  
20 agencies listed in subsection (1) of this section and the  
21 parties to the proceedings and their counsel.

22 (4) All information obtained in discharge of an  
23 official duty by any officer or other employee of the youth  
24 court shall be privileged and shall not be disclosed to  
25 anyone other than the judge and others entitled under this

1 chapter to receive such information, unless otherwise  
2 ordered by the judge.

3 (5) After youth court records, reports of preliminary  
4 inquiries, predispositional studies, and supervision records  
5 of probationers are sealed, they are not open to inspection  
6 except, upon order of the youth court, for good cause to:

7 (a) those persons and agencies listed in subsection  
8 (1); and

9 (b) adult probation professional staff preparing a  
10 presentence report on a youth who has reached the age of  
11 majority."

12 Section 8. Section 41-5-805, MCA, is amended to read:

13 "41-5-805. Financial investigation by county welfare  
14 department. (i) Whenever a disposition under 41-5-403,  
15 41-5-523, or 41-5-524 involves placement in a foster home,  
16 child care agency, group home, or private treatment facility  
17 and the department of social and rehabilitation services or  
18 any branch of the youth court is responsible for all or part  
19 of the cost of such placement, the probation officer or the  
20 court shall notify the department of social and  
21 rehabilitation services and order the county welfare  
22 department or any branch of the youth court in the youth's  
23 county of residence to conduct an investigation of the  
24 financial status of the youth's parents or guardianship  
25 assets. Following an adjudicatory hearing in which a youth

1 is determined to be a delinquent youth or a youth in need of  
2 supervision, the court may order the county welfare  
3 department to conduct a financial status investigation.

4 (2) Upon receipt of the order, the county welfare  
5 department or any branch of the youth court shall make an  
6 investigation for the purpose of ascertaining the residence  
7 of the parents or guardian of the youth and the financial  
8 ability of the parents or the adequacy of the guardianship  
9 assets to pay the cost of supporting the youth in the foster  
10 home, child care agency, group home, or private treatment  
11 facility. A written report of the investigation shall be  
12 filed with the court having jurisdiction, the department of  
13 social and rehabilitation services, and the department of  
14 institutions, and a copy shall be sent to the parents or  
15 guardian of the youth or to any other party to the  
16 proceeding."

-End-

## 1 HOUSE BILL NO. 480

2 INTRODUCED BY MATSKO, KEYSER, SCHULTZ, DEVLIN, MOORE,

3 HEMSTAD, J. O'HARA, NILSON, GOODOVER, BRIGGS, KEEDY

4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE YOUTH  
6 COURT ACT; CHANGING THE CRITERIA FOR TRANSFER TO DISTRICT  
7 COURT; ~~ALLOWING 10 WORKING DAYS FOR FILING A PETITION~~  
8 CHANGING THE PROVISIONS FOR RETAINING FINGERPRINT AND  
9 PHOTOGRAPHIC RECORDS; PROHIBITING CONSIDERATION OF INSURANCE  
10 COMPENSATION TO A VICTIM; PROVIDING FOR APPOINTED COUNSEL  
11 WHEN THE YOUTH AND HIS PARENTS ARE UNABLE TO RETAIN COUNSEL;  
12 ~~ALLOWING LAW ENFORCEMENT OFFICERS ACCESS TO YOUTH COURT~~  
13 ~~RECORDS~~; AMENDING SECTIONS 41-5-206, 41-5-301, 41-5-304,  
14 41-5-403, 41-5-511, 41-5-522, 41-5-603, AND 41-5-805, MCA."

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

17 Section 1. Section 41-5-206, MCA, is amended to read:

18 "41-5-206. Transfer to criminal court. (1) After a  
19 petition has been filed alleging delinquency, the court may  
20 shall, upon motion of the county attorney, before hearing  
21 the petition on its merits, transfer the matter of  
22 prosecution to the district court if:

23 (a) the youth charged was 16 years of age or more at  
24 the time of the conduct alleged to be unlawful and the  
25 unlawful act is one or more of the following:

1 (i) criminal homicide as defined in 45-5-101;

2 (ii) arson as defined in 45-6-103;

3 (iii) aggravated assault as defined in 45-5-202;

4 (iv) robbery as defined in 45-5-401;

5 (v) burglary or aggravated burglary as defined in  
6 45-6-204;

7 (vi) sexual intercourse without consent as defined in  
8 45-5-503;

9 (vii) aggravated kidnapping as defined in 45-5-303;

10 (viii) possession of explosives as defined in 45-8-335;

11 (ix) criminal sale of dangerous drugs for profit as  
12 included in 45-9-101;

13 (x) attempt as defined in 45-4-103 of any of the acts  
14 enumerated in subsections (1)(a)(i) through (1)(a)(ix);

15 (b) a hearing on whether the transfer should be made  
16 is held in conformity with the rules on a hearing on a  
17 petition alleging delinquency, except that the hearing will  
18 be to the youth court without a jury;

19 (c) notice in writing of the time, place, and purpose  
20 of the hearing is given to the youth, his counsel, and his  
21 parents, guardian, or custodian at least 10 days before the  
22 hearing; and

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

25 (i) the youth committed the delinquent act alleged;

1 (ii) the seriousness of the offense and the protection  
2 of the community require treatment of the youth beyond that  
3 afforded by juvenile facilities; and

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

6 (2) In transferring the matter of prosecution to the  
7 district court, the court shall may also consider the  
8 following factors:

9 (a) the sophistication and maturity of the youth,  
10 determined by consideration of his home, environmental  
11 situation, and emotional attitude and pattern of living;

12 (b) the record and previous history of the youth,  
13 including previous contacts with the youth court, law  
14 enforcement agencies, youth courts in other jurisdictions,  
15 prior periods of probation, and prior commitments to  
16 juvenile institutions. However, lack of a prior juvenile  
17 history will not of itself be grounds for denying the  
18 transfer.

19 (c) the severity of the offense;

20 ~~(d) the prospects for adequate protection of the~~  
21 ~~the public and the likelihood of reasonable rehabilitation of~~  
22 the youth by the use of procedures, services, and facilities  
23 currently available to the youth court.

24 (3) Upon transfer to district court, the judge shall  
25 make written findings of the reasons why the jurisdiction of

1 the court was waived and the case transferred to district  
2 court.

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

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

12 (6) Any offense not enumerated in subsection (1)(a)  
13 that arises during the commission of a crime enumerated in  
14 subsection (1)(a) may be:

15 (a) tried in youth court;

16 (b) transferred to district court with an offense  
17 enumerated in subsection (1)(a), upon motion of the county  
18 attorney and acceptance by the district court judge.

19 ~~(6)(7)~~ If a youth is found guilty in district court of  
20 any of the offenses enumerated in subsection (1)(a) of this  
21 section and is sentenced to the state prison, his commitment  
22 shall be to the department of institutions which shall  
23 confine the youth in whatever institution it considers  
24 proper."

25 Section 2. Section 41-5-301, MCA, is amended to read:

1           "41-5-301. Preliminary investigation and disposition.

2       (1) Whenever the court receives information from any agency  
3 or person, based upon reasonable grounds, that a youth is or  
4 appears to be a delinquent youth or a youth in need of  
5 supervision or, being subject to a court order or consent  
6 order, has violated the terms thereof, the probation officer  
7 shall make a preliminary inquiry into the matter.

8           (2) The probation officer may:

9           (a) require the presence of any person relevant to the  
10 inquiry;

11           (b) request subpoenas from the judge to accomplish  
12 this purpose;

13           (c) require investigation of the matter by any law  
14 enforcement agency or any other appropriate state or local  
15 agency.

16           (3) If the probation officer determines that the facts  
17 indicate a youth in need of care, the matter shall be  
18 immediately referred to the department of social and  
19 rehabilitation services.

20           (4) (a) The probation officer in the conduct of the  
21 preliminary inquiry shall:

22           (i) advise the youth of the youth's rights under this  
23 chapter and the constitutions of the state of Montana and  
24 the United States;

25           (ii) determine whether the matter is within the

1 jurisdiction of the court;

2           (iii) determine, if the youth is in detention or  
3 shelter care, whether such detention or shelter care should  
4 be continued based upon criteria set forth in 41-5-305.

5           (b) Once relevant information is secured, the  
6 probation officer shall:

7           (i) determine whether the interest of the public or  
8 the youth requires that further action be taken;

9           (ii) terminate the inquiry upon the determination that  
10 no further action be taken;

11           (iii) release the youth immediately upon the  
12 determination that the filing of a petition is not  
13 authorized.

14           (5) The probation officer upon determining that  
15 further action is required may:

16           (a) provide counseling, refer the youth and his  
17 parents to another agency providing appropriate services, or  
18 take any other action or make any informal adjustment that  
19 does not involve probation or detention;

20           (b) provide for treatment or adjustment involving  
21 probation or other disposition authorized under 41-5-401  
22 through 41-5-403, provided such treatment or adjustment is  
23 voluntarily accepted by the youth's parents or guardian and  
24 the youth, and provided further that said matter is referred  
25 immediately to the county attorney for review and that the

1 probation officer proceed no further unless authorized by  
2 the county attorney;

3 (c) refer the matter to the county attorney for filing  
4 a petition charging the youth to be a delinquent youth or a  
5 youth in need of supervision.

6 (6) A petition charging a youth held in detention must  
7 be filed within 5 ~~to~~ 5 working days from the date the youth  
8 was first detained or the petition shall be dismissed and  
9 the youth released unless good cause is shown to further  
10 detain such youth.

11 (7) If no petition is filed under this section, the  
12 complainant and victim, if any, shall be informed by the  
13 probation officer of the action and the reasons therefor and  
14 shall be advised of the right to submit the matter to the  
15 county attorney for review. The county attorney, upon  
16 receiving a request for review, shall consider the facts,  
17 consult with the probation officer, and make the final  
18 decision as to whether a petition shall or shall not be  
19 filed."

20 Section 3. Section 41-5-304, MCA, is amended to read:

21 "41-5-304. Fingerprints and photographs. (1) Title 46  
22 shall apply to all law enforcement investigations relating  
23 to a complaint alleging a delinquent youth or youth in need  
24 of supervision, except that:

25 (a) no youth may be fingerprinted or photographed for

1 criminal identification purposes except by order of the  
2 youth court judge;

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

9 (2) ~~At such time as the proceedings in the matter~~  
10 ~~including appeals are complete the fingerprint records and~~  
11 ~~photographs shall be destroyed. However, such fingerprint~~  
12 Fingerprint records and photographs may shall be retained by  
13 the originating agency for ~~a specific period when ordered by~~  
14 ~~the court for good cause shown~~ ONLY until the youth reaches  
15 the age of majority or until UNLESS the judge orders the  
16 records destroyed AT AN EARLIER DATE. ANY SUCH RECORD MAY BE  
17 USED BY THE ORIGINATING AGENCY FOR COMPARISON AND  
18 IDENTIFICATION PURPOSES IN ANY OTHER INVESTIGATION ONLY WHEN  
19 PROBABLE CAUSE IS ESTABLISHED BEFORE THE YOUTH COURT JUDGE  
20 THAT THE YOUTH IS A PRINCIPAL SUSPECT."

21 Section 4. Section 41-5-403, MCA, is amended to read:

22 "41-5-403. Disposition permitted under informal  
23 adjustment. (1) The following dispositions may be imposed by  
24 informal adjustment:

25 (a) probation;

1 (b) placement of the youth in a licensed foster home  
2 or other home approved by the court;

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

6 (d) transfer of legal custody of the youth to the  
7 department of institutions, provided that such commitment  
8 does not authorize the department of institutions to place  
9 the youth in a state youth correctional facility, and such  
10 commitment may not exceed a period of 6 months without a  
11 subsequent order of the court, after notice and hearing;

12 (e) restitution upon approval of the youth court  
13 judge.

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

- 17 (a) age of the youth;
- 18 (b) ability of the youth to pay;
- 19 (c) ability of the parents or legal guardian to pay;
- 20 (d) amount of damage to the victim; and
- 21 (e) legal remedies of the victim, however the ability

22 of the victim or his insurer to stand any loss may not be  
23 considered in any case."

24 Section 5. Section 41-5-511, MCA, is amended to read:  
25 "41-5-511. Right to counsel. In all proceedings

1 following the filing of a petition alleging a delinquent  
2 youth or youth in need of supervision, the youth and the  
3 parents or guardian of the youth shall be advised by the  
4 court or, in the absence of the court, by its representative  
5 that the youth may be represented by counsel at all stages  
6 of the proceedings. If counsel is not retained or if it  
7 appears that counsel will not be retained, counsel ~~shall~~ may  
8 SHALL be appointed for the youth if the parents and the  
9 youth are unable to provide counsel unless the right to  
10 appointed counsel is waived by the youth and the parents or  
11 guardian. Neither the youth nor his parent or guardian may  
12 waive counsel after a petition has been filed if commitment  
13 to a state correctional facility or to the department of  
14 institutions for a period of more than 6 months may result  
15 from adjudication."

16 Section 6. Section 41-5-522, MCA, is amended to read:  
17 "41-5-522. Dispositional hearing. (1) As soon as  
18 practicable after a youth is found to be a delinquent youth  
19 or a youth in need of supervision, the court shall conduct a  
20 dispositional hearing. The dispositional hearing may involve  
21 a determination of financial liability as provided in  
22 41-5-805 and 41-5-806.

23 (2) Before conducting the dispositional hearing, the  
24 court shall direct that a social summary or predisposition  
25 report be made in writing by a probation officer concerning

1 the youth, his family, his environment, and other matters  
 2 relevant to the need for care or rehabilitation or  
 3 disposition of the case. The youth court may have the youth  
 4 examined, and the results of the examination shall be made  
 5 available to the court as part of the social summary or  
 6 predisposition report. The court may order the examination  
 7 of a parent or guardian who gives his consent and whose  
 8 ability to care for or supervise a youth is at issue before  
 9 the court. The results of such examination shall be included  
 10 in the social summary or predisposition report. The youth,  
 11 his parents, guardian, or counsel shall have the right to  
 12 subpoena all persons who have prepared any portion of the  
 13 social summary or predisposition report and shall have the  
 14 right to cross-examine said parties at the dispositional  
 15 hearing.

16 (3) Defense counsel shall be furnished with a copy of  
 17 the social summary or predisposition report and  
 18 psychological report prior to the dispositional hearing.

19 (4) The dispositional hearing shall be conducted in  
 20 the manner set forth in subsections (3), (4), and (5) of  
 21 ~~41-5-621~~. The court shall hear all evidence relevant to a  
 22 proper disposition of the case best serving the interests of  
 23 the youth and the public. Such evidence shall include, but  
 24 not be limited to, the social summary and predisposition  
 25 report provided for in subsection (2) of this section.

1 (5) If the court finds that it is in the best interest  
 2 of the youth, the youth, his parents, or guardian may be  
 3 temporarily excluded from the hearing during the taking of  
 4 evidence on the issues of need for treatment and  
 5 rehabilitation.

6 (6) In determining whether restitution, as authorized  
 7 by 41-5-523(1)(f), is appropriate in a particular case, the  
 8 following factors may be considered in addition to any other  
 9 evidence:

- 10 (a) age of the youth;
- 11 (b) ability of the youth to pay;
- 12 (c) ability of the parents or legal guardian to pay;
- 13 (d) amount of damage to the victim; and
- 14 (e) legal remedies of the victim, however the ability  
 15 of the victim or his insurer to stand any loss may not be  
 16 considered in any case."

17 Section 7. Section 41-5-603, MCA, is amended to read:

18 "41-5-603. Youth court records. (1) Youth court  
 19 records, including social, medical, and psychological  
 20 records, reports of preliminary inquiries, predispositional  
 21 studies, and supervision records of probationers, are open  
 22 to inspection prior to the sealing of the records only to  
 23 the following:

- 24 (a) the youth court and its professional staff;
- 25 (b) representatives of any agency providing



1 supervision and having legal custody of a youth;

2 (c) any other person, by order of the court, having a

3 legitimate interest in the case or in the work of the court;

4 (d) any court and its probation and other professional

5 staff or the attorney for a convicted party who had been a

6 party to proceedings in the youth court when considering the

7 sentence to be imposed upon such party;

8 (e) the county attorney;

9 ~~(f) law enforcement officers of Montana when~~

10 ~~necessary for the discharge of their immediate duties and~~

11 ~~when approved by the youth court judge;~~

12 (f)(g)(F) the youth who is the subject of the report

13 or record, after he has been emancipated or reaches the age

14 of majority.

15 (2) All or any part of records information secured

16 from records listed in subsection (1) of this section, when

17 presented to and used by the court in a proceeding under

18 this chapter, shall also be made available to the counsel

19 for the parties to the proceedings.

20 (3) All other court records, including docket,

21 petitions, motions, and other papers filed in a case,

22 transcripts of testimony, findings, verdicts, orders, and

23 decrees, shall be open to inspection by those persons and

24 agencies listed in subsection (1) of this section and the

25 parties to the proceedings and their counsel.

1 (4) All information obtained in discharge of an

2 official duty by any officer or other employee of the youth

3 court shall be privileged and shall not be disclosed to

4 anyone other than the judge and others entitled under this

5 chapter to receive such information, unless otherwise

6 ordered by the judge.

7 (5) After youth court records, reports of preliminary

8 inquiries, predispositional studies, and supervision records

9 of probationers are sealed, they are not open to inspection

10 except, upon order of the youth court, for good cause to:

11 (a) those persons and agencies listed in subsection

12 (1); and

13 (b) adult probation professional staff preparing a

14 presentence report on a youth who has reached the age of

15 majority."

16 Section 8. Section 41-5-805, MCA, is amended to read:

17 "41-5-805. Financial investigation by county welfare

18 department. (1) Whenever a disposition under 41-5-403,

19 41-5-523, or 41-5-524 involves placement in a foster home,

20 child care agency, group home, or private treatment facility

21 and the department of social and rehabilitation services or

22 any branch of the youth court is responsible for all or part

23 of the cost of such placement, the probation officer or the

24 court shall notify the department of social and

25 rehabilitation services and order the county welfare

1 department or any branch of the youth court in the youth's  
2 county of residence to conduct an investigation of the  
3 financial status of the youth's parents or guardianship  
4 assets. Following an adjudicatory hearing in which a youth  
5 is determined to be a delinquent youth or a youth in need of  
6 supervision, the court may order the county welfare  
7 department to conduct a financial status investigation.

8 (2) Upon receipt of the order, the county welfare  
9 department or any branch of the youth court shall make an  
10 investigation for the purpose of ascertaining the residence  
11 of the parents or guardian of the youth and the financial  
12 ability of the parents or the adequacy of the guardianship  
13 assets to pay the cost of supporting the youth in the foster  
14 home, child care agency, group home, or private treatment  
15 facility. A written report of the investigation shall be  
16 filed with the court having jurisdiction, the department of  
17 social and rehabilitation services, and the department of  
18 institutions, and a copy shall be sent to the parents or  
19 guardian of the youth or to any other party to the  
20 proceeding.

-End-

## HOUSE BILL NO. 480

INTRODUCED BY MATSKO, KEYSER, SCHULTZ, DEVLIN, MOORE,  
HEMSTAD, J. O'HARA, NILSON, GOODOVER, BRIGGS, KEEDY

A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE YOUTH  
COURT ACT; CHANGING THE CRITERIA FOR TRANSFER TO DISTRICT  
COURT; ~~ALLOWING 10 WORKING DAYS FOR FILING A PETITION;~~  
CHANGING THE PROVISIONS FOR RETAINING FINGERPRINT AND  
PHOTOGRAPHIC RECORDS; PROHIBITING CONSIDERATION OF INSURANCE  
COMPENSATION TO A VICTIM; PROVIDING FOR APPOINTED COUNSEL  
WHEN THE YOUTH AND HIS PARENTS ARE UNABLE TO RETAIN COUNSEL;  
~~ALLOWING LAW ENFORCEMENT OFFICERS ACCESS TO YOUTH COURT  
RECORDS;~~ AMENDING SECTIONS 41-5-206, ~~41-5-301,~~ 41-5-304,  
41-5-403, 41-5-511, AND 41-5-522, ~~41-5-603,~~ AND ~~41-5-805,~~  
MCA."

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

Section 1. Section 41-5-206, MCA, is amended to read:

"41-5-206. Transfer to criminal court. (1) After a  
petition has been filed alleging delinquency, the court ~~may~~  
~~shall~~ MAY, upon motion of the county attorney, before  
hearing the petition on its merits, transfer the matter of  
prosecution to the district court if:

(a) the youth charged was 16 years of age or more at  
the time of the conduct alleged to be unlawful and the

unlawful act is one or more of the following:

(i) criminal homicide as defined in 45-5-101;

(ii) arson as defined in 45-6-103;

(iii) aggravated assault as defined in 45-5-202;

(iv) robbery as defined in 45-5-401;

(v) burglary or aggravated burglary as defined in  
45-6-204;

(vi) sexual intercourse without consent as defined in  
45-5-503;

(vii) aggravated kidnapping as defined in 45-5-303;

(viii) possession of explosives as defined in 45-8-335;

(ix) criminal sale of dangerous drugs for profit as  
included in 45-9-101;

(x) attempt as defined in 45-4-103 of any of the acts  
enumerated in subsections (1)(a)(i) through (1)(a)(ix);

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

(c) notice in writing of the time, place, and purpose  
of the hearing is given to the youth, his counsel, and his  
parents, guardian, or custodian at least 10 days before the  
hearing; and

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

1 (i) the youth committed the delinquent act alleged;

2 (ii) the seriousness of the offense and the protection

3 of the community require treatment of the youth beyond that

4 afforded by juvenile facilities; and

5 (iii) the alleged offense was committed in an

6 aggressive, violent, or premeditated manner.

7 (2) In transferring the matter of prosecution to the

8 district court, the court shall ~~shall~~ may also consider the

9 following factors:

10 (a) the sophistication and maturity of the youth,

11 determined by consideration of his home, environmental

12 situation, and emotional attitude and pattern of living;

13 (b) the record and previous history of the youth,

14 including previous contacts with the youth court, law

15 enforcement agencies, youth courts in other jurisdictions,

16 prior periods of probation, and prior commitments to

17 juvenile institutions. However, lack of a prior juvenile

18 history WITH YOUTH COURTS will not of itself be grounds for

19 denying the transfer.

20 (c) the severity of the offense;

21 ~~(d)~~ (d) the prospects for adequate protection of the

22 public and the likelihood of reasonable rehabilitation of

23 the youth by the use of procedures, services, and facilities

24 currently available to the youth court.

25 (3) Upon transfer to district court, the judge shall

1 make written findings of the reasons why the jurisdiction of

2 the court was waived and the case transferred to district

3 court.

4 (4) The transfer terminates the jurisdiction of the

5 court over the youth with respect to the acts alleged in the

6 petition. No youth may be prosecuted in the district court

7 for a criminal offense originally subject to the

8 jurisdiction of the youth court unless the case has been

9 transferred as provided in this section.

10 (5) Upon order of the court transferring the case to

11 the district court, the county attorney shall file the

12 information against the youth without unreasonable delay.

13 (6) Any offense not enumerated in subsection (1)(a)

14 that arises during the commission of a crime enumerated in

15 subsection (1)(a) may be:

16 (a) tried in youth court;

17 (b) transferred to district court with an offense

18 enumerated in subsection (1)(a), upon motion of the county

19 attorney and acceptance by the district court judge.

20 ~~(6)(7)~~ (7) If a youth is found guilty in district court of

21 any of the offenses enumerated in subsection (1)(a) of this

22 section and is sentenced to the state prison, his commitment

23 shall be to the department of institutions which shall

24 confine the youth in whatever institution it considers

25 proper."

1 Section 2. Section 41-5-301, MCA, is amended to read  
 2 "41-5-301. Preliminary investigation and disposition.  
 3 (1) Whenever the court receives information from any agency  
 4 or person based upon reasonable grounds that a youth is or  
 5 appears to be a delinquent youth or a youth in need of  
 6 supervision or being subject to a court order or consent  
 7 order, has violated the terms thereof, the probation officer  
 8 shall make a preliminary inquiry into the matter.  
 9 (2) The probation officer may:  
 10 (a) require the presence of any person relevant to the  
 11 inquiry;  
 12 (b) request subpoenas from the judge to accomplish  
 13 this purpose;  
 14 (c) require investigation of the matter by any law  
 15 enforcement agency or any other appropriate state or local  
 16 agency.  
 17 (3) If the probation officer determines that the facts  
 18 indicate a youth in need of care, the matter shall be  
 19 immediately referred to the department of social and  
 20 rehabilitation services.  
 21 (4) (a) The probation officer in the conduct of the  
 22 preliminary inquiry shall:  
 23 (i) advise the youth of the youth's rights under this  
 24 chapter and the constitutions of the state of Montana and  
 25 the United States;

1 (ii) determine whether the matter is within the  
 2 jurisdiction of the court;  
 3 (iii) determine if the youth is in detention or  
 4 shelter care, whether such detention or shelter care should  
 5 be continued based upon criteria set forth in 41-5-305.  
 6 (b) Once relevant information is secured, the  
 7 probation officer shall:  
 8 (i) determine whether the interest of the public or  
 9 the youth requires that further action be taken;  
 10 (ii) terminate the inquiry upon the determination that  
 11 no further action be taken;  
 12 (iii) release the youth immediately upon the  
 13 determination that the filing of a petition is not  
 14 authorized.  
 15 (5) The probation officer upon determining that  
 16 further action is required may:  
 17 (a) provide counseling, refer the youth and his  
 18 parents to another agency providing appropriate services, or  
 19 take any other action or make any informal adjustment that  
 20 does not involve probation or detention;  
 21 (b) provide for treatment or adjustment involving  
 22 probation or other disposition authorized under 41-5-401  
 23 through 41-5-403, provided such treatment or adjustment is  
 24 voluntarily accepted by the youth's parents or guardian and  
 25 the youth, and provided further that said matter is referred

1 immediately to the county attorney for review and that the  
2 probation officer proceed no further unless authorized by  
3 the county attorney.

4 (c) refer the matter to the county attorney for filing  
5 a petition charging the youth to be a delinquent youth or a  
6 youth in need of supervision.

7 (6) A petition charging a youth held in detention must  
8 be filed within 5 ~~10~~ 5 working days from the date the youth  
9 was first detained or the petition shall be dismissed and  
10 the youth released unless good cause is shown to further  
11 detain such youth.

12 (7) If no petition is filed under this section, the  
13 complainant and victim, if any, shall be informed by the  
14 probation officer of the action and the reasons therefor and  
15 shall be advised of the right to submit the matter to the  
16 county attorney for review. The county attorney, upon  
17 receiving a request for review, shall consider the facts,  
18 consult with the probation officers, and make the final  
19 decision as to whether a petition shall or shall not be  
20 filed.

21 Section 2. Section 41-5-304, MCA, is amended to read:  
22 "41-5-304. Fingerprints and photographs. (1) Title 46  
23 shall apply to all law enforcement investigations relating  
24 to a complaint alleging a delinquent youth or youth in need  
25 of supervision, except that:

1 (a) no youth may be fingerprinted or photographed for  
2 criminal identification purposes except by order of the  
3 youth court judge;

4 (b) no fingerprint records or photographs may be filed  
5 with the federal bureau of investigation, the Montana  
6 department of justice, or any other than the originating  
7 agency, except for sending the fingerprints or photographs  
8 to any law enforcement agency for comparison purposes in the  
9 original investigation.

10 (2) At such time as the proceedings in the matter  
11 including appeals are complete, the fingerprint records and  
12 photographs shall be destroyed. However, such fingerprint  
13 fingerprint records and photographs may shall be retained by  
14 the originating agency for a specific period when ordered by  
15 the court for good cause shown ONLY until the youth reaches  
16 the age of majority or until UNLESS the judge orders the  
17 records destroyed AT AN EARLIER DATE. ANY SUCH RECORD MAY BE  
18 USED BY THE ORIGINATING AGENCY FOR COMPARISON AND  
19 IDENTIFICATION PURPOSES IN ANY OTHER INVESTIGATION ONLY WHEN  
20 PROBABLE CAUSE IS ESTABLISHED BEFORE THE YOUTH COURT JUDGE  
21 THAT THE YOUTH IS A PRINCIPAL SUSPECT."

22 Section 3. Section 41-5-403, MCA, is amended to read:  
23 "41-5-403. Disposition permitted under informal  
24 adjustment. (1) The following dispositions may be imposed by  
25 informal adjustment:

1 (a) probation;

2 (b) placement of the youth in a licensed foster home  
3 or other home approved by the court;

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

7 (d) transfer of legal custody of the youth to the  
8 department of institutions, provided that such commitment  
9 does not authorize the department of institutions to place  
10 the youth in a state youth correctional facility, and such  
11 commitment may not exceed a period of 6 months without a  
12 subsequent order of the court, after notice and hearing;

13 (e) restitution upon approval of the youth court  
14 judge.

15 (2) In determining whether restitution is appropriate  
16 in a particular case, the following factors may be  
17 considered in addition to any other evidence:

18 (a) age of the youth;

19 (b) ability of the youth to pay;

20 (c) ability of the parents or legal guardian to pay;

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

22 (e) legal remedies of the victim, however the ability  
23 of the victim or his insurer to stand any loss may not be  
24 considered in any case."

25 Section 4. Section 41-5-511, MCA, is amended to read:

1 "41-5-511. Right to counsel. In all proceedings  
2 following the filing of a petition alleging a delinquent  
3 youth or youth in need of supervision, the youth and the  
4 parents or guardian of the youth shall be advised by the  
5 court or, in the absence of the court, by its representative  
6 that the youth may be represented by counsel at all stages  
7 of the proceedings. If counsel is not retained or if it  
8 appears that counsel will not be retained, counsel ~~shall~~ may  
9 SHALL be appointed for the youth if the parents and the  
10 youth are unable to provide counsel unless the right to  
11 appointed counsel is waived by the youth and the parents or  
12 guardian. Neither the youth nor his parent or guardian may  
13 waive counsel after a petition has been filed if commitment  
14 to a state correctional facility or to the department of  
15 institutions for a period of more than 6 months may result  
16 from adjudication."

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

18 "41-5-522. Dispositional hearing. (1) As soon as  
19 practicable after a youth is found to be a delinquent youth  
20 or a youth in need of supervision, the court shall conduct a  
21 dispositional hearing. The dispositional hearing may involve  
22 a determination of financial liability as provided in  
23 41-5-805 and 41-5-806.

24 (2) Before conducting the dispositional hearing, the  
25 court shall direct that a social summary or predisposition

1 report be made in writing by a probation officer concerning  
 2 the youth, his family, his environment, and other matters  
 3 relevant to the need for care or rehabilitation or  
 4 disposition of the case. The youth court may have the youth  
 5 examined, and the results of the examination shall be made  
 6 available to the court as part of the social summary or  
 7 predisposition report. The court may order the examination  
 8 of a parent or guardian who gives his consent and whose  
 9 ability to care for or supervise a youth is at issue before  
 10 the court. The results of such examination shall be included  
 11 in the social summary or predisposition report. The youth,  
 12 his parents, guardian, or counsel shall have the right to  
 13 subpoena all persons who have prepared any portion of the  
 14 social summary or predisposition report and shall have the  
 15 right to cross-examine said parties at the dispositional  
 16 hearing.

17 (3) Defense counsel shall be furnished with a copy of  
 18 the social summary or predisposition report and  
 19 psychological report prior to the dispositional hearing.

20 (4) The dispositional hearing shall be conducted in  
 21 the manner set forth in subsections (3), (4), and (5) of  
 22 41-5-521. The court shall hear all evidence relevant to a  
 23 proper disposition of the case best serving the interests of  
 24 the youth and the public. Such evidence shall include, but  
 25 not be limited to, the social summary and predisposition

1 report provided for in subsection (2) of this section.

2 (5) If the court finds that it is in the best interest  
 3 of the youth, the youth, his parents, or guardian may be  
 4 temporarily excluded from the hearing during the taking of  
 5 evidence on the issues of need for treatment and  
 6 rehabilitation.

7 (6) In determining whether restitution, as authorized  
 8 by 41-5-523(1)(f), is appropriate in a particular case, the  
 9 following factors may be considered in addition to any other  
 10 evidence:

- 11 (a) age of the youth;
- 12 (b) ability of the youth to pay;
- 13 (c) ability of the parents or legal guardian to pay;
- 14 (d) amount of damage to the victim; and
- 15 (e) legal remedies of the victim, however the ability  
 16 of the victim or his insurer to stand any loss may not be  
 17 considered in any case."

18 ~~Section 7. Section 41-5-603, MEA, is amended to read:~~  
 19 ~~41-5-603. Youth court records. (1) Youth court~~  
 20 ~~records, including social, medical, and psychological~~  
 21 ~~records, reports of preliminary inquiries, predispositional~~  
 22 ~~studies, and supervision records of probationers, are open~~  
 23 ~~to inspection prior to the sealing of the records only to~~  
 24 ~~the following:~~

- 25 (a) ~~the youth court and its professional staff;~~



1       ~~(b) representatives of any agency providing~~  
 2 ~~supervision and having legal custody of a youth;~~  
 3       ~~(c) any other person, by order of the court, having a~~  
 4 ~~legitimate interest in the case or in the work of the court;~~  
 5       ~~(d) any court and its probation and other professional~~  
 6 ~~staff or the attorney for a convicted party who had been a~~  
 7 ~~party to proceedings in the youth court when considering the~~  
 8 ~~sentence to be imposed upon such party;~~  
 9       ~~(e) the county attorney;~~  
 10       ~~(f) law enforcement officers of Montana when~~  
 11 ~~necessary for the discharge of their immediate duties and~~  
 12 ~~when approved by the youth court judge;~~  
 13       ~~(f)(3)(F) the youth who is the subject of the report~~  
 14 ~~or records after he has been emancipated or reaches the age~~  
 15 ~~of majority;~~  
 16       ~~(2) All or any part of records information secured~~  
 17 ~~from records listed in subsection (1) of this section, when~~  
 18 ~~presented to and used by the court in a proceeding under~~  
 19 ~~this chapter, shall also be made available to the counsel~~  
 20 ~~for the parties to the proceedings;~~  
 21       ~~(3) All other court records, including docket,~~  
 22 ~~petitions, motions, and other papers filed in a case,~~  
 23 ~~transcripts of testimony, findings, verdicts, orders, and~~  
 24 ~~decrees, shall be open to inspection by those persons and~~  
 25 ~~agencies listed in subsection (1) of this section and the~~

1       ~~parties to the proceedings and their counsel;~~  
 2       ~~(4) All information obtained in discharge of an~~  
 3 ~~official duty by any officer or other employee of the youth~~  
 4 ~~court shall be privileged and shall not be disclosed to~~  
 5 ~~anyone other than the judge and others entitled under this~~  
 6 ~~chapter to receive such information, unless otherwise~~  
 7 ~~ordered by the judge;~~  
 8       ~~(5) After youth court records, reports of preliminary~~  
 9 ~~inquiries, predispositional studies, and supervision records~~  
 10 ~~of probationers are sealed, they are not open to inspection~~  
 11 ~~except upon order of the youth court for good cause to:~~  
 12       ~~(a) those persons and agencies listed in subsection~~  
 13 ~~(1); and~~  
 14       ~~(b) adult probation professional staff preparing a~~  
 15 ~~presentence report on a youth who has reached the age of~~  
 16 ~~majority."~~  
 17       ~~Section 6, Section 41-5-805, MCA, is amended to read:~~  
 18       ~~"41-5-805. Financial investigation by county welfare~~  
 19 ~~departments. (1) Whenever a disposition under 41-5-403,~~  
 20 ~~41-5-523, or 41-5-524 involves placement in a foster home,~~  
 21 ~~child care agency, group home, or private treatment facility~~  
 22 ~~and the department of social and rehabilitation services or~~  
 23 ~~any branch of the youth court is responsible for all or part~~  
 24 ~~of the cost of such placement, the probation officer or the~~  
 25 ~~court shall notify the department of social and~~

1 rehabilitation services and order the county welfare  
2 department ~~or any branch of the youth court~~ in the youth's  
3 county of residence to conduct an investigation of the  
4 financial status of the youth's parents or guardianship  
5 assets. Following an adjudicatory hearing in which a youth  
6 is determined to be a delinquent youth or a youth in need of  
7 supervision, the court may order the county welfare  
8 department to conduct a financial status investigation.  
9 (2) Upon receipt of the order, the county welfare  
10 department ~~or any branch of the youth court~~ shall make an  
11 investigation for the purpose of ascertaining the residence  
12 of the parents or guardian of the youth and the financial  
13 ability of the parents or the adequacy of the guardianship  
14 assets to pay the cost of supporting the youth in the foster  
15 home, child care agency, group home, or private treatment  
16 facility. A written report of the investigation shall be  
17 filed with the court having jurisdiction, the department of  
18 social and rehabilitation services, and the department of  
19 institutions, and a copy shall be sent to the parents or  
20 guardian of the youth or to any other party to the  
21 proceeding."

-End-

March 25, 1981

SENATE STANDING COMMITTEE REPORT  
(Judiciary)

That House Bill No. 480 be amended as follows:

1. Title, line 14.  
Following: "41-5-511,"  
Insert: "AND"  
Following: "41-5-603,"  
Strike: "AND 41-5-805,"
2. Page 1, line 20.  
Following: line 19  
Strike: "shall"  
Insert: "may"
3. Page 3, line 17.  
Following: "history"  
Insert: "with youth courts"
4. Page 14, line 16 through line 20 on page 15.  
Strike: Section 8 in its entirety.