

Senate Bill 473

In The Senate

February 13, 1981	Introduced and referred to Committee on Highways and Transportation.
February 18, 1981	Fiscal note requested.
February 21, 1981	Fiscal note returned.
	Committee recommend bill do not pass.

1 *Senate* BILL NO. *473*
 2 INTRODUCED BY *Van Valkenburg* *McBallum*
 3

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
 5 YOUTH COURT ACT RELATING TO YOUTHS IN NEED OF SUPERVISION;
 6 CHANGING THE NAME TO "YOUTH IN NEED OF SERVICES"; PROVIDING
 7 THAT THE PARENT OF THE YOUTH IS UNDER THE JURISDICTION OF
 8 THE YOUTH COURT; AMENDING SECTIONS 41-5-103, 41-5-105,
 9 41-5-203, 41-5-204, 41-5-301 THROUGH 41-5-304, 41-5-306,
 10 41-5-511, 41-5-516, 41-5-521 THROUGH 41-5-524, 41-5-533,
 11 41-5-601, 41-5-805, 41-5-911, 41-5-922 THROUGH 41-5-924, AND
 12 45-5-624, MCA."

13
 14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

15 Section 1. Section 41-5-103, MCA, is amended to read:

16 "41-5-103. Definitions. For the purposes of the
 17 Montana Youth Court Act, unless otherwise stated the
 18 following definitions apply:

- 19 (1) "Adult" means an individual who is 18 years of age
 20 or older.
- 21 (2) "Agency" means the department of institutions, the
 22 department of social and rehabilitation services, and any
 23 division or department of either.
- 24 (3) "Commit" means to transfer to legal custody.
- 25 (4) "Court", when used without further qualification,

- 1 means the youth court of the district court.
- 2 (5) "Foster home" means a private residence approved
 3 by the court for placement of a youth.
- 4 (6) "Guardianship" means the status created and
 5 defined by law between a youth and an adult with the
 6 reciprocal rights, duties, and responsibilities.
- 7 (7) "Judge", when used without further qualification,
 8 means the judge of the youth court.
- 9 (8) (a) "Legal custody" means the legal status created
 10 by order of a court of competent jurisdiction that gives a
 11 person the right and duty to:
 12 (i) have physical custody of the youth;
 13 (ii) determine with whom the youth shall live and for
 14 what period;
 15 (iii) protect, train, and discipline the youth; and
 16 (iv) provide the youth with food, shelter, education,
 17 and ordinary medical care.
- 18 (b) An individual granted legal custody of a youth
 19 shall personally exercise his rights and duties as guardian
 20 unless otherwise authorized by the court entering the order.
- 21 (9) "Parent" means the natural or adoptive parent but
 22 does not include a person whose parental rights have been
 23 judicially terminated, nor does it include the putative
 24 father of an illegitimate youth unless his paternity is
 25 established by an adjudication or by other clear and

1 convincing proof.

2 (10) "Youth" means an individual who is less than 18
3 years of age without regard to sex or emancipation.

4 (11) "Youth court" means the court established pursuant
5 to this chapter to hear all proceedings in which a youth is
6 alleged to be a delinquent youth, a youth in need of
7 supervision services, or a youth in need of care and
8 includes the youth court, the judge, and probation officers.

9 (12) "Delinquent youth" means a youth:

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

12 (b) who, having been placed on probation as a
13 delinquent youth or a youth in need of supervision services,
14 violates any condition of his probation.

15 (13) "Youth in need of supervision services" means a
16 youth who commits an offense prohibited by law which, if
17 committed by an adult, would not constitute a criminal
18 offense, including includes but is not limited to a youth
19 who:

20 (a) violates any Montana municipal or state law
21 regarding use of alcoholic beverages by minors three or more
22 times;

23 (b) habitually disobeys the reasonable and lawful
24 demands of his parents or guardian or is ungovernable and
25 beyond their control;

1 (c) being subject to compulsory school attendance, is
2 habitually truant from school; or

3 (d) has committed any of the acts of a delinquent
4 youth but whom the youth court in its discretion chooses to
5 regard as a youth in need of supervision services.

6 (14) "Youth in need of care" means a youth as defined
7 in 41-3-102.

8 (15) "Custodian" means a person other than a parent or
9 guardian to whom legal custody of the youth has been given
10 but does not include a person who has only physical custody.

11 (16) "Necessary parties" include the youth, his
12 parents, guardian, custodian, or spouse.

13 (17) "State youth correctional facility" means a
14 residential facility for the rehabilitation of delinquent
15 youth such as Pine Hills school in Miles City, and Mountain
16 View school in Helena, and Swan River youth forest camp.

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

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

21 (20) "District youth guidance home" means a
22 family-oriented residence established in a judicial district
23 of the state of Montana as an alternative to existing state
24 youth correctional facilities, the function of which is to
25 provide a home and guidance through adult supervision for

1 delinquent youths and youths in need of supervision.

2 (21) "Restitution" means payments in cash to the victim
3 or with services to the victim or the general community when
4 these payments are made under the jurisdiction of a youth
5 court proceeding.

6 (22) "Semisecure facility" means any community-based
7 facility, including but not limited to shelter care
8 facilities, specialized foster and group homes, and runaway
9 centers that are operated in a manner to be physically
10 restricting.

11 (23) "Secure facility" means a facility that, by virtue
12 of its physical structure, is physically restrictive."

13 Section 2. Section 41-5-105, MCA, is amended to read:

14 "41-5-105. Youth court committee. (1) In every county
15 of the state the judge having jurisdiction may appoint there
16 shall be a committee, willing to act without compensation,
17 composed of not less than three or more than seven reputable
18 citizens including youth representatives which committee
19 shall be designated as a youth court committee. This
20 committee shall be subject to the call of the judge to meet
21 and confer with him on all matters pertaining to the youth
22 department of the court including the appointment of
23 probation officers and shall act as a supervisory committee
24 of youth detention homes.

25 (2) The committee shall include but not be limited to:

1 (a) the chief probation officer or his designee;

2 (b) the county welfare director;

3 (c) the chairman of a child abuse team, appointed by
4 the county commissioners;

5 (d) a public health nurse assigned school duties,
6 appointed by the county commissioners;

7 (e) a county commissioner, or other elected county
8 official with budget determination authority;

9 (f) a person from the major high school district
10 holding an administrative position, appointed by the county
11 commissioners;

12 (g) a private sector representative, appointed by the
13 county commissioners.

14 (3) The committee shall insure the coordination of
15 social services to youths voluntarily receiving social
16 services.

17 (4) The committee shall advise county officials on the
18 budgets for locally funded programs for youths voluntarily
19 receiving social services or for youths in need of
20 services."

21 Section 3. Section 41-5-203, MCA, is amended to read:

22 "41-5-203. Jurisdiction of the court. (1) Except as
23 provided in subsection (2), the court has exclusive original
24 jurisdiction of all proceedings under the Montana Youth
25 Court Act in which a youth is alleged to be a delinquent

1 youth, a youth in need of supervision ~~services~~, or a youth
2 in need of care or concerning any person under 21 years of
3 age charged with having violated any law of the state or
4 ordinance of any city or town other than a traffic or fish
5 and game law prior to having become 18 years of age.

6 (2) Justice, municipal, and city courts have
7 concurrent jurisdiction with the youth court over all
8 alcoholic beverage violations alleged to have been committed
9 by a youth.

10 ~~(3) The court also has jurisdiction over the parent of~~
11 ~~a youth alleged to be in need of services."~~

12 Section 4. Section 41-5-204, MCA, is amended to read:

13 "41-5-204. Venue and transfer. (1) The county where a
14 youth is a resident has initial jurisdiction over any youth
15 alleged to be a delinquent youth, a youth in need of
16 ~~supervision services~~, or a youth in need of care. The youth
17 court of that county shall assume the initial handling of
18 the case. ~~Transfers Except in the case of a youth in need of~~
19 ~~services, transfers~~ of venue may be made to any of the
20 following counties in the state:

21 (a) the county in which the youth is apprehended or
22 found;

23 (b) the county in which the youth is alleged to have
24 violated the law;

25 (c) the county of residence of the youth's parents or

1 guardian.

2 (2) A change of venue may be ordered at any time by
3 the concurrence of the youth court judges of both counties
4 in order to assure a fair, impartial, and speedy hearing and
5 final disposition of the case.

6 (3) In the case of a youth 16 years of age or older
7 who is accused of one of the serious offenses listed in
8 41-5-206, the court in the county where the offense occurred
9 shall serve as a transfer hearing court, and if the youth is
10 to be tried in district court, the charge shall be filed and
11 trial held in the district court of the county where the
12 offense occurred."

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

14 "41-5-301. Preliminary investigation and disposition.

15 (1) Whenever the court receives information from any agency
16 or person, based upon reasonable grounds, that a youth is or
17 appears to be a delinquent youth or a youth in need of
18 ~~supervision services~~ or, being subject to a court order or
19 consent order, has violated the terms thereof, the probation
20 officer shall make a preliminary inquiry into the matter.

21 (2) The probation officer may:

22 (a) require the presence of any person relevant to the
23 inquiry;

24 (b) request subpoenas from the judge to accomplish
25 this purpose;

1 (c) require investigation of the matter by any law
2 enforcement agency or any other appropriate state or local
3 agency.

4 (3) If the probation officer determines that the facts
5 indicate a youth in need of care, the matter shall be
6 immediately referred to the department of social and
7 rehabilitation services.

8 (4) (a) The probation officer in the conduct of the
9 preliminary inquiry shall:

10 (i) advise the youth of the youth's rights under this
11 chapter and the constitutions of the state of Montana and
12 the United States;

13 (ii) determine whether the matter is within the
14 jurisdiction of the court;

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

18 (b) Once relevant information is secured, the
19 probation officer shall:

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

22 (ii) terminate the inquiry upon the determination that
23 no further action be taken;

24 (iii) release the youth immediately upon the
25 determination that the filing of a petition is not

1 authorized.

2 (5) The probation officer upon determining that
3 further action is required may:

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

8 (b) provide for treatment or adjustment involving
9 probation or other disposition authorized under 41-5-401
10 through 41-5-403, provided such treatment or adjustment is
11 voluntarily accepted by the youth's parents or guardian and
12 the youth, and provided further that said matter is referred
13 immediately to the county attorney for review and that the
14 probation officer proceed no further unless authorized by
15 the county attorney;

16 (c) refer the matter to the county attorney for filing
17 a petition charging the youth to be a delinquent youth or a
18 youth in need of supervision services.

19 (6) A petition charging a youth held in detention must
20 be filed within 5 working days from the date the youth was
21 first detained or the petition shall be dismissed and the
22 youth released unless good cause is shown to further detain
23 such youth. The petition for a youth in need of services
24 must be accompanied by an affidavit stating the facts upon
25 which the petition is based.

1 (7) If no petition is filed under this section, the
 2 complainant and victim, if any, shall be informed by the
 3 probation officer of the action and the reasons therefor and
 4 shall be advised of the right to submit the matter to the
 5 county attorney for review. The county attorney, upon
 6 receiving a request for review, shall consider the facts,
 7 consult with the probation officer, and make the final
 8 decision as to whether a petition shall or shall not be
 9 filed."

10 Section 6. Section 41-5-303, MCA, is amended to read:

11 "41-5-303. Rights of youth upon apprehension. When a
 12 youth is detained for investigation or questioning upon a
 13 matter which could result in a petition alleging that the
 14 youth being detained is either delinquent or in need of
 15 supervision services, the following requirements must be
 16 met:

17 (1) The youth shall be immediately and effectively
 18 advised of his constitutional rights and his rights under
 19 this chapter.

20 (2) The youth may waive such rights under the
 21 following situations:

22 (a) when the youth is under the age of 12 years, the
 23 parents of the youth may make an effective waiver;

24 (b) when the youth is over the age of 12 years and the
 25 youth and his parents agree, they may make an effective

1 waiver; and

2 (c) when the youth is over the age of 12 years and the
 3 youth and his parents do not agree, the youth may make an
 4 effective waiver only with advice of counsel."

5 Section 7. Section 41-5-304, MCA, is amended to read:

6 "41-5-304. Fingerprints and photographs. (1) Title 46
 7 shall apply to all law enforcement investigations relating
 8 to a complaint alleging a delinquent youth or youth in need
 9 of supervision services, except that:

10 (a) no youth may be fingerprinted or photographed for
 11 criminal identification purposes except by order of the
 12 youth court judge;

13 (b) no fingerprint records or photographs may be filed
 14 with the federal bureau of investigation, the Montana
 15 department of justice, or any other than the originating
 16 agency, except for sending the fingerprints or photographs
 17 to any law enforcement agency for comparison purposes in the
 18 original investigation.

19 (2) At such time as the proceedings in the matter,
 20 including appeals, are complete, the fingerprint records and
 21 photographs shall be destroyed. However, such fingerprint
 22 records and photographs may be retained by the originating
 23 agency for a specific period when ordered by the court for
 24 good cause shown."

25 Section 8. Section 41-5-302, MCA, is amended to read:

1 "41-5-302. Taking into custody. (1) A youth may be
2 taken into custody under the following circumstances:

3 (a) by a law enforcement officer pursuant to a lawful
4 order or process of any court;

5 (b) by a law enforcement officer pursuant to a lawful
6 arrest for violation of the law;

7 (c) by a law enforcement officer, agent of the
8 department of social and rehabilitation services, county
9 attorney, or a person or physician treating a youth when
10 there is reason to believe the youth is a youth in need of
11 care and that the residence of the youth or the custody by
12 the person legally responsible for the youth presents an
13 imminent danger to the life or health of the youth;

14 ~~(d) by a law enforcement officer when there is reason~~
15 ~~to believe that the youth is in need of services and is in~~
16 ~~immediate danger to himself or to others.~~

17 (2) The taking of a youth into custody is not an
18 arrest except for the purpose of determining the validity of
19 the taking under the constitution of Montana or the United
20 States."

21 Section 9. Section 41-5-306, MCA, is amended to read:

22 "41-5-306. Place of shelter care or detention. (1) A
23 youth alleged to be a delinquent youth or youth in need of
24 supervision services may be sheltered only in:

25 (a) a licensed foster home or a home approved by the

1 court for the provision of shelter care of youth;

2 (b) a facility operated by a licensed child welfare
3 agency;

4 (c) a licensed attention home or shelter facility
5 which is operated by a nonprofit corporation or the youth
6 court for the provision of shelter care of youth;

7 (d) any other suitable place or facility designated or
8 operated by the court for the supervision of youth in
9 shelter care.

10 (2) The youth may be detained in a jail or other
11 facility for the detention of adults only if:

12 (a) the facilities in subsection (1) are not available
13 or do not provide adequate security;

14 (b) the detention is in an area physically and
15 visually separate and removed from those of adults;

16 (c) it appears to the satisfaction of the court that
17 public safety and protection reasonably require detention;
18 and

19 (d) the court so orders.

20 ~~(3) Such detention for a youth in need of services~~
21 ~~cannot exceed 24 hours without a detention hearing as~~
22 ~~provided in [section 10].~~

23 ~~(3)(4)~~ The official in charge of a jail or other
24 facility for the detention of adult offenders or persons
25 charged with crime shall inform the court immediately if a

1 person who is or appears to be under the age of 18 years is
2 received at the facility. Such official shall bring the
3 person before the court upon request or deliver him to a
4 detention facility designated by the court.

5 ~~44(5)~~ A youth alleged to be in need of care shall be
6 placed only in the facilities stated in subsection (1) of
7 this section and shall not be detained in a jail or other
8 facility intended or used for the detention of adults
9 charged with criminal offenses."

10 NEW SECTION. Section 10. Detention hearing for a
11 youth in need of services. (1) Whenever a youth in need of
12 services has been placed in detention, the court must hold a
13 hearing on the next working day to determine the necessity
14 for continued detention. If the youth court judge is not
15 available, then an officer designated by the judge may
16 conduct the hearing.

17 (2) If for the protection of the youth or others, the
18 court determines that the youth must be held in a facility
19 used for detention of youths charged with or convicted of a
20 criminal offense:

21 (a) such detention may not exceed 14 days; and

22 (b) a petition must be filed within 3 days following
23 the detention order, unless good cause for not so filing is
24 shown.

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

17 Section 12. Section 41-5-516, MCA, is amended to read:

18 "41-5-516. Time limitations on petition hearing --
19 continuance. (1) Unless the allegations of a petition
20 alleging that a youth is a delinquent youth or a youth in
21 need of ~~supervision services~~ are determined by a written
22 admission of the allegations by the youth, the petition
23 shall be dismissed with prejudice if a hearing on the
24 petition is not begun within 15 days after all service is
25 completed. However, either party may move for a continuance

1 under subsection (2) of this section if the youth is not in
2 custody.

3 (2) The youth court may, upon motion of either party
4 or upon the court's own motion, order a continuance if the
5 youth is not in custody and interests of justice so require.
6 All motions for a continuance are addressed to the
7 discretion of the youth court judge and must be considered
8 in the light of the diligence shown on the part of the
9 movant.

10 (3) Delays resulting from service of process or delays
11 resulting from legal actions taken in behalf of the youth
12 shall not be included in the 15-day time limitation."

13 Section 13. Section 41-5-521, MCA, is amended to read:

14 "41-5-521. Adjudicatory hearing. (1) Prior to any
15 adjudicatory hearing, the court shall determine whether the
16 youth admits or denies the offenses alleged in the petition.
17 If the youth denies all offenses alleged in the petition,
18 the youth, his parent, guardian, or attorney may demand a
19 jury trial on such contested offenses. In the absence of
20 such demand, a jury trial is waived. If the youth denies
21 some offenses and admits others, the contested offenses may
22 be dismissed in the discretion of the youth court judge. The
23 adjudicatory hearing shall be set immediately and accorded a
24 preferential priority.

25 (2) An adjudicatory hearing shall be held to determine

1 whether the contested offenses are supported by proof beyond
2 a reasonable doubt in cases involving a youth alleged to be
3 delinquent ~~or in need of supervision~~. If the hearing is
4 before a jury, the jury's function shall be to determine
5 whether the youth committed the contested offenses. If the
6 hearing is before the youth court judge without a jury, the
7 judge shall make and record his findings on all issues. If
8 the allegations of the petitions are not established at the
9 hearing, the youth court shall dismiss the petition and
10 discharge the youth from custody.

11 (3) An adjudicatory hearing shall be recorded verbatim
12 by whatever means the court considers appropriate.

13 (4) The youth charged in a petition must be present at
14 the hearing and, if brought from detention to the hearing,
15 may not appear clothed in institutional clothing.

16 (5) In a hearing on a petition ~~under this section for~~
17 ~~a youth alleged to be delinquent~~, the general public may not
18 be excluded except when the court determines a closed
19 hearing to be in the youth's best interest.

20 (6) If, on the basis of a valid admission by a youth
21 of the allegations of the petition or after the hearing
22 required by this section, a youth is found to be a
23 delinquent youth or a youth in need of supervision, the
24 court shall schedule a dispositional hearing under this
25 chapter.

1 (7) When a jury trial is required in a case, it may be
2 held before a jury selected as provided in Title 25, chapter
3 7, part 2, and M.R.Civ.P., Rule 47.

4 (8) The court, in an adjudicatory hearing for a youth
5 in need of services, shall:

6 (a) consider the following circumstances:

7 (i) whether the course of conduct was inappropriate
8 for the age and circumstances of the youth;

9 (ii) whether the youth has violated a previous order of
10 the court or agreement for voluntary services;

11 (iii) whether the youth has left or refused to follow
12 the reasonable rules of a crisis residential center or
13 alternative residential placement;

14 (iv) whether the youth is an out-of-state runaway or
15 has a history of running away;

16 (v) whether the youth is suffering from a mental or
17 physical condition that has significantly reduced his
18 judgment, though failing to establish a basis for
19 commitment; and

20 (vi) whether the youth is suffering from alcohol or
21 chemical dependence;

22 (b) find by a preponderance of the evidence whether:

23 (i) the facts support a determination that the youth
24 engaged in a course of persistent antisocial conduct;
25 refused to assume his appropriate responsibilities to his

1 parents or guardians or to an agency legally responsible for
2 his proper discipline, training, and education; is without
3 necessary food, clothing, and shelter; or has committed a
4 delinquent act;

5 (ii) the youth's physical or emotional well-being is
6 imminently threatened by such conduct; and

7 (iii) appropriate voluntary services have been made
8 available and the youth has refused such services;

9 (c) find by a preponderance of evidence whether the
10 parent or legal guardian is responsible.

11 (9) If the allegations of the petition are not
12 established at the hearing, the youth court shall dismiss
13 the petition and discharge the youth from custody."

14 Section 14. Section 41-5-522, MCA, is amended to read:

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

21 (2) Before conducting the dispositional hearing, the
22 court shall direct that a social summary or predisposition
23 report be made in writing by a probation officer concerning
24 the youth, his family, his environment, and other matters
25 relevant to the need for care or rehabilitation or

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

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

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

24 (5) If the court finds that it is in the best interest
 25 of the youth, the youth, his parents, or guardian may be

1 temporarily excluded from the hearing during the taking of
 2 evidence on the issues of need for treatment and
 3 rehabilitation.

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

- 8 (a) age of the youth;
- 9 (b) ability of the youth to pay;
- 10 (c) ability of the parents or legal guardian to pay;
- 11 (d) amount of damage to the victim; and
- 12 (e) legal remedies of the victim."

13 Section 15. Section 41-5-523, MCA, is amended to read:
 14 "41-5-523. Disposition of delinquent youth and youth
 15 in need of supervision services. (1) If a youth is found to
 16 be delinquent or in need of supervision services, the court
 17 may enter its judgment making the following disposition:

- 18 (a) place the youth on probation;
- 19 (b) place in a licensed foster home or a home approved
 20 by the court;
- 21 (c) place the youth in a private agency responsible
 22 for the care and rehabilitation of such a youth, including
 23 but not limited to a district youth guidance home;
- 24 (d) transfer legal custody to the department of
 25 institutions; provided, however, that in the case of a youth

1 in need of ~~supervision services~~, such transfer of custody
 2 does not authorize the department of institutions to place
 3 the youth in a state youth correctional facility and such
 4 custody may not continue for a period of more than 6 months
 5 without a subsequent court order after notice and hearing;

6 (e) such further care and treatment or evaluation that
 7 the court considers beneficial to the youth, consistent with
 8 subsection (d) of this section, including mental health
 9 counseling or medical treatment, if appropriate;

10 (f) place the youth in need of services in an approved
 11 treatment facility for evaluation not to exceed 45 days;

12 (g) place the youth in need of services in alternative
 13 residential placement;

14 ~~(f)(h)~~ order restitution by the youth.

15 (2) At any time after the youth has been taken into
 16 custody, the court may, with the consent of the youth in the
 17 manner provided in 41-5-303 for consent by a youth to waiver
 18 of his constitutional rights or after the youth has been
 19 adjudicated delinquent or in need of ~~supervision~~ services:

20 (a) order the youth to be evaluated by the department
 21 of institutions for a period not to exceed 45 days of
 22 evaluation at a reception and evaluation center for youths;
 23 or

24 (b) in the case of a delinquent youth 16 years or
 25 older whom the court considers a suitable person for

1 placement at a youth forest camp, notify the director of the
 2 department of institutions of the finding. The director of
 3 the department of institutions shall then designate to the
 4 court the facility to which the youth shall be delivered for
 5 evaluation. The court may then commit the youth to the
 6 department of institutions for a period not to exceed 45
 7 days for the purpose of evaluation as to the youth's
 8 suitability for placement and order the youth delivered for
 9 evaluation to the youth facility designated by the director.
 10 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
 16 institutions reports and states the reasons to the court why
 17 the youth is not suitable for placement, the youth shall be
 18 returned to the court for such further disposition as the
 19 court may consider advisable under the provisions of this
 20 chapter. The costs of transporting the youth to the
 21 designated youth facility for evaluation and cost of
 22 returning the youth to the court shall be borne by the
 23 county of residence of the youth.

24 (3) Any disposition of a youth in need of services
 25 ordering placement in a semisecure or secure treatment

1 facility must be reviewed every 60 days.

2 (4) When the court finds that a youth in need of
3 services is dependent upon alcohol or chemicals, that there
4 is a need for treatment, and that the youth need not be
5 placed in a secure facility, the court shall place the youth
6 in a community-based alcohol and chemical dependence program
7 for residential or outpatient treatment.

8 ~~(3)~~(5) No youth may be committed or transferred to a
9 penal institution or other facility used for the execution
10 of sentence of adult persons convicted of crimes except as
11 provided by subsection (2)(b).

12 ~~(4)~~(6) Any order of the court may be modified at any
13 time.

14 ~~(5)~~(7) Whenever the court vests legal custody in an
15 agency, institution, or department, it must transmit with
16 the dispositional judgment copies of a medical report and
17 such other clinical, predisposition, or other reports and
18 information pertinent to the care and treatment of the
19 youth.

20 ~~(6)~~(8) The order of commitment to the department of
21 institutions shall read as follows:

22 ORDER OF COMMITMENT

23 In the district court for the judicial district

24 State of Montana)

25) ss.

1 County of)

2 On the day of, 19... .., a minor of this
3 county, years of age, was brought before me charged
4 with, Upon due proof I find that is a suitable
5 person to be committed to the department of institutions.

6 It is ordered that be committed to the department
7 of institutions until

8 The names, addresses, and occupations of the parents
9 are:

10 Name	11 Address	12 Occupation
13	14	15
16	17	18

19 The names and addresses of their nearest relatives are:

20
21

22 Witness my hand this day of, A.D. 19...

23
24 Judge

25 (9) Any judgment in respect of a youth in need of
services shall impose upon the parents of the youth the duty
to ensure the youth's compliance with the judgment."

26 Section 16. Section 41-5-524, MCA, is amended to read:
27 "41-5-524. Consent decree with petition. (1) At any
28 time after the filing of a petition alleging delinquency or
29 need of supervision services and before the entry of a

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1 judgment, the court may, on motion of counsel for the youth
 2 or on the court's own motion, suspend the proceedings and
 3 continue the youth under supervision under terms and
 4 conditions negotiated with probation services and agreed to
 5 by all necessary parties. The court's order continuing the
 6 child under supervision under this section shall be known as
 7 a "consent decree". The procedures used and dispositions
 8 permitted under this section shall conform to the procedures
 9 and dispositions specified in 41-5-401 through 41-5-403
 10 relating to consent adjustments without petition.

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

14 (3) If, either prior to discharge by probation
 15 services or expiration of the consent decree, a new petition
 16 alleging delinquency or need of supervision services is
 17 filed against the youth or if the youth fails to fulfill the
 18 expressed terms and conditions of the consent decree, the
 19 petition under which the youth was continued under
 20 supervision may be reinstated in the discretion of the
 21 county attorney in consultation with probation services. In
 22 the event of reinstatement, the proceeding on the petition
 23 shall be continued to conclusion as if the consent decree
 24 had never been entered.

25 (4) A youth who is discharged by probation services or

1 who completes a period under supervision without
 2 reinstatement of the original petition may not again be
 3 proceeded against in any court for the same offense alleged
 4 in the petition, and the original petition shall be
 5 dismissed with prejudice. Nothing in this subsection
 6 precludes a civil suit against the youth for damages arising
 7 from his conduct.

8 (5) In all cases where the terms of the consent decree
 9 shall extend for a period in excess of 6 months, the
 10 probation officer shall at the end of each 6-month period
 11 submit a report which shall be reviewed by the court."

12 Section 17. Section 41-5-533, MCA, is amended to read:
 13 "41-5-533. Probation revocation -- disposition. (1) A
 14 youth on probation incident to an adjudication that he is a
 15 delinquent youth ~~or a youth in need of supervision~~ and who
 16 violates a term of such probation may be proceeded against
 17 in a probation revocation proceeding. A proceeding to revoke
 18 probation shall be done by filing in the original proceeding
 19 a petition styled "petition to revoke probation".

20 (2) Petitions to revoke probation shall be screened,
 21 reviewed, and prepared in the same manner and shall contain
 22 the same information as petitions alleging delinquency or
 23 need--of--supervision. Procedures of the Montana Youth Court
 24 Act regarding taking into custody and detention shall apply.
 25 The petition shall state the terms of probation alleged to

1 have been violated and the factual basis for such
2 allegations.

3 (3) The standard of proof in probation revocation
4 proceedings is the same standard used in probation
5 revocation of an adult and the hearing shall be before the
6 youth court without a jury. In all other respects
7 proceedings to revoke probation are governed by the
8 procedures, rights, and duties applicable to proceedings on
9 petitions alleging that the youth is delinquent ~~or a youth~~
10 ~~in-need-of-supervision~~. If a youth is found to have violated
11 a term of his probation, the youth court may make any
12 judgment of disposition that could have been made in the
13 original case."

14 NEW SECTION. Section 18. Youth in need of services --
15 violation of court order -- hearing -- disposition. (1) When
16 a youth in need of services or parent is alleged to be in
17 violation of the court order provided for in 41-5-523, the
18 court may, on its own motion or on the motion of the county
19 attorney, hold a hearing to determine the facts of the
20 alleged violation.

21 (2) If the court finds that the youth in need of
22 services or his parent has violated the court order, it may:

- 23 (a) modify the previous order;
- 24 (b) if an adult, incarcerate the person in the county
25 jail, not to exceed 5 days for each violation. The court may

1 order successive periods of confinement until the person
2 comes into compliance with the court order.

3 (c) if a youth, order semisecure or secure detention,
4 excluding a correctional facility or jail, for not to exceed
5 3 days for each violation. The court may order successive
6 periods of detention until the person comes into compliance
7 with the court order.

8 Section 19. Section 41-5-601, MCA, is amended to read:

9 "41-5-601. Publicity. No publicity shall be given to
10 the identity of an arrested youth or to any matter or
11 proceeding in the youth court involving a youth proceeded
12 against as, or found to be, a delinquent youth or youth in
13 need of supervision services except as provided in
14 41-5-521(5)."

15 Section 20. Section 41-5-805, MCA, is amended to read:

16 "41-5-805. Financial investigation by county welfare
17 department. (1) Whenever a disposition under 41-5-403,
18 41-5-523, or 41-5-524 involves placement in a foster home,
19 child care agency, group home, or private treatment facility
20 and the department of social and rehabilitation services is
21 responsible for all or part of the cost of such placement,
22 the probation officer or the court shall notify the
23 department of social and rehabilitation services and order
24 the county welfare department in the youth's county of
25 residence to conduct an investigation of the financial

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

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

18 Section 21. Section 41-5-911, MCA, is amended to read:

19 "41-5-911. Per diem charge to financially able
 20 parents. A youth court judge placing a delinquent youth or a
 21 youth in need of supervision services in a district youth
 22 guidance home may require the parents or parent to pay to
 23 the district youth guidance home a per diem charge as the
 24 judge may determine under the standards set out in Title 53,
 25 chapter 1, part 4, and the department of institutions' rules

1 governing payments for care of residents of institutions as
 2 those provisions and rules apply to the youth and parent or
 3 parents before the court."

4 Section 22. Section 41-5-922, MCA, is amended to read:

5 "41-5-922. Placement of youths by department of
 6 institutions. The department of institutions is hereby
 7 authorized as part of its aftercare program to place a
 8 delinquent youth or a youth in need of supervision services
 9 in a district youth guidance home subject to the approval of
 10 its sponsoring nonprofit corporation or association."

11 Section 23. Section 41-5-923, MCA, is amended to read:

12 "41-5-923. Authority of youth court judge to commit
 13 delinquent youths and youths in need of supervision
 14 services. A youth court judge is hereby authorized in his
 15 discretion to place a delinquent youth or a youth in need of
 16 supervision services in a district youth guidance home for
 17 any period of time up to the child's 21st birthday subject
 18 to the approval of its sponsoring nonprofit corporation or
 19 association."

20 Section 24. Section 41-5-924, MCA, is amended to read:

21 "41-5-924. Continuing jurisdiction of youth court over
 22 youths. The youth court placing a delinquent youth or a
 23 youth in need of supervision services in a district youth
 24 guidance home shall retain continuing jurisdiction over the
 25 youth until the youth becomes 21 years of age or is

1 otherwise discharged by order of the court."

2 Section 25. Section 45-5-624, MCA, is amended to read:

3 "45-5-624. Unlawful possession of an intoxicating
4 substance by children. (1) A person under the age of 18
5 years commits the offense of possession of an intoxicating
6 substance if he knowingly has in his possession an
7 intoxicating substance other than an alcoholic beverage. A
8 person under the age of 19 commits the offense of possession
9 of an intoxicating substance if he knowingly has in his
10 possession an alcoholic beverage, except that he does not
11 commit the offense when in the course of his employment it
12 is necessary to possess alcoholic beverages.

13 (2) A person convicted of the offense of possession of
14 an intoxicating substance shall be fined not to exceed \$50
15 or be imprisoned in the county jail for any term not to
16 exceed 10 days, or both. If proceedings are held in the
17 youth court, the preceding penalty does not apply, and the
18 offender shall be treated as an alleged youth in need of
19 supervision services as defined in 41-5-103(13). In such
20 case, the youth court may enter its judgment under
21 41-5-523."

-End-

STATE OF MONTANA

REQUEST NO. 410-81

FISCAL NOTE

Form BD-15

In compliance with a written request received February 20, 19 81, there is hereby submitted a Fiscal Note for Senate Bill 473 pursuant to Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA).

Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

Description of Proposed Legislation

An act to generally revise the Youth Court Act relating to Youths In Need of Supervision; changing the name to Youth in Need of Services; providing that the parent of the Youth is under the jurisdiction of the Youth Court.

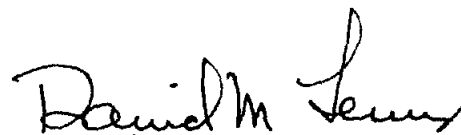
Assumptions

1. The legislation does not create a new service population. The number of youth receiving "voluntary services" would be slightly less than the 3,000 youth currently being served as Youth in Need of Supervision.
2. The number of youth requiring treatment in a secure facility would be approximately 20 per year.
3. The number of formal court hearings required by this legislation would not necessitate additional judicial personnel.
4. Additional out-patient services would be required for youth found to be chemically dependent.
5. The Department of Institutions, Department of Social and Rehabilitation Services, and the Office of Public Instruction are currently providing resources and services to this population.

Fiscal Impact

The legislation is expected to have a fiscal impact of approximately \$446,000 for FY 1982 and \$494,000 for FY 1983.

However, the Board of Crime Control is currently researching this legislation to determine how much of the impact would be accommodated by existing budgets.



BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2-21-81