

HOUSE BILL NO. 103

INTRODUCED BY D. BROWN, J. BROWN, KEYSER, HANNAH, JENKINS,
PAVLOVICH, IVERSON, LYNCH, PINSONEAULT

IN THE HOUSE

January 7, 1985	Introduced and referred to Committee on Judiciary.
January 14, 1985	On motion, Representatives J. Brown, Keyser, Hannah, Jenkins, Pavlovich, and Iverson and Senators Lynch and Pinsoneault added as additional sponsors.
January 15, 1985	Committee recommend bill do pass as amended. Report adopted.
January 16, 1985	Bill printed and placed on members' desks.
January 17, 1985	Second reading, do pass as amended.
January 18, 1985	Correctly engrossed.
January 19, 1985	Third reading, passed. Transmitted to Senate.

IN THE SENATE

January 22, 1985	Introduced and referred to Committee on Judiciary.
February 12, 1985	Committee recommend bill be concurrred in as amended. Report adopted.
February 15, 1985	Second reading, concurred in as amended.

February 18, 1985

Third reading, concurred in.
Ayes, 45; Noes, 4.

Returned to House with
amendments.

IN THE HOUSE

February 19, 1985

Received from Senate.

March 5, 1985

Second reading, amendments
concurred in.

March 6, 1985

Third reading, amendments
concurred in.

Sent to enrolling.

Reported correctly enrolled.

1 HOUSE BILL NO. 103
2 INTRODUCED BY D. BROWN

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE
5 JURISDICTION PROVISIONS OF THE YOUTH COURT ACT; PROVIDING
6 FOR JURISDICTION OVER AN ALLEGED DELINQUENT YOUTH IN THE
7 COUNTY WHERE THE YOUTH IS ALLEGED TO HAVE VIOLATED THE LAW;
8 PROVIDING FOR DISTRICT COURT JURISDICTION OVER A YOUTH
9 ALLEGED TO HAVE COMMITTED THE OFFENSE OF DELIBERATE HOMICIDE
10 OR MITIGATED DELIBERATE HOMICIDE REGARDLESS OF AGE; AMENDING
11 SECTIONS 41-5-204 AND 41-5-206, MCA."

12
13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

14 Section 1. Section 41-5-204, MCA, is amended to read:
15 "41-5-204. Venue and transfer. (1) The county where a
16 youth is a resident or is alleged to have violated the law
17 has initial jurisdiction over any youth alleged to be a
18 delinquent youth. The youth court shall assume the initial
19 handling of the case.

20 (2) The county where a youth is a resident has initial
21 jurisdiction over any youth alleged to be a youth in need of
22 supervision, or a youth in need of care. The youth court of
23 that county shall assume the initial handling of the case.
24 Transfers of venue may be made to any either of the
25 following counties in the state:

1 (a) the county in which the youth is apprehended or
2 found; or

3 ~~(b) the county in which the youth is alleged to have~~
4 ~~violated the law;~~

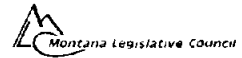
5 ~~(c)~~(b) the county of residence of the youth's parents
6 or guardian.

7 ~~(2)~~(3) In the case of a youth alleged to be a youth in
8 need of supervision or a youth in need of care, a change
9 of venue may be ordered at any time by the concurrence of
10 the youth court judges of both counties in order to assure a
11 fair, impartial, and speedy hearing and final disposition of
12 the case.

13 ~~(3)~~(4) In the case of a youth 16 years of age or older
14 who is accused of one of the serious offenses listed in
15 41-5-206, the court in the county where the offense occurred
16 shall serve as a transfer hearing court, and if the youth is
17 to be tried in district court, the charge shall be filed and
18 trial held in the district court of the county where the
19 offense occurred."

20 Section 2. Section 41-5-206, MCA, is amended to read:

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



-2- INTRODUCED BILL
HB 103

1 (a) the unlawful act alleged to have been committed by
 2 the youth, regardless of age, would constitute deliberate
 3 homicide as defined in 45-5-102 or mitigated deliberate
 4 homicide as defined in 45-5-103 if the act had been
 5 committed by an adult;

6 ~~(a)~~(b) the youth charged was 16 years of age or more
 7 at the time of the conduct alleged to be unlawful and the
 8 unlawful act is one or more of the following:

9 (i) ~~criminal~~ negligent homicide as defined in
 10 ~~45-5-101~~ 45-5-104;

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

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

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

14 (v) burglary or aggravated burglary as defined in
 15 45-6-204;

16 (vi) sexual intercourse without consent as defined in
 17 45-5-503;

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

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

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

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

24 ~~(b)~~(c) a hearing on whether the transfer should be
 25 made is held in conformity with the rules on a hearing on a

1 petition alleging delinquency, except that the hearing will
 2 be to the youth court without a jury;

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

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

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

11 (ii) the seriousness of the offense and the protection
 12 of the community require treatment of the youth beyond that
 13 afforded by juvenile facilities; and

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

16 (2) In transferring the matter of prosecution to the
 17 district court, the court may also consider the following
 18 factors:

19 (a) the sophistication and maturity of the youth,
 20 determined by consideration of his home, environmental
 21 situation, and emotional attitude and pattern of living;

22 (b) the record and previous history of the youth,
 23 including previous contacts with the youth court, law
 24 enforcement agencies, youth courts in other jurisdictions,
 25 prior periods of probation, and prior commitments to

1 juvenile institutions. However, lack of a prior juvenile
2 history with youth courts will not of itself be grounds for
3 denying the transfer.

4 (c) the severity of the offense;

5 (d) the prospects for adequate protection of the
6 public and the likelihood of reasonable rehabilitation of
7 the youth by the use of procedures, services, and facilities
8 currently available to the youth court.

9 (3) Upon transfer to district court, the judge shall
10 make written findings of the reasons why the jurisdiction of
11 the court was waived and the case transferred to district
12 court.

13 (4) The transfer terminates the jurisdiction of the
14 court over the youth with respect to the acts alleged in the
15 petition. No youth may be prosecuted in the district court
16 for a criminal offense originally subject to the
17 jurisdiction of the youth court unless the case has been
18 transferred as provided in this section.

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

22 (6) Any offense not enumerated in subsection (1)(a)
23 that arises during the commission of a crime enumerated in
24 subsection (1)(a) may be:

25 (a) tried in youth court;

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

4 (7) If a youth is found guilty in district court of
5 any of the offenses enumerated in subsection (1)(a) of this
6 section and is sentenced to the state prison, his commitment
7 shall be to the department of institutions which shall
8 confine the youth in whatever institution it considers
9 proper."

-End-

APPROVED BY COMMITTEE
ON JUDICIARY

HOUSE BILL NO. 103

INTRODUCED BY D. BROWN, J. BROWN, KEYSER, HANNAH,
PINSONEAULT, JENKINS, PAVLOVICH, IVERSON, LYNCH

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE
JURISDICTION PROVISIONS OF THE YOUTH COURT ACT; PROVIDING
FOR INITIAL JURISDICTION OVER AN ALLEGED DELINQUENT YOUTH IN
THE COUNTY WHERE THE YOUTH IS ALLEGED TO HAVE VIOLATED THE
LAW; PROVIDING FOR DISTRICT COURT JURISDICTION OVER A YOUTH
12 YEARS OF AGE OR OLDER ALLEGED TO HAVE COMMITTED THE
OFFENSE OF DELIBERATE HOMICIDE OR, MITIGATED DELIBERATE
HOMICIDE REGARDLESS-OF-AGE, ATTEMPTED DELIBERATE HOMICIDE,
OR ATTEMPTED MITIGATED DELIBERATE HOMICIDE; AMENDING
SECTIONS 41-5-204 AND 41-5-206, MCA."

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

Section 1. Section 41-5-204, MCA, is amended to read:

"41-5-204. Venue and transfer. (1) The county where a
youth is a resident or is alleged to have violated the law
has initial jurisdiction over any youth alleged to be a
delinquent youth. The youth court shall assume the initial
handling of the case.

(2) The county where a youth is a resident has initial
jurisdiction over any youth alleged to be a youth in need of
supervision or a youth in need of care. The youth court of

that county shall assume the initial handling of the case.
Transfers of venue may be made to any either ANY of the
following counties in the state:

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

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

(B) THE COUNTY IN WHICH THE YOUTH IS ALLEGED TO HAVE
VIOLATED THE LAW; OR

~~(c)~~(C) the county of residence of the youth's
parents or guardian.

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

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

Section 2. Section 41-5-206, MCA, is amended to read:



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

6 (a) (I) THE YOUTH CHARGED WAS 12 YEARS OF AGE OR MORE
 7 AT THE TIME OF THE CONDUCT ALLEGED TO BE UNLAWFUL AND the
 8 unlawful act alleged--to-have-been-committed-by-the-youth,
 9 regardless-of-age, would constitute deliberate homicide as
 10 defined in 45-5-102 or, mitigated deliberate homicide as
 11 defined in 45-5-103, OR THE ATTEMPT, AS DEFINED IN 45-4-103,
 12 OF EITHER DELIBERATE OR MITIGATED DELIBERATE HOMICIDE if the
 13 act had been committed by an adult; OR

14 (a)(b)(II) the youth charged was 16 years of age or
 15 more at the time of the conduct alleged to be unlawful and
 16 the unlawful act is one or more of the following:

17 (i)(A) criminal negligent homicide as defined in
 18 45-5-101 45-5-104;

19 (i)(B) arson as defined in 45-6-103;

20 (i)(C) aggravated assault as defined in 45-5-202;

21 (i)(D) robbery as defined in 45-5-401;

22 (i)(E) burglary or aggravated burglary as defined in
 23 45-6-204;

24 (i)(F) sexual intercourse without consent as defined
 25 in 45-5-503;

1 (viii)(G) aggravated kidnapping as defined in 45-5-303;
 2 (viii)(H) possession of explosives as defined in
 3 45-8-335;

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

6 (x)(J) attempt as defined in 45-4-103 of any of the
 7 acts enumerated in subsections (1)(A)(II)(A)
 8 through (1)(A)(II)(I);

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

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

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

- 20 (i) the youth committed the delinquent act alleged;
- 21 (ii) the seriousness of the offense and the protection
- 22 of the community require treatment of the youth beyond that
- 23 afforded by juvenile facilities; and
- 24 (iii) the alleged offense was committed in an
- 25 aggressive, violent, or premeditated manner.

1 (2) In transferring the matter of prosecution to the
 2 district court, the court may SHALL also consider the
 3 following factors:

4 (a) the sophistication and maturity of the youth,
 5 determined by consideration of his home, environmental
 6 situation, and emotional attitude and pattern of living;

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

14 (c) the severity of the offense;

15 (d) the prospects for adequate protection of the
 16 public and the likelihood of reasonable rehabilitation of
 17 the youth by the use of procedures, services, and facilities
 18 currently available to the youth court.

19 (3) Upon transfer to district court, the judge shall
 20 make written findings of the reasons why the jurisdiction of
 21 the court was waived and the case transferred to district
 22 court.

23 (4) The transfer terminates the jurisdiction of the
 24 court over the youth with respect to the acts alleged in the
 25 petition. No youth may be prosecuted in the district court

1 for a criminal offense originally subject to the
 2 jurisdiction of the youth court unless the case has been
 3 transferred as provided in this section.

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

7 (6) Any offense not enumerated in subsection (1)(a)
 8 that arises during the commission of a crime enumerated in
 9 subsection (1)(a) may be:

10 (a) tried in youth court;

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

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

-End-

1 HOUSE BILL NO. 103

2 INTRODUCED BY D. BROWN, J. BROWN, KEYSER, HANNAH,
3 PINSONEAULT, JENKINS, PAVLOVICH, IVERSON, LYNCH
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5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE
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7 FOR INITIAL JURISDICTION OVER AN ALLEGED DELINQUENT YOUTH IN
8 THE COUNTY WHERE THE YOUTH IS ALLEGED TO HAVE VIOLATED THE
9 LAW; PROVIDING FOR DISTRICT COURT JURISDICTION OVER A YOUTH
10 12 YEARS OF AGE OR OLDER ALLEGED TO HAVE COMMITTED THE
11 OFFENSE OF SEXUAL INTERCOURSE WITHOUT CONSENT, DELIBERATE
12 HOMICIDE OR, MITIGATED DELIBERATE HOMICIDE REGARDLESS--OF
13 AGE, ATTEMPTED DELIBERATE HOMICIDE, OR ATTEMPTED MITIGATED
14 DELIBERATE HOMICIDE; AMENDING SECTIONS 41-5-204 AND
15 41-5-206, MCA."
16

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

18 Section 1. Section 41-5-204, MCA, is amended to read:

19 "41-5-204. Venue and transfer. (1) The county where a
20 youth is a resident or is alleged to have violated the law
21 has initial jurisdiction over any youth alleged to be a
22 delinquent youth. The youth court shall assume the initial
23 handling of the case.

24 (2) The county where a youth is a resident has initial
25 jurisdiction over any youth alleged to be a youth in need of

1 supervision, or a youth in need of care. The youth court of
2 that county shall assume the initial handling of the case.
3 Transfers of venue may be made to any either ANY of the
4 following counties in the state:

5 (a) the county in which the youth is apprehended or
6 found; or

7 ~~(b) the county in which the youth is alleged to have~~
8 ~~violated the law;~~

9 (B) THE COUNTY IN WHICH THE YOUTH IS ALLEGED TO HAVE
10 VIOLATED THE LAW; OR

11 ~~(c) (b) (C)~~ the county of residence of the youth's
12 parents or guardian.

13 ~~(2) (3)~~ In the case of a youth alleged to be a youth in
14 need of supervision or a youth in need of care, a A change
15 of venue may be ordered at any time by the concurrence of
16 the youth court judges of both counties in order to assure a
17 fair, impartial, and speedy hearing and final disposition of
18 the case.

19 ~~(3) (4)~~ In the case of a youth 16 years of age or older
20 who is accused of one of the serious offenses listed in
21 41-5-206, the court in the county where the offense occurred
22 shall serve as a transfer hearing court, and if the youth is
23 to be tried in district court, the charge shall be filed and
24 trial held in the district court of the county where the
25 offense occurred."

1 Section 2. Section 41-5-206, MCA, is amended to read:
 2 "41-5-206. Transfer to criminal court. (1) After a
 3 petition has been filed alleging delinquency, the court may,
 4 upon motion of the county attorney, before hearing the
 5 petition on its merits, transfer the matter of prosecution
 6 to the district court if:

7 (a) (I) THE YOUTH CHARGED WAS 12 YEARS OF AGE OR MORE
 8 AT THE TIME OF THE CONDUCT ALLEGED TO BE UNLAWFUL AND the
 9 unlawful act ~~alleged-to-have-been-committed-by-the-youth~~
 10 regardless--of--age, would constitute SEXUAL INTERCOURSE
 11 WITHOUT CONSENT AS DEFINED IN 45-5-503, deliberate homicide
 12 as defined in 45-5-102 or, OR mitigated deliberate homicide
 13 as defined in 45-5-103, OR THE ATTEMPT, AS DEFINED IN
 14 45-4-103, OF EITHER DELIBERATE OR MITIGATED DELIBERATE
 15 HOMICIDE if the act had been committed by an adult; OR

16 (a)(b)(II) the youth charged was 16 years of age or
 17 more at the time of the conduct alleged to be unlawful and
 18 the unlawful act is one or more of the following:

19 (i)(A) criminal negligent homicide as defined in
 20 45-5-101 45-5-104;

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

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

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

24 (v)(E) burglary or aggravated burglary as defined in
 25 45-6-204;

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

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

4 (viii)(H) possession of explosives as defined in
 5 45-8-335;

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

8 (x)(J) attempt as defined in 45-4-103 of any of the
 9 acts enumerated in subsections (i)(A)(II)(A)
 10 through (i)(A)(II)(I);

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

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

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

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

23 (ii) the seriousness of the offense and the protection
 24 of the community require treatment of the youth beyond that
 25 afforded by juvenile facilities; and

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

3 (2) In transferring the matter of prosecution to the
4 district court, the court may SHALL also consider the
5 following factors:

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

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

16 (c) the severity of the offense;

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

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

25 (4) The transfer terminates the jurisdiction of the

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

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

9 (6) Any offense not enumerated in subsection (1){a}
10 that arises during the commission of a crime enumerated in
11 subsection (1){a} may be:

12 (a) tried in youth court;

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

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

-End-

COMMITTEE OF THE WHOLE AMENDMENT

2-15-85

SENATE

DATE

5:20 p.m.

TIME

SENATE JUDICIARY STANDING COMMITTEE REPORT

MR. CHAIRMAN: I MOVE TO AMEND

OF 2/12/85 ON HOUSE BILL

No. 103

~~XX~~ as follows:
~~XX~~
~~Color~~

Strike Amendments No. 1 and 4 in their entirety.

Go
ADOPT
REJECT

[Signature]
REGAN

SENATE

STANDING COMMITTEE REPORT

Page 1 of 2

February 12 19 85

MR. PRESIDENT

We, your committee on JUDICIARY

having had under consideration HOUSE BILL No. 103

third reading copy (blue color)

(SENATOR DANIELS)

REVISE YOUTH COURT JURISDICTION-YOUTH HOMICIDE TRIABLE IN DISTRICT COURT.

Respectfully report as follows: That HOUSE BILL No. 103

be amended as follows:

- 1. Title, line 11. Following: "OF" Strike: "SEXUAL INTERCOURSE WLTOUT CONSENT"
2. Title, line 14. Following: "SECTIONS" Insert: "41-5-201," Following: "41-5-204" Insert: ",,"

CONTINUED [Signature] Chairman

lmd

Page 2 of 2

February 12 19 85

HOUSE BILL NO. 103

3. Page 1, line 18. Insert: "Section 1. Section 41-5-201, MCA, is amended to read:

41-5-201. Youth court judge. (1) Each judicial district in the state shall have at least one judge of the youth court. His duties shall be to:

- (a) appoint and supervise qualified personnel to staff the youth division probation departments within the judicial district;
(b) conduct hearings on youth court proceedings under this chapter;
(c) perform any other functions consistent with the legislative purpose of this chapter.

(2) In each multijudge judicial district the judges shall, by court rule, designate one or more of their number to act as youth court judge in each county in the judicial district for a fixed period of time. Service as youth court judge may be rotated among the different judges of the judicial district and among the individual counties within the judicial district for given periods of time. Continuity of service of a given judge as youth court judge and continuity in the operation and policies of the youth court in the county having the largest population in the judicial district shall be the principal consideration of the rule."

Renumber: all subsequent sections

4. Page 3, line 10. Following: "constitute" Strike: remainder of line 10 through "41-5-503," on line 11

3. Page 5, line 4. Following: "may" Strike: "SHALL" Insert: "may"

4. Page 6, line 21. Following: "proper" Insert: "; however, no youth under 16 years of age may be confined in the state prison"

AND AS AMENDED BE CONCURRED IN

DOX PAGE

[Signature] Senator Joe Mazurek Chairman Report adopted

mc

1 HOUSE BILL NO. 103

2 INTRODUCED BY D. BROWN, J. BROWN, KEYSER, HANNAH,
3 PINSONEAULT, JENKINS, PAVLOVICH, IVERSON, LYNCH

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5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE
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8 THE COUNTY WHERE THE YOUTH IS ALLEGED TO HAVE VIOLATED THE
9 LAW; PROVIDING FOR DISTRICT COURT JURISDICTION OVER A YOUTH
10 12 YEARS OF AGE OR OLDER ALLEGED TO HAVE COMMITTED THE
11 OFFENSE OF ~~SEXUAL--INTERCOURSE--WITHOUT--CONSENT~~, SEXUAL
12 INTERCOURSE WITHOUT CONSENT, DELIBERATE HOMICIDE OR,
13 MITIGATED DELIBERATE HOMICIDE REGARDLESS-OF-AGE, ATTEMPTED
14 DELIBERATE HOMICIDE, OR ATTEMPTED MITIGATED DELIBERATE
15 HOMICIDE; AMENDING SECTIONS 41-5-201, 41-5-204, AND
16 41-5-206, MCA."

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

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21 district in the state shall have at least one judge of the
22 youth court. His duties shall be to:

23 (a) appoint and supervise qualified personnel to staff
24 the youth division probation departments within the judicial
25 district;

1 (b) conduct hearings on youth court proceedings under
2 this chapter;

3 (c) perform any other functions consistent with the
4 legislative purpose of this chapter.

5 (2) In each multijudge judicial district the judges
6 shall, by court rule, designate one or more of their number
7 to act as youth court judge in each county in the judicial
8 district for a fixed period of time. Service as youth court
9 judge may be rotated among the different judges of the
10 judicial district and among the individual counties within
11 the judicial district for given periods of time. Continuity
12 of service of a given judge as youth court judge and
13 continuity in the operation and policies of the youth court
14 in the county having the largest population in the judicial
15 district shall be the principal consideration of the rule."

16 Section 2. Section 41-5-204, MCA, is amended to read:

17 "41-5-204. Venue and transfer. (1) The county where a
18 youth is a resident or is alleged to have violated the law
19 has initial jurisdiction over any youth alleged to be a
20 delinquent youth. The youth court shall assume the initial
21 handling of the case.

22 (2) The county where a youth is a resident has initial
23 jurisdiction over any youth alleged to be a youth in need of
24 supervision, or a youth in need of care. The youth court of
25 that county shall assume the initial handling of the case.

1 Transfers of venue may be made to any either ANY of the
2 following counties in the state:

3 (a) the county in which the youth is apprehended or
4 found; or

5 ~~(b) the county in which the youth is alleged to have~~
6 ~~violated the law;~~

7 (B) THE COUNTY IN WHICH THE YOUTH IS ALLEGED TO HAVE
8 VIOLATED THE LAW; OR

9 ~~(c)(b)(C)~~ the county of residence of the youth's
10 parents or guardian.

11 ~~(2)(3)~~ In the case of a youth alleged to be a youth in
12 need of supervision or a youth in need of care, a A change
13 of venue may be ordered at any time by the concurrence of
14 the youth court judges of both counties in order to assure a
15 fair, impartial, and speedy hearing and final disposition of
16 the case.

17 ~~(3)(4)~~ In the case of a youth 16 years of age or older
18 who is accused of one of the serious offenses listed in
19 41-5-206, the court in the county where the offense occurred
20 shall serve as a transfer hearing court, and if the youth is
21 to be tried in district court, the charge shall be filed and
22 trial held in the district court of the county where the
23 offense occurred."

24 Section 3. Section 41-5-206, MCA, is amended to read:
25 "41-5-206. Transfer to criminal court. (1) After a

1 petition has been filed alleging delinquency, the court may,
2 upon motion of the county attorney, before hearing the
3 petition on its merits, transfer the matter of prosecution
4 to the district court if:

5 (a) (I) THE YOUTH CHARGED WAS 12 YEARS OF AGE OR MORE
6 AT THE TIME OF THE CONDUCT ALLEGED TO BE UNLAWFUL AND the
7 unlawful act ~~alleged to have been committed by the youth,~~
8 regardless of age, would constitute ~~SEXUAL INTERCOURSE~~
9 WITHOUT CONSENT AS DEFINED IN 45-5-503, SEXUAL INTERCOURSE
10 WITHOUT CONSENT AS DEFINED IN 45-5-503, deliberate homicide
11 as defined in 45-5-102 or, OR mitigated deliberate homicide
12 as defined in 45-5-103, OR THE ATTEMPT, AS DEFINED IN
13 45-4-103, OF EITHER DELIBERATE OR MITIGATED DELIBERATE
14 HOMICIDE if the act had been committed by an adult; OR

15 ~~(a)(b)(II)~~ the youth charged was 16 years of age or
16 more at the time of the conduct alleged to be unlawful and
17 the unlawful act is one or more of the following:

18 ~~(i)(A)~~ criminal negligent homicide as defined in
19 ~~45-5-101~~ 45-5-104;

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

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

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

23 ~~(v)(E)~~ burglary or aggravated burglary as defined in
24 45-6-204;

25 ~~(vi)(F)~~ sexual intercourse without consent as defined

1 in 45-5-503;

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

3 ~~(viii)~~(H) possession of explosives as defined in

4 45-8-335;

5 ~~(ix)~~(I) criminal sale of dangerous drugs for profit as

6 included in 45-9-101;

7 ~~(x)~~(J) attempt as defined in 45-4-103 of any of the

8 acts enumerated in subsections ~~(1)(a)(i)~~ (1)(A)(II)(A)

9 through ~~(1)(a)(ix)~~ (1)(A)(II)(I);

10 ~~(b)(c)~~(B) a hearing on whether the transfer should be

11 made is held in conformity with the rules on a hearing on a

12 petition alleging delinquency, except that the hearing will

13 be to the youth court without a jury;

14 ~~(c)(d)~~(C) notice in writing of the time, place, and

15 purpose of the hearing is given to the youth, his counsel,

16 and his parents, guardian, or custodian at least 10 days

17 before the hearing; and

18 ~~(d)(e)~~(D) the court finds upon the hearing of all

19 relevant evidence that there are reasonable grounds to

20 believe that:

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

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

23 of the community require treatment of the youth beyond that

24 afforded by juvenile facilities; and

25 (iii) the alleged offense was committed in an

1 aggressive, violent, or premeditated manner.

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

3 district court, the court ~~may~~ SHALL MAY also consider the

4 following factors:

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

6 determined by consideration of his home, environmental

7 situation, and emotional attitude and pattern of living;

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

9 including previous contacts with the youth court, law

10 enforcement agencies, youth courts in other jurisdictions,

11 prior periods of probation, and prior commitments to

12 juvenile institutions. However, lack of a prior juvenile

13 history with youth courts will not of itself be grounds for

14 denying the transfer.

15 (c) the severity of the offense;

16 (d) the prospects for adequate protection of the

17 public and the likelihood of reasonable rehabilitation of

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

19 currently available to the youth court.

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

21 make written findings of the reasons why the jurisdiction of

22 the court was waived and the case transferred to district

23 court.

24 (4) The transfer terminates the jurisdiction of the

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

1 petition. No youth may be prosecuted in the district court
2 for a criminal offense originally subject to the
3 jurisdiction of the youth court unless the case has been
4 transferred as provided in this section. *

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

8 (6) Any offense not enumerated in subsection (1)~~(a)~~
9 that arises during the commission of a crime enumerated in
10 subsection (1)~~(a)~~ may be:

11 (a) tried in youth court;

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

15 (7) If a youth is found guilty in district court of
16 any of the offenses enumerated in subsection (1)~~(a)~~ of this
17 section and is sentenced to the state prison, his commitment
18 shall be to the department of institutions which shall
19 confine the youth in whatever institution it considers
20 proper; HOWEVER, NO YOUTH UNDER 16 YEARS OF AGE MAY BE
21 CONFINED IN THE STATE PRISON."

-End-