

HOUSE BILL NO. 272

INTRODUCED BY NILSON

BY REQUEST OF THE DEPARTMENT OF INSTITUTIONS

IN THE HOUSE

January 15, 1983	Introduced and referred to Committee on Judiciary.
January 27, 1983	Committee recommend bill do pass. Report adopted.
January 28, 1983	Bill printed and placed on members' desks.
January 29, 1983	Second reading, do pass as amended.
January 31, 1983	Correctly engrossed.
February 1, 1983	Third reading, passed. Transmitted to Senate.

IN THE SENATE

February 2, 1983	Introduced and referred to Committee on Judiciary.
March 10, 1983	Committee recommend bill be concurred in. Report adopted.
March 12, 1983	Second reading, concurred in.
March 15, 1983	Third reading, concurred in. Ayes, 46; Noes, 2.

IN THE HOUSE

March 15, 1983	Returned to House.
March 16, 1983	Sent to enrolling.  Reported correctly enrolled.

1 House BILL NO. 272  
2 INTRODUCED BY Nixon  
3 BY REQUEST OF THE DEPARTMENT OF INSTITUTIONS  
4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT ELIMINATING THE SWAN  
6 RIVER YOUTH FOREST CAMP AS A PLACE OF COMMITMENT UNDER THE  
7 YOUTH COURT ACT; AMENDING SECTIONS 41-5-103 AND 41-5-523,  
8 MCA."  
9  
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
11 Section 1. Section 41-5-103, MCA, is amended to read:  
12 "41-5-103. Definitions. For the purposes of the  
13 Montana Youth Court Act, unless otherwise stated the  
14 following definitions apply:  
15 (1) "Adult" means an individual who is 18 years of age  
16 or older.  
17 (2) "Agency" means the department of institutions, the  
18 department of social and rehabilitation services, and any  
19 division or department of either.  
20 (3) "Commit" means to transfer to legal custody.  
21 (4) "Court", when used without further qualification,  
22 means the youth court of the district court.  
23 (5) "Foster home" means a private residence approved  
24 by the court for placement of a youth.  
25 (6) "Guardianship" means the status created and

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

to this chapter to hear all proceedings in which a youth is alleged to be a delinquent youth, a youth in need of supervision, or a youth in need of care and includes the youth court, the judge, and probation officers.

(12) "Delinquent youth" means a youth:

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

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

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

(a) violates any Montana municipal or state law regarding use of alcoholic beverages by minors;

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

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

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

(14) "Youth in need of care" means a youth as defined

in 41-3-102.

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

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

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

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

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

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

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

Section 2. Section 41-5-523, MCA, is amended to read:

1       "41-5-523. Disposition of delinquent youth and youth  
2 in need of supervision. (1) If a youth is found to be  
3 delinquent or in need of supervision, the court may enter  
4 its judgment making the following disposition:

5       (a) place the youth on probation;

6       (b) place in a licensed foster home or a home approved  
7 by the court;

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

11       (d) transfer legal custody to the department of  
12 institutions; provided, however, that in the case of a youth  
13 in need of supervision, such transfer of custody does not  
14 authorize the department of institutions to place the youth  
15 in a state youth correctional facility and such custody may  
16 not continue for a period of more than 6 months without a  
17 subsequent court order after notice and hearing;

18       (e) such further care and treatment or evaluation that  
19 the court considers beneficial to the youth, consistent with  
20 subsection (1)(d) of this section;

21       (f) order restitution by the youth.

22       (2) At any time after the youth has been taken into  
23 custody, the court may, with the consent of the youth in the  
24 manner provided in 41-5-303 for consent by a youth to waiver  
25 of his constitutional rights or after the youth has been

1 adjudicated delinquent or in need of supervision<sub>2</sub>

2       ~~(a)~~ order the youth to be evaluated by the department  
3 of institutions for a period not to exceed 45 days of  
4 evaluation at a reception and evaluation center for youths<sub>1</sub>  
5 or<sub>2</sub>

6       ~~(b) in the case of a delinquent youth 16 years or~~  
7 ~~older whom the court considers a suitable person for~~  
8 ~~placement at a youth forest camp, notify the director of the~~  
9 ~~department of institutions of the findings. The director of~~  
10 ~~the department of institutions shall then designate to the~~  
11 ~~court the facility to which the youth shall be delivered for~~  
12 ~~evaluation. The court may then commit the youth to the~~  
13 ~~department of institutions for a period not to exceed 45~~  
14 ~~days for the purpose of evaluation as to the youth's~~  
15 ~~suitability for placement and order the youth delivered for~~  
16 ~~evaluation to the youth facility designated by the director.~~  
17 ~~If after the evaluation the department of institutions~~  
18 ~~reports to the court that such child is suitable for~~  
19 ~~placement in a youth forest camp and if there is space~~  
20 ~~available at a camp, the court may then commit such child~~  
21 ~~directly to the youth forest camp under the terms of~~  
22 ~~commitment of this chapter. If the department of~~  
23 ~~institutions reports and states the reasons to the court why~~  
24 ~~the youth is not suitable for placement, the youth shall be~~  
25 ~~returned to the court for such further disposition as the~~

~~court may consider advisable under the provisions of this chapter. The costs of transporting the youth to the designated youth facility for evaluation and cost of returning the youth to the court shall be borne by the county of residence of the youth.~~

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

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

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

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

#### ORDER OF COMMITMENT

State of Montana )

) ss.

County of ..... )

In the district court for the .... Judicial District.

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

county, .... years of age, was brought before me charged with ....., Upon due proof I find that .... is a suitable person to be committed to the department of institutions.

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

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

Name	Address	Occupation
.....	.....	.....
.....	.....	.....

.....

.....

The names and addresses of their nearest relatives are:

.....

.....

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

.....

Judge"

-End-

Approved by Committee  
on Judiciary

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16 or older.  
17 (2) "Agency" means the department of institutions, the  
18 department of social and rehabilitation services, and any  
19 division or department of either.  
20 (3) "Commit" means to transfer to legal custody.  
21 (4) "Court", when used without further qualification,  
22 means the youth court of the district court.  
23 (5) "Foster home" means a private residence approved  
24 by the court for placement of a youth.  
25 (6) "Guardianship" means the status created and

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

to this chapter to hear all proceedings in which a youth is alleged to be a delinquent youth, a youth in need of supervision, or a youth in need of care and includes the youth court, the judge, and probation officers.

(12) "Delinquent youth" means a youth:

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

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

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

(a) violates any Montana municipal or state law regarding use of alcoholic beverages by minors;

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

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

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

(14) "Youth in need of care" means a youth as defined

in 41-3-102.

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

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

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

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

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

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

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

Section 2. Section 41-5-523, MCA, is amended to read:

"41-5-523. Disposition of delinquent youth and youth in need of supervision. (1) If a youth is found to be delinquent or in need of supervision, the court may enter its judgment making the following disposition:

(a) place the youth on probation;

(b) place in a licensed foster home or a home approved by the court;

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

(d) transfer legal custody to the department of institutions; provided, however, that in the case of a youth in need of supervision, such transfer of custody does not authorize the department of institutions to place the youth in a state youth correctional facility and such custody may not continue for a period of more than 6 months without a subsequent court order after notice and hearing;

(e) such further care and treatment or evaluation that the court considers beneficial to the youth, consistent with subsection (1)(d) of this section;

(f) order restitution by the youth.

(2) At any time after the youth has been taken into custody, the court may, with the consent of the youth in the manner provided in 41-5-303 for consent by a youth to waiver of his constitutional rights or after the youth has been

adjudicated delinquent or in need of supervision,

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

~~(b) in the case of a delinquent youth 16 years or older whom the court considers a suitable person for placement at a youth forest camp, notify the director of the department of institutions of the findings. The director of the department of institutions shall then designate to the court the facility to which the youth shall be delivered for evaluation. The court may then commit the youth to the department of institutions for a period not to exceed 45 days for the purpose of evaluation as to the youth's suitability for placement and order the youth delivered for evaluation to the youth facility designated by the director. If after the evaluation the department of institutions reports to the court that such child is suitable for placement in a youth forest camp and if there is space available at a camp, the court may then commit such child directly to the youth forest camp under the terms of commitment of this chapter. If the department of institutions reports and states the reasons to the court why the youth is not suitable for placement, the youth shall be returned to the court for such further disposition as the~~



~~court may consider advisable under the provisions of this chapters. The costs of transporting the youth to the designated youth facility for evaluation and cost of returning the youth to the court shall be borne by the county of residence of the youth.~~

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

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

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

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

ORDER OF COMMITMENT

State of Montana )

) ss.

County of ..... )

In the district court for the .... Judicial District.

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

county, .... years of age, was brought before me charged with ..... Upon due proof I find that .... is a suitable person to be committed to the department of institutions.

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

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

Name	Address	Occupation
.....	.....	.....
.....	.....	.....

.....

.....

The names and addresses of their nearest relatives are:

.....

.....

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

.....

Judge"

-End-

## HOUSE BILL NO. 272

INTRODUCED BY NILSON

BY REQUEST OF THE DEPARTMENT OF INSTITUTIONS

A BILL FOR AN ACT ENTITLED: "AN ACT ELIMINATING THE SWAN RIVER YOUTH FOREST CAMP AS A PLACE OF COMMITMENT UNDER THE YOUTH COURT ACT AND PROVIDING FOR EVALUATION OF THOSE COMMITTED TO THE CAMP; AMENDING SECTIONS 41-5-103, AND 41-5-523, AND 53-30-212, MCA."

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

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

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

(1) "Adult" means an individual who is 18 years of age or older.

(2) "Agency" means the department of institutions, the department of social and rehabilitation services, and any division or department of either.

(3) "Commit" means to transfer to legal custody.

(4) "Court", when used without further qualification, means the youth court of the district court.

(5) "Foster home" means a private residence approved by the court for placement of a youth.

(6) "Guardianship" means the status created and defined by law between a youth and an adult with the reciprocal rights, duties, and responsibilities.

(7) "Judge", when used without further qualification, means the judge of the youth court.

(8) (a) "Legal custody" means the legal status created by order of a court of competent jurisdiction that gives a person the right and duty to:

(i) have physical custody of the youth;

(ii) determine with whom the youth shall live and for what period;

(iii) protect, train, and discipline the youth; and

(iv) provide the youth with food, shelter, education, and ordinary medical care.

(b) An individual granted legal custody of a youth shall personally exercise his rights and duties as guardian unless otherwise authorized by the court entering the order.

(9) "Parent" means the natural or adoptive parent but does not include a person whose parental rights have been judicially terminated, nor does it include the putative father of an illegitimate youth unless his paternity is established by an adjudication or by other clear and convincing proof.

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

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

(12) "Delinquent youth" means a youth:

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

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

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

(a) violates any Montana municipal or state law regarding use of alcoholic beverages by minors;

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

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

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

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

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

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

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

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

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

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

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

Section 2. Section 41-5-523, MCA, is amended to read:

"41-5-523. Disposition of delinquent youth and youth in need of supervision. (1) If a youth is found to be delinquent or in need of supervision, the court may enter its judgment making the following disposition:

(a) place the youth on probation;

(b) place in a licensed foster home or a home approved by the court;

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

(d) transfer legal custody to the department of institutions; provided, however, that in the case of a youth in need of supervision, such transfer of custody does not authorize the department of institutions to place the youth in a state youth correctional facility and such custody may not continue for a period of more than 6 months without a subsequent court order after notice and hearing;

(e) such further care and treatment or evaluation that the court considers beneficial to the youth, consistent with subsection (1)(d) of this section;

(f) order restitution by the youth.

(2) At any time after the youth has been taken into custody, the court may, with the consent of the youth in the manner provided in 41-5-303 for consent by a youth to waiver

of his constitutional rights or after the youth has been adjudicated delinquent or in need of supervision,

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

~~(b) in the case of a delinquent youth 16 years or older whom the court considers a suitable person for placement at a youth forest camp, notify the director of the department of institutions of the findings. The director of the department of institutions shall then designate to the court the facility to which the youth shall be delivered for evaluation. The court may then commit the youth to the department of institutions for a period not to exceed 45 days for the purpose of evaluation as to the youth's suitability for placement and order the youth delivered for evaluation to the youth facility designated by the director. If after the evaluation the department of institutions reports to the court that such child is suitable for placement in a youth forest camp and if there is space available at a camp, the court may then commit such child directly to the youth forest camp under the terms of commitment of this chapter. If the department of institutions reports and states the reasons to the court why the youth is not suitable for placement, the youth shall be~~

~~returned to the court for such further disposition as the court may consider advisable under the provisions of this chapter. The costs of transporting the youth to the designated youth facility for evaluation and cost of returning the youth to the court shall be borne by the county of residence of the youth.~~

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

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

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

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

ORDER OF COMMITMENT

State of Montana )

) ss.

County of ..... )

In the district court for the .... Judicial District.

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

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

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

Name	Address	Occupation
.....	.....	.....
.....	.....	.....

.....

.....

The names and addresses of their nearest relatives are:

.....

.....

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

.....

Judge"

~~SECTION 3. SECTION 53-30-212, MCA, IS AMENDED TO READ:~~

"53-30-212. Commutation of sentence to state prison and transfer of prisoner to juvenile correctional facility.

(1) Upon the application of a person under 21 years of age who has been sentenced to the state prison or upon the application of his parents or guardian, the governor may, after consulting with the department of institutions and with the approval of the board of pardons, commute the

1 sentence by committing such person to the department until  
2 he is 21 years of age or until sooner placed or discharged.

3 (2) If such person's behavior after being committed to  
4 the department indicates that he is not a proper person to  
5 reside at one of the department's juvenile facilities, the  
6 governor, after consulting with the department and with the  
7 approval of the board of pardons, may revoke the commutation  
8 and return him to the state prison to serve out his  
9 unexpired term, and the time spent by him at one of the  
10 department's juvenile facilities or while a refugee from one  
11 of the department's juvenile facilities shall not be  
12 considered as a part of his original sentence.

13 (3) Upon recommendation of the warden and with the  
14 approval of the department, a person under 21 years of age  
15 who has been sentenced to the state prison may be  
16 transferred to any juvenile facility under the jurisdiction  
17 and control of the department.

18 (4) Upon recommendation of the warden and approval of  
19 a person sentenced to the state prison or application of a  
20 person sentenced to the state prison and approval of the  
21 warden and with the approval of the department, such person  
22 sentenced to the state prison who is 25 years of age or  
23 younger may be transferred to the Swan River youth forest  
24 camp. ~~Upon such transfer such person~~ PRIOR TO DEPARTMENTAL  
25 APPROVAL OF THE TRANSFER, THE PERSON MUST UNDERGO AN

1 EVALUATION BY THE DEPARTMENT TO DETERMINE HIS SUITABILITY  
2 FOR TRANSFER TO THE CAMP. THE RESULTS OF THE EVALUATION MUST  
3 INCLUDE A FINDING THAT A MINIMUM SECURITY FACILITY IS AN  
4 APPROPRIATE PLACEMENT FOR SUCH PERSON OR THE TRANSFER SHALL  
5 BE DENIED. IF THE PERSON IS TRANSFERRED, HE shall be under  
6 the supervision and control of the facility to which he is  
7 transferred.

8 (5) If such person's behavior after transfer to such  
9 juvenile facility indicates he might be released on parole  
10 or his sentence be commuted and he be discharged from  
11 custody, the superintendent of such facility, with the  
12 approval of the department, may make an appropriate  
13 recommendation to the state board of pardons and the  
14 governor, who may, in their discretion, parole such person  
15 or commute his sentence.

16 (6) If such person's behavior after transfer to a  
17 juvenile facility indicates he is not a proper person to  
18 reside in such facility, upon recommendation of the  
19 superintendent and with the approval of the department, such  
20 person shall be returned to the state prison to serve out  
21 his unexpired term."

-End-

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

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

(1) "Adult" means an individual who is 18 years of age or older.

(2) "Agency" means the department of institutions, the department of social and rehabilitation services, and any division or department of either.

(3) "Commit" means to transfer to legal custody.

(4) "Court", when used without further qualification, means the youth court of the district court.

(5) "Foster home" means a private residence approved by the court for placement of a youth.

(6) "Guardianship" means the status created and defined by law between a youth and an adult with the reciprocal rights, duties, and responsibilities.

(7) "Judge", when used without further qualification, means the judge of the youth court.

(8) (a) "Legal custody" means the legal status created by order of a court of competent jurisdiction that gives a person the right and duty to:

(i) have physical custody of the youth;

(ii) determine with whom the youth shall live and for what period;

(iii) protect, train, and discipline the youth; and

(iv) provide the youth with food, shelter, education, and ordinary medical care.

(b) An individual granted legal custody of a youth shall personally exercise his rights and duties as guardian unless otherwise authorized by the court entering the order.

(9) "Parent" means the natural or adoptive parent but does not include a person whose parental rights have been judicially terminated, nor does it include the putative father of an illegitimate youth unless his paternity is established by an adjudication or by other clear and convincing proof.

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

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

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

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

9 (b) who, having been placed on probation as a  
10 delinquent youth or a youth in need of supervision, violates  
11 any condition of his probation.

12 (13) "Youth in need of supervision" means a youth who  
13 commits an offense prohibited by law which, if committed by  
14 an adult, would not constitute a criminal offense, including  
15 but not limited to a youth who:

16 (a) violates any Montana municipal or state law  
17 regarding use of alcoholic beverages by minors;

18 (b) habitually disobeys the reasonable and lawful  
19 demands of his parents or guardian or is ungovernable and  
20 beyond their control;

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

23 (d) has committed any of the acts of a delinquent  
24 youth but whom the youth court in its discretion chooses to  
25 regard as a youth in need of supervision.

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

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

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

8 (17) "State youth correctional facility" means a  
9 residential facility for the rehabilitation of delinquent  
10 youth such as Pine Hills school in Miles City and Mountain  
11 View school in Helena and Swan River youth forest camp.

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

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

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

22 (21) "Restitution" means payments in cash to the victim  
23 or with services to the victim or the general community when  
24 these payments are made under the jurisdiction of a youth  
25 court proceeding."



Section 2. Section 41-5-523, MCA, is amended to read:

"41-5-523. Disposition of delinquent youth and youth in need of supervision. (1) If a youth is found to be delinquent or in need of supervision, the court may enter its judgment making the following disposition:

(a) place the youth on probation;

(b) place in a licensed foster home or a home approved by the court;

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

(d) transfer legal custody to the department of institutions; provided, however, that in the case of a youth in need of supervision, such transfer of custody does not authorize the department of institutions to place the youth in a state youth correctional facility and such custody may not continue for a period of more than 6 months without a subsequent court order after notice and hearing;

(e) such further care and treatment or evaluation that the court considers beneficial to the youth, consistent with subsection (1)(d) of this section;

(f) order restitution by the youth.

(2) At any time after the youth has been taken into custody, the court may, with the consent of the youth in the manner provided in 41-5-303 for consent by a youth to waiver

of his constitutional rights or after the youth has been adjudicated delinquent or in need of supervision;

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

(b) in the case of a delinquent youth 16 years or older whom the court considers a suitable person for placement at a youth forest camp, notify the director of the department of institutions of the findings. The director of the department of institutions shall then designate to the court the facility to which the youth shall be delivered for evaluation. The court may then commit the youth to the department of institutions for a period not to exceed 45 days for the purpose of evaluation as to the youth's suitability for placement and order the youth delivered for evaluation to the youth facility designated by the director. If after the evaluation the department of institutions reports to the court that such child is suitable for placement in a youth forest camp and if there is space available at a camp, the court may then commit such child directly to the youth forest camp under the terms of commitment of this chapter. If the department of institutions reports and states the reasons to the court why the youth is not suitable for placement, the youth shall be

1 returned-to-the-court-for-such-further--disposition--as--the  
 2 court--may--consider--advisable-under-the-provisions-of-this  
 3 chapters--The--costs--of--transporting--the--youth--to--the  
 4 designated--youth--facility--for--evaluation--and--cost--of  
 5 returning-the-youth-to-the--court--shall--be--borne--by--the  
 6 county-of-residence-of-the-youth.

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

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

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

19 (6) The order of commitment to the department of  
 20 Institutions shall read as follows:

21 ORDER OF COMMITMENT

22 State of Montana )

23 ) ss.

24 County of ..... )

25 In the district court for the .... Judicial District.

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

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

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

9 Name Address Occupation

10 .....

11 .....

12 The names and addresses of their nearest relatives are:

13 .....

14 .....

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

16 .....

17 Judge"

18 ~~SECTION 3. SECTION 53-30-212, MCA, IS AMENDED TO READ:~~

19 "53-30-212. Commutation of sentence to state prison

20 and transfer of prisoner to juvenile correctional facility.

21 (1) Upon the application of a person under 21 years of age

22 who has been sentenced to the state prison or upon the

23 application of his parents or guardian, the governor may,

24 after consulting with the department of institutions and

25 with the approval of the board of pardons, commute the

1 sentence by committing such person to the department until  
2 he is 21 years of age or until sooner placed or discharged.

3 (2) If such person's behavior after being committed to  
4 the department indicates that he is not a proper person to  
5 reside at one of the department's juvenile facilities, the  
6 governor, after consulting with the department and with the  
7 approval of the board of pardons, may revoke the commutation  
8 and return him to the state prison to serve out his  
9 unexpired term, and the time spent by him at one of the  
10 department's juvenile facilities or while a refugee from one  
11 of the department's juvenile facilities shall not be  
12 considered as a part of his original sentence.

13 (3) Upon recommendation of the warden and with the  
14 approval of the department, a person under 21 years of age  
15 who has been sentenced to the state prison may be  
16 transferred to any juvenile facility under the jurisdiction  
17 and control of the department.

18 (4) Upon recommendation of the warden and approval of  
19 a person sentenced to the state prison or application of a  
20 person sentenced to the state prison and approval of the  
21 warden and with the approval of the department, such person  
22 sentenced to the state prison who is 25 years of age or  
23 younger may be transferred to the Swan River youth forest  
24 camp. ~~Upon such transfer such person PRIOR TO DEPARTMENTAL~~  
25 ~~APPROVAL OF THE TRANSFER, THE PERSON MUST UNDERGO AN~~

1 ~~EVALUATION BY THE DEPARTMENT TO DETERMINE HIS SUITABILITY~~  
2 ~~FOR TRANSFER TO THE CAMP. THE RESULTS OF THE EVALUATION MUST~~  
3 ~~INCLUDE A FINDING THAT A MINIMUM SECURITY FACILITY IS AN~~  
4 ~~APPROPRIATE PLACEMENT FOR SUCH PERSON OR THE TRANSFER SHALL~~  
5 ~~BE DENIED. IF THE PERSON IS TRANSFERRED, HE~~ shall be under  
6 the supervision and control of the facility to which he is  
7 transferred.

8 (5) If such person's behavior after transfer to such  
9 juvenile facility indicates he might be released on parole  
10 or his sentence be commuted and he be discharged from  
11 custody, the superintendent of such facility, with the  
12 approval of the department, may make an appropriate  
13 recommendation to the state board of pardons and the  
14 governor, who may, in their discretion, parole such person  
15 or commute his sentence.

16 (6) If such person's behavior after transfer to a  
17 juvenile facility indicates he is not a proper person to  
18 reside in such facility, upon recommendation of the  
19 superintendent and with the approval of the department, such  
20 person shall be returned to the state prison to serve out  
21 his unexpired term."

-End-