

HOUSE BILL NO. 325

INTRODUCED BY MERCER, MAZUREK, COBB, REAM, SQUIRES,
M. WILLIAMS, PECK, LORY, CAMPBELL, KADAS, O'CONNELL, FRITZ,
DONALDSON, ADDY, MILES, SPAETH, GRADY, HARRINGTON,
WINSLOW, HANSEN, ECK, BACHINI, PATTERSON, MILLER,
JERGESON, MANUEL, BLAYLOCK, REGAN, B. BROWN, DARKO

BY REQUEST OF THE GOVERNOR'S OFFICE

IN THE HOUSE

JANUARY 20, 1987	INTRODUCED AND REFERRED TO COMMITTEE ON STATE ADMINISTRATION.
FEBRUARY 9, 1987	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED. STATEMENT OF INTENT ADOPTED.
FEBRUARY 10, 1987	PRINTING REPORT.
FEBRUARY 11, 1987	SECOND READING, DO PASS AS AMENDED.
FEBRUARY 12, 1987	ENGROSSING REPORT.
FEBRUARY 13, 1987	THIRD READING, PASSED. AYES, 66; NOES, 23. TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 16, 1987	INTRODUCED AND REFERRED TO COMMITTEE ON STATE ADMINISTRATION.
MARCH 25, 1987	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 28, 1987	SECOND READING, CONCURRED IN.
MARCH 30, 1987	THIRD READING, CONCURRED IN. AYES, 30; NOES, 20. RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

APRIL 7, 1987

RECEIVED FROM SENATE.

SECOND READING, AMENDMENTS NOT
CONCURRED IN.

ON MOTION, FREE CONFERENCE COMMITTEE
REQUESTED AND APPOINTED.

IN THE SENATE

APRIL 9, 1987

ON MOTION, FREE CONFERENCE COMMITTEE
REQUESTED AND APPOINTED.

IN THE HOUSE

APRIL 13, 1987

FREE CONFERENCE COMMITTEE REPORTED.

IN THE SENATE

APRIL 15, 1987

FREE CONFERENCE
COMMITTEE REPORT ADOPTED.

IN THE HOUSE

APRIL 15, 1987

SECOND READING, FREE CONFERENCE
COMMITTEE REPORT ADOPTED.

APRIL 16, 1987

THIRD READING, FREE CONFERENCE
COMMITTEE REPORT ADOPTED.

SENT TO ENROLLING.

1 *m. williams* *House* BILL NO. *325* *Inquiries*
 2 INTRODUCED BY *M. Mercer* *Therese* *Jobb* *Ream*
 3 *Pack Long* *Conley* BY REQUEST OF THE GOVERNOR'S OFFICE *Stallard* *Waller*
 4 *Hydard* *Fitch* *Lincoln* *Miles* *Brady* *Winkler* *Harrison* *Bachman*
 5 A BILL FOR AN ACT ENTITLED: "AN ACT REORGANIZING THE *Pherson*
 6 EXECUTIVE BRANCH OF STATE GOVERNMENT, CREATING A NEW
 7 DEPARTMENT OF FAMILY SERVICES; TRANSFERRING CERTAIN
 8 FUNCTIONS OF THE DEPARTMENT OF SOCIAL AND REHABILITATION
 9 SERVICES, COUNTY WELFARE DEPARTMENTS, THE DEPARTMENT OF
 10 INSTITUTIONS, AND THE YOUTH COURT OF THE DISTRICT COURT TO
 11 THE DEPARTMENT OF FAMILY SERVICES; TRANSFERRING YOUTH
 12 PROBATION OFFICERS FROM THE YOUTH COURT TO THE DEPARTMENT OF
 13 FAMILY SERVICES; GENERALLY REVISING THE LAWS RELATING TO
 14 CHILD WELFARE SERVICES, CHILD AND ADULT PROTECTIVE SERVICES,
 15 AND THE YOUTH COURT TO CONFORM TO THE REORGANIZATION;
 16 REPEALING SECTIONS 40-3-115, 41-3-1106, 41-3-1113,
 17 41-3-1121, 41-5-702, 41-5-704, 41-5-705, 53-4-121, 53-4-122,
 18 53-20-404, 53-20-407, 53-20-411, AND 53-20-412, MCA; AND
 19 PROVIDING EFFECTIVE DATES."
 20
 21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 22 Section 1. Section 2-15-104, MCA, is amended to read:
 23 "2-15-104. Structure of executive branch. (1) In
 24 accordance with the constitution, all executive and
 25 administrative offices, boards, commissions, agencies, and

1 instrumentalities of the executive branch of state
 2 government and their respective functions are allocated by
 3 this chapter among and within the following departments or
 4 entities:
 5 (a) department of administration;
 6 (b) department of military affairs;
 7 (c) department of revenue;
 8 (d) state board of education;
 9 (e) department of labor and industry;
 10 (f) department of commerce;
 11 (g) department of justice;
 12 (h) department of health and environmental sciences;
 13 (i) department of social and rehabilitation services;
 14 (j) department of institutions;
 15 (k) department of highways;
 16 (l) department of public service regulation;
 17 (m) department of agriculture;
 18 (n) department of livestock;
 19 (o) department of state lands;
 20 (p) department of natural resources and conservation;
 21 (q) department of fish, wildlife, and parks;
 22 (r) department of family services.
 23 (2) For its internal structure, each department shall
 24 adhere to the following standard terms:
 25 (a) The principal unit of a department is a division.

1 Each division shall be headed by an administrator.

2 (b) The principal unit of a division is a bureau. Each
3 bureau shall be headed by a chief.

4 (c) The principal unit of a bureau is a section. Each
5 section shall be headed by a supervisor."

6 NEW SECTION. Section 2. Department of family services
7 -- head. There is a department of family services. The
8 department head is a director of family services appointed
9 by the governor in accordance with 2-15-111.

10 NEW SECTION. Section 3. Purpose. It is the public
11 policy of the legislature to reduce duplication and
12 fragmentation of services to youth, families, and senior
13 citizens by creating a department that shall develop and
14 maintain consolidated programs and services, within
15 available resources, and a planned continuum of services to:

16 (1) provide protective services to ensure the health,
17 welfare, and safety of children and adults who are in danger
18 of abuse, neglect, or exploitation within communities;

19 (2) provide for the care, protection, and mental and
20 physical development of youth alleged to be youth in need of
21 supervision or delinquent youth and to provide programs for
22 the supervision and rehabilitation of these youth; and

23 (3) provide supportive services to enable senior
24 citizens to maintain their independence.

25 NEW SECTION. Section 4. Definitions. Unless the

1 context requires otherwise, in this title the following
2 definitions apply;

3 (1) "Department" means the department of family
4 services provided for in [section 2].

5 (2) "Director" means the director of family services
6 provided for in [section 2].

7 NEW SECTION. Section 5. Powers and duties of
8 department. The department shall:

9 (1) administer and supervise all forms of child and
10 adult protective services;

11 (2) administer and supervise all services to youth
12 alleged or adjudicated to be delinquent or in need of
13 supervision;

14 (3) provide the following functions, as necessary, for
15 the youth served:

16 (a) intake, investigation, case management, and client
17 supervision;

18 (b) placement in youth care facilities;

19 (c) contracting for necessary services;

20 (d) protective services day care;

21 (e) adoption;

22 (f) institutional services; and

23 (g) supervision, care, and control of youth released
24 from a state youth correctional facility;

25 (4) license youth care facilities, child placing

1 agencies, day-care facilities, community homes for
2 developmentally disabled persons, community homes for
3 physically disabled persons, and adult foster care
4 facilities;

5 (5) administer interstate compacts for children and
6 delinquent youth;

7 (6) (a) administer child abuse prevention services
8 funded through child abuse grants and the Montana children's
9 trust fund provided for in Title 41, chapter 3, part 7; and

10 (b) administer elder abuse prevention services;

11 (7) develop a statewide youth services and resources
12 plan that takes into consideration local needs as reflected
13 in plans developed by the local youth services advisory
14 councils, as provided in [section 8];

15 (8) administer services to the aged;

16 (9) provide consultant services to:

17 (a) facilities providing care for needy, indigent,
18 handicapped, or dependent adults; and

19 (b) youth care facilities;

20 (10) utilize at maximum efficiency the resources of
21 state government in a coordinated effort to:

22 (a) provide for children in need of temporary
23 protection or correctional services; and

24 (b) coordinate and apply the principles of modern
25 institutional administration to the institutions in the

1 department;

2 (11) subject to the functions of the department of
3 administration, lease or purchase lands for use by
4 institutions in the department and classify those lands to
5 determine which are of such character as to be most
6 profitably used for agricultural purposes, taking into
7 consideration:

8 (a) the needs of all institutions in the department
9 for the food products that can be grown or produced on the
10 lands; and

11 (b) the relative value of agricultural programs in the
12 treatment or rehabilitation of the persons confined in the
13 institutions in the department;

14 (12) utilize the staff and services of other state
15 agencies and units of the Montana university system, within
16 their respective statutory functions, to carry out its
17 functions under this title;

18 (13) propose programs to the legislature to meet the
19 projected long-range needs of institutions in the
20 department, including programs and facilities for the
21 diagnosis, treatment, care, and aftercare of persons placed
22 in institutions in the department; and

23 (14) adopt rules necessary to carry out the purposes
24 of [sections 3 through 10].

25 NEW SECTION. Section 6. Local service areas. The

1 department shall organize its field offices into local
2 service areas. The director shall take into consideration
3 geographic boundaries used by local governments, judicial
4 districts, and service agencies when creating local service
5 areas.

6 NEW SECTION. Section 7. State youth services council
7 -- membership. (1) The governor may appoint a state planning
8 and advisory council or designate an existing council to
9 advise the director on policies relating to services to
10 children and youth.

11 (2) A member of the council must have knowledge of and
12 experience in at least one of the following areas:

13 (a) services to:

- 14 (i) youth in need of care;
- 15 (ii) youth in need of supervision;
- 16 (iii) delinquent youth;
- 17 (iv) emotionally disturbed youth; or
- 18 (v) chemically dependent youth; or
- 19 (b) domestic violence issues.

20 (3) Membership of the council must include as many of
21 these areas of expertise as possible.

22 (4) Members must be compensated and reimbursed as
23 provided for in 2-15-122.

24 NEW SECTION. Section 8. Local youth services advisory
25 councils. (1) The department shall establish a local youth

1 services advisory council within each local service area to
2 ensure a broad-based community plan for children and youth
3 services within the area. A local youth services advisory
4 council may act in an advisory capacity only. Each local
5 advisory council consists of seven members. The director
6 shall appoint members to each local advisory council. At
7 least two members must be nominated by the county
8 commissioners within the area, and at least two members must
9 be nominated by district court judges within the area.
10 Members of the local advisory councils must be broadly
11 representative of the local service area and may not be
12 employed by or under contract to the department.

13 (2) The department shall provide technical assistance
14 to the local advisory councils as necessary.

15 (3) Each local advisory council shall:

16 (a) make an annual written review and evaluation of
17 needs and services within the local service area and provide
18 a copy of the review and evaluation to the state planning
19 and advisory council;

20 (b) advise the department, other state agencies,
21 councils, local governments, and private organizations on
22 programs for services to the children and youth within the
23 local service area; and

24 (c) develop a plan for a system of community-based
25 services for the children and youth within the local service

1 area and provide a copy of the plan to the state planning
2 and advisory council.

3 (4) Members must be compensated and reimbursed as
4 provided for in 2-15-122.

5 NEW SECTION. Section 9. Institutions in department.

6 (1) The following institutions are in the department:

7 (a) Mountain View school;

8 (b) Pine Hills school; and

9 (c) any other institution that provides care and
10 services for delinquent youth.

11 (2) A state institution may not be moved,
12 discontinued, or abandoned without prior consent of the
13 legislature.

14 NEW SECTION. Section 10. Debt to state by natural or
15 adoptive parents -- limitations. If a child has been placed
16 in substitute care, as defined in 41-5-103 and 41-3-1102,
17 and a written agreement for payment of support has been
18 entered into by the responsible parent or parents and the
19 department, the debt for support is limited to the amount
20 provided for in the agreement. However, if a court order for
21 support is or has been entered, the order prevails over the
22 agreement.

23 NEW SECTION. Section 11. Certain functions of
24 department of social and rehabilitation services transferred
25 to department of family services. (1) The functions of the

1 department of social and rehabilitation services in Title 41
2 and Title 53 relating to child welfare services and child
3 and adult protective services for youth in need of care,
4 youth in need of supervision, delinquent youth, children and
5 adults in need of protective services, and senior citizens
6 are transferred to the department of family services. The
7 transferred functions include:

8 (a) intake, investigation, case management, and client
9 supervision;

10 (b) out-of-home placements;

11 (c) contracting for services such as evaluations,
12 in-home services, and counseling;

13 (d) protective services day care;

14 (e) adoption;

15 (f) licensure of youth care facilities, child-placing
16 agencies, day-care facilities, community homes for
17 developmentally disabled persons, community homes for
18 physically disabled persons, and adult foster care
19 facilities;

20 (g) child abuse prevention services funded through
21 child abuse grants and the Montana children's trust fund
22 provided for in Title 41, chapter 3, part 7;

23 (h) elder abuse prevention services;

24 (i) adult protective services and services for the
25 aged; and

1 (j) any other functions necessary to provide child
2 welfare services and child and adult protective services.

3 (2) Unless inconsistent with this act, any reference
4 in the following sections to "department of social and
5 rehabilitation services" or to "department" (of social and
6 rehabilitation services) referring to the functions listed
7 in subsection (1) or any related reference to "department"
8 (of social and rehabilitation services) referring to the
9 functions listed in subsection (1) in related sections is
10 changed to "department of family services": 2-15-2211,
11 15-6-209, 20-5-301, 27-1-718, 40-2-401 through 40-2-404,
12 40-8-111, 40-8-121, 40-8-124, 41-3-201, 41-3-202, 41-3-208,
13 41-3-403, 41-3-406, 41-3-702, 41-3-704, 41-3-1101, 41-4-103,
14 41-4-104, 41-5-301, 41-5-403, 41-5-523, 53-4-303, 53-5-101
15 through 53-5-103, 53-5-111, 53-5-202, 53-5-302, 53-5-504,
16 53-5-511, 53-5-601, and 53-20-302. The code commissioner
17 shall conform internal references and grammar to these
18 changes.

19 NEW SECTION. Section 12. Certain functions of county
20 welfare offices or departments transferred to department of
21 family services. (1) The functions of county welfare offices
22 or departments in Title 40, Title 41, and Title 53 relating
23 to child welfare services and child and adult protective
24 services for youth in need of care, youth in need of
25 supervision, delinquent youth, and children and adults in

1 need of protective services are transferred to the
2 department of family services.

3 (2) Unless inconsistent with this act, any reference
4 in the following sections to "county welfare office" or
5 "county welfare department" or to (county welfare) "office"
6 or (county welfare) "department" referring to the functions
7 listed in subsection (1) or related reference to (county
8 welfare) "office" or (county welfare) "department" referring
9 to the functions listed in subsection (1) in related
10 sections is changed to "department of family services":
11 40-4-218 and 41-3-107. The code commissioner shall conform
12 internal references and grammar to these changes.

13 NEW SECTION. Section 13. Certain functions of
14 department of institutions transferred to department of
15 family services. (1) The following functions of the
16 department of institutions in Title 53 relating to the
17 evaluation, detention, and aftercare of youth who are
18 alleged to be or have been adjudicated to be youth in need
19 of care, youth in need of supervision, or delinquent youth
20 and of emotionally disturbed youth are transferred to the
21 department of family services:

22 (a) intake, investigation, case management, and client
23 supervision;

24 (b) contracting for services such as evaluations,
25 in-home services, and counseling;

1 (c) institutional services at department institutions;
 2 (d) supervision, custody, and control of youth
 3 released from a state juvenile correctional facility; and
 4 (e) community-based programs for evaluation or
 5 residential care.

6 (2) Unless inconsistent with this act, any reference
 7 in the following sections to "department of institutions" or
 8 to "department" (of institutions) referring to the functions
 9 listed in subsection (1) or any related reference to
 10 "department" (of institutions) referring to the functions
 11 listed in subsection (1) in related sections is changed to
 12 "department of family services": 53-21-502, 53-30-209,
 13 53-30-210, 53-30-213, 53-30-227, and 53-30-228. The code
 14 commissioner shall conform internal references and grammar
 15 to these changes.

16 NEW SECTION. Section 14. Certain functions of youth
 17 court of district court transferred to department of family
 18 services. (1) The following functions of the youth court of
 19 the district court contained in Title 41, chapter 5, and
 20 related to youth who are alleged to be or have been
 21 adjudicated to be youth in need of care, youth in need of
 22 supervision, or delinquent youth are transferred to the
 23 department of family services:

24 (a) intake, investigation, case management, and client
 25 supervision;

1 (b) out-of-home placements; and

2 (c) contracting for services such as evaluations,
 3 in-home services, and counseling.

4 (2) Unless inconsistent with this act, any reference
 5 in Title 41, chapter 5, to "youth court", (youth) "court",
 6 or "probation officer" referring to the functions listed in
 7 subsection (1) or related reference to "youth court",
 8 (youth) "court", or "probation officer" referring to the
 9 functions listed in subsection (1) in related sections is
 10 changed to "department of family services". The code
 11 commissioner shall conform internal references and grammar
 12 to these changes.

13 NEW SECTION. Section 15. Pay of youth court employees
 14 upon transfer to department of family services. (1) Upon the
 15 transfer of certain functions of the youth court of the
 16 district court to the department of family services, as
 17 provided in [section 14], all probation officers, clerical
 18 staff, and all other persons employed by the youth court
 19 probation office become state employees and are subject to
 20 all laws concerning state employees.

21 (2) The rate of pay of the persons referred to in
 22 subsection (1) shall be established according to the
 23 provisions of Title 2, chapter 18, parts 1, 2, and 3. Each
 24 person shall be placed on a step of the established grade in
 25 the state pay plan that most closely matches his pay rate at

1 the time of transfer.

2 (3) If a person's current rate of pay at the time of
3 transfer is greater than that allowed under step 13 for his
4 assigned grade on the state pay plan matrix, his rate of pay
5 must remain the same until increases in the state pay plan
6 matrix cause a step 13 for his assigned grade to match or
7 exceed his salary, at which time he shall be assigned a step
8 13 for that grade.

9 (4) After the transfer provided for in subsection (1),
10 subsequent pay changes due to reclassification or transfer
11 shall be determined according to the pay plan rules adopted
12 by the department of administration under the authority of
13 2-18-301.

14 Section 16. Section 20-5-301, MCA, is amended to read:

15 "20-5-301. Elementary tuition with mandatory approval.

16 (1) Any child may be enrolled in and attend an elementary
17 school outside of the elementary district in which he
18 resides when such elementary school is located in:

19 (a) any other district of the county of his residence;

20 (b) a county adjoining his county of residence; or

21 (c) a district of another state that is adjacent to
22 the county of his residence.

23 (2) When a parent or guardian of a child wishes to
24 have his child attend a school under the provisions of this
25 section, he shall apply to the county superintendent of the

1 county of his residence before July 1 of the school fiscal
2 year for which he seeks approval except in those cases when
3 substantial changes in circumstances occurred subsequently
4 to justify later application. The application shall be made
5 on a tuition agreement form supplied by the county
6 superintendent and shall be approved, before permission to
7 enroll in and attend school outside of the district under
8 the provisions of this section may be granted, by:

9 (a) the trustees of the elementary district in which
10 the child resides;

11 (b) the trustees of the district where the child
12 wishes to attend school; and

13 (c) the county superintendent of the child's
14 residence.

15 (3) In considering the approval of a tuition
16 application, the tuition approval agents prescribed in this
17 section shall approve such application for a resident child
18 when:

19 (a) the child resides less than 3 miles from the
20 school which he wishes to attend and more than 3 miles from
21 any school of his resident elementary district;

22 (b) the child resides more than 3 miles from any
23 school of his resident elementary district and such district
24 does not provide transportation under the provisions of this
25 title;

1 (c) the child resides more than 3 miles from any
2 school of his resident elementary district, the resident
3 district does not provide transportation under the
4 provisions of this title, and school bus transportation is
5 furnished by the district operating the school which he
6 wishes to attend;

7 (d) the child is a member of a family who must send
8 another child outside of the elementary district to attend
9 high school and the child of elementary age may more
10 conveniently attend an elementary school where the high
11 school is located, provided the child resides more than 3
12 miles from an elementary school of the resident district or
13 the parent must move to the elementary district where the
14 high school is located in order to enroll the other child in
15 high school;

16 (e) the child has been declared by a court of
17 competent jurisdiction to be an abused, neglected, or
18 dependent child, as defined in 41-3-102, or a delinquent
19 youth, as defined in 41-5-103, and has been ordered to be
20 placed in a licensed child care institution which is
21 approved by the department of ~~social--and--rehabilitation~~
22 family services and as a result of the order the child is
23 required to attend elementary school outside of the district
24 of his residence. For purposes of this subsection the
25 prescribed geographic relationship of the receiving district

1 to the district of residence does not apply.

2 (f) the child is required to attend elementary school
3 outside the district of residence as the result of an order
4 of a court of competent jurisdiction. For the purposes of
5 this subsection (f), the following do not apply:

6 (i) the prescribed geographic relationship of the
7 receiving district to the district of residence in this
8 subsection (3); or

9 (ii) an order issued under Title 40, chapter 4, part 2.

10 (4) The trustees of the district where the school to
11 be attended is located may disapprove a tuition agreement
12 that satisfies any of the mandatory approval conditions
13 specified in subsection (3) above when they find that, due
14 to insufficient room and overcrowding, the accreditation of
15 the school would be adversely affected by the acceptance of
16 the child. In the event of disapproval, the trustees shall
17 so notify the parent in writing within 15 days of the first
18 receipt of the application."

19 Section 17. Section 20-7-404, MCA, is amended to read:

20 "20-7-404. Cooperation of state agencies. The state
21 department of health, the department of institutions, ~~the~~
22 ~~department-of-social-and-rehabilitation~~ family services, and
23 the state school for the deaf and blind shall cooperate with
24 the superintendent of public instruction in assisting school
25 districts in discovering children in need of special

education. Nothing herein shall be construed to interfere with the purpose and function of these state agencies."

Section 18. Section 20-7-422, MCA, is amended to read:

"20-7-422. Out-of-state tuition for special education children. (1) If the trustees of any district recommend to the superintendent of public instruction the attendance of a child in need of special education in a special education program offered outside of the state of Montana, such arrangements shall not be subject to the out-of-state attendance provisions of the laws governing the attendance of pupils in schools outside the state of Montana.

(2) Whenever the attendance of a child at an out-of-state special education program is approved by the superintendent of public instruction, it shall be the responsibility of the superintendent of public instruction, in cooperation with the department of ~~social--and~~ rehabilitation family services ~~and--the---department---of~~ institutions, to negotiate the program for the child and the amount and manner of payment of tuition. The amount of tuition shall be included as a contracted service in 20-7-431(1)(a)(iii)(A) in the maximum-budget-without-a-vote for special education."

Section 19. Section 20-9-304, MCA, is amended to read:

"20-9-304. Eligibility for and payment of state impact aid. Any district which shall have children of employees of

a public institution may be eligible for state impact aid under the following provisions:

(1) An "employee" means an employee of a public institution under the administration of the department of institutions, as defined in 53-1-202, or the department of family services, as defined in [section 2], who resides on the property of such a public institution.

(2) A school district shall receive annually from moneys available for state equalization aid \$150 for each elementary pupil and \$250 for each high school pupil whose parents are employees of an institution located in the school district where the pupil attends school or in a school district which has a tuition agreement with the district where the pupil attends school.

(3) A district which is eligible for state impact aid shall apply for such aid to the superintendent of public instruction in the manner prescribed by the rules prescribed by the superintendent of public instruction.

(4) The distribution of state impact aid shall be deposited in the general fund of the district and shall not be considered as a part of the state equalization aid but shall be used to reduce the property tax in support of the general fund of the district."

Section 20. Section 40-3-122, MCA, is amended to read:

"40-3-122. Petition form and contents. (1) The

1 petition shall be captioned substantially as follows:

2 District Court of the State of Montana

3 For the County of

4 Upon the petition of Petition for Conciliation

5 (Under the Conciliation

6 Petitioner Court Law)

7 And concerning

8 and

9

10 Respondents.

11 To the Conciliation Court:

12 (2) The petition shall:

13 (a) allege that a controversy exists between the
14 spouses and request the aid of the court to effect a
15 reconciliation or an amicable settlement of the controversy;

16 (b) state the name and age of each minor child whose
17 welfare may be affected by the controversy;

18 (c) state the name and address of the petitioner or
19 the names and addresses of the petitioners;

20 (d) if the petition is presented by one spouse only,
21 name the other spouse as a respondent and state the address
22 of that spouse;

23 (e) also name as a respondent any other person who has
24 any relation to the controversy and state the address of the
25 person, if known to the petitioner;

1 (f) state such other information as the court may by
2 rule require.

3 (3) The clerk of the court shall provide, at the
4 expense of the county, blank forms for petitions for filing
5 pursuant to this chapter. The ~~probation--officers--of--the~~
6 ~~county--and--the--attaches--and~~ employees of the conciliation
7 court shall assist any person in the preparation and
8 presentation of any such petition when any person requests
9 such assistance. All public officers in each county shall
10 refer to the conciliation court all petitions and complaints
11 made to them in respect to controversies within the
12 jurisdiction of the conciliation court."

13 Section 21. Section 40-4-209, MCA, is amended to read:

14 "40-4-209. Security or guaranty to secure support. (1)
15 Upon verified application by a person authorized to enforce
16 or collect a child support obligation, the department of
17 revenue, the department of family services, or the
18 department of social and rehabilitation services showing
19 that a person obligated to pay child support or maintenance
20 pursuant to court or administrative order is delinquent in
21 an amount equal to the total of 6 months' support payments,
22 the court may direct the obligated person to appear and show
23 cause why an order should not be entered ordering that he
24 post bond, give a mortgage, or provide other security or
25 guaranty for the payment of the delinquency.

(2) If the court finds that a delinquency greater than the total of 6 months of support is owed and that the obligated person has the ability to post bond, give a mortgage, or provide security or other guaranty, the court may enter an order requiring him to post bond, give a mortgage, or provide security or guaranty for so long as there is a support delinquency.

(3) The bond or other security may be in an amount up to the total support due for a 2-year period and must be approved by the court. The bond must include the name and address of the issuer. Any person issuing a bond under this section must, if the bond is cancelled, notify the court and the person or public agency entitled to receive payments under the support order.

(4) If the person obligated to pay child support or maintenance fails to make payments as required by the court or administrative order, the person or public agency entitled to receive payment may recover on the bond or other security. The amount recovered on the bond or other security must first be applied toward satisfaction of any support arrearages.

(5) The department of revenue shall adopt guidelines which take into account the payment record of the obligated person, the availability of other remedies, and other considerations which it determines relevant for determining

whether the procedure provided in this section would carry out the purpose of enforcing payments of child support or would be appropriate in the circumstances. If after application of the guidelines the department of revenue determines an application for an order requiring security is not appropriate, it may not request the order."

Section 22. Section 40-5-112, MCA, is amended to read:

"40-5-112. Contents and filing of petition for support -- venue. (1) The petition shall be verified and shall state the name and, so far as known to the obligee, the address and circumstances of the obligor and the persons for whom support is sought and all other pertinent information. The obligee may include in or attach to the petition any information which may help in locating or identifying the obligor, including a photograph of the obligor, a description of any distinguishing marks on his person, other names and aliases by which he has been or is known, the name of his employer, his fingerprints, and his social security number.

(2) At the time of filing the petition, the obligee shall also file with the court an affidavit as required by 53-4-248 stating whether he has received public assistance from any source and, if he has received public assistance, that he has notified the department of social and rehabilitation services and the department of family

1 services in writing of the pending action.

2 (3) The petition may be filed in the appropriate court
3 of any state in which the obligee resides. The court may not
4 decline or refuse to accept and forward the petition on the
5 ground that it should be filed with some other court of this
6 or any other state where there is pending another action for
7 separation, annulment, dissolution, habeas corpus, adoption,
8 or custody between the same parties or where another court
9 has already issued a support order in some other proceeding
10 and has retained jurisdiction for its enforcement."

11 Section 23. Section 40-5-113, MCA, is amended to read:

12 "40-5-113. Officials to represent obligee. If this
13 state is acting as an initiating state, the prosecuting
14 attorney, upon the request of the court, the department of
15 social and rehabilitation services, the department of
16 revenue, the department of family services, a county
17 commissioner, or other local welfare officer, shall
18 represent the obligee in any proceeding under this part. If
19 the prosecuting attorney neglects or refuses to represent
20 the obligee, the attorney general may order him to comply
21 with the request of the court or may undertake the
22 representation."

23 Section 24. Section 40-5-139, MCA, is amended to read:

24 "40-5-139. Official to represent obligee. (1) If this
25 state is acting either as a rendering or a registering

1 state, the prosecuting attorney, upon the request of the
2 court, a state department of social and rehabilitation
3 services, a state department of family services, a county
4 commissioner, or other local welfare official, shall
5 represent the obligee in proceeding under this part.

6 (2) If the prosecuting attorney neglects or refuses to
7 represent the obligee, the attorney general may order him to
8 comply with the request of the court or may undertake the
9 representation."

10 Section 25. Section 40-5-202, MCA, is amended to read:

11 "40-5-202. Department of revenue -- powers and duties
12 regarding collection of support debt. (1) Whenever the
13 department of social and rehabilitation services or the
14 department of family services receives an application for
15 public assistance on behalf of a child and it appears to the
16 satisfaction of that department that the child has been
17 abandoned by his parents; the child and one parent have been
18 abandoned by the other parent; or the parent or other person
19 who has a responsibility for the care, support, or
20 maintenance of such child has failed or neglected to give
21 proper care or support to the child, the department of
22 social and rehabilitation services or the department of
23 family services shall promptly refer the matter to the
24 department of revenue for action under the provisions of
25 this part, the abandonment or nonsupport statutes, or other

appropriate statutes of this state to insure that the parent or other person responsible pays for the care, support, or maintenance of the dependent child.

(2) In the event that public assistance is furnished by a state or county agency or in instances where the department has contracted to collect support, the department shall become trustee of any cause of action of the dependent child or the person having legal custody of the dependent child to recover support due to that obligee from any person and may bring and maintain the action either in the department's own name or in the name of the obligee.

(3) The department has the power of attorney to act in the name of any recipient of public assistance in endorsing and cashing any and all drafts, checks, money orders, or other negotiable instruments received by the department and representing support payments for children in whose behalf public assistance has been previously paid.

(4) For purposes of prosecuting any civil action pursuant to this part, the department is a real party in interest upon the payment of public assistance. No obligee shall act to prejudice the rights of the department after the receipt of public assistance.

(5) No agreement between any obligee and any obligor either relieving an obligor of any duty of support or purporting to settle past, present, or future support

obligations either as settlement or prepayment may act to reduce or terminate any rights of the department to recover from that obligor for support debt provided unless the department has consented to the agreement in writing.

(6) The department may petition a court for modification of any court order on the same basis as a party to that action would have been entitled to do.

(7) The department shall be subrogated to the right of the child or children or person having the care, custody, and control of the child or children to maintain any civil action or execute any administrative remedy existing under the laws of the state to obtain reimbursement of money thus spent.

(8) If a district court orders an amount of support to be paid by a responsible parent, the department shall be subrogated to the debt created by the order and the money judgment shall be determined to be in favor of the department. This subrogation applies both to:

(a) the lesser of the amount paid by the department of social and rehabilitation services or the department of family services in public assistance money to or for the benefit of a dependent child or children of the responsible parent or the amount of support contained in the court order; and

(b) to any amount allocated to the benefit of the

1 children on the basis of providing necessities for the
2 caretaker of the children.

3 (9) The department may adopt and enforce such rules as
4 may be necessary to carry out the provisions of this part.

5 (10) The department, for the purposes mentioned in this
6 part, through its director or the director's authorized
7 representatives, may administer oaths to certify official
8 acts, issue subpoenas, and compel witnesses and the
9 production of books, accounts, documents, and evidence."

10 Section 26. Section 40-5-303, MCA, is amended to read:

11 "40-5-303. Petition for income deduction -- who may
12 initiate. A petition for an income deduction for the payment
13 of delinquent child support payments may be made by:

14 (1) the person named as the recipient of the child
15 support payments in the child support order;

16 (2) the child or the guardian of the child named in
17 the child support order; or

18 (3) the department of revenue, the department of
19 family services, or the department of social and
20 rehabilitation services of the state of Montana."

21 Section 27. Section 40-6-107, MCA, is amended to read:

22 "40-6-107. Determination of father and child
23 relationship -- who may bring action. (1) Any interested
24 party may bring an action for the purpose of determining the
25 existence or nonexistence of the father and child

1 relationship presumed pursuant to 40-6-105.

2 (2) An action to determine the existence of the father
3 and child relationship with respect to a child who has no
4 presumed father under 40-6-105 may be brought by the child,
5 the mother or personal representative of the child, the
6 department of social and rehabilitation services or its
7 appropriate local affiliate, the department of family
8 services or its appropriate local affiliate, the personal
9 representative or a parent of the mother if the mother has
10 died, a man alleged or alleging himself to be the father, or
11 the personal representative or a parent of the alleged
12 father if the alleged father has died or is a minor.

13 (3) Regardless of its terms, an agreement, other than
14 an agreement approved by the court in accordance with
15 40-6-114(2), between an alleged or presumed father and the
16 mother or child does not bar an action under this section.

17 (4) If an action under this section is brought before
18 the birth of the child, all proceedings shall be stayed
19 until after the birth, except service of process and the
20 taking of depositions to perpetuate testimony."

21 Section 28. Section 40-6-110, MCA, is amended to read:

22 "40-6-110. Parties. The child shall be made a party to
23 the action. If he is a minor, he shall be represented by
24 his general guardian or a guardian ad litem appointed by the
25 court. The child's mother or father may not represent the

1 child as guardian or otherwise. The court may appoint the
 2 department of ~~social-and-rehabilitation~~ family services or
 3 ~~the--appropriate--county--welfare--department~~ as guardian ad
 4 litem for the child. The natural mother, each man presumed
 5 to be the father under 40-6-105, and each man alleged to be
 6 the natural father shall be made parties or, if not subject
 7 to the jurisdiction of the court, shall be given notice of
 8 the action in a manner prescribed by the court and an
 9 opportunity to be heard. The court may align the parties."

10 Section 29. Section 40-8-103, MCA, is amended to read:

11 "40-8-103. Definitions. As used in this chapter,
 12 unless the context otherwise requires the following
 13 definitions apply:

14 (1) "Adoption" means the act of creating the legal
 15 relationship between parent and child when it does not exist
 16 genetically.

17 (2) "Adoptive parent" means an adult who has become
 18 the mother or father of a child through the legal process of
 19 adoption.

20 (3) "Agency" means a public or voluntary agency
 21 licensed by any jurisdiction within the United States and
 22 expressly empowered to place children as a preliminary to a
 23 possible adoption.

24 (4) "Birth parent" means the mother or father of
 25 genetic origin of a child but does not include a putative

1 father of a child.

2 (5) "Child" means any person under 18 years of age.

3 (6) "Court" means a Montana district court or a tribal
 4 court of any Montana Indian reservation.

5 (7) "Department" means the department of ~~social-and~~
 6 ~~rehabilitation~~ family services, as established and provided
 7 for in ~~Title-27-chapter-15-part-22~~ [section 2].

8 (8) "Extended family member" means an adult who is the
 9 child's grandparent, aunt or uncle, brother or sister, niece
 10 or nephew, or first cousin.

11 (9) "Parent" means the birth or adoptive mother or the
 12 birth, adoptive, or legal father whose parental rights have
 13 not been terminated.

14 (10) "Placement for adoption" means the transfer of
 15 physical custody of a child with respect to whom all
 16 parental rights have been terminated and who is otherwise
 17 legally free for adoption to a person who intends to adopt
 18 the child.

19 (11) "Relinquishment" means the informed and voluntary
 20 release in writing of all parental rights with respect to a
 21 child by a parent to an agency or individual pursuant to
 22 40-6-135 or 40-8-109, whichever is applicable."

23 Section 30. Section 40-8-126, MCA, is amended to read:

24 "40-8-126. Confidentiality of record and proceedings.

25 (1) Unless the court shall otherwise order, all hearings

1 held in proceedings under this part shall be confidential
2 and shall be held in closed court without admittance of any
3 person other than interested parties and their counsel.

4 (2) All papers and records pertaining to the adoption
5 shall be kept as a permanent record of the court and
6 withheld from inspection. No person shall have access to
7 such records except:

8 (a) for good cause shown, on order of the judge of the
9 court in which the decree of adoption was entered; or

10 (b) as provided in 50-15-206.

11 (3) All files and records pertaining to said adoption
12 proceedings in the county departments of public welfare, the
13 department of social and rehabilitation services, the
14 department of family services, or any authorized agencies
15 shall be confidential and withheld from inspection except
16 upon order of court for good cause shown or as provided in
17 50-15-206."

18 Section 31. Section 41-3-102, MCA, is amended to read:

19 "41-3-102. Definitions. As used in this chapter, the
20 following definitions apply:

21 (1) "Child" or "youth" means any person under 18 years
22 of age.

23 (2) An "abused or neglected child" means a child whose
24 normal physical or mental health or welfare is harmed or
25 threatened with harm by the acts or omissions of his parent

1 or other person responsible for his welfare.

2 (3) "Harm to a child's health or welfare" means the
3 harm that occurs whenever the parent or other person
4 responsible for the child's welfare:

5 (a) inflicts or allows to be inflicted upon the child
6 physical or mental injury, including injuries sustained as a
7 result of excessive corporal punishment;

8 (b) commits or allows to be committed a sexual assault
9 against the child or exploits the child or allows the child
10 to be exploited for sexual purposes or commits or allows to
11 be committed the act of sexual abuse of children as defined
12 in subsection (1) of 45-5-625;

13 (c) causes failure to thrive or otherwise fails to
14 supply the child with adequate food or fails to supply
15 clothing, shelter, education, or health care, though
16 financially able to do so or offered financial or other
17 reasonable means to do so;

18 (d) abandons the child by leaving him under
19 circumstances that make reasonable the belief that the
20 parent or other person does not intend to resume care of the
21 child in the future or by willfully surrendering physical
22 custody for a period of 6 months and during that period does
23 not manifest to the child and the person having physical
24 custody of the child a firm intention to resume physical
25 custody or to make permanent legal arrangements for the care

1 of the child; or

2 (e) is unknown and has been unknown for a period of 90
3 days and reasonable efforts to identify and locate the
4 parents have failed.

5 (4) "Adequate health care" means any medical or
6 nonmedical remedial health care, including the prevention of
7 the withholding of medically indicated treatment, permitted
8 or authorized under state law.

9 (5) "Withholding of medically indicated treatment"
10 means the failure to respond to an infant's life-threatening
11 conditions by providing treatment (including appropriate
12 nutrition, hydration, and medication) that, in the treating
13 physician's or physicians' reasonable medical judgment, will
14 be most likely to be effective in ameliorating or correcting
15 all such conditions. However, the term does not include the
16 failure to provide treatment (other than appropriate
17 nutrition, hydration, or medication) to an infant when, in
18 the treating physician's or physicians' reasonable medical
19 judgment:

20 (a) the infant is chronically and irreversibly
21 comatose;

22 (b) the provision of such treatment would:

23 (i) merely prolong dying;

24 (ii) not be effective in ameliorating or correcting all
25 of the infant's life-threatening conditions; or

1 (iii) otherwise be futile in terms of the survival of
2 the infant; or

3 (c) the provision of such treatment would be virtually
4 futile in terms of the survival of the infant and the
5 treatment itself under such circumstances would be inhumane.
6 For purposes of this subsection, "infant" means an infant
7 less than 1 year of age or an infant 1 year of age or older
8 who has been continuously hospitalized since birth, who was
9 born extremely prematurely, or who has a long-term
10 disability. The reference to less than 1 year of age may not
11 be construed to imply that treatment should be changed or
12 discontinued when an infant reaches 1 year of age or to
13 affect or limit any existing protections available under
14 state laws regarding medical neglect of children over 1 year
15 of age.

16 (6) "Threatened harm" means imminent risk of harm.

17 (7) "A person responsible for a child's welfare" means
18 the child's parent, guardian, or foster parent; an employee
19 of a public or private residential institution, facility,
20 home, or agency; or any other person legally responsible for
21 the child's welfare in a residential setting.

22 (8) "Physical injury" means death, permanent or
23 temporary disfigurement, or impairment of any bodily organ
24 or function.

25 (9) "Mental injury" means an identifiable and

1 substantial impairment of the child's intellectual or
2 psychological functioning.

3 (10) "Dependent youth" means a youth:

4 (a) who is abandoned;

5 (b) who is without parents or guardian or not under
6 the care and supervision of a suitable adult;

7 (c) who has no proper guidance to provide for his
8 necessary physical, moral, and emotional well-being;

9 (d) who is destitute;

10 (e) who is dependent upon the public for support; or

11 (f) whose parent or parents have voluntarily
12 relinquished custody of the child and whose legal custody
13 has been transferred to a licensed agency.

14 (11) "Youth in need of care" means a youth who is
15 dependent, abused, or neglected as defined in this section.

16 ~~{12} "Supervision" means the authority granted by a~~
17 ~~youth court or by a voluntary agreement of a parent to~~
18 ~~determine the foster care placement of a child and the~~
19 ~~length of stay of a child in foster care and provide for the~~
20 ~~needs of a child under subsection {1} of 41-3-1122.~~

21 ~~{13} (12) "Department" means the department of social~~
22 ~~and rehabilitation family services provided for in 2-15-2201~~
23 ~~[section 2].~~

24 ~~{14} (13) "Limited emancipation" means a status~~
25 ~~conferred on a dependent youth by a court after a~~

1 dispositional hearing in accordance with 41-3-406 under
2 which the youth is entitled to exercise some but not all of
3 the rights and responsibilities of a person who is 18 years
4 of age or older.

5 (14) "Social worker" means an employee of the
6 department of family services whose duties generally involve
7 the provision of either child or adult protective services,
8 or both."

9 Section 32. Section 41-3-108, MCA, is amended to read:

10 "41-3-108. Child protective teams. The county attorney
11 or the ~~county--welfare~~ department of family services may
12 convene one or more temporary or permanent interdisciplinary
13 child protective teams. These teams may assist in assessing
14 the needs of, formulating and monitoring a treatment plan
15 for, and coordinating services to the child and his family.
16 The supervisor of child protective services ~~of the county~~
17 welfare department in a local service area or his designee
18 shall serve as the team's coordinator. Members shall include
19 a social worker, a member of a local law enforcement agency,
20 a representative of the medical profession, and a county
21 attorney."

22 Section 33. Section 41-3-204, MCA, is amended to read:

23 "41-3-204. Admissibility and preservation of evidence.
24 (1) In any proceeding resulting from a report made pursuant
25 to the provisions of this chapter or in any proceeding where

the report or its contents are sought to be introduced into evidence, the report or its contents or any other fact related to the report or to the condition of the child who is the subject of the report shall not be excluded on the ground that the matter is or may be the subject of a privilege related to the examination or treatment of the child and granted in Title 26, chapter 1, part 8, except the attorney-client privilege granted by 26-1-803.

(2) Any person or official required to report under 41-3-201 may take or cause to be taken photographs of the area of trauma visible on a child who is the subject of a report. The cost of photographs taken under this section shall be paid by the ~~county-child-protective-service-agency~~ department.

(3) When any person required to report under 41-3-201 finds visible evidence that a child has suffered abuse or neglect, he must include in his report either a written description or photographs of the evidence.

(4) A physician, either in the course of his providing medical care to a minor or after consultation with child protective services, the county attorney, or a law enforcement officer may require x-rays to be taken when in his professional opinion there is a need for radiological evidence of suspected abuse or neglect. X-rays may be taken under this section without the permission of the parent or

guardian. The cost of the x-rays ordered and taken under this section shall be paid by the county child protective service agency.

(5) All written, photographic, or radiological evidence gathered under this section shall be sent to the ~~local child-protective--services--agency~~ affiliate of the department at the time the written confirmation report is sent or as soon thereafter as is possible."

Section 34. Section 41-3-205, MCA, is amended to read:

"41-3-205. Confidentiality. (1) The case records of the department of social and rehabilitation services, the department of family services and its local affiliate, the county welfare department, the county attorney, and the court concerning actions taken under this chapter and all records concerning reports of child abuse and neglect shall be kept confidential except as provided by this section. Any person who permits or encourages the unauthorized dissemination of their contents is guilty of a misdemeanor.

(2) Records may be used by interagency interdisciplinary child protective teams as authorized under 41-3-108 for the purposes of assessing the needs of the child and family, formulating a treatment plan, and monitoring the plan. Members of the team are required to keep information about the subject individuals confidential.

(3) Records may be disclosed to a court for in camera

1 inspection if relevant to an issue before it. The court may
2 permit public disclosure if it finds such disclosure to be
3 necessary for the fair resolution of an issue before it.

4 (4) Nothing in this section is intended to affect the
5 confidentiality of criminal court records or records of law
6 enforcement agencies."

7 Section 35. Section 41-3-208, MCA, is amended to read:

8 "41-3-208. Rulemaking authority. The department of
9 ~~social--and-rehabilitation~~ family services shall adopt rules
10 to govern the procedures used by department personnel ~~and-by~~
11 ~~employees-of-county-welfare-departments~~ in preparing and
12 processing reports and in making investigations authorized
13 by this chapter or 41-3-1123."

14 Section 36. Section 41-3-301, MCA, is amended to read:

15 "41-3-301. Emergency protective service. (1) Any child
16 protective social worker of the department of ~~social--and~~
17 ~~rehabilitation~~ family services, ~~the---county---welfare~~
18 ~~department~~, a peace officer, or the county attorney who has
19 reason to believe any youth is in immediate or apparent
20 danger of harm may immediately remove the youth and place
21 him in a protective facility. The department may make a
22 request for further assistance from the law enforcement
23 agency or take appropriate legal action. The person or
24 agency placing the child shall notify the parents, parent,
25 guardian, or other person having legal custody of the youth

1 at the time the placement is made or as soon thereafter as
2 possible.

3 (2) No child who has been removed from his home or any
4 other place for his protection or care may be placed in a
5 jail.

6 (3) A petition shall be filed within 48 hours of
7 emergency placement of a child unless arrangements
8 acceptable to the agency for the care of the child have been
9 made by the parents.

10 (4) The department of ~~social-and-rehabilitation~~ family
11 services ~~and-the-county-welfare-department~~ shall make such
12 necessary arrangements for the youth's well-being as are
13 required prior to the court hearing."

14 Section 37. Section 41-3-302, MCA, is amended to read:

15 "41-3-302. Responsibility of providing protective
16 services. (1) The department of ~~social-and-rehabilitation~~
17 family services ~~and-the-county-welfare-department~~ shall have
18 the primary responsibility to provide the protective
19 services authorized by this chapter and shall have the
20 authority pursuant to this chapter to take temporary or
21 permanent custody of a child when ordered to do so by the
22 court, including the right to give consent to adoption.

23 (2) The ~~county-welfare~~ department shall respond to
24 emergency reports of known or suspected child abuse or
25 neglect 24 hours a day, 7 days a week."

Section 38. Section 41-3-401, MCA, is amended to read:

"41-3-401. Abuse, neglect, and dependency petitions.

(1) The county attorney, attorney general, or an attorney hired by the county ~~welfare-department-or-office-of-human services~~ shall be responsible for filing all petitions alleging abuse, neglect, or dependency. The county attorney or attorney general, or an attorney hired by the county ~~welfare-department-or-office-of-human-services~~ with the written consent of the county attorney or attorney general, may require all state, county, and municipal agencies, including law enforcement agencies, to conduct such investigations and furnish such reports as may be necessary. Investigations as to financial status may not be made prior to the adjudicatory hearing provided for in 41-3-404.

(2) Upon receipt of a petition, the court shall set a date for an adjudicatory hearing on the petition. Such petitions shall be given preference by the court in setting hearing dates and must be heard within 20 days of the filing of the petition.

(3) A petition alleging abuse, neglect, or dependency is a civil action brought in the name of the state of Montana. The rules of civil procedure shall apply except as herein modified. Proceedings under a petition are not a bar to criminal prosecution.

(4) The parents or parent, guardian, or other person

or agency having legal custody of the youth named in the petition, if residing in the state, shall be served personally with a copy of the petition and summons at least 5 days prior to the date set for hearing. If such person or agency resides out of state or is not found within the state, the rules of civil procedure relating to service of process in such cases shall apply.

(5) In the event service cannot be made upon the parents or parent, guardian, or other person or agency having legal custody, the court shall appoint an attorney to represent the unavailable party where in the opinion of the court the interests of justice require.

(6) If a parent of the child is a minor, notice shall be given to the minor parent's parents or guardian, and if there is no guardian the court shall appoint one.

(7) Any person interested in any cause under this chapter has the right to appear.

(8) Except where the proceeding is instituted or commenced ~~by-a-representative-of~~ at the request of the department of ~~social-and-rehabilitation~~ family services, a citation shall be issued and served upon a representative of the department prior to the court hearing.

(9) The petition shall:

(a) state the nature of the alleged abuse, neglect, or dependency;

(b) state the full name, age, and address of the youth and the name and address of his parents or guardian or person having legal custody of the youth;

(c) state the names, addresses, and relationship to the youth of all persons who are necessary parties to the action.

(10) The petition may ask for the following relief:

(a) temporary investigative authority and protective services;

(b) temporary legal custody;

(c) termination of the parent-child legal relationship;

(d) any combination of the above or such other relief as may be required for the best interest of the youth.

(11) The petition may be modified for different relief at any time within the discretion of the court.

(12) The court may at any time on its own motion or the motion of any party appoint counsel for any indigent party."

Section 39. Section 41-3-402, MCA, is amended to read:

"41-3-402. Petition for temporary investigative authority and protective services. (1) In cases where it appears that a youth is abused or neglected or is in danger of being abused or neglected, the county attorney, attorney general, or an attorney hired by the county welfare department-or-office-of-human-services may file a petition

for temporary investigative authority and protective services.

(2) A petition for temporary investigative authority and protective services shall state the specific authority requested and the facts establishing probable cause that a youth is abused or neglected or is in danger of being abused or neglected.

(3) The petition for temporary investigative authority and protective services shall be supported by an affidavit signed by the county attorney, attorney general, or an attorney hired by the county welfare-department-attorney, or office--of-human-services-attorney or a department of social and-rehabilitation family services report stating in detail the facts upon which the request is based."

Section 40. Section 41-3-607, MCA, is amended to read:

"41-3-607. Petition for termination -- separate hearing -- right to counsel -- no jury trial. (1) The termination of a parent-child legal relationship shall be considered only after the filing of a petition pursuant to 41-3-401 alleging the factual grounds for termination. Termination of a parent-child legal relationship shall be considered at a dispositional hearing held pursuant to 41-3-406, following or together with an adjudicatory hearing held pursuant to 41-3-404, within 180 days after the filing of the petition.

(2) After the county attorney, attorney general, or an attorney hired by the county ~~welfare-department-or-office-of human--services~~ files a petition for termination of a parent-child relationship pursuant to this part, parents shall be advised of the right to counsel, and counsel shall be appointed in accordance with 41-3-401(12).

(3) A guardian ad litem shall be appointed to represent the child's best interests in any hearing determining the involuntary termination of the parent-child legal relationship. The guardian ad litem shall continue to represent the child until the child is returned home or placed in an appropriate permanent placement. If a respondent parent is a minor, a guardian ad litem must be appointed to serve the minor parent in addition to any counsel requested by the parent.

(4) There is no right to a jury trial at proceedings held to consider the termination of a parent-child legal relationship."

Section 41. Section 41-3-1102, MCA, is amended to read:

"41-3-1102. Definitions. For the purposes of this part, the following definitions apply:

(1) "Child-care agency" means a youth care facility in which substitute care is provided to 13 or more children or youth.

(2) "Department" means the department of ~~social-and rehabilitation~~ family services provided for in [section 2].

(3) "Operator of a youth care facility" means any person owning or operating a youth care facility into which he takes any child or children for the purpose of caring for them and maintaining them and for which care and maintenance he receives money or other consideration of value, and which child is neither his son, daughter, nor ward, except that this part shall not apply when any person accepts such care and custody of such child on a temporary basis and simply as a temporary accommodation for the parent or parents, guardian, or relative of such child.

(4) "Person" means any individual, partnership, voluntary association, or corporation.

(5) "Substitute care" means full-time care of youth in a residential setting for the purpose of providing food, shelter, security and safety, guidance, direction, and if necessary, treatment to youth who are removed from or without the care and supervision of their parents or guardian.

(6) "Youth care facility" means a facility, licensed ~~in-accordance-with--41-3-1141--through--41-3-1143;~~ by the department or by the appropriate licensing authority in another state and in which facility substitute care is provided to youth, and The term includes youth foster homes,

1 youth group homes, and child-care agencies.

2 (7) "Youth foster home" means a youth care facility in
3 which substitute care is provided to one to six children or
4 youth other than the foster parents' own children,
5 stepchildren, or wards.

6 (8) "Youth group home" means a youth care facility in
7 which substitute care is provided to 7 to 12 children or
8 youth."

9 Section 42. Section 41-3-1103, MCA, is amended to
10 read:

11 "41-3-1103. Powers and duties of department. (1) The
12 department shall:

13 (a) administer all state and federal funds allocated
14 to the department for youth foster homes, youth group homes,
15 and child-care agencies for youth in need of care, youth in
16 need of supervision, and delinquent youth;

17 (b) exercise licensing authority over all youth foster
18 homes, youth group homes, and child-care agencies;

19 (c) collect and disseminate information relating to
20 youth in need of care, youth in need of supervision, and
21 delinquent youth;

22 (d) provide for training of program personnel
23 delivering services;

24 (e) in cooperation with ~~the department of institutions~~
25 and youth care facility providers, develop and implement

1 standards for youth care facilities;

2 (f) apportion and allocate placement budgets to all
3 ~~judicial districts~~ service areas;

4 (g) maintain adequate data on placements it funds in
5 order to keep the legislature properly informed of the
6 following:

7 (i) the breakdown of youth in need of care, youth in
8 need of supervision, and delinquent youth by category in
9 out-of-home care facilities;

10 (ii) the cost per facility for services rendered;

11 (iii) the type and level of care of services provided
12 by each facility;

13 (iv) a profile of out-of-home care placements by level
14 of care; and

15 (v) a profile of public institutional placements; and

16 (h) administer all funds allocated to the department
17 for residential alcohol and drug abuse treatment for
18 indigent youths in need of care, indigent youths in need of
19 supervision, and indigent delinquent youths who require such
20 treatment.

21 (2) The department may:

22 (a) enter into contracts with nonprofit corporations
23 or associations or private organizations to provide
24 facilities and services for youth in need of care, youth in
25 need of supervision, and delinquent youth;

(b) accept gifts, grants, and donations of money and property from public and private sources to initiate and maintain community-based services to youth;

(c) adopt rules to carry out the administration and purposes of this part.

(3) The department shall pay for room, board, clothing, personal needs, transportation, and treatment in youth foster care homes and youth group homes ~~other--than aftercare--homes~~ for youths committed to the department of institutions who need to be placed in such facilities. ~~Youths--committed--to--the--department--of--institutions--and placed--in--residential--facilities--other--than--those--described above--shall--not--be--the--financial--responsibility--of--the department--of--social--and--rehabilitation--services--unless--such placements--have--been--approved--in--advance--by--the--department of--social--and--rehabilitation--services."~~

Section 43. Section 41-3-1104, MCA, is amended to read:

"41-3-1104. Aftercare facilities. The department of institutions family services may establish, maintain, and administer youth ~~correction~~ correctional facilities, evaluation facilities, mental health facilities and services, aftercare programs, and aftercare facilities for the care, custody, and treatment of youth who have been committed to the department ~~of--institutions."~~

Section 44. Section 41-3-1112, MCA, is amended to read:

"41-3-1112. Petition for placement in facility or home. Any person between the ages of 18 and 21 years who is still within the jurisdiction of the youth court or any person under the age of 18 years may petition the youth court of a district in which a licensed youth care facility has been established to be placed in such a facility ~~or--in any--other--home--approved--by--the--court~~ for any period of time up to the person's 21st birthday."

Section 45. Section 41-3-1114, MCA, is amended to read:

"41-3-1114. Continuing jurisdiction of youth court. The youth court ~~placing~~ committing a delinquent youth or a ~~child~~ youth in need of supervision ~~in--a--youth--care--facility to the department of family services~~ retains continuing jurisdiction over the youth until the youth becomes 21 years of age or is otherwise discharged by ~~order--of--the--court~~ the department after notice to the youth court of original jurisdiction."

Section 46. Section 41-3-1115, MCA, is amended to read:

"41-3-1115. Foster care review committee. (1) In every judicial district the youth court judge, in consultation with the department, shall appoint a foster care review

committee. The members of the committee must be willing to act without compensation. The committee shall be composed of not less than five or more than seven members. The members shall include:

(a) a representative of the department;

~~(b) a representative of the youth court;~~

~~(c)~~ (b) someone knowledgeable in the needs of children in foster care placements who is not employed by the department or the youth court;

~~(d)~~ (c) a representative of a local school district;

and

~~(e)~~ (d) if there is one, the foster parent of the child whose care is under review. The foster parent's appointment is effective only for and during that review.

(2) When a child is in foster care under the supervision of the department ~~or the youth court~~ or if payment for care is made pursuant to 41-3-1122 ~~or 41-3-1121(2)~~, the committee shall conduct a review of the foster care status of the child. The review must be conducted within a time limit established by the department. The time limit must comply with federal law and may not be later than the 12-month anniversary date of the child's placement into foster care.

(3) The department shall provide the committee with guidelines for operation of the committee. Within 30 days of

the foster care review, the committee shall provide the youth court and the department a written report of its findings and recommendations for further action by the youth court or the department.

(4) The department shall adopt rules necessary to carry out the purposes of this section.

(5) Because of the individual privacy involved, meetings of the committee, reports of the committee, and information on individuals' cases shared by committee members is confidential and subject to the confidentiality requirements of the department.

(6) The committee is subject to the call of the youth court judge to meet and confer with him on all matters pertaining to the foster care of a child before the youth court."

Section 47. Section 41-3-1122, MCA, is amended to read:

"41-3-1122. Payment for support of youth in need of care, youth in need of supervision, or delinquent youth -- reimbursement by county. (1) Whenever a youth who is a youth in need of care, a youth in need of supervision, or a delinquent youth is placed by the ~~youth court or the~~ department of family services in a youth care facility, the department shall pay, within the limits of the appropriation for that purpose, a foster care payment to the youth care

1 facility at a rate established by the department for board,
2 clothing, personal needs, treatment, and room of the youth.

3 (2) On or before the 20th of each month the department
4 shall present a claim to the county of residence of the
5 youth for no more than one-half the payments so made during
6 the month. The county must make reimbursement to the
7 department within 20 days after the claim is presented.

8 (3) The department shall conduct or arrange for the
9 review required under 41-3-1115 of a youth placed in a youth
10 care facility if the youth is placed ~~under--the--supervision~~
11 ~~of--the--department--or--placed by the department or the~~
12 ~~department-pays-for-the-care-of-the-youth-as--set--forth--in~~
13 ~~this-section."~~

14 Section 48. Section 41-3-1123, MCA, is amended to
15 read:

16 "41-3-1123. Investigation of parents' or guardians'
17 financial ability -- financial status report. (1) Whenever a
18 disposition under 41-3-404, 41-5-403, 41-5-523, or 41-5-524
19 involves placement in a youth care facility or youth
20 correctional facility and the department is responsible for
21 all or part of the cost of such placement, ~~the--probation~~
22 ~~officer--or the court shall notify-the-department-and order~~
23 ~~the county-welfare department in--the--youth's--county--of~~
24 ~~residence to conduct an investigation of the financial~~
25 ~~status of the youth's parents or guardianship assets.~~

1 ~~Following--an--adjudicatory--hearing--in--which--a--youth--i~~
2 ~~determined-to-be-a-delinquent-youth-or-a-youth--in--need--e~~
3 ~~supervision,--the--court--may--order--the--county--welfar~~
4 ~~department-to-conduct-a-financial-status-investigation.~~

5 (2) (a) Upon receipt of the order, the ~~county--welfar~~
6 department shall make an investigation for the purpose o
7 ascertaining the residence of the parents or guardian of th
8 youth and the financial ability of the parents or th
9 adequacy of the guardianship assets to pay the cost c
10 supporting the youth:

11 (i) in the youth care facility or youth correctiona
12 facility; or

13 (ii) as a child of limited emancipation, as may
14 ordered under 41-3-406.

15 (b) A written report of the investigation shall b
16 filed with the court having jurisdiction, and the departmen
17 ~~of-social-and-rehabilitation-services,--and-the-department-c~~
18 ~~institutions,~~ and a copy shall be sent to the parents c
19 guardian of the youth or to any other party to th
20 proceeding.

21 (3) A copy of the written report shall be provided t
22 all parties to the proceeding before the time set for t
23 dispositional hearing."

24 Section 49. Section 41-5-103, MCA, is amended to read

25 "41-5-103. Definitions. For the purposes of th

1 Montana Youth Court Act, unless otherwise stated the
2 following definitions apply:

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

5 (2) "Agency" means any entity of state or local
6 government authorized by law to be responsible for the care
7 or rehabilitation of youth.

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

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

11 (5) "Department" means the department of family
12 services provided for in [section 2].

13 ~~(6)~~ "Foster home" means a private residence
14 approved licensed by the court department for placement of a
15 youth.

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

19 ~~(8)~~ "Judge", when used without further
20 qualification, means the judge of the youth court.

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

24 (i) have physical custody of the youth;

25 (ii) determine with whom the youth shall live and for

1 what period;

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

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

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

8 ~~(9)~~~~(10)~~ "Parent" means the natural or adoptive parent
9 but does not include a person whose parental rights have
10 been judicially terminated, nor does it include the putative
11 father of an illegitimate youth unless his paternity is
12 established by an adjudication or by other clear and
13 convincing proof.

14 ~~(11)~~ "Probation officer" means an employee of the
15 department whose duties generally involve the provision of
16 services to alleged and adjudicated youth in need of
17 supervision or delinquent youth, as provided in this
18 chapter.

19 ~~(10)~~~~(12)~~ "Youth" means an individual who is less than
20 18 years of age without regard to sex or emancipation.

21 ~~(11)~~~~(13)~~ "Youth court" means the court established
22 pursuant to this chapter to hear all proceedings in which a
23 youth is alleged to be a delinquent youth, a youth in need
24 of supervision, or a youth in need of care and includes the
25 youth-court, the youth court judge, and probation--officers

1 any court appointed staff.

2 †12†(14) "Delinquent youth" means a youth:

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

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

8 †13†(15) "Youth in need of supervision" means a youth
9 who commits an offense prohibited by law which, if committed
10 by an adult, would not constitute a criminal offense,
11 including but not limited to a youth who:

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

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

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

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

22 †14†(16) "Youth in need of care" means a youth as
23 defined in 41-3-102.

24 †15†(17) "Custodian" means a person other than a parent
25 or guardian to whom legal custody of the youth has been

1 given but does not include a person who has only physical
2 custody.

3 †16†(18) "Necessary parties" include the youth, his
4 parents, guardian, custodian, or spouse.

5 †17†(19) "State youth correctional facility" means a
6 residential facility for the rehabilitation of delinquent
7 youth such as Pine Hills school in Miles City, and Mountain
8 View school in Helena.

9 †18†(20) "Shelter care" means the temporary substitute
10 care of youth in physically unrestricting facilities.

11 †19†(21) "Detention" means the temporary substitute
12 care of youth in physically restricting facilities.

13 †20†(22) "Restitution" means payments in cash to the
14 victim or with services to the victim or the general
15 community when these payments are made under---the
16 jurisdiction--of--a--youth--court--proceeding pursuant to an
17 informal adjustment, consent decree, or other youth court
18 order.

19 †21†(23) "Substitute care" means full-time care of
20 youth in a residential setting for the purpose of providing
21 food, shelter, security and safety, guidance, direction, and
22 if necessary, treatment to youth who are removed from or
23 without the care and supervision of their parents or
24 guardian. Nothing-in-this-definition-is-intended-to-include
25 juvenile--correctional--facilities,--evaluation--facilities,

1 ~~mental--health--facilities--and--services;--and--aftercare~~
2 ~~programs--operated--by--the--department--of--institutions;~~

3 (24) "Serious juvenile offender" means a youth who has
4 committed an offense against the person, an offense against
5 property, or an offense involving dangerous drugs which
6 would be considered a felony offense if committed by an
7 adult."

8 Section 50. Section 41-5-104, MCA, is amended to read:

9 "41-5-104. County commissioners authorized to provide
10 funds. (1) The county commissioners of all counties are
11 hereby authorized, empowered, and required to provide the
12 necessary funds and to make all needful appropriations to
13 carry out the provisions of this chapter.

14 (2) Each The department shall annually bill each
15 county shall pay for its portion-of-the costs of the youth
16 court, based:

17 ~~{a}--on--actual--costs--incurred--in--or--on--behalf--of--the~~
18 ~~county;--or~~

19 ~~{b}--if--actual--costs--cannot--be--identified;--on--each~~
20 ~~county's--proportion--of--the--total--youth--court--workload--in--the~~
21 ~~judicial--district--during--the--calendar--year--preceding--the~~
22 ~~setting--of--the--budget;~~

23 ~~{3}--The--youth--court--judge--shall;--in--January--of--each~~
24 ~~year;--establish--the--proportion--of--the--workload--of--the--court~~
25 ~~to--be--attributed--to--each--county--in--the--ensuing--budget--year~~

1 ~~for--purposes--of--any--necessary--application--of--subsection~~
2 ~~{2}{b}.~~ Each county's payment must be equal to the amount
3 initially budgeted by that county for funding and support of
4 the youth probation operations in that county for fiscal
5 year 1987. Payments are due July 1 and January 1 of each
6 fiscal year and must be deposited in the state special
7 revenue fund in the state treasury for the purpose of paying
8 the expenses of the department."

9 Section 51. Section 41-5-105, MCA, is amended to read:

10 "41-5-105. Youth court committee. In every county of
11 the state the judge having jurisdiction may appoint a
12 committee, willing to act without compensation, composed of
13 not less than three or more than seven reputable citizens,
14 including youth representatives, which committee shall be
15 designated as a youth court committee. This committee shall
16 be subject to the call of the judge to meet and confer with
17 him on all matters pertaining to the youth department-of-the
18 court;--including-the-appointment-of-probation-officers; and
19 shall act as a supervisory committee of youth detention
20 homes."

21 Section 52. Section 41-5-106, MCA, is amended to read:

22 "41-5-106. Order of adjudication -- noncriminal. No
23 commitment placement of any youth to in any state youth
24 correctional facility under this chapter shall be deemed
25 commitment to a penal institution. No adjudication upon the

status of any youth in the jurisdiction of the court shall operate to impose any of the civil disability imposed on a person by reason of conviction of a criminal offense, nor shall such adjudication be deemed a criminal conviction, nor shall any youth be charged with or convicted of any crime in any court except as provided in this chapter. Neither the disposition of a youth under this chapter nor evidence given in youth court proceedings under this chapter shall be admissible in evidence except as otherwise provided in this chapter."

Section 53. 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)(a)~~ conduct hearings on youth court proceedings under this chapter; and

~~(c)(b)~~ 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."

Section 54. Section 41-5-205, MCA, is amended to read:

"41-5-205. Retention of jurisdiction. Once a court obtains jurisdiction over a youth, the court retains jurisdiction unless terminated by the court or by mandatory termination in the following cases:

(1) at the time the proceedings are transferred to adult criminal court;

(2) at the time ~~of commitment--of--the--youth--to--the custody--of--the--department--of--institutions;~~ the youth is discharged by the department; and

(3) in any event, at the time the youth reaches the age of 21 years."

Section 55. Section 41-5-206, MCA, is amended to read:

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

1 (a) (i) the youth charged was 12 years of age or more
 2 at the time of the conduct alleged to be unlawful and the
 3 unlawful act would constitute sexual intercourse without
 4 consent as defined in 45-5-503, deliberate homicide as
 5 defined in 45-5-102, or mitigated deliberate homicide as
 6 defined in 45-5-103, or the attempt, as defined in 45-4-103,
 7 of either deliberate or mitigated deliberate homicide if the
 8 act had been committed by an adult; or

9 (ii) the youth charged was 16 years of age or more at
 10 the time of the conduct alleged to be unlawful and the
 11 unlawful act is one or more of the following:

- 12 (A) negligent homicide as defined in 45-5-104;
- 13 (B) arson as defined in 45-6-103;
- 14 (C) aggravated assault as defined in 45-5-202;
- 15 (D) robbery as defined in 45-5-401;
- 16 (E) burglary or aggravated burglary as defined in
 17 45-6-204;
- 18 ~~{P}--sexual-intercourse-without-consent-as--defined--in~~
 19 45-5-503;
- 20 {G}{F} aggravated kidnapping as defined in 45-5-303;
- 21 {H}{G} possession of explosives as defined in
 22 45-8-335;
- 23 {I}{H} criminal sale of dangerous drugs for profit as
 24 included in 45-9-101;
- 25 {J}{I} attempt as defined in 45-4-103 of any of the

1 acts enumerated in subsections (1)(a)(ii)(A) through
 2 (1)(a)(ii){I}{H};

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

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

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

- 13 (i) the youth committed the delinquent act alleged;
- 14 (ii) the seriousness of the offense and the protection
 15 of the community require treatment of the youth beyond that
 16 afforded by juvenile facilities; and
- 17 (iii) the alleged offense was committed in an
 18 aggressive, violent, or premeditated manner.

19 (2) In transferring the matter of prosecution to the
 20 district court, the court may also consider the following
 21 factors:

- 22 (a) the sophistication and maturity of the youth,
 23 determined by consideration of his home, environmental
 24 situation, and emotional attitude and pattern of living;
- 25 (b) the record and previous history of the youth,

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

(c) the severity of the offense;

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

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

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

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

(6) Any offense not enumerated in subsection (1) that

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

(a) tried in youth court;

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

(7) If a youth is found guilty in district court of any of the offenses enumerated in subsection (1) of this section and is sentenced to the state prison, his commitment shall be to the department of institutions which shall confine the youth in whatever institution it considers proper, including a state youth correctional facility under the procedures of 53-30-212; however, no youth under 16 years of age may be confined in the state prison."

Section 56. Section 41-5-301, MCA, is amended to read:

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

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

(2) The probation officer may:

(a) require the presence of any person relevant to the

1 inquiry;

2 (b) request subpoenas from the judge to accomplish
3 this purpose;

4 (c) require investigation of the matter by any law
5 enforcement agency or any other appropriate state or local
6 agency.

7 (3) If the probation officer determines that the facts
8 indicate a youth in need of care, the matter shall be
9 immediately referred to the appropriate staff within the
10 department of social and rehabilitation services.

11 (4) (a) The probation officer in the conduct of the
12 preliminary inquiry shall:

13 (i) advise the youth of the youth's rights under this
14 chapter and the constitutions of the state of Montana and
15 the United States;

16 (ii) determine whether the matter is within the
17 jurisdiction of the court;

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

21 (b) Once relevant information is secured, the
22 probation officer shall:

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

25 (ii) terminate the inquiry upon the determination that

1 no further action be taken; and

2 (iii) release the youth immediately upon the
3 determination that the filing of a petition is not
4 authorized.

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

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

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

19 (c) refer the matter to the county attorney for filing
20 a petition charging the youth to be a delinquent youth or a
21 youth in need of supervision.

22 (6) A petition charging a youth held in detention must
23 be filed within 5 working days from the date the youth was
24 first detained or the petition shall be dismissed and the
25 youth released unless good cause is shown to further detain

such youth.

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

Section 57. Section 41-5-403, MCA, is amended to read:

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

(a) probation;

(b) placement of the youth for substitute care into a youth care facility as defined in 41-3-1102 ~~or into a home approved by the court;~~

(c) placement of the youth in a private agency responsible for the care and rehabilitation of such a youth;

~~(d) transfer of legal custody to the department of institutions for a period of 6 months, which period may be extended for 6 months upon further order of the court after notice and hearing;~~

~~(e)~~ (d) restitution upon approval of the youth court

judge.

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

(a) age of the youth;

(b) ability of the youth to pay;

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

(d) amount of damage to the victim; and

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

~~(3) If the court finds that placement in a youth care facility other than a youth group home or youth foster home is necessary and in the best interests of the youth and the community, the court shall determine if the youth can receive appropriate treatment in a youth care facility located in Montana as follows:~~

~~(a) If the court finds the youth can receive appropriate treatment in a youth care facility located in Montana that will accept the youth, the court may not place the youth in a youth care facility located outside this state unless an out-of-state facility can provide appropriate treatment that:~~

~~(i) can be obtained at a cost less than that offered by any available facility in this state; and~~

~~{ii}-is--available--in--closer-proximity-to-the-youth's
place-of-residence-than-any-facility-located-in-this--state-~~

~~{b)--When--the--department-of-social-and-rehabilitation
services-is-ordered-to-pay-the-costs-of-caring-for-the-child
in-a-youth-care-facility-other-than-a-youth-foster--home--or
youth--group--homey--the--court-shall-provide-the-department
with-at-least-5-days'-written-notice-and-opportunity--to--be
heard-before-ordering-the-placement-of-the-youth-~~

~~{4}{3}~~ If the youth violates his aftercare agreement as provided for in 53-30-226, he must be returned to the court for further disposition. No youth may be placed in a state youth correctional facility under informal adjustment."

Section 58. Section 41-5-511, MCA, is amended to read:

"41-5-511. Right to counsel. In all proceedings following the filing of a petition alleging a delinquent youth or youth in need of supervision, the youth and the parents or guardian of the youth shall be advised by the court or, in the absence of the court, by its representative that the youth may be represented by counsel at all stages of the proceedings. If counsel is not retained or if it appears that counsel will not be retained, counsel shall be appointed for the youth if the parents and the youth are unable to provide counsel unless the right to appointed counsel is waived by the youth and the parents or guardian.

Neither the youth nor his parent or guardian may waive counsel after a petition has been filed if commitment to a state correctional facility or to the department of institutions for a period of more than 6 months may result from adjudication."

Section 59. Section 41-5-522, MCA, is amended to read:

"41-5-522. Disposition hearing. (1) As soon as practicable after a youth is found to be a delinquent youth or a youth in need of supervision, the court shall conduct a dispositional hearing. The dispositional hearing may involve a determination of financial liability as provided in 41-3-1123 and 41-3-1124.

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

his parents, guardian, or counsel shall have the right to subpoena all persons who have prepared any portion of the social summary or predisposition report and shall have the right to cross-examine said parties at the dispositional hearing.

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

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

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

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

(a) age of the youth;

(b) ability of the youth to pay;

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

(d) amount of damage to the victim; and

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

Section 60. 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 any of the following disposition dispositions:

(a) place the youth on probation;

~~(b) place the youth for substitute care into a youth care facility as defined in 41-3-1102 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;~~

~~(d) transfer legal custody~~ commit the youth to the department of institutions The department shall thereafter determine the appropriate placement, supervision, and rehabilitation program for the youth; provided, however, that:

(i) in the case of a youth in need of supervision, such transfer-of-custody commitment 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;

(ii) in the case of a delinquent youth who is a serious juvenile offender, the judge may specify that the youth be placed in physical confinement in an appropriate facility only if the judge finds that such confinement is necessary for the protection of the public; and

(iii) a youth may not be held in physical confinement for a period of time in excess of the maximum period of imprisonment that could be imposed on an adult convicted of the offense or offenses that brought the youth under the jurisdiction of the youth court. Nothing in this section limits the power of the department to enter into an aftercare agreement with the youth pursuant to 53-30-226.

(e)(c) order such further care and treatment or evaluation that the court considers beneficial to the youth recommended by the department; or

(f)(d) 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, 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. The department shall determine the place and manner of evaluation.

(3) No evaluation of a youth may be performed at the Montana state hospital unless such youth is transferred to the district court under 41-5-206.

(4)--if--the-court-finds-that-placement-in-a-youth-care facility--other--than--a--youth-group-home--or--youth-foster--home is--necessary--and--in--the--best--interests--of--the--youth--and--the community,--the--court--shall--determine--if--the--youth--can receive--appropriate--treatment--in--a--youth--care--facility located-in-Montana-as-follows:

(a)--if--the--court--finds--the--youth--can--receive appropriate--treatment--in--a--youth--care--facility--located--in Montana--that--will--accept--the--youth,--the--court--may--not--place the--youth--in--a--youth--care--facility--located--outside--this state--unless--an--out--of--state--facility--can--provide appropriate--treatment--that:

(i)--can--be--obtained--at--a--cost--less--than--that--offered by--any--available--facility--in--this--state;--and

(ii)--is--available--in--closer--proximity--to--the--youth's place--of--residence--than--any--facility--located--in--this--state;

(b)--When--the--department--of--social--and--rehabilitation services--is--ordered--to--pay--the--costs--of--caring--for--the--child

~~in--a--youth-care-facility-other-than-a-youth-foster-home-or
youth-group-home, the court shall provide the department--at
least--5--days--written--notice-and-opportunity-to-be-heard
before-ordering-the-placement-of-the-youth.~~

{5}(4) 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.

{6}(5) Any order of the court may be modified at any time. In the case of a youth committed to the department of institutions, an order pertaining to the youth may be modified only upon notice to the department and subsequent hearing.

{7}(6) 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.

{8}(7) 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 family services.

It is ordered that be committed to the department of institutions family services 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 61. Section 41-5-602, MCA, is amended to read:

"41-5-602. Law enforcement records. (1) No law enforcement records concerning a youth, except traffic records, may be open to public inspection or their contents disclosed to the public unless the records are directly related to an offense to which publicity must be allowed under subsection (2) of 41-5-601 or unless inspection is

1 ordered by the court.

2 (2) Inspection of law enforcement records concerning a
3 youth, which records are not open to public inspection under
4 subsection (1), is permitted prior to the sealing of the
5 records by:

6 (a) a youth court having the youth currently before it
7 in any proceeding;

8 (b) the department if it is investigating,
9 supervising, or providing services to the youth;

10 ~~(b)~~(c) the officers of agencies having legal custody
11 of the youth and those responsible for his supervision after
12 release;

13 ~~(c)~~(d) any other person, by order of the court, having
14 a legitimate interest in the case or in the work of the law
15 enforcement agency;

16 ~~(d)~~(e) law enforcement officers of Montana, when
17 necessary for the discharge of their immediate duties;

18 ~~(e)~~(f) a district court in which the youth is
19 convicted of a criminal offense, for the purpose of a
20 presentence investigation;

21 ~~(f)~~(g) the county attorney; or

22 ~~(g)~~(h) the youth, his parent, guardian, or counsel."

23 Section 62. Section 41-5-603, MCA, is amended to read:

24 "41-5-603. Youth court and department records. (1)
25 Youth court and youth court-related department records,

1 including social, medical, and psychological records,
2 reports of preliminary inquiries, predispositional studies,
3 and supervision records of probationers, are open to
4 inspection prior to the sealing of the records only to the
5 following:

6 (a) the youth court and its professional staff;

7 (b) representatives of any agency providing
8 supervision and having legal custody of a youth;

9 (c) any other person, by order of the court, having a
10 legitimate interest in the case or in the work of the court;

11 (d) any court and its professional staff and the
12 department's probation and other professional staff or the
13 attorney for a convicted party who had been a party to
14 proceedings in the youth court when considering the sentence
15 to be imposed upon such party;

16 (e) the county attorney;

17 (f) the youth who is the subject of the report or
18 record, after he has been emancipated or reaches the age of
19 majority.

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

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

1 petitions, motions, and other papers filed in a case,
2 transcripts of testimony, findings, verdicts, orders, and
3 decrees, shall be open to inspection by those persons and
4 agencies listed in subsection (1) of this section and the
5 parties to the proceedings and their counsel.

6 (4) All information obtained in discharge of an
7 official duty by any officer or other employee of the youth
8 court or the department shall be privileged and shall not be
9 disclosed to anyone other than the judge and others entitled
10 under this chapter to receive such information, unless
11 otherwise ordered by the judge.

12 (5) After youth court and department records, reports
13 of preliminary inquiries, predispositional studies, and
14 supervision records of probationers are sealed, they are not
15 open to inspection except, upon order of the youth court,
16 for good cause to:

17 (a) those persons and agencies listed in subsection
18 (1); and

19 (b) adult probation professional staff preparing a
20 presentence report on a youth who has reached the age of
21 majority."

22 Section 63. Section 41-5-701, MCA, is amended to read:

23 "41-5-701. Appointment Employment of probation
24 officers. The youth--court-judge-of-each-judicial-district
25 department shall appoint employ such necessary probation

1 officers as are required to carry out the purpose and intent
2 of this chapter. ~~He shall appoint such part-time probation~~
3 ~~officers--as--shall--be--required;--The--qualifications--for~~
4 ~~part-time probation officers must approximate those required~~
5 ~~for--probation--officers--insofar--as--possible;--A--chief~~
6 ~~probation officer--must--be--appointed--by--the--judge--to~~
7 ~~supervise--the--youth--division--offices--in--the--judicial~~
8 ~~district;--The--judge--shall--also--insure--that--the--youth~~
9 ~~division offices are staffed with necessary office personnel~~
10 ~~and--that--the--offices--are--properly--equipped--to--effectively~~
11 ~~carry out the purpose and intent of this chapter. No person~~
12 ~~while--serving--as--a--law--enforcement--officer--may--be--appointed~~
13 ~~or perform the duties of a full-time or part-time probation~~
14 ~~officer."~~

15 Section 64. Section 41-5-703, MCA, is amended to read:

16 "41-5-703. Powers and duties of probation officers.

17 (1) A probation officer shall:

18 (a) perform the duties set out in 41-5-401;

19 (b) make predisposition studies and submit reports and
20 recommendations to the court;

21 (c) supervise, assist, and counsel youth placed on
22 probation or under his supervision; and

23 (d) perform any other functions designated by the
24 court department.

25 (2) A probation officer shall have no power to make

1 arrests or to perform any other law enforcement functions in
2 carrying out his duties except that a probation officer may
3 take into custody any youth who violates either his
4 probation or a lawful order of the court."

5 Section 65. Section 45-5-624, MCA, is amended to read:

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

17 (2) A person convicted of the offense of possession of
18 an intoxicating substance shall:

19 (a) be fined not to exceed \$50;

20 (b) be ordered to complete and, if financially able,
21 pay all costs of his participation in a community-based
22 substance abuse information course;

23 (c) have his driver's license confiscated by the court
24 for not more than 90 days and be ordered not to drive during
25 that period if he was driving or otherwise in actual

1 physical control of a motor vehicle when the offense
2 occurred; or

3 (d) be sentenced to any combination of these
4 penalties.

5 (3) A defendant who fails to comply with a sentence
6 and is under 21 years of age and was under 18 years of age
7 when he failed to comply must be transferred to the youth
8 court. If proceedings for violation of subsection (1) are
9 held in the youth court, the penalties in subsection (2) do
10 not apply. If proceedings for violation of subsection (1) or
11 for failure to comply with a sentence are held in the youth
12 court, the offender shall be treated as an alleged youth in
13 need of supervision as defined in 41-5-103~~†~~3~~†~~. In such
14 case, the youth court may enter its judgment under 41-5-523.

15 (4) A person commits the offense of interference with
16 a sentence or court order if he purposely or knowingly
17 causes his child or ward to fail to comply with a sentence
18 imposed under this section or a youth court disposition
19 order for a youth found to have violated this section and
20 upon conviction shall be fined \$100 or imprisoned in the
21 county jail for 10 days, or both."

22 Section 66. Section 50-8-101, MCA, is amended to read:

23 "50-8-101. Definitions. As used in this part, the
24 following definitions apply:

25 (1) "Department" means the department of institutions,

the department of health and environmental sciences, and the department of ~~social-and-rehabilitation~~ family services.

(2) "Facility" means:

(a) for the department of institutions, nonmedical facilities including:

(i) mental health transitional living facilities; and

(ii) inpatient freestanding or intermediate transitional living facilities for alcohol/drug treatment or emergency detoxification;

(b) for the department of ~~social-and-rehabilitation~~ family services:

(i) ~~adult---services~~ community homes for the developmentally disabled, ~~adult---independent---and~~ semi-independent--living--facilities community homes for physically disabled persons, and adult foster care facilities homes; and

(ii) ~~children's-services-achievement--homes--maternity homes--attention--homes--aftercare--group--homes--district youth--guidance--homes--foster--family--care--facilities, child-care--agencies,--and--community--homes--for--the developmentally-disabled~~ youth care facilities; and

(c) for the department of health and environmental sciences:

(i) public accommodations, including roominghouses and retirement homes, hotels, and motels;

(ii) health care facilities or services, including hospitals, skilled and intermediate nursing home services, and intermediate care nursing home services for the mentally retarded;

(iii) freestanding medical facilities or care, including infirmaries, kidney treatment centers, and home health agencies; and

(iv) personal care facilities.

(3) "Inspecting authority" means the department or agency authorized by statute to perform a given inspection necessary for certification for licensure.

(4) "Licensing agency" means the agency that is authorized by statute to issue the license."

Section 67. Section 50-15-206, MCA, is amended to read:

"50-15-206. Permissible disclosure of illegitimate birth. (1) Disclosure of illegitimacy of birth or information from which illegitimacy can be ascertained may be made only:

(a) upon an order of a court to determine personal or property rights. An adopted person of legal age may apply to the court for such an order.

(b) upon request of the department of social and rehabilitation services, the department of family services, or a licensed adoption agency for purposes of custody

1 action, social security eligibility determinations, or
2 Indian tribal enrollment determinations;

3 (c) upon request of the natural parent during the
4 child's minority unless the child has been placed for
5 adoption.

6 (2) Except when an order of the court is sought, prior
7 to disclosure, the requesting party must submit in writing
8 to the department:

9 (a) proof of identity when appropriate;

10 (b) the need for the information; and

11 (c) the specific purpose for which the information is
12 to be used. The information may be used only for that
13 purpose."

14 Section 68. Section 53-1-104, MCA, is amended to read:

15 "53-1-104. Release of arsonist -- notification of
16 department of justice. (1) Each of the following
17 institutions or facilities having the charge or custody of a
18 person convicted of arson or of a person acquitted of arson
19 on the ground of mental disease or defect shall give written
20 notification to the department of justice whenever such a
21 person is admitted or released by it:

22 (a) Montana state hospital;

23 (b) State prison;

24 (c) Mountain View school;

25 (d) Pine Hills school;

1 (e) Swan River youth forest camp; or

2 (f) Any county or city detention facility.

3 (2) The notification shall disclose:

4 (a) the name of the person;

5 (b) where the person is or will be located; and

6 (c) the type of fire the person was involved in."

7 Section 69. Section 53-1-201, MCA, is amended to read:

8 "53-1-201. Purpose of department. The department shall
9 utilize at maximum efficiency the resources of state
10 government in a coordinated effort to:

11 (1) restore the physically or mentally disabled;

12 (2) rehabilitate the violators of law;

13 (3) sustain the vigor and dignity of the aged;

14 ~~†4†--provide---for---children---in---need---of---temporary~~
15 ~~protection-or-correctional-counseling;~~

16 ~~†5†~~(4) train children of limited mental capacity to
17 their best potential;

18 ~~†6†~~(5) rededicate the resources of the state to the
19 productive independence of its now dependent citizens; and

20 ~~†7†~~(6) coordinate and apply the principles of modern
21 institutional administration to the institutions of the
22 state."

23 Section 70. Section 53-1-202, MCA, is amended to read:

24 "53-1-202. Institutions in department. (1) The
25 following institutions are in the department:

1 (a) Montana state hospital;
 2 (b) Montana veterans' home;
 3 (c) State prison;
 4 ~~{d}--Mountain-View-school;~~
 5 ~~{e}--Pine-Hills-school;~~
 6 ~~{f}{(d)}~~ Montana developmental center;
 7 ~~{g}{(e)}~~ Montana center for the aged;
 8 ~~{h}{(f)}~~ Swan River youth forest camp; and
 9 ~~{i}{(g)}~~ Eastmont human services center; and,
 10 ~~{j}--Any-other--institution--which--provides--care--and~~
 11 ~~services-for-juvenile-delinquents;-including-but-not-limited~~
 12 ~~to--youth-forest-camps-and-juvenile-reception-and-evaluation~~
 13 ~~centers;~~

14 (2) A state institution may not be moved,
 15 discontinued, or abandoned without prior consent of the
 16 legislature."

17 Section 71. Section 53-2-101, MCA, is amended to read:

18 "53-2-101. Definitions. Unless the context requires
 19 otherwise, in this chapter the following definitions apply:

20 (1) "Department" means the department of social and
 21 rehabilitation services provided for in Title 2, chapter 15,
 22 part 22.

23 (2) "Protective services" means services to children
 24 and adults to be provided by the department of family
 25 services as permitted by Titles 41 and 53.

1 ~~{2}{(3)}~~ "Public assistance" or "assistance" means any
 2 type of monetary or other assistance furnished under this
 3 title to a person by a state or county agency, regardless of
 4 the original source of the assistance.

5 ~~{3}{(4)}~~ "Needy person" is one who is eligible for
 6 public assistance under the laws of this state.

7 ~~{4}{(5)}~~ "Net monthly income" means one-twelfth of the
 8 difference between the net income for the taxable year as
 9 the term net income is defined in 15-30-101 and the state
 10 income tax paid as determined by the state income tax return
 11 filed during the current year.

12 ~~{5}{(6)}~~ "Ward Indian" is hereby defined as an Indian
 13 who is living on an Indian reservation set aside for tribal
 14 use or is a member of a tribe or nation accorded certain
 15 rights and privileges by treaty or by federal statutes. If
 16 and when the federal Social Security Act is amended to
 17 define a "ward Indian", such definition shall supersede the
 18 foregoing definition."

19 Section 72. Section 53-2-201, MCA, is amended to read:

20 "53-2-201. Powers and duties of department. (1) The
 21 department shall:

22 (a) administer or supervise ~~all--forms--of~~ public
 23 assistance, ~~child--protection-and-child-welfare~~, including
 24 the provision of medical care payments in behalf of
 25 recipients of public assistance;

1 ~~{b}~~--administer---or---supervise---all---child--welfare
 2 activities, including:
 3 ~~{i}~~--importation-and-exportation-of-children;
 4 ~~{ii}~~--licensing-of-all-children's-foster--family--homes,
 5 group-homes, child-care-agencies-and-child-placing-agencies;
 6 ~~{iii}~~--the--care--of--dependent-and-neglected-children-in
 7 substitute-care-placement-and--children--who--are--free--for
 8 adoption;
 9 ~~{iv}~~--the--maintenance--of--supplemental--day--care--for
 10 children; and
 11 ~~{v}~~--all-state--and--federal--funds--allocated--to--the
 12 department--for--youth--foster--homes, youth-group-homes,
 13 child-care-agencies, and-state-programs-for-youth-in-need-of
 14 care, youth-in-need-of-supervision, and-delinquent-youth;
 15 ~~{c}~~{b} give consultant service to private institutions
 16 providing care for the needy, indigent, handicapped, or
 17 dependent adults;
 18 ~~{d}~~{c} cooperate with other state agencies and develop
 19 provisions for services to the blind, including the
 20 prevention of blindness, the location of blind persons,
 21 medical services for eye conditions, and vocational guidance
 22 and training of the blind;
 23 ~~{e}~~{d} provide services in respect to organization and
 24 supervise county departments of public welfare and county
 25 boards of public welfare in the administration of public

1 assistance functions and for efficiency and economy;
 2 ~~{f}~~{e} assist and cooperate with other state and
 3 federal departments, bureaus, agencies, and institutions,
 4 when so requested, by performing services in conformity with
 5 public assistance purposes;
 6 ~~{g}~~{f} administer all state and federal funds
 7 allocated to the department for public assistance and do
 8 all things necessary, in conformity with federal and state
 9 law, for the proper fulfillment of public assistance
 10 purposes; and
 11 ~~{h}~~{g} make rules governing payment for services and
 12 supplies provided to recipients of public assistance.
 13 (2) The department may:
 14 (a) purchase, exchange, condemn, or receive by gift
 15 either real or personal property which is necessary to carry
 16 out its public assistance functions. Title to property
 17 obtained under this subsection shall be taken in the name of
 18 the state of Montana for the use and benefit of the
 19 department.
 20 (b) contract with the federal government to carry out
 21 its public assistance functions. The department may do all
 22 things necessary in order to avail itself of federal aid and
 23 assistance.
 24 (c) make rules, consistent with state and federal law,
 25 establishing the amount, scope, and duration of services to

be provided to recipients of public assistance."

Section 73. Section 53-2-301, MCA, is amended to read:

"53-2-301. County departments to be established. There shall be established in each county of the state, except in a county that has transferred its public assistance and protective services responsibilities to the department--of social---and---rehabilitation---services state under the provisions of part 8 of this chapter, a county department of public welfare, which shall consist of a county board of public welfare and such staff personnel as may be necessary for the efficient performance of the public assistance activities of the county. If conditions warrant and if two or more county boards enter into an agreement, two or more counties may combine into one administrative unit and use the same staff personnel throughout the administrative unit."

Section 74. Section 53-2-302, MCA, is amended to read:

"53-2-302. County commissioners ex officio county welfare board. Except in a county that has transferred its public assistance and protective services responsibilities to the department--of--social--and--rehabilitation--services state under part 8 of this chapter, the board of county commissioners shall be the ex officio county welfare board and is hereby authorized to devote such additional time for public assistance matters as may be found necessary. The

members of the county welfare board shall receive the same compensation for their services and the same mileage when acting as the county board of public welfare as they receive when acting as the board of county commissioners and shall be limited as to meetings as now provided by law, and the compensation and mileage of the members of the board shall be paid from county funds. They may transact business as a board of county commissioners and as a county welfare board on the same day, and in such cases they shall be paid as a board of county commissioners but may not receive compensation for more than 1 day's work for all services performed on the same calendar day."

Section 75. Section 53-2-304, MCA, is amended to read:

"53-2-304. Staff personnel of county department. (1) Each county board shall select and appoint from a list of qualified persons furnished by the department of social and rehabilitation services such staff personnel as are necessary. The staff personnel in each county shall consist of at least one qualified staff worker (or investigator) and such clerks and stenographers as may be decided necessary. If conditions warrant, the county board, with the approval of the department of social and rehabilitation services, may appoint some fully qualified person listed by the department as supervisor of its staff personnel. The staff personnel of each county department are directly responsible to the

1 county board, but the department of social and
 2 rehabilitation services may supervise such county employees
 3 in respect to the efficient and proper performance of their
 4 duties. The county board of public welfare may not dismiss
 5 any member of the staff personnel without the approval of
 6 the department of social and rehabilitation services, but
 7 the department may request the county board to dismiss any
 8 member of the staff personnel for inefficiency,
 9 incompetence, or similar cause.

10 (2) Public assistance staff personnel attached to the
 11 county board shall be paid from state public assistance
 12 funds both their salaries and their travel expenses as
 13 provided for in 2-18-501 through 2-18-503 when away from the
 14 county seat in the performance of their duties, but the
 15 county board of public welfare shall reimburse the
 16 department of social and rehabilitation services from county
 17 poor funds the full amount of the salaries and travel
 18 expenses not reimbursed to the department by the federal
 19 government and the full amount of the department's
 20 administrative costs which are allocated by the department
 21 to the county for the administration of county welfare
 22 programs and not reimbursed to the department by the federal
 23 government. Under circumstances prescribed by the department
 24 of social and rehabilitation services, the reimbursement by
 25 the county board of public welfare may be less than the

1 county share as prescribed above. All other administrative
 2 costs of the county department shall also be paid from
 3 county poor funds.

4 (3) On or before the 20th day of the month following
 5 the month for which the payments to the public assistance
 6 staff personnel of the county were made, the department of
 7 social and rehabilitation services shall present to the
 8 county department of public welfare a claim for the required
 9 reimbursements. The county board shall make such
 10 reimbursements within 20 days after the presentation of the
 11 claim, and the department of social and rehabilitation
 12 services shall credit (add) all such reimbursements to its
 13 account for administrative costs.

14 (4) If a county has transferred its public assistance
 15 and protective services responsibilities to the department
 16 ~~of--social-and-rehabilitation-services~~ state under part 8 of
 17 this chapter, the appropriate department shall select,
 18 appoint, and supervise all necessary public assistance and
 19 protective services personnel, including if necessary a
 20 supervisor of staff personnel. All such personnel are
 21 directly responsible to the department."

22 Section 76. Section 53-2-306, MCA, is amended to read:
 23 "53-2-306. County department charged with local
 24 administration of public assistance. Except in a county that
 25 has transferred its public assistance and protective

services responsibilities to the ~~department--of--social--and rehabilitation--services~~ state under part 8 of this chapter, the county department of public welfare shall be charged with the local administration of all forms of public assistance operations in the county, ~~including--but--not limited-to-food-stamp-programs-and-social-services-programs.~~ All such local administration must conform to federal and state law and the rules as established by the department of social and rehabilitation services."

Section 77. Section 53-2-322, MCA, is amended to read:

"53-2-322. County to levy taxes, budget, and make expenditures for public assistance activities. (1) The board of county commissioners in each county shall levy 13.5 mills for the county poor fund as provided by law or so much thereof as may be necessary. Counties transferring public assistance and protective services responsibilities to the ~~department-of-social-and-rehabilitation-services~~ state under part 8 of this chapter may not levy more than the difference between 13.5 mills and the state levy pursuant to 53-2-813.

(2) The board shall budget and expend so much of the funds in the county poor fund for public assistance and protective services purposes as will enable the county welfare department to pay the general relief activities of the county and to reimburse the department of social and rehabilitation services and the department of family

services for the county's proportionate share of the administrative costs of the county welfare department and of all public assistance and protective services and its proportionate share of any other public assistance activity that may be carried on jointly by the state and the county.

(3) The amounts set up in the budget for the reimbursements to the department of social and rehabilitation services and the department of family services shall be sufficient to make all of these reimbursements in full. The budget shall make separate provision for each one of these public assistance and protective services activities, and proper accounts shall be established for the funds for all such activities.

(4) As soon as the county proposed budget provided for in 7-6-2315 has been agreed upon, a copy thereof shall without delay be mailed to the department of social and rehabilitation services, and at any time before the final adoption of the budget, the department shall make such recommendations with regard to changes in any part of the budget relating to the county poor fund as considered necessary in order to enable the county to discharge its obligations under the public assistance laws.

(5) The department of social and rehabilitation services shall promptly examine the county proposed budget in order to ascertain if the amounts provided for

1 reimbursements to the department are likely to be sufficient
 2 and shall notify the county clerk of its findings. The board
 3 shall make such changes in the amounts provided for
 4 reimbursements, if any are required, in order that the
 5 county will be able to make the reimbursements in full.

6 (6) The board of county commissioners may not make any
 7 transfer from the amounts budgeted for reimbursing the
 8 department of social and rehabilitation services without
 9 having first obtained a statement in writing from the
 10 department to the effect that the amount to be transferred
 11 will not be required during the fiscal year for the purposes
 12 for which the amounts were provided in the budget.

13 (7) No part of the county poor fund, irrespective of
 14 the source of any part thereof, may be used directly or
 15 indirectly for the erection or improvement of any county
 16 building so long as the fund is needed for general relief
 17 expenditures by the county or is needed for paying the
 18 county's proportionate share of public assistance and
 19 protective services or its proportionate share of any other
 20 public assistance activity that may be carried on jointly by
 21 the state and the county. Expenditures for improvement of
 22 any county buildings used directly for care of the poor,
 23 except a county hospital or county nursing home, may be made
 24 out of any moneys in the county poor fund, whether such
 25 moneys are produced by the 13.5-mill levy provided for in

1 subsection (1) of this section or from any additional levy
 2 authorized or to be authorized by law. Such expenditure
 3 shall be authorized only when any county building used for
 4 the care of the poor must be improved in order to meet legal
 5 standards required for such buildings by the department of
 6 health and environmental sciences and when such expenditure
 7 has been approved by the department of social and
 8 rehabilitation services and the department of family
 9 services."

10 Section 78. Section 53-2-323, MCA, is amended to read:
 11 "53-2-323. Emergency grants from state funds to
 12 counties. Except when a county has transferred its public
 13 assistance and protective services responsibilities to the
 14 ~~department of social and rehabilitation services~~ state under
 15 part 8 of this chapter, a county may apply to the department
 16 for an emergency grant-in-aid, and the grant shall be made
 17 to the county upon the following conditions:

18 (1) The board of county commissioners or a duly
 19 elected or appointed executive officer of the county shall
 20 make written application to the department for emergency
 21 assistance and shall show by written report and sworn
 22 affidavit of the county clerk and recorder and chairman of
 23 the board of county commissioners or other duly elected or
 24 appointed executive officer of the county the following:

25 (a) that the county will not be able to meet its

1 obligations under law to provide assistance to the needy of
2 the county or meet its proportionate share of any public
3 assistance activity carried on jointly with the department;

4 (b) that all lawful sources of revenue and other
5 income to the county poor fund will be exhausted;

6 (c) that all expenditures from the county poor fund
7 have been lawfully made; and

8 (d) that all expenditures from the county poor fund
9 have been reasonable and necessary, according to criteria
10 set by the department in rules adopted for that purpose, for
11 the county to meet its obligations under law to provide
12 assistance to the needy.

13 (2) Within 10 days of receipt of the application and
14 affidavit, the department shall determine whether the county
15 poor fund will be depleted and shall give notice to the
16 county of the department's intention to deny or allow the
17 grant-in-aid. Before a grant-in-aid for any fiscal year may
18 be made to a county under this section, any money credited
19 during that fiscal year to the depletion allowance reserve
20 fund from the sources provided by 7-34-2402(2) shall be
21 transferred to the county poor fund to be used for lawful
22 poor fund expenditures. The amount of the grant-in-aid shall
23 be determined after all sources of income available to the
24 poor fund, including the depletion allowance reserve fund
25 transfers, have been exhausted.

1 (3) Within 10 days of receiving notice from the
2 department that a grant-in-aid will be made to the county,
3 the board of county commissioners or other duly elected or
4 appointed executive officer of the county shall adopt an
5 emergency budget. There is no requirement of notice and
6 hearing for that emergency budget. The emergency budget
7 shall state the amount required to meet the obligation of
8 the county and shall allocate that whole amount among the
9 various classes of expenditures for which the grant was
10 made.

11 (4) Upon receipt and approval of the county emergency
12 budget, the department shall issue a warrant to the county
13 treasurer of the county for the total amount stated in the
14 approved emergency budget.

15 (5) The grant-in-aid received by the county shall be
16 placed in an emergency fund account to be kept separate and
17 distinct from the poor fund account. All expenditures from
18 the emergency fund account shall be made by a separate
19 series of warrants or checks marked as emergency warrants or
20 checks.

21 (6) The grants-in-aid from the department may be used
22 only for public assistance activities lawfully conducted by
23 the county, including but not limited to medical aid,
24 hospitalization, and institutional care. No part of a
25 grant-in-aid may be used, directly or indirectly, to pay for

1 the erection or improvement of any county building or for
2 furniture, fixtures, appliances, or equipment for a county
3 building.

4 (7) In the event the county poor fund is replenished
5 by other lawful sources of revenue, the county shall issue
6 warrants to meet its obligations from the county poor fund
7 until such time as that fund is again so depleted that
8 warrants can no longer lawfully be drawn on that account.
9 Upon depletion of the county poor fund, the county may again
10 make disbursements from the emergency fund account as
11 provided in subsection (5). At the close of the county
12 fiscal year, the county shall return to the department any
13 amounts remaining in the county poor fund and the emergency
14 fund account, but the remaining amount to be returned may
15 not exceed the total amount of the emergency grant-in-aid
16 for that fiscal year.

17 (8) Any amount which is unlawfully disbursed or
18 transferred from the emergency fund account or used for a
19 purpose other than that specified in the grant-in-aid shall
20 be returned by the county to the department."

21 Section 79. Section 53-2-801, MCA, is amended to read:

22 "53-2-801. Purpose. The purpose of this part is to
23 provide for the department of social and rehabilitation
24 services to assume all responsibilities for public
25 assistance programs and for the department of family

1 services to assume all responsibilities for protective
2 services for children and adults that, as of July 1, 1983,
3 are provided by the counties pursuant to Titles 41 and 53.
4 The assumption may become effective only at the option and
5 with the express consent of each individual county
6 requesting state assumption."

7 Section 80. Section 53-2-802, MCA, is amended to read:
8 "53-2-802. Definitions. Unless the context requires
9 otherwise, in this part the following definitions apply:

10 (1) "County department" means the county department of
11 public welfare provided for in part 3 of this chapter.

12 ~~†2) -- "Department" -- means -- the -- department of social and~~
13 ~~rehabilitation services provided for in Title 27 Chapter 15,~~
14 ~~part 22.~~

15 ~~†3) (2)~~ "Mill levy equivalent" means the prior year's
16 expenditure divided by the value of 1 mill.

17 ~~†4) (3)~~ "Needy person" is one who is eligible for
18 public assistance under the laws of this state.

19 ~~†5) (4)~~ "Protective services" means services to
20 children and adults to be provided by the department of
21 family services as permitted by Titles 41 and 53.

22 ~~†6) (5)~~ "Public assistance" or "assistance" means any
23 type of monetary or other assistance furnished under this
24 title to a person by a state or county department,
25 regardless of the original source of assistance.

1 †7†(6) "State assumption" means the transfer to the
 2 department of social and rehabilitation services and the
 3 department of family services for the county by the board of
 4 county commissioners of all powers and duties, including
 5 staff personnel as provided in 53-2-301 through 53-2-306 and
 6 public assistance and protective services, respectively,
 7 provided by the county department pursuant to Titles 41 and
 8 53, except as otherwise specifically provided in this part."

9 Section 81. Section 53-2-803, MCA, is amended to read:

10 "53-2-803. Authority to adopt rules. (1) The
 11 department of social and rehabilitation services and the
 12 department of family services may adopt rules necessary to
 13 carry out the purposes of this part, including implementing
 14 transfer of the county programs to the each department,
 15 respectively.

16 (2) The department of social and rehabilitation
 17 services may adopt rules:

18 †1†(a) to determine the amount, scope, and duration of
 19 general relief, which may not exceed those services and
 20 amounts payable under the department's department of social
 21 and rehabilitation services programs of medicaid and aid to
 22 families with dependent children as necessary to carry out
 23 the purposes of this part; and

24 †2†(b) establishing a system of penalties and
 25 sanctions applicable to providers of health-related services

1 to state-assumed counties in accordance with 53-6-111(2)
 2 through (5)."

3 Section 82. Section 53-2-811, MCA, is amended to read:

4 "53-2-811. Transfer of county public assistance and
 5 protective services to state department departments. (1) All
 6 authority granted to the board of county commissioners to
 7 establish and operate a public assistance program and
 8 provide protective services for children and adults pursuant
 9 to Titles 41 and 53 may be transferred to the department of
 10 social and rehabilitation services and the department of
 11 family services, respectively, except that the county
 12 attorney shall continue to provide legal assistance and
 13 representation for the purposes of adult and child
 14 protective services without charge and all debts and
 15 obligations incurred prior to the effective date of state
 16 assumption continue as the responsibility of the county.

17 (2) The board of county commissioners, after public
 18 hearing, may by resolution or ordinance transfer to the
 19 department of social and rehabilitation services and the
 20 department of family services all powers and duties for
 21 public assistance and protective services for children and
 22 adults, respectively, including the selection, supervision,
 23 and termination of staff personnel associated with the
 24 performance of these activities. Upon the effective date of
 25 such transfer, the department of social and rehabilitation

1 services and the department of family services shall assume
 2 all powers and duties related to public assistance and
 3 protective services, respectively, and accorded by law to
 4 the county welfare department. If the notice required in
 5 subsection (3) is given, the transfer is effective at the
 6 start of the next state fiscal year.

7 (3) Counties opting for state assumption shall notify
 8 the department of social and rehabilitation services and the
 9 department of family services at least 90 days prior to the
 10 start of the state fiscal year unless the time period is
 11 waived in whole or in part by the director of the each
 12 department.

13 (4) Counties opting for state assumption shall permit
 14 the department of social and rehabilitation services and the
 15 department of family services to use the same facilities
 16 currently occupied by the county department or substantially
 17 equal facilities, with fair rental value for such facilities
 18 to be paid by the each department. Counties opting for state
 19 assumption shall transfer to the appropriate department all
 20 materials, equipment, and supplies used in the operation of
 21 the county department and which were paid for in whole or in
 22 part with federal or state funds."

23 Section 83. Section 53-2-812, MCA, is amended to read:

24 "53-2-812. State assumption -- permanent transfer to
 25 department state -- exceptions. (1) A county opting for

1 state assumption does so on a complete and permanent basis,
 2 unless the county requests to retain or reassume
 3 responsibility for medical assistance or monetary payments
 4 to needy persons as provided in Title 53, chapter 3,
 5 pursuant to the adoption of a resolution or ordinance as
 6 provided in 53-2-811(2) and notice to the department of
 7 social and rehabilitation services as provided in
 8 53-2-811(3). Under such a retention or reassumption, staff
 9 personnel continue under the supervision and control of the
 10 department of social and rehabilitation services but the
 11 department may contract with the counties for the operation
 12 of programs provided in Title 53, chapter 3. A county may
 13 not retain or reassume assistance programs partially funded
 14 by the federal government.

15 (2) A county transferring all duties and
 16 responsibilities to the department state may reassume
 17 limited responsibility for medical assistance or monetary
 18 payments to needy persons as provided in subsection (1) but
 19 may not thereafter request full state assumption. A county
 20 initially requesting limited state assumption may not
 21 thereafter request full state assumption. A county opting
 22 for limited or full state assumption does so on a permanent
 23 basis, except as provided in this section."

24 Section 84. Section 53-2-813, MCA, is amended to read:

25 "53-2-813. Mill levy for counties transferring public

1 assistance and protective services. (1) (a) Except as
2 provided in subsection (1)(b), for the purpose of this part,
3 12 mills must be levied annually in those counties opting
4 for state assumption.

5 (b) A county that levied an amount less than 12 mills
6 for purposes of its county poor fund during fiscal year 1982
7 must levy an equivalent amount to the poor fund mill levy
8 assessed by that county during fiscal year 1982 plus 1.5
9 mills, not to exceed a total of 12 mills, less a mill levy
10 equivalent to an amount the county can demonstrate was spent
11 during fiscal year 1982 for the building or operation of a
12 medical facility. The reduced mill levy exception provided
13 in this subsection (1)(b) continues in effect until June 30,
14 1984. After that date 12 mills must be levied in all
15 counties where state assumption is in effect.

16 (2) The For a county electing state assumption before
17 July 1, 1986, the proceeds of the mill levy established in
18 subsection (1) must be deposited in the state special
19 revenue fund in the state treasury for the purpose of paying
20 the expenses of the department of social and rehabilitation
21 services. The mill levy may not exceed 12 mills,
22 notwithstanding actual expenditures made by the department.

23 (3) For a county electing state assumption on or after
24 July 1, 1986, the proceeds of the mill levy established in
25 subsection (1) must be deposited in the state special

1 revenue fund in the state treasury to the credit of the
2 department of social and rehabilitation services. The
3 general fund authority of the department of social and
4 rehabilitation services shall be reduced and the general
5 fund authority of the department of family services shall be
6 increased by an amount equal to the county's expenditures
7 for child and adult protective services in the fiscal year
8 immediately preceding state assumption. The mill levy may
9 not exceed 12 mills, notwithstanding actual expenditures
10 made by the department of social and rehabilitation services
11 and the department of family services.

12 ~~(3)~~(4) For a county retaining or reassuming
13 operational responsibility for medical assistance or
14 monetary payments to needy persons as provided in 53-2-812,
15 the levy provided in subsection (1) must be reduced by the
16 mill levy equivalent expended by that county or the
17 department for such purposes in the fiscal year immediately
18 preceding the option to retain or reassume such
19 responsibility."

20 Section 85. Section 53-2-821, MCA, is amended to read:

21 "53-2-821. Creation of advisory councils. (1) The
22 department of social and rehabilitation services may
23 establish one or more advisory councils to advise the
24 department on policies relating to public assistance or
25 protective-services. The director of the department shall

1 appoint members of the advisory council for a term set by
2 him, and they may be dismissed at his discretion.

3 (2) Upon request of the governing body of a county
4 having opted for state assumption, the department of social
5 and rehabilitation services shall establish a county
6 advisory council for the county. The advisory council shall
7 consist of the board of county commissioners of the county
8 or, if the county governing body consists of greater than
9 three members, three members of the governing body chosen by
10 the governing body. The department may appoint two other
11 members to the advisory council as provided in subsection
12 (1).

13 (3) No compensation or expenses may be paid advisory
14 council members for their service on the advisory council.
15 The requirements of 2-15-122 do not apply to an advisory
16 council appointed pursuant to this section."

17 Section 86. Section 53-2-822, MCA, is amended to read:

18 "53-2-822. Work program required. The department of
19 social and rehabilitation services shall establish a work
20 program as provided in 53-3-304. The department of social
21 and rehabilitation services may contract with the county, a
22 municipality, or state agency that has work available for
23 recipients of general relief."

24 Section 87. Section 53-4-101, MCA, is amended to read:

25 "53-4-101. Definitions. As used in this part, the

1 following definitions apply:

2 (1) "Child welfare services" means the establishing,
3 extending, and strengthening of child welfare services
4 (especially in predominantly rural areas) for the protection
5 and care of ~~homeless, dependent, and neglected children and~~
6 ~~children in danger of becoming delinquent~~ children alleged
7 to be youth in need of care, youth in need of supervision,
8 and delinquent youth.

9 ~~(2) "Child welfare worker" means staff personnel who~~
10 ~~have had education and training in the field of child~~
11 ~~welfare and who are qualified and accepted as such in~~
12 ~~conformity with the standards established by the department.~~

13 ~~(3) (2) "Department" means the department of social and~~
14 ~~rehabilitation family services provided for in Title 2,~~
15 ~~chapter 15, part 22 [section 2].~~

16 ~~(4) (3) "Public assistance" or "assistance" means any~~
17 ~~type of monetary or other assistance furnished under this~~
18 ~~title to a person by a state or county agency, regardless of~~
19 ~~the original source of the assistance."~~

20 Section 88. Section 53-4-111, MCA, is amended to read:

21 "53-4-111. Administrative duties of department.
22 Subject to the authority and regulations of the department
23 and in cooperation with the federal government, the
24 department shall:

25 (1) adopt rules necessary to carry out the purposes of

1 this part;

2 (2) administer or supervise all child welfare
3 ~~activities services~~ of the state except the child welfare
4 ~~activities services~~ which are administered by the department
5 of health and environmental sciences and the department of
6 social and rehabilitation services."

7 Section 89. Section 53-4-113, MCA, is amended to read:

8 "53-4-113. Child protection and rehabilitation --
9 duties of department. The department shall:

10 (1) enforce all laws pertaining to children and take
11 the initiative in all matters involving the interest of
12 illegitimate, dependent, neglected, and delinquent children
13 where adequate provision therefor has not been made by law;

14 (2) use funds available for cases where special
15 medical or material assistance is necessary to rehabilitate
16 ~~subnormal~~ developmentally disabled or physically handicapped
17 children and where it is not otherwise provided for by law;

18 (3) cooperate for the purposes hereof with all
19 reputable child-helping and child-placing agencies; and

20 (4) inspect, license, and supervise ~~public-and-private~~
21 ~~infants--homes--and--child-caring youth care facilities~~ and
22 child-placing ~~institutions-and~~ agencies."

23 Section 90. Section 53-4-115, MCA, is amended to read:

24 "53-4-115. Department to accept custody of children
25 committed by courts. The department shall accept the

1 guardianship or custody of children committed by the courts
2 to the department and ~~arrange~~ provide for their care in
3 ~~family-foster-homes-or-otherwise-in-cooperation-with--county~~
4 ~~departments-of-public-weifare.~~"

5 Section 91. Section 53-4-401, MCA, is amended to read:

6 "53-4-401. Definitions. As used in this part, the
7 following definitions apply:

8 (1) "Person" includes any individual, partnership,
9 voluntary association, or corporation.

10 (2) "Agency" includes a person not related by blood or
11 marriage to a minor child to be adopted.

12 (3) "Department" means the department of ~~social-and~~
13 ~~rehabilitation family~~ services provided for in ~~Title--2,~~
14 ~~chapter-157-part-22~~ [section 2]."

15 Section 92. Section 53-4-501, MCA, is amended to read:

16 "53-4-501. Purpose -- definitions. (1) The purpose of
17 this part is to assure that children requiring supplemental
18 parental care be provided such food, shelter, security and
19 safety, guidance and direction, nurture and comfort, and
20 learning experiences commensurate to their ages and
21 capabilities so as to safeguard the growth and development
22 of such children, thereby facilitating their proper physical
23 and emotional maturation.

24 (2) In this part, the following definitions apply:

25 (a) "Child" means a person under 12 years of age.

(b) "Day-care facility" means a person, association, or place, incorporated or unincorporated, that provides supplemental parental care on a regular basis. It includes a family day-care home, a day-care center, or a group day-care home. It does not include a person who limits care to children who are related to him by blood or marriage or under his legal guardianship or any group facility established chiefly for educational purposes.

(c) "Day-care center" means a place in which supplemental parental care is provided to 13 or more children on a regular basis.

(d) "Department" means the department of ~~social--and rehabilitation~~ family services provided for in ~~Title-2, chapter-15,--part-22~~ [section 2].

(e) "Day care" means supplemental parental child care.

(f) "Supplemental parental child care" means the provision of food, shelter, and learning experiences commensurate with a child's age and capabilities so as to safeguard the child's growth and development on a supplemental basis outside of the child's home by an adult other than a parent, guardian, person in loco parentis, or relative on a regular basis for daily periods of less than 24 hours.

(g) "Regular basis" means providing supplemental parental care to children of separate families for any daily

periods of less than 24 hours and within 3 or more consecutive weeks.

(h) "Family day-care home" means a private residence in which supplemental parental care is provided to three to six children from separate families on a regular basis.

(i) "Group day-care home" means a private residence in which supplemental parental care is provided to 7 to 12 children on a regular basis.

(j) "Registration" means the process whereby the department maintains a record of all family day-care homes and group day-care homes, prescribes standards, promulgates rules, and requires the operator of a family day-care home or a group day-care home to certify that he has complied with the prescribed standards and promulgated rules.

(k) "Registrant" means the holder of a registration certificate issued by the department in accordance with the provisions of this part.

(l) "Registration certificate" means a written instrument issued by the department to publicly document that the certificate holder has, in writing, certified to the department his compliance with this part and the applicable standards for family day-care homes and group day-care homes.

(m) "License" means a written document issued by the department that the license holder has complied with this

part and the applicable standards and rules for day-care centers.

(n) "Licensee" means the holder of a license issued by the department in accordance with the provisions of this part."

Section 93. Section 53-20-203, MCA, is amended to read:

"53-20-203. Responsibilities of department. The department shall:

(1) take cognizance of matters affecting the developmentally disabled citizens of the state;

(2) initiate a preventive developmental disabilities program which shall include but not be limited to the implementation of developmental disabilities care, treatment, prevention, and research as can best be accomplished by community-centered services. Every means shall be utilized to initiate and operate the service program in cooperation with local agencies under the provisions of 53-20-205 and 53-20-207.

(3) collect and disseminate information relating to developmental disabilities;

(4) prepare, with the assistance of the planning and advisory council, an annual comprehensive plan for the initiation and maintenance of developmental disabilities services in the state. The services shall include but not

be limited to community comprehensive developmental disabilities services as referred to in 53-20-202.

(5) provide to the planning and advisory council a written quarterly report of planning, program, and fiscal activities of the department in regard to community-based services for the developmentally disabled;

(6) provide by rule for the evaluation of persons who apply for services or persons admitted into a program at a developmental disability facility;

(7) provide state personnel to assist regional councils provided for in 53-20-207;

(8) receive from agencies of the government of the United States and other agencies, persons or groups of persons, associations, firms, or corporations grants of money, receipts from fees, gifts, supplies, materials, and contributions to initiate and maintain developmental disabilities services within the state; and

(9) require that habilitation plans be developed, implemented, and continuously maintained for all developmentally disabled persons who are served through a community-based program funded by the state; and

(10) use funds available for cases in which special medical or material assistance is necessary to rehabilitate developmentally disabled or physically handicapped children if such assistance is not otherwise provided for by law."

1 Section 94. Section 53-20-213, MCA, is amended to
2 read:

3 "53-20-213. Departments to cooperate. The department
4 of institutions, the department of social and rehabilitation
5 services, the department of health and environmental
6 sciences, the department of family services, and the office
7 of superintendent of public instruction shall cooperate on
8 all aspects of each agency's respective programs for the
9 developmentally disabled."

10 Section 95. Section 53-20-305, MCA, is amended to
11 read:

12 "53-20-305. Local control of community homes --
13 departmental licensing, administration, operation, health
14 and safety standards. (1) Community homes for the
15 developmentally disabled may be under local control, and the
16 nonprofit corporations or associations operating community
17 homes are authorized to establish homes and programs they
18 believe in the best interest of their homes.

19 (2) (a) A community home for the developmentally
20 disabled shall be licensed annually by the department of
21 ~~social and rehabilitation~~ family services.

22 (b) One temporary license may be issued for no longer
23 than 60 days if there are unavoidable delays in the
24 certification process.

25 (3) (a) The department of family services for the

1 purpose of licensing shall adopt standards and rules
2 concerning the administration, operation, health, and safety
3 of community homes for the developmentally disabled.

4 (b) The department of health and environmental
5 sciences shall provide advice and recommendations to the
6 department of social and rehabilitation services and the
7 department of family services concerning the standards for
8 health and safety."

9 Section 96. Section 53-20-307, MCA, is amended to
10 read:

11 "53-20-307. Health and safety standards for licensing.

12 (1) (a) After initial certification by the state fire
13 marshal, community homes must be certified annually for fire
14 and life safety by the state fire marshal.

15 (b) The state fire marshal shall notify the department
16 of social and rehabilitation services and the department of
17 family services when a community home has been certified.

18 (2) (a) Local health officers shall certify community
19 homes for compliance with health and safety standards. If
20 for any reason the local authority cannot complete the
21 certification in a timely manner, the department of health
22 and environmental sciences is authorized to make the
23 determination on certification.

24 (b) A reasonable fee may be charged to authorized
25 parties as defined in 53-20-303 for the health and safety

certification."

Section 97. Section 53-20-401, MCA, is amended to read:

"53-20-401. Definitions. As used in this part, unless the context otherwise requires, the following definitions apply:

(1) "Client" means a person for whom voluntary protective services are rendered pursuant to provisions of this part.

(2) "Department" means the department of social and rehabilitation family services provided for in (section 2).

(3) "Developmentally disabled person" means a person who by reason of a developmental disability is not able, unassisted, to properly manage or care for his person or his property.

(4) "Ward" means a person for whom protective services are rendered pursuant to the provisions of this part the department has been appointed guardian under Title 72, chapter 5, part 3.

(5) "Respondent" means a person in whose interest proceedings are brought under this part.

(6) "Protective services" means case management of services directed at preventing or remedying neglect, abuse, or exploitation of developmentally disabled persons."

Section 98. Section 53-20-402, MCA, is amended to

read:

"53-20-402. Legislative findings and directives. (1)

In recognition of the need to provide supervision and protection from abuse, neglect, and exploitation for the developmentally disabled and in acknowledgment of the desirability of providing such services outside the state institutions, the legislature hereby finds and declares that a program should be established by the department to provide protective services for the developmentally disabled. Such a program should be designed to provide the services set forth in this part for developmentally disabled persons.

(2) The director of the department shall adopt rules for the administration of this part. The department shall develop a statewide system of protective service services in accordance with regulations and standards established by the department with respect to this program. The department may:

(a) provide direct services;

(b) enter into a contract with any responsible agency, public or private, for provision of protective service services by the agency;

(c) accept appointment by any district court as guardian, or conservator, trustee, protector, or trustee and protector of a mentally retarded or other developmentally disabled person. However, this subsection does not relieve

1 the department of the duty to comply with the requirements
2 of Title 72, chapter 5, for the appointment of a guardian or
3 conservator or the requirements of 53-20-406."

4 Section 99. Section 53-20-405, MCA, is amended to
5 read:

6 "53-20-405. Protective and supportive services
7 provided. (1) The department shall ~~provide-in-the-manner~~
8 ~~set-forth-for assist~~ each of its clients or wards to obtain
9 those protective and supportive services which the
10 ~~department--believes~~ may be necessary to help the client or
11 ward function to the extent of his capabilities as an
12 independent, self-sufficient member of society. Services
13 under this part may include but shall not be limited to
14 assistance in obtaining:

15 (a) housing, clothing, and food;

16 (b) education and training for living in society and,
17 where possible, for employment;

18 (c) employment;

19 (d) financial benefits to which the client or ward may
20 be entitled;

21 (e) medical services and supplies;

22 (f) necessary legal services;

23 (g) marshaling, protection, and insurance of the
24 client's or ward's property;

25 (h) financial advice and services; and

1 (i) participation in cultural and recreational
2 activities.

3 (2) Services under this part may also include but
4 shall not be limited to assistance in preventing
5 exploitation of the client or ward by others and in
6 preventing ~~injury-to~~ abuse or neglect of the client or ward
7 and injury ~~by-the-ward~~ to others.

8 (3) The provision of protective services pursuant to
9 this part does not create a guardianship relationship
10 between the department and the developmentally disabled
11 person unless a guardianship is created in accordance with
12 the requirements of Title 72, chapter 5, part 3.

13 (4) The department may not provide a developmentally
14 disabled person protective services that impose a legal
15 limitation or restriction on the person unless the
16 department has been appointed the legal guardian of or
17 conservator for the person under the provisions of Title 72,
18 chapter 5."

19 Section 100. Section 53-20-409, MCA, is amended to
20 read:

21 "53-20-409. Costs of protective services. (1) If the
22 income from the assets available to a ward suffice, the
23 department may require such ward, the custodian, guardian,
24 or conservator of such ward or, if the governing instrument
25 permits, the trustee of such ward to pay all reasonable and

proper costs of proceedings in the interest of such ward under this part or Title 72, chapter 5, including, without limitation, court costs, sheriff fees, attorney fees, and costs of diagnostic services, and to pay for protective services rendered to the ward or to reimburse the department for funds expended for such costs or services.

(2) Upon a written petition filed by the department, the court by which the department was appointed may permit annual expenditure of up to 3% of the principal assets if such expenditure be shown to be of special advantage for the ward. The department shall file an accounting each year, and the court by which the department was appointed shall conduct a hearing to determine the propriety of any charge or charges to a ward. ~~All-of-the-provisions-of-subsections (2)-and-(3)-of--53-20-404--concerning--notice--and--hearings shall--apply--to--hearings--under--this--section.~~ Upon such hearing, the court shall enter its order approving, disapproving, or modifying such charge or charges. The order of the court may be prospective as to charges of a recurring nature which reasonably may be anticipated.

(3) Except as provided in subsections (1) and (2) of this section, the net cost of proceedings under this part and of services provided by the department shall be paid from moneys appropriated for that purpose by the legislature or from moneys available from any other governmental or

private source. Claims for state reimbursements shall be presented to the department at such times and in such manner as the department may prescribe. The department shall certify the amount to the department of administration. The amount so certified shall be paid from the state treasury upon the voucher of the department and the warrant of the department of administration."

Section 101. Section 53-20-410, MCA, is amended to read:

"53-20-410. Reports required. With respect to each client or ward, designated field staff shall file a written report with the director of the department no later than June 30, 1974, and annually thereafter setting forth the services which have been provided for the client or ward, including specifically an accounting for any transactions with property of the client or ward other than as a court-appointed conservator, the current condition of the client or ward, and the recommendations of the department as to whether its services should continue or be terminated and whether other proceedings should be instituted. ~~if-the department--is--serving--pursuant--to--court---order---under 53-20-404,--a-copy--of--such-report-also-shall-be-filed-with such-court--~~"

Section 102. Section 53-30-202, MCA, is amended to read:

1 "53-30-202. Establishment of juvenile youth
 2 correctional facilities. The department of institutions
 3 family services, within the annual or biennial budgetary
 4 appropriation, may establish, maintain, and operate
 5 facilities to properly diagnose, care for, train, educate,
 6 and rehabilitate children in need of these services. The
 7 children must be 10 years of age or older and under 21 years
 8 of age. The facilities include but are not limited to the
 9 Mountain View school and the Pine Hills school ~~but--do--not~~
 10 ~~include-the-youth-forest-camp."~~

11 Section 103. Section 53-30-203, MCA, is amended to
 12 read:

13 "53-30-203. Control and management of juvenile youth
 14 correctional facilities. The facilities provided for in
 15 53-30-202 shall exercise their functions under the
 16 supervision and general management of the department of
 17 institutions family services. Except where otherwise
 18 provided by law, the department by rules shall establish
 19 standards of care, policies of admission, transfers,
 20 discharge, and aftercare supervision in order to provide
 21 adequate care for children and adequate service to the
 22 courts. The department shall develop special programs within
 23 each facility which are adaptable to the particular needs of
 24 its operation."

25 Section 104. Section 53-30-204, MCA, is amended to

1 read:

2 "53-30-204. Cooperative agreements for services with
 3 governing body of Indian tribe. (1) The department of
 4 institutions family services may enter into agreements with
 5 the governing body of an Indian tribe within the state for
 6 residential, and educational, evaluation, and aftercare
 7 services at--Mountain--View--school,--Pine--Hills--school,
 8 aftercare-division,--or--other--juvenile-facility maintained by
 9 the department for children who have been adjudicated
 10 delinquent by the tribal court, subject to the provisions of
 11 this part and parts 1 and 2 of chapter 1.

12 (2) Any agreement entered into under subsection (1)
 13 must also satisfy the requirements of Title 18, chapter 11."

14 Section 105. Section 53-30-208, MCA, is amended to
 15 read:

16 "53-30-208. Maximum age of commitment. No child who
 17 has attained the age of 18 years shall be committed by any
 18 juvenile youth court to the Mountain-View-school,--Pine-Hills
 19 school,--or--other--juvenile--facility department of family
 20 services, except, however, that any person under 21 years
 21 who prior to attaining the age of 18 years came under the
 22 jurisdiction of the juvenile youth court by reason of
 23 delinquent conduct and whose adjudication of delinquency,
 24 including the finding that commitment to some institution
 25 was necessary, is not made until after the child reaches the

1 age of 18 years shall be committed to the department of
 2 institutions family services. The department shall then have
 3 the obligation to test and evaluate the person to determine
 4 the proper place of detention for the person, who shall
 5 thereupon be confined at that institution until the person
 6 shall have attained the age of 21 years unless sooner
 7 discharged by the department."

8 Section 106. Section 53-30-211, MCA, is amended to
 9 read:

10 "53-30-211. Transfer of child to other facility or
 11 institution -- notice. The department of institutions family
 12 services upon recommendation of the superintendent of a
 13 facility may transfer a child resident in one of its
 14 juvenile youth correctional facilities to any other facility
 15 or institution under the jurisdiction and control of the
 16 department."

17 Section 107. Section 53-30-212, MCA, is amended to
 18 read:

19 "53-30-212. Commutation of sentence to state prison
 20 and transfer of prisoner to juvenile youth correctional
 21 facility or Swan River forest camp. (1) Upon the application
 22 of a person under 21 years of age who has been sentenced to
 23 the state prison or upon the application of his parents or
 24 guardian, the governor may, after consulting with the
 25 department of institutions and the department of family

1 services and with the approval of the board of pardons,
 2 commute the sentence by committing such person to the
 3 department of family services until he is 21 years of age or
 4 until sooner placed or discharged.

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

17 (3) Upon recommendation of the warden and with the
 18 approval of the department of institutions and the
 19 department of family services, a person under 21 years of
 20 age who has been sentenced to the state prison may be
 21 transferred to any juvenile youth correctional facility
 22 under the jurisdiction and control of the department of
 23 family services.

24 (4) Upon recommendation of the warden and approval of
 25 a person sentenced to the state prison or application of a

1 person sentenced to the state prison and approval of the
 2 warden and with the approval of the department of
 3 institutions, such person sentenced to the state prison who
 4 is 25 years of age or younger may be transferred to the Swan
 5 River youth forest camp. Prior to departmental approval of
 6 the transfer, the person must undergo an evaluation by the
 7 department to determine his suitability for transfer to the
 8 camp. The results of the evaluation must include a finding
 9 that a minimum security facility is an appropriate placement
 10 for such person or the transfer shall be denied. If the
 11 person is transferred, he shall be under the supervision and
 12 control of the facility to which he is transferred.

13 (5) If such person's behavior after transfer to such
 14 juvenile a youth correctional facility or the Swan River
 15 forest camp indicates he might be released on parole or his
 16 sentence be commuted and he be discharged from custody, the
 17 superintendent of such facility, with the approval of the
 18 department of institutions and the department of family
 19 services in the case of a youth correctional facility or
 20 with the approval of the department of institutions in the
 21 case of the Swan River forest camp, may make an appropriate
 22 recommendation to the state board of pardons and the
 23 governor, who may in their discretion parole such person or
 24 commute his sentence.

25 (6) If such person's behavior after transfer to a

1 juvenile youth correctional facility or the Swan River
 2 forest camp indicates he is not a proper person to reside in
 3 such facility, upon recommendation of the superintendent and
 4 with the approval of the department of institutions and the
 5 department of family services in the case of a youth
 6 correctional facility or with the approval of the department
 7 of institutions in the case of the Swan River forest camp,
 8 such person shall be returned to the state prison to serve
 9 out his unexpired term."

10 Section 108. Section 53-30-214, MCA, is amended to
 11 read:

12 "53-30-214. Apprehension and return of child youth
 13 leaving juvenile youth correctional facility without
 14 permission. A child youth who has left a juvenile youth
 15 correctional facility of the department of institutions
 16 family services without permission may be apprehended and
 17 returned by any citizen. The term "juvenile youth
 18 correctional facility of the department" means any facility
 19 under the supervision and control of the department of
 20 institutions family services which has as its primary
 21 function the care, training, custody, and control of
 22 children youth and specifically includes the Pine Hills
 23 school for boys and the Mountain View school for girls."

24 Section 109. Section 53-30-215, MCA, is amended to
 25 read:

"53-30-215. Penalty for aiding resident in leaving juvenile youth correctional facility. A person who permits or assists a resident of any juvenile youth correctional facility to leave a facility without permission or who furnishes or attempts to furnish to such a resident a tool, weapon, or other article with the intent of aiding him to leave without permission or who harbors or conceals a resident who has left without permission shall on conviction be punished by imprisonment for a term of not less than 6 months or more than 2 years or by a fine not exceeding \$1,000 or by both such fine and imprisonment."

Section 110. Section 53-30-226, MCA, is amended to read:

"53-30-226. Youth aftercare agreement. A youth released by the department of institutions family services from one of the state-juvenile youth correctional facilities to the supervision, custody, and control of the department shall, before his release, sign an aftercare agreement containing:

(1) a statement of the terms and conditions of his release, including a list of the acts which, if committed by the youth, may result in his return to the facility; and

(2) a statement that if the department or any person alleges any violation of the terms and conditions of the agreement, the youth is entitled to a hearing as provided

for in 53-30-229 before he may be returned to the facility."

Section 111. Section 53-30-229, MCA, is amended to read:

"53-30-229. Hearing on alleged violation of aftercare agreement -- right to appeal outcome. (1) When it is alleged by an aftercare counselor that a youth has violated the terms of his aftercare agreement, the youth shall be granted a hearing at the site of the alleged violation or in the county where the youth is residing or is found within 10 days after notice has been served on the youth or the youth is detained, whichever is earlier. The purpose of the hearing is to determine whether the youth committed the violation and, if so, whether the violation is of such a nature that he should be returned to the juvenile youth correctional facility from which he was released or a different plan for treatment should be pursued by the department of institutions family services.

(2) The youth, upon advice of an attorney, may waive his right to a hearing.

(3) With regard to this hearing, the youth shall be given:

(a) written notice of the alleged violation of his aftercare agreement, including notice of the purpose of the hearing;

(b) disclosure of the evidence against him and the

1 facts constituting the alleged violation;
2 (c) opportunity to be heard in person and to present
3 witnesses and documentary evidence to controvert the
4 evidence against him and to show that there are compelling
5 reasons which justify or mitigate the violation;
6 (d) opportunity to have the referee subpoena
7 witnesses;
8 (e) the right to confront and cross-examine adverse
9 witnesses;
10 (f) the right to be represented by an attorney;
11 (g) a record of the hearing; and
12 (h) notice that a written statement as to the evidence
13 relied upon in reaching the final decision and the reasons
14 for the final decision will be provided by the referee.
15 (4) The department shall appoint a referee, who shall
16 not be an employee of the department, to conduct the
17 hearing. In the conduct of the hearing, the department may
18 request the county attorney's assistance as necessary. The
19 department shall adopt rules necessary to effect a prompt
20 and full review.
21 (5) If the referee finds, by a preponderance of the
22 evidence, that the youth did in fact commit the violation,
23 he shall make a recommendation to the department for the
24 placement of the youth. In making this recommendation, the
25 referee may consider mitigating circumstances. Final

1 approval rests with the department and must be made within
2 10 days of the referee's recommendation.
3 (6) The youth may appeal from the decision at the
4 hearing to the district court of the county in which the
5 hearing was held by serving and filing a notice of appeal
6 with the court within 10 days of the department's decision.
7 The youth may obtain a written transcript of the hearing
8 from the department by giving written notice of appeal. The
9 district court, upon receipt of a notice of appeal, shall
10 order the department to promptly certify to the court a
11 record of all proceedings before the department and shall
12 proceed to a prompt hearing on the appeal based upon the
13 record on appeal. The decision of the department shall not
14 be altered except for abuse of discretion or manifest
15 injustice.
16 (7) Pending the hearing on a violation and pending the
17 department's decision, a youth may not be detained except
18 when his detention or care is required to protect the person
19 or property of the youth or of others or he may abscond or
20 be removed from the community. Procedures for taking into
21 custody and detention of a youth charged with violation of
22 his aftercare agreement shall be as provided in 41-3-1111
23 and 41-5-306.
24 (8) If the decision is made to return the youth to the
25 institution youth correctional facility from which he was

released and the youth appeals that decision, he shall await the outcome of the appeal at such institution facility."

NEW SECTION. Section 112. Repealer. Sections 40-3-115, 41-3-1106, 41-3-1113, 41-3-1121, 41-5-702, 41-5-704, 41-5-705, 53-4-121, 53-4-122, 53-20-404, 53-20-407, 53-20-411, and 53-20-412, MCA, are repealed.

NEW SECTION. Section 113. Extension of authority. Any existing authority of the department of social and rehabilitation services, the department of family services, or the department of institutions to make rules on the various functions transferred by the provisions of this act is extended to the provisions of this act.

NEW SECTION. Section 114. Codification instructions. (1) Section 2 is intended to be codified as an integral part of Title 2, chapter 15, and the provisions of Title 2, chapter 15, apply to section 2. Section 2-15-2211 is intended to be renumbered and codified in the same part as section 2.

(2) Section 53-20-414 is intended to be renumbered and codified by the code commissioner as an integral part of Title 53, chapter 20, part 1. The code commissioner shall conform internal references and grammar to this change.

NEW SECTION. Section 115. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is

invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 116. Reorganization procedure. The provisions of sections 2-15-131 through 2-15-137 govern the creation of the department of family services and the transfer of the various functions contained in this act from the department of social and rehabilitation services, county welfare offices and departments, the department of institutions, and the youth court of the district court to the department of family services.

NEW SECTION. Section 117. Implementation. (1) The governor shall by executive order implement the provisions of this act.

(2) The governor may by executive order assign to the department of family services in a manner consistent with this act functions allocated to the department of social and rehabilitation services, county welfare offices or departments, the department of institutions, or the youth court of the district court by the 50th legislature and not transferred by this act.

NEW SECTION. Section 118. Effective dates. (1) Section 117 is effective on passage and approval.

(2) Sections 1 through 116 and this section are effective upon signing of the executive order under section

LC 0037/01

1 117(1) or on October 1, 1987, whichever occurs first.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB325, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:


An act reorganizing the executive branch of state government; creating a new Department of Family Services; transferring certain functions of the Department of Social and Rehabilitation Services, county welfare departments, the Department of Institutions, and the Youth Court of the District Court to the Department of Family Services; transferring youth probation officers from the Youth Court to the Department of Family Services; generally revising the laws relating to child welfare services, child and adult protective services, and the Youth Court to conform to the reorganization; repealing sections 40-3-115, 41-3-1106, 41-3-1113, 41-3-1121, 41-5-702, 41-5-704, 41-5-705, 53-4-121, 53-4-122, 53-20-404, 53-20-407, 53-20-411, and 53-20-412, MCA; and providing effective dates.


ASSUMPTIONS:

1. County participation in foster care benefit costs is held at the FY87 actual expenditure level, with county participation above that FY87 amount reduced by one-half of the amount that would be due under current law.
2. County financial support of the youth probation function will be frozen at the FY87 budgeted level.
3. It is assumed that counties will continue to provide current level support as in FY87 to protective services staff and youth probation staff for such costs as office space, equipment and clerical services.
4. If additional counties opt for state-assumption of social services programs, the income from 12 mills property tax will be allocated to SRS. The amount of the 12 mill income attributable to child and adult protective services in the previous year will be transferred from the SRS budget to the Department of Family Services.
5. There is a net decrease in 10.8 FTE due to the reorganization of youth services. Five new FTE are allocated to the new department and 15.8 FTE are removed from SRS.

FISCAL IMPACT:

	FY88			FY89		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
<u>Expenditures:</u>						
Personal Services	\$15,760,129	\$15,360,653	(\$399,476)	\$15,786,638	\$15,380,088	(\$406,550)
Operating expenses						
and capitol outlay	3,335,613	3,735,089	399,476	3,373,635	3,780,185	406,550
Benefits	14,560,621	14,560,621	0	14,555,621	14,555,621	0
TOTAL	\$33,656,363	\$33,656,363	\$ 0	\$33,715,894	\$33,715,894	\$ 0

 DATE 1/27/87
 DAVID L. HUNTER, BUDGET DIRECTOR
 Office of Budget and Program Planning

 DATE 1/28/87
 JOHN MERCER, PRIMARY SPONSOR
 Fiscal Note for HB325, as introduced.

HB 325

1. ~~Fiscal Note Request~~, HB325, as introduced.

Form BD-15

Page 2

Funding:

General Fund	\$20,307,588	\$20,307,588	\$	0	\$20,317,806	\$20,317,806	\$	0
Federal and Other	8,372,314	8,372,314		0	8,417,515	8,417,515		0
County Funds	<u>4,976,461</u>	<u>4,976,461</u>		<u>0</u>	<u>4,980,573</u>	<u>4,980,573</u>		<u>0</u>
Net Impact	\$	0	\$	0	\$	0	\$	0

EFFECT ON COUNTY OR OTHER LOCAL REVENUE OR EXPENDITURES:

The proposed law will decrease county expenditures above the actual FY87 cost for foster care benefits by 50 percent.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

The proposed legislation will centralize youth and aging services within one state agency.

APPROVED BY COMMITTEE
ON STATE ADMINISTRATION

STATEMENT OF INTENT

HOUSE BILL 325

House State Administration Committee

A statement of intent is required for this bill because section 5 grants rulemaking authority to the department of family services to adopt rules necessary to carry out the purposes of sections 3 through 10 and 15 through 19.

Rules are primarily necessary to implement sections 7 and 8 of the bill. These sections require that a state youth services council and local youth services advisory councils be established to advise the director of the department on policies related to children and youth, to make an annual written review and evaluation of local needs and services, and to develop a local plan for a system of community-based services for children and youth.

The rules to be adopted would address:

(1) the composition, membership requirements, and operating procedures for the state and local advisory councils;

(2) procedures for the development and format of the annual written review and evaluation of services;

(3) procedures for the preparation and format of the state plan; and

(4) other guidelines necessary for the administration

and operation of the state and local advisory councils.

It is also intended that the department adopt rules necessary to carry out its duties and responsibilities set forth in section 5. These rules will be adopted in a manner consistent with the expressed purposes of the legislation and the existing rulemaking authority of the department of social and rehabilitation services that are transferred to the department of family services.

In addition, the department will adopt rules governing the establishment and administration of youth placement committees as provided in sections 15 through 19.

SECOND READING

HB-325

HOUSE BILL NO. 325

INTRODUCED BY MERCER, MAZUREK, COBB, REAM, SQUIRES

M. WILLIAMS, PECK, LORY, CAMPBELL, KADAS, O'CONNELL, FRITZ,

DONALDSON, ADDY, MILES, SPAETH, GRADY, HARRINGTON,

WINSLOW, HANSEN, ECK, BACHINI, PATTERSON, MILLER,

JERGESON, MANUEL, BLAYLOCK, REGAN, B. BROWN, DARKO

BY REQUEST OF THE GOVERNOR'S OFFICE

A BILL FOR AN ACT ENTITLED: "AN ACT REORGANIZING THE EXECUTIVE BRANCH OF STATE GOVERNMENT; CREATING A NEW DEPARTMENT OF FAMILY SERVICES; TRANSFERRING CERTAIN FUNCTIONS OF THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES, COUNTY WELFARE DEPARTMENTS, THE DEPARTMENT OF INSTITUTIONS, AND THE YOUTH COURT OF THE DISTRICT COURT TO THE DEPARTMENT OF FAMILY SERVICES; ~~TRANSPERRING---YOUTH PROBATION-OFFICERS-FROM-THE-YOUTH-COURT-TO-THE-DEPARTMENT-OF FAMILY--SERVICES;~~ GENERALLY REVISING THE LAWS RELATING TO CHILD WELFARE SERVICES, CHILD AND ADULT PROTECTIVE SERVICES, AND THE YOUTH COURT TO CONFORM TO THE REORGANIZATION; REPEALING SECTIONS ~~40-3-115~~, 41-3-1106, 41-3-1113, 41-3-1121, ~~41-5-702~~, ~~41-5-704~~, ~~41-5-705~~, 53-4-121, 53-4-122, 53-20-404, 53-20-407, 53-20-411, AND 53-20-412, MCA; AND PROVIDING EFFECTIVE DATES."

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

Section 1. Section 2-15-104, MCA, is amended to read:

"2-15-104. Structure of executive branch. (1) In accordance with the constitution, all executive and administrative offices, boards, commissions, agencies, and instrumentalities of the executive branch of state government and their respective functions are allocated by this chapter among and within the following departments or entities:

- (a) department of administration;
- (b) department of military affairs;
- (c) department of revenue;
- (d) state board of education;
- (e) department of labor and industry;
- (f) department of commerce;
- (g) department of justice;
- (h) department of health and environmental sciences;
- (i) department of social and rehabilitation services;
- (j) department of institutions;
- (k) department of highways;
- (l) department of public service regulation;
- (m) department of agriculture;
- (n) department of livestock;
- (o) department of state lands;
- (p) department of natural resources and conservation;
- (q) department of fish, wildlife, and parks;

(r) department of family services.

(2) For its internal structure, each department shall adhere to the following standard terms:

(a) The principal unit of a department is a division. Each division shall be headed by an administrator.

(b) The principal unit of a division is a bureau. Each bureau shall be headed by a chief.

(c) The principal unit of a bureau is a section. Each section shall be headed by a supervisor."

NEW SECTION. Section 2. Department of family services -- head. There is a department of family services. The department head is a director of family services appointed by the governor in accordance with 2-15-111.

NEW SECTION. Section 3. Purpose. It is the public policy of the legislature to reduce duplication and fragmentation of services to youth, families, and senior citizens by creating a department that shall develop and maintain consolidated programs and services, within available resources, and a planned continuum of services to:

(1) provide protective services to ensure the health, welfare, and safety of children and adults who are in danger of abuse, neglect, or exploitation within communities;

(2) provide for the care, protection, and mental and physical development of youth alleged to be youth in need of supervision or delinquent youth ~~and-to-provide-programs-for~~

~~the-supervision-and-rehabilitation-of-these--youth~~ WHO ARE REFERRED OR COMMITTED TO THE DEPARTMENT: and

(3) provide supportive services to enable senior citizens to maintain their independence.

NEW SECTION. Section 4. Definitions. Unless the context requires otherwise, in this title the following definitions apply:

(1) "Department" means the department of family services provided for in [section 2].

(2) "Director" means the director of family services provided for in [section 2].

NEW SECTION. Section 5. Powers and duties of department. The department shall:

(1) administer and supervise all forms of child and adult protective services;

(2) ~~administer-and-supervise-all-services--to~~ PROVIDE FUNDING FOR AND PLACE youth alleged or adjudicated to be delinquent or in need of supervision WHO ARE REFERRED OR COMMITTED TO THE DEPARTMENT;

(3) provide the following functions, as necessary, for the youth servd IN NEED OF CARE:

(a) intake, investigation, case management, and client supervision;

(b) placement in youth care facilities;

(c) contracting for necessary services;

1 (d) protective services day care; AND
 2 (e) adoption;
 3 ~~††--institutional-services,-and~~
 4 (4) ADMINISTER YOUTH CORRECTIONAL FACILITIES;
 5 †g†(5) PROVIDE supervision, care, and control of youth
 6 released from a state youth correctional facility;
 7 †4†(6) license youth care facilities, child placing
 8 agencies, day-care facilities, community homes for
 9 developmentally disabled persons, community homes for
 10 physically disabled persons, and adult foster care
 11 facilities;
 12 †5†(7) administer interstate compacts for children and
 13 delinquent youth;
 14 †6†(8) (a) administer child abuse prevention services
 15 funded through child abuse grants and the Montana children's
 16 trust fund provided for in Title 41, chapter 3, part 7; and
 17 (b) administer elder abuse prevention services;
 18 †7†(9) (A) MAKE A WRITTEN EVALUATION OF EACH PLAN
 19 DEVELOPED BY THE LOCAL YOUTH SERVICES ADVISORY COUNCILS, AS
 20 PROVIDED IN [SECTION 8], INDICATING THOSE PORTIONS OF EACH
 21 PLAN THAT WILL BE IMPLEMENTED BY THE DEPARTMENT, THOSE
 22 PORTIONS THAT WILL NOT BE IMPLEMENTED, AND THE REASONS FOR
 23 NOT IMPLEMENTING THOSE PORTIONS;
 24 (B) develop a statewide youth services and resources
 25 plan that takes into consideration local needs as reflected

1 in plans developed by the local youth services advisory
 2 councils;~~as-provided-in-section-8;~~
 3 †8†(10) administer services to the aged;
 4 †9†(11) provide consultant services to:
 5 (a) facilities providing care for needy, indigent,
 6 handicapped, or dependent adults; and
 7 (b) youth care facilities;
 8 †10†(12) utilize at maximum efficiency the resources of
 9 state government in a coordinated effort to:
 10 (a) provide for children in need of temporary
 11 protection or correctional services; and
 12 (b) coordinate and apply the principles of modern
 13 institutional administration to the institutions in the
 14 department;
 15 †11†(13) subject to the functions of the department of
 16 administration, lease or purchase lands for use by
 17 institutions in the department and classify those lands to
 18 determine which are of such character as to be most
 19 profitably used for agricultural purposes, taking into
 20 consideration:
 21 (a) the needs of all institutions in the department
 22 for the food products that can be grown or produced on the
 23 lands; and
 24 (b) the relative value of agricultural programs in the
 25 treatment or rehabilitation of the persons confined in the

institutions in the department;

~~(12)~~(14) utilize the staff and services of other state agencies and units of the Montana university system, within their respective statutory functions, to carry out its functions under this title;

~~(13)~~(15) propose programs WITH SPECIFIC GOALS AND OBJECTIVES to the legislature to meet the projected long-range needs of institutions in the department, including programs and facilities for the diagnosis, treatment, care, and aftercare of persons placed in institutions in the department; and

~~(14)~~(16) adopt rules necessary to carry out the purposes of [sections 3 through 10 AND 17 THROUGH 19].

NEW SECTION. Section 6. Local service areas. The department shall organize its field offices into local service areas. The director shall take into consideration geographic boundaries used by local governments, judicial districts, and service agencies when creating local service areas.

NEW SECTION. Section 7. State youth services council -- membership. (1) The governor may appoint a state planning and advisory council or designate an existing council to advise the director on policies relating to services to children and youth.

(2) A member of the council must have knowledge of and

experience in at least one of the following areas:

(a) services to:

(i) youth in need of care;

(ii) youth in need of supervision;

(iii) delinquent youth;

(iv) emotionally disturbed youth; or

(v) chemically dependent youth; or

(b) domestic violence issues.

(3) Membership of the council must include as many of these areas of expertise as possible.

(4) Members must be compensated and reimbursed as provided for in 2-15-122.

NEW SECTION. Section 8. Local youth services advisory councils. (1) The department shall establish a local youth services advisory council within each local service area to ensure a broad-based community plan for children and youth services within the area. A local youth services advisory council may act in an advisory capacity only. Each local advisory council consists of seven members. The director shall appoint members to each local advisory council. At least two members must be nominated by the county commissioners within the area, and at least two members must be nominated by district court judges within the area. Members of the local advisory councils must be broadly representative of the local service area and may not be

1 employed by or under contract to the department OR THE YOUTH
2 COURT.

3 (2) The department shall provide technical assistance
4 to the local advisory councils as necessary.

5 (3) Each local advisory council shall:

6 (a) make an annual written review and evaluation of
7 needs and services within the local service area and provide
8 a copy of the review and evaluation to the state planning
9 and advisory council;

10 (b) advise the department, other state agencies,
11 councils, local governments, and private organizations on
12 programs for services to the children and youth within the
13 local service area; and

14 (c) develop a plan WITH SPECIFIC GOALS AND OBJECTIVES
15 for a system of community-based services for the children
16 and youth within the local service area and provide a copy
17 of the plan to the state planning and advisory council.

18 (4) Members must be compensated and reimbursed as
19 provided for in 2-15-122.

20 NEW SECTION. Section 9. Institutions in department.

21 (1) The following institutions are in the department:

22 (a) Mountain View school;

23 (b) Pine Hills school; and

24 (c) any other institution that provides care and
25 services for delinquent youth.

1 (2) A state institution may not be moved,
2 discontinued, or abandoned without prior consent of the
3 legislature.

4 NEW SECTION. Section 10. Debt to state by natural or
5 adoptive parents -- limitations. If a child has been placed
6 in substitute care, as defined in 41-5-103 and 41-3-1102,
7 and a written agreement for payment of support has been
8 entered into by the responsible parent or parents and the
9 department, the debt for support is limited to the amount
10 provided for in the agreement. However, if a court order for
11 support is or has been entered, the order prevails over the
12 agreement.

13 NEW SECTION. Section 11. Certain functions of
14 department of social and rehabilitation services transferred
15 to department of family services. (1) The functions of the
16 department of social and rehabilitation services in Title 41
17 and Title 53 relating to child welfare services and child
18 and adult protective services for youth in need of care,
19 youth in need of supervision, delinquent youth, children and
20 adults in need of protective services, and senior citizens
21 are transferred to the department of family services. The
22 transferred functions include:

23 (a) intake, investigation, case management, and client
24 supervision;

25 (b) out-of-home placements;

(c) contracting for services such as evaluations, in-home services, and counseling;

(d) protective services day care;

(e) adoption;

(f) licensure of youth care facilities, child-placing agencies, day-care facilities, community homes for developmentally disabled persons, community homes for physically disabled persons, and adult foster care facilities;

(g) child abuse prevention services funded through child abuse grants and the Montana children's trust fund provided for in Title 41, chapter 3, part 7;

(h) elder abuse prevention services;

(i) adult protective services and services for the aged; and

(j) any other functions necessary to provide child welfare services and child and adult protective services.

(2) Unless inconsistent with this act, any reference in the following sections to "department of social and rehabilitation services" or to "department" (of social and rehabilitation services) referring to the functions listed in subsection (1) or any related reference to "department" (of social and rehabilitation services) referring to the functions listed in subsection (1) in related sections is changed to "department of family services": 2-15-2211,

15-6-209, 20-5-301, 27-1-718, 40-2-401 through 40-2-404, 40-8-111, 40-8-121, 40-8-124, 41-3-201, 41-3-202, 41-3-208, 41-3-403, 41-3-406, 41-3-702, 41-3-704, 41-3-1101, 41-4-103, 41-4-104, 41-5-301, ~~41-5-403~~, ~~41-5-523~~, 53-4-303, 53-5-101 through 53-5-103, 53-5-111, 53-5-202, 53-5-302, 53-5-504, 53-5-511, 53-5-601, and 53-20-302. The code commissioner shall conform internal references and grammar to these changes.

NEW SECTION. Section 12. Certain functions of county welfare offices or departments transferred to department of family services. (1) The functions of county welfare offices or departments in Title 40, Title 41, and Title 53 relating to child welfare services and child and adult protective services for youth in need of care, youth in need of supervision, delinquent youth, and children and adults in need of protective services are transferred to the department of family services.

(2) Unless inconsistent with this act, any reference in the following sections to "county welfare office" or "county welfare department" or to (county welfare) "office" or (county welfare) "department" referring to the functions listed in subsection (1) or related reference to (county welfare) "office" or (county welfare) "department" referring to the functions listed in subsection (1) in related sections is changed to "department of family services":

1 40-4-218 and 41-3-107. The code commissioner shall conform
2 internal references and grammar to these changes.

3 NEW SECTION. Section 13. Certain functions of
4 department of institutions transferred to department of
5 family services. (1) The following functions of the
6 department of institutions in Title 53 relating to the
7 evaluation, detention, and aftercare of youth who are
8 alleged to be or have been adjudicated to be youth in need
9 of care, youth in need of supervision, or delinquent youth
10 and of emotionally disturbed youth are transferred to the
11 department of family services:

12 (a) intake, investigation, case management, and client
13 supervision;

14 (b) contracting for services such as evaluations,
15 in-home services, and counseling;

16 (c) institutional services at department institutions;

17 (d) supervision, custody, and control of youth
18 released from a state juvenile correctional facility; and

19 (e) community-based programs for evaluation or
20 residential care.

21 (2) Unless inconsistent with this act, any reference
22 in the following sections to "department of institutions" or
23 to "department" (of institutions) referring to the functions
24 listed in subsection (1) or any related reference to
25 "department" (of institutions) referring to the functions

1 listed in subsection (1) in related sections is changed to
2 "department of family services": 53-21-502, 53-30-209,
3 53-30-210, 53-30-213, 53-30-227, and 53-30-228. The code
4 commissioner shall conform internal references and grammar
5 to these changes.

6 ~~NEW SECTION. Section 14. Certain functions of youth~~
7 ~~court of district court transferred to department of family~~
8 ~~services. (1) The following functions of the youth court of~~
9 ~~the district court contained in Title 41, chapter 5, and~~
10 ~~related to youth who are alleged to be or have been~~
11 ~~adjudicated to be youth in need of care, youth in need of~~
12 ~~supervision, or delinquent youth are transferred to the~~
13 ~~department of family services:~~

14 ~~(a) intake, investigation, case management, and client~~
15 ~~supervision;~~

16 ~~(b) out-of-home placements; and~~

17 ~~(c) contracting for services such as evaluations,~~
18 ~~in-home services, and counseling;~~

19 ~~(2) Unless inconsistent with this act, any reference~~
20 ~~in Title 41, chapter 5, to "youth court," "youth," "court,"~~
21 ~~or "probation officer" referring to the functions listed in~~
22 ~~subsection (1) or related reference to "youth court,"~~
23 ~~"youth," "court," or "probation officer" referring to the~~
24 ~~functions listed in subsection (1) in related sections is~~
25 ~~changed to "department of family services." The code~~

commissioner shall conform internal references and grammar to these changes:

NEW SECTION. Section 15. Pay of youth court employees upon transfer to department of family services. (1) Upon the transfer of certain functions of the youth court of the district court to the department of family services, as provided in (section 14), all probation officers, clerical staff, and all other persons employed by the youth court probation office become state employees and are subject to all laws concerning state employees.

(2) The rate of pay of the persons referred to in subsection (1) shall be established according to the provisions of Title 27, chapter 18, parts 2, 27, and 3. Each person shall be placed on a step of the established grade in the state pay plan that most closely matches his pay rate at the time of transfer.

(3) If a person's current rate of pay at the time of transfer is greater than that allowed under step 13 for his assigned grade on the state pay plan matrix, his rate of pay must remain the same until increases in the state pay plan matrix cause a step 13 for his assigned grade to match or exceed his salary, at which time he shall be assigned a step 13 for that grade.

(4) After the transfer provided for in subsection (1), subsequent pay changes due to reclassification or transfer

shall be determined according to the pay plan rules adopted by the department of administration under the authority of 2-18-301.

NEW SECTION. SECTION 14. COUNTY CONTRIBUTION FOR SALARIES AND TRAVEL OF PROTECTIVE SERVICES EMPLOYEES. (1) UPON TRANSFER OF CERTAIN FUNCTIONS OF THE COUNTY WELFARE DEPARTMENT TO THE DEPARTMENT OF FAMILY SERVICES AS PROVIDED IN [SECTION 12], THE SALARIES AND TRAVEL EXPENSES, AS PROVIDED IN 2-18-501 THROUGH 2-18-503, OF PROTECTIVE SERVICES EMPLOYEES MUST BE PAID BY THE DEPARTMENT OF FAMILY SERVICES. THE BOARD OF COUNTY COMMISSIONERS SHALL REIMBURSE THE DEPARTMENT OF FAMILY SERVICES FROM COUNTY POOR FUNDS IN AN AMOUNT EQUAL TO THAT COUNTY'S EXPENDITURES FOR SALARIES AND TRAVEL EXPENSES OF PROTECTIVE SERVICES EMPLOYEES IN FISCAL YEAR 1987.

(2) ON OR BEFORE THE 20TH DAY OF THE MONTH FOLLOWING THE MONTH FOR WHICH PAYMENTS WERE MADE FOR PROTECTIVE SERVICES EMPLOYEES' SALARIES AND TRAVEL, THE DEPARTMENT OF FAMILY SERVICES SHALL PRESENT TO THE BOARD OF COUNTY COMMISSIONERS A CLAIM FOR THE REQUIRED REIMBURSEMENT. THE BOARD OF COUNTY COMMISSIONERS SHALL MAKE SUCH REIMBURSEMENT WITHIN 20 DAYS AFTER THE PRESENTATION OF THE CLAIM.

NEW SECTION. SECTION 15. YOUTH PLACEMENT COMMITTEES -- COMPOSITION. (1) IN EACH JUDICIAL DISTRICT, THE DEPARTMENT SHALL ESTABLISH A YOUTH PLACEMENT COMMITTEE FOR

1 THE PURPOSES OF RECOMMENDING AN APPROPRIATE PLACEMENT OF A
 2 YOUTH REFERRED TO THE DEPARTMENT UNDER 41-5-403 OR COMMITTED
 3 TO THE DEPARTMENT UNDER 41-5-523.

4 (2) THE COMMITTEE CONSISTS OF NOT LESS THAN FOUR
 5 MEMBERS APPOINTED BY THE DEPARTMENT AND MUST INCLUDE A
 6 REPRESENTATIVE OF THE DEPARTMENT, A YOUTH PROBATION OFFICER,
 7 A MENTAL HEALTH PROFESSIONAL, AND A REPRESENTATIVE OF A
 8 SCHOOL DISTRICT LOCATED WITHIN THE BOUNDARIES OF THE
 9 JUDICIAL DISTRICT. COMMITTEE MEMBERS SERVE WITHOUT
 10 COMPENSATION.

11 NEW SECTION. SECTION 16. DUTIES OF THE YOUTH
 12 PLACEMENT COMMITTEE. A YOUTH PLACEMENT COMMITTEE SHALL:

13 (1) REVIEW ALL INFORMATION RELEVANT TO THE PLACEMENT
 14 OF A YOUTH REFERRED OR COMMITTED TO THE DEPARTMENT;

15 (2) CONSIDER AVAILABLE RESOURCES APPROPRIATE TO MEET
 16 THE NEEDS OF THE YOUTH;

17 (3) CONSIDER THE TREATMENT RECOMMENDATIONS OF ANY
 18 PROFESSIONAL PERSON WHO HAS EVALUATED THE YOUTH;

19 (4) RECOMMEND IN WRITING TO THE DEPARTMENT AN
 20 APPROPRIATE PLACEMENT FOR THE YOUTH IN A LICENSED FACILITY,
 21 CONSIDERING THE AGE AND TREATMENT NEEDS OF THE YOUTH AND THE
 22 RELATIVE COSTS OF CARE IN THE FACILITIES CONSIDERED
 23 APPROPRIATE FOR PLACEMENT;

24 (5) REVIEW TEMPORARY AND EMERGENCY PLACEMENTS AS
 25 REQUIRED UNDER [SECTION 18]; AND

1 (6) CONDUCT PLACEMENT REVIEWS AS REQUESTED BY THE
 2 DEPARTMENT.

3 NEW SECTION. SECTION 17. YOUTH PLACEMENT COMMITTEE TO
 4 SUBMIT RECOMMENDATION TO DEPARTMENT -- ACCEPTANCE OR
 5 REJECTION OF RECOMMENDATION BY DEPARTMENT. (1) WHEN A YOUTH
 6 HAS BEEN REFERRED OR COMMITTED TO THE DEPARTMENT FOR
 7 PLACEMENT, THE DEPARTMENT SHALL NOTIFY THE APPROPRIATE YOUTH
 8 PLACEMENT COMMITTEE. THE COMMITTEE SHALL SUBMIT IN WRITING
 9 TO THE DEPARTMENT ITS RECOMMENDATION FOR PLACEMENT OF THE
 10 YOUTH. THE COMMITTEE SHALL SEND A COPY OF THE RECOMMENDATION
 11 TO THE APPROPRIATE YOUTH COURT JUDGE.

12 (2) IF THE DEPARTMENT ACCEPTS THE COMMITTEE'S
 13 RECOMMENDATION, THE YOUTH MUST BE PLACED ACCORDING TO THE
 14 RECOMMENDATION.

15 (3) IF THE DEPARTMENT REJECTS THE COMMITTEE'S
 16 RECOMMENDATION, IT PROMPTLY SHALL NOTIFY THE COMMITTEE IN
 17 WRITING OF THE REASONS FOR REJECTING THE RECOMMENDATION. THE
 18 DEPARTMENT SHALL SEND A COPY OF THE NOTICE TO THE
 19 APPROPRIATE YOUTH COURT JUDGE.

20 (4) AFTER RECEIVING A NOTICE UNDER SUBSECTION (3), THE
 21 COMMITTEE SHALL SUBMIT IN WRITING TO THE DEPARTMENT A
 22 RECOMMENDATION FOR AN ALTERNATIVE PLACEMENT OF THE YOUTH.

23 (5) IF THE DEPARTMENT ACCEPTS THE COMMITTEE'S
 24 RECOMMENDATION FOR ALTERNATIVE PLACEMENT, THE YOUTH MUST BE
 25 PLACED ACCORDING TO THE RECOMMENDATION.

(6) IF THE DEPARTMENT REJECTS THE COMMITTEE'S RECOMMENDATION FOR ALTERNATIVE PLACEMENT, THE DEPARTMENT PROMPTLY SHALL NOTIFY THE COMMITTEE IN WRITING OF THE REASONS FOR REJECTING THE RECOMMENDATION, AND THE YOUTH MUST BE PLACED IN AN APPROPRIATE FACILITY AS DETERMINED BY THE DEPARTMENT.

NEW SECTION. SECTION 18. TEMPORARY AND EMERGENCY PLACEMENTS -- LIMIT. (1) A TEMPORARY PLACEMENT OF A YOUTH IN A SHELTER CARE FACILITY OR AN EMERGENCY PLACEMENT OF A YOUTH IN A YOUTH CARE FACILITY IS EXEMPT FROM THE REQUIREMENTS OF [SECTION 17].

(2) IF A TEMPORARY OR EMERGENCY PLACEMENT OF A YOUTH CONTINUES FOR 45 OR MORE DAYS, THE DEPARTMENT SHALL REFER THE PLACEMENT OF THE YOUTH TO THE APPROPRIATE YOUTH PLACEMENT COMMITTEE FOR REVIEW. THE COMMITTEE SHALL MAKE A RECOMMENDATION FOR PLACEMENT TO THE DEPARTMENT IN ACCORDANCE WITH [SECTION 17].

NEW SECTION. SECTION 19. CONFIDENTIALITY OF YOUTH PLACEMENT COMMITTEE MEETINGS AND RECORDS. (1) MEETINGS OF A YOUTH PLACEMENT COMMITTEE ARE CLOSED TO THE PUBLIC TO PROTECT A YOUTH'S RIGHT TO INDIVIDUAL PRIVACY.

(2) INFORMATION PRESENTED TO THE COMMITTEE ABOUT A YOUTH AND COMMITTEE RECORDS ARE CONFIDENTIAL AND SUBJECT TO CONFIDENTIALITY REQUIREMENTS ESTABLISHED BY RULE BY THE DEPARTMENT.

NEW SECTION. SECTION 20. STATUS OF EMPLOYEES UPON TRANSFER TO THE DEPARTMENT OF FAMILY SERVICES. A CURRENT STATE EMPLOYEE WHO IS A MEMBER OF A COLLECTIVE BARGAINING UNIT AND WHO OCCUPIES A POSITION THAT IS TRANSFERRED TO THE DEPARTMENT OF FAMILY SERVICES BECOMES AN EMPLOYEE OF THE DEPARTMENT OF FAMILY SERVICES UPON SIGNING OF THE EXECUTIVE ORDER PROVIDED IN [SECTION 116] AND MAY NOT RECEIVE A REDUCTION IN WAGES UPON SUCH TRANSFER. ANY SUBSEQUENT CHANGES THAT MAY AFFECT SUCH EMPLOYEE MUST BE MADE ACCORDING TO EXISTING LAWS AND RULES.

Section 21. Section 20-5-301, MCA, is amended to read:

"20-5-301. Elementary tuition with mandatory approval.

(1) Any child may be enrolled in and attend an elementary school outside of the elementary district in which he resides when such elementary school is located in:

(a) any other district of the county of his residence;

(b) a county adjoining his county of residence; or

(c) a district of another state that is adjacent to the county of his residence.

(2) When a parent or guardian of a child wishes to have his child attend a school under the provisions of this section, he shall apply to the county superintendent of the county of his residence before July 1 of the school fiscal year for which he seeks approval except in those cases when substantial changes in circumstances occurred subsequently

1 to justify later application. The application shall be made
 2 on a tuition agreement form supplied by the county
 3 superintendent and shall be approved, before permission to
 4 enroll in and attend school outside of the district under
 5 the provisions of this section may be granted, by:

6 (a) the trustees of the elementary district in which
 7 the child resides;

8 (b) the trustees of the district where the child
 9 wishes to attend school; and

10 (c) the county superintendent of the child's
 11 residence.

12 (3) In considering the approval of a tuition
 13 application, the tuition approval agents prescribed in this
 14 section shall approve such application for a resident child
 15 when:

16 (a) the child resides less than 3 miles from the
 17 school which he wishes to attend and more than 3 miles from
 18 any school of his resident elementary district;

19 (b) the child resides more than 3 miles from any
 20 school of his resident elementary district and such district
 21 does not provide transportation under the provisions of this
 22 title;

23 (c) the child resides more than 3 miles from any
 24 school of his resident elementary district, the resident
 25 district does not provide transportation under the

1 provisions of this title, and school bus transportation is
 2 furnished by the district operating the school which he
 3 wishes to attend;

4 (d) the child is a member of a family who must send
 5 another child outside of the elementary district to attend
 6 high school and the child of elementary age may more
 7 conveniently attend an elementary school where the high
 8 school is located, provided the child resides more than 3
 9 miles from an elementary school of the resident district or
 10 the parent must move to the elementary district where the
 11 high school is located in order to enroll the other child in
 12 high school;

13 (e) the child has been declared by a court of
 14 competent jurisdiction to be an abused, neglected, or
 15 dependent child, as defined in 41-3-102, or a delinquent
 16 youth, as defined in 41-5-103, and has been ordered to be
 17 placed in a licensed ~~child--care--institution~~ YOUTH CARE
 18 FACILITY which is approved by the department of ~~social--and~~
 19 ~~rehabilitation~~ family services and as a result of the order
 20 the child is required to attend elementary school outside of
 21 the district of his residence. For purposes of this
 22 subsection the prescribed geographic relationship of the
 23 receiving district to the district of residence does not
 24 apply.

25 (f) the child is required to attend elementary school

outside the district of residence as the result of an order of a court of competent jurisdiction. For the purposes of this subsection (f), the following do not apply:

(i) the prescribed geographic relationship of the receiving district to the district of residence in this subsection (3); or

(ii) an order issued under Title 40, chapter 4, part 2.

(4) The trustees of the district where the school to be attended is located may disapprove a tuition agreement that satisfies any of the mandatory approval conditions specified in subsection (3) above when they find that, due to insufficient room and overcrowding, the accreditation of the school would be adversely affected by the acceptance of the child. In the event of disapproval, the trustees shall so notify the parent in writing within 15 days of the first receipt of the application."

Section 22. Section 20-7-404, MCA, is amended to read:

"20-7-404. Cooperation of state agencies. The state department of health, the department of institutions, ~~the department of social and rehabilitation~~ family services, and the state school for the deaf and blind shall cooperate with the superintendent of public instruction in assisting school districts in discovering children in need of special education. Nothing herein shall be construed to interfere with the purpose and function of these state agencies."

Section 23. Section 20-7-422, MCA, is amended to read:

"20-7-422. Out-of-state tuition for special education children. (1) If the trustees of any district recommend to the superintendent of public instruction the attendance of a child in need of special education in a special education program offered outside of the state of Montana, such arrangements shall not be subject to the out-of-state attendance provisions of the laws governing the attendance of pupils in schools outside the state of Montana.

(2) Whenever the attendance of a child at an out-of-state special education program is approved by the superintendent of public instruction, it shall be the responsibility of the superintendent of public instruction, in cooperation with the department of ~~social and~~ rehabilitation family services ~~and the department of~~ institutions, to negotiate the program for the child and the amount and manner of payment of tuition. The amount of tuition shall be included as a contracted service in 20-7-431(1)(a)(iii)(A) in the maximum-budget-without-a-vote for special education."

Section 24. Section 20-9-304, MCA, is amended to read:

"20-9-304. Eligibility for and payment of state impact aid. Any district which shall have children of employees of a public institution may be eligible for state impact aid under the following provisions:

1 (1) An "employee" means an employee of a public
2 institution under the administration of the department of
3 institutions, as defined in 53-1-202, or the department of
4 family services, as defined in [section 2], who resides on
5 the property of such a public institution.

6 (2) A school district shall receive annually from
7 moneys available for state equalization aid \$150 for each
8 elementary pupil and \$250 for each high school pupil whose
9 parents are employees of an institution located in the
10 school district where the pupil attends school or in a
11 school district which has a tuition agreement with the
12 district where the pupil attends school.

13 (3) A district which is eligible for state impact aid
14 shall apply for such aid to the superintendent of public
15 instruction in the manner prescribed by the rules prescribed
16 by the superintendent of public instruction.

17 (4) The distribution of state impact aid shall be
18 deposited in the general fund of the district and shall not
19 be considered as a part of the state equalization aid but
20 shall be used to reduce the property tax in support of the
21 general fund of the district."

22 Section 20,--Section 40-3-122,--is amended to read:

23 "40-3-122,--Petition--form--and--contents,---{1}---The
24 petition-shall-be-captioned-substantially-as-follows:

25 District-Court-of-the-State-of-Montana

1 For-the-County-of-~~----~~
2 Upon-the-petition-of Petition-for-Conciliation
3 ~~-----~~ {Under-the-Conciliation
4 Petitioner Court-law}
5 And-concerning --
6 ~~-----and~~ --
7 ~~-----~~ --
8 Respondents: --
9 To-the-Conciliation-Court:
10 {2}--The-petition-shall:
11 {a}--allege--that--a--controversy--exists--between--the
12 spouses-and-request--the--aid--of--the--court--to--effect--a
13 reconciliation-or-an-amicable-settlement-of-the-controversy;
14 {b}--state--the--name-and-age-of-each-minor-child-whose
15 welfare-may-be-affected-by-the-controversy;
16 {c}--state-the-name-and-address-of--the--petitioner--or
17 the-names-and-addresses-of-the-petitioners;
18 {d}--if--the--petition-is-presented-by-one-spouse-only,
19 name-the-other-spouse-as-a-respondent-and-state-the--address
20 of-that-spouse;
21 {e}--also-name-as-a-respondent-any-other-person-who-has
22 any-relation-to-the-controversy-and-state-the-address-of-the
23 person-if-known-to-the-petitioner;
24 {f}--state--such--other-information-as-the-court-may-by
25 rule-require;

1 ~~(3) The clerk of the court shall provide, at the~~
 2 ~~expense of the county, blank forms for petitions for filing~~
 3 ~~pursuant to this chapter. The probation officers of the~~
 4 ~~county and the attaches and employees of the conciliation~~
 5 ~~court shall assist any person in the preparation and~~
 6 ~~presentation of any such petition when any person requests~~
 7 ~~such assistance. All public officers in each county shall~~
 8 ~~refer to the conciliation court all petitions and complaints~~
 9 ~~made to them in respect to controversies within the~~
 10 ~~jurisdiction of the conciliation court."~~

11 Section 25. Section 40-4-209, MCA, is amended to read:

12 "40-4-209. Security or guaranty to secure support. (1)
 13 Upon verified application by a person authorized to enforce
 14 or collect a child support obligation, the department of
 15 revenue, the department of family services, or the
 16 department of social and rehabilitation services showing
 17 that a person obligated to pay child support or maintenance
 18 pursuant to court or administrative order is delinquent in
 19 an amount equal to the total of 6 months' support payments,
 20 the court may direct the obligated person to appear and show
 21 cause why an order should not be entered ordering that he
 22 post bond, give a mortgage, or provide other security or
 23 guaranty for the payment of the delinquency.

24 (2) If the court finds that a delinquency greater than
 25 the total of 6 months of support is owed and that the

1 obligated person has the ability to post bond, give a
 2 mortgage, or provide security or other guaranty, the court
 3 may enter an order requiring him to post bond, give a
 4 mortgage, or provide security or guaranty for so long as
 5 there is a support delinquency.

6 (3) The bond or other security may be in an amount up
 7 to the total support due for a 2-year period and must be
 8 approved by the court. The bond must include the name and
 9 address of the issuer. Any person issuing a bond under this
 10 section must, if the bond is cancelled, notify the court and
 11 the person or public agency entitled to receive payments
 12 under the support order.

13 (4) If the person obligated to pay child support or
 14 maintenance fails to make payments as required by the court
 15 or administrative order, the person or public agency
 16 entitled to receive payment may recover on the bond or other
 17 security. The amount recovered on the bond or other security
 18 must first be applied toward satisfaction of any support
 19 arrearages.

20 (5) The department of revenue shall adopt guidelines
 21 which take into account the payment record of the obligated
 22 person, the availability of other remedies, and other
 23 considerations which it determines relevant for determining
 24 whether the procedure provided in this section would carry
 25 out the purpose of enforcing payments of child support or

1 would be appropriate in the circumstances. If after
2 application of the guidelines the department of revenue
3 determines an application for an order requiring security is
4 not appropriate, it may not request the order."

5 Section 26. Section 40-5-112, MCA, is amended to read:

6 "40-5-112. Contents and filing of petition for support
7 -- venue. (1) The petition shall be verified and shall state
8 the name and, so far as known to the obligee, the address
9 and circumstances of the obligor and the persons for whom
10 support is sought and all other pertinent information. The
11 obligee may include in or attach to the petition any
12 information which may help in locating or identifying the
13 obligor, including a photograph of the obligor, a
14 description of any distinguishing marks on his person, other
15 names and aliases by which he has been or is known, the name
16 of his employer, his fingerprints, and his social security
17 number.

18 (2) At the time of filing the petition, the obligee
19 shall also file with the court an affidavit as required by
20 53-4-248 stating whether he has received public assistance
21 from any source and, if he has received public assistance,
22 that he has notified the department of social and
23 rehabilitation services and the department of family
24 services in writing of the pending action.

25 (3) The petition may be filed in the appropriate court

1 of any state in which the obligee resides. The court may not
2 decline or refuse to accept and forward the petition on the
3 ground that it should be filed with some other court of this
4 or any other state where there is pending another action for
5 separation, annulment, dissolution, habeas corpus, adoption,
6 or custody between the same parties or where another court
7 has already issued a support order in some other proceeding
8 and has retained jurisdiction for its enforcement."

9 Section 27. Section 40-5-113, MCA, is amended to read:

10 "40-5-113. Officials to represent obligee. If this
11 state is acting as an initiating state, the prosecuting
12 attorney, upon the request of the court, the department of
13 social and rehabilitation services, the department of
14 revenue, the department of family services, a county
15 commissioner, or other local welfare officer, shall
16 represent the obligee in any proceeding under this part. If
17 the prosecuting attorney neglects or refuses to represent
18 the obligee, the attorney general may order him to comply
19 with the request of the court or may undertake the
20 representation."

21 Section 28. Section 40-5-139, MCA, is amended to read:

22 "40-5-139. Official to represent obligee. (1) If this
23 state is acting either as a rendering or a registering
24 state, the prosecuting attorney, upon the request of the
25 court, a state department of social and rehabilitation

services, a state department of family services, a county commissioner, or other local welfare official, shall represent the obligee in proceeding under this part.

(2) If the prosecuting attorney neglects or refuses to represent the obligee, the attorney general may order him to comply with the request of the court or may undertake the representation."

Section 29. Section 40-5-202, MCA, is amended to read:

"40-5-202. Department of revenue -- powers and duties regarding collection of support debt. (1) Whenever the department of social and rehabilitation services or the department of family services receives an application for public assistance on behalf of a child and it appears to the satisfaction of that department that the child has been abandoned by his parents; the child and one parent have been abandoned by the other parent; or the parent or other person who has a responsibility for the care, support, or maintenance of such child has failed or neglected to give proper care or support to the child, the department of social and rehabilitation services or the department of family services shall promptly refer the matter to the department of revenue for action under the provisions of this part, the abandonment or nonsupport statutes, or other appropriate statutes of this state to insure that the parent or other person responsible pays for the care, support, or

maintenance of the dependent child.

(2) In the event that public assistance is furnished by a state or county agency or in instances where the department has contracted to collect support, the department shall become trustee of any cause of action of the dependent child or the person having legal custody of the dependent child to recover support due to that obligee from any person and may bring and maintain the action either in the department's own name or in the name of the obligee.

(3) The department has the power of attorney to act in the name of any recipient of public assistance in endorsing and cashing any and all drafts, checks, money orders, or other negotiable instruments received by the department and representing support payments for children in whose behalf public assistance has been previously paid.

(4) For purposes of prosecuting any civil action pursuant to this part, the department is a real party in interest upon the payment of public assistance. No obligee shall act to prejudice the rights of the department after the receipt of public assistance.

(5) No agreement between any obligee and any obligor either relieving an obligor of any duty of support or purporting to settle past, present, or future support obligations either as settlement or prepayment may act to reduce or terminate any rights of the department to recover

1 from that obligor for support debt provided unless the
2 department has consented to the agreement in writing.

3 (6) The department may petition a court for
4 modification of any court order on the same basis as a party
5 to that action would have been entitled to do.

6 (7) The department shall be subrogated to the right of
7 the child or children or person having the care, custody,
8 and control of the child or children to maintain any civil
9 action or execute any administrative remedy existing under
10 the laws of the state to obtain reimbursement of money thus
11 spent.

12 (8) If a district court orders an amount of support to
13 be paid by a responsible parent, the department shall be
14 subrogated to the debt created by the order and the money
15 judgment shall be determined to be in favor of the
16 department. This subrogation applies both to:

17 (a) the lesser of the amount paid by the department of
18 social and rehabilitation services or the department of
19 family services in public assistance money to or for the
20 benefit of a dependent child or children of the responsible
21 parent or the amount of support contained in the court
22 order; and

23 (b) to any amount allocated to the benefit of the
24 children on the basis of providing necessities for the
25 caretaker of the children.

1 (9) The department may adopt and enforce such rules as
2 may be necessary to carry out the provisions of this part.

3 (10) The department, for the purposes mentioned in this
4 part, through its director or the director's authorized
5 representatives, may administer oaths to certify official
6 acts, issue subpoenas, and compel witnesses and the
7 production of books, accounts, documents, and evidence."

8 Section 30. Section 40-5-303, MCA, is amended to read:

9 "40-5-303. Petition for income deduction -- who may
10 initiate. A petition for an income deduction for the payment
11 of delinquent child support payments may be made by:

12 (1) the person named as the recipient of the child
13 support payments in the child support order;

14 (2) the child or the guardian of the child named in
15 the child support order; or

16 (3) the department of revenue, the department of
17 family services, or the department of social and
18 rehabilitation services of the state of Montana."

19 Section 31. Section 40-6-107, MCA, is amended to read:

20 "40-6-107. Determination of father and child
21 relationship -- who may bring action. (1) Any interested
22 party may bring an action for the purpose of determining the
23 existence or nonexistence of the father and child
24 relationship presumed pursuant to 40-6-105.

25 (2) An action to determine the existence of the father

1 and child relationship with respect to a child who has no
 2 presumed father under 40-6-105 may be brought by the child,
 3 the mother or personal representative of the child, the
 4 department of social and rehabilitation services or its
 5 appropriate local affiliate, the department of family
 6 services or its appropriate local affiliate, the personal
 7 representative or a parent of the mother if the mother has
 8 died, a man alleged or alleging himself to be the father, or
 9 the personal representative or a parent of the alleged
 10 father if the alleged father has died or is a minor.

11 (3) Regardless of its terms, an agreement, other than
 12 an agreement approved by the court in accordance with
 13 40-6-114(2), between an alleged or presumed father and the
 14 mother or child does not bar an action under this section.

15 (4) If an action under this section is brought before
 16 the birth of the child, all proceedings shall be stayed
 17 until after the birth, except service of process and the
 18 taking of depositions to perpetuate testimony."

19 Section 32. Section 40-6-110, MCA, is amended to read:

20 "40-6-110. Parties. The child shall be made a party to
 21 the action. If he is a minor, he shall be represented by
 22 his general guardian or a guardian ad litem appointed by the
 23 court. The child's mother or father may not represent the
 24 child as guardian or otherwise. The court may appoint the
 25 department of ~~social-and-rehabilitation~~ family services or

1 ~~the--appropriate--county--welfare--department~~ as guardian ad
 2 litem for the child. The natural mother, each man presumed
 3 to be the father under 40-6-105, and each man alleged to be
 4 the natural father shall be made parties or, if not subject
 5 to the jurisdiction of the court, shall be given notice of
 6 the action in a manner prescribed by the court and an
 7 opportunity to be heard. The court may align the parties."

8 Section 33. Section 40-8-103, MCA, is amended to read:
 9 "40-8-103. Definitions. As used in this chapter,
 10 unless the context otherwise requires the following
 11 definitions apply:

12 (1) "Adoption" means the act of creating the legal
 13 relationship between parent and child when it does not exist
 14 genetically.

15 (2) "Adoptive parent" means an adult who has become
 16 the mother or father of a child through the legal process of
 17 adoption.

18 (3) "Agency" means a public or voluntary agency
 19 licensed by any jurisdiction within the United States and
 20 expressly empowered to place child as a preliminary to a
 21 possible adoption.

22 (4) "Birth parent" means the mother or father of
 23 genetic origin of a child but does not include a putative
 24 father of a child.

25 (5) "Child" means any person under 18 years of age.

1 (6) "Court" means a Montana district court or a tribal
2 court of any Montana Indian reservation.

3 (7) "Department" means the department of ~~social and~~
4 ~~rehabilitation family~~ services, as established and provided
5 for in ~~Title 27, chapter 157, part 22~~ [section 2].

6 (8) "Extended family member" means an adult who is the
7 child's grandparent, aunt or uncle, brother or sister, niece
8 or nephew, or first cousin.

9 (9) "Parent" means the birth or adoptive mother or the
10 birth, adoptive, or legal father whose parental rights have
11 not been terminated.

12 (10) "Placement for adoption" means the transfer of
13 physical custody of a child with respect to whom all
14 parental rights have been terminated and who is otherwise
15 legally free for adoption to a person who intends to adopt
16 the child.

17 (11) "Relinquishment" means the informed and voluntary
18 release in writing of all parental rights with respect to a
19 child by a parent to an agency or individual pursuant to
20 40-6-135 or 40-8-109, whichever is applicable."

21 Section 34. Section 40-8-126, MCA, is amended to read:

22 "40-8-126. Confidentiality of record and proceedings.

23 (1) Unless the court shall otherwise order, all hearings
24 held in proceedings under this part shall be confidential
25 and shall be held in closed court without admittance of any

1 person other than interested parties and their counsel.

2 (2) All papers and records pertaining to the adoption
3 shall be kept as a permanent record of the court and
4 withheld from inspection. No person shall have access to
5 such records except:

6 (a) for good cause shown, on order of the judge of the
7 court in which the decree of adoption was entered; or

8 (b) as provided in 50-15-206.

9 (3) All files and records pertaining to said adoption
10 proceedings in the county departments of public welfare, the
11 department of social and rehabilitation services, the
12 department of family services, or any authorized agencies
13 shall be confidential and withheld from inspection except
14 upon order of court for good cause shown or as provided in
15 50-15-206."

16 Section 35. Section 41-3-102, MCA, is amended to read:

17 "41-3-102. Definitions. As used in this chapter, the
18 following definitions apply:

19 (1) "Child" or "youth" means any person under 18 years
20 of age.

21 (2) An "abused or neglected child" means a child whose
22 normal physical or mental health or welfare is harmed or
23 threatened with harm by the acts or omissions of his parent
24 or other person responsible for his welfare.

25 (3) "Harm to a child's health or welfare" means the

1 harm that occurs whenever the parent or other person
2 responsible for the child's welfare:

3 (a) inflicts or allows to be inflicted upon the child
4 physical or mental injury, including injuries sustained as a
5 result of excessive corporal punishment;

6 (b) commits or allows to be committed a sexual assault
7 against the child or exploits the child or allows the child
8 to be exploited for sexual purposes or commits or allows to
9 be committed the act of sexual abuse of children as defined
10 in subsection (1) of 45-5-625;

11 (c) causes failure to thrive or otherwise fails to
12 supply the child with adequate food or fails to supply
13 clothing, shelter, education, or health care, though
14 financially able to do so or offered financial or other
15 reasonable means to do so;

16 (d) abandons the child by leaving him under
17 circumstances that make reasonable the belief that the
18 parent or other person does not intend to resume care of the
19 child in the future or by willfully surrendering physical
20 custody for a period of 6 months and during that period does
21 not manifest to the child and the person having physical
22 custody of the child a firm intention to resume physical
23 custody or to make permanent legal arrangements for the care
24 of the child; or

25 (e) is unknown and has been unknown for a period of 90

1 days and reasonable efforts to identify and locate the
2 parents have failed.

3 (4) "Adequate health care" means any medical or
4 nonmedical remedial health care, including the prevention of
5 the withholding of medically indicated treatment, permitted
6 or authorized under state law.

7 (5) "Withholding of medically indicated treatment"
8 means the failure to respond to an infant's life-threatening
9 conditions by providing treatment (including appropriate
10 nutrition, hydration, and medication) that, in the treating
11 physician's or physicians' reasonable medical judgment, will
12 be most likely to be effective in ameliorating or correcting
13 all such conditions. However, the term does not include the
14 failure to provide treatment (other than appropriate
15 nutrition, hydration, or medication) to an infant when, in
16 the treating physician's or physicians' reasonable medical
17 judgment:

18 (a) the infant is chronically and irreversibly
19 comatose;

20 (b) the provision of such treatment would:

21 (i) merely prolong dying;

22 (ii) not be effective in ameliorating or correcting all
23 of the infant's life-threatening conditions; or

24 (iii) otherwise be futile in terms of the survival of
25 the infant; or

1 (c) the provision of such treatment would be virtually
 2 futile in terms of the survival of the infant and the
 3 treatment itself under such circumstances would be inhumane.
 4 For purposes of this subsection, "infant" means an infant
 5 less than 1 year of age or an infant 1 year of age or older
 6 who has been continuously hospitalized since birth, who was
 7 born extremely prematurely, or who has a long-term
 8 disability. The reference to less than 1 year of age may not
 9 be construed to imply that treatment should be changed or
 10 discontinued when an infant reaches 1 year of age or to
 11 affect or limit any existing protections available under
 12 state laws regarding medical neglect of children over 1 year
 13 of age.

14 (6) "Threatened harm" means imminent risk of harm.

15 (7) "A person responsible for a child's welfare" means
 16 the child's parent, guardian, or foster parent; an employee
 17 of a public or private residential institution, facility,
 18 home, or agency; or any other person legally responsible for
 19 the child's welfare in a residential setting.

20 (8) "Physical injury" means death, permanent or
 21 temporary disfigurement, or impairment of any bodily organ
 22 or function.

23 (9) "Mental injury" means an identifiable and
 24 substantial impairment of the child's intellectual or
 25 psychological functioning.

1 (10) "Dependent youth" means a youth:

2 (a) who is abandoned;

3 (b) who is without parents or guardian or not under
 4 the care and supervision of a suitable adult;

5 (c) who has no proper guidance to provide for his
 6 necessary physical, moral, and emotional well-being;

7 (d) who is destitute;

8 (e) who is dependent upon the public for support; or

9 (f) whose parent or parents have voluntarily
 10 relinquished custody of the child and whose legal custody
 11 has been transferred to a licensed agency.

12 (11) "Youth in need of care" means a youth who is
 13 dependent, abused, or neglected as defined in this section.

14 ~~{12} "Supervision" means the authority granted by a~~
 15 ~~youth court or by a voluntary agreement of a parent to~~
 16 ~~determine the foster care placement of a child and the~~
 17 ~~length of stay of a child in foster care and provide for the~~
 18 ~~needs of a child under subsection (1) of 41-3-1122.~~

19 ~~{13} (12) "Department" means the department of social~~
 20 ~~and rehabilitation family services provided for in 2-15-2201~~
 21 ~~[section 2].~~

22 ~~{14} (13) "Limited emancipation" means a status~~
 23 ~~conferred on a dependent youth by a court after a~~
 24 ~~dispositional hearing in accordance with 41-3-406 under~~
 25 ~~which the youth is entitled to exercise some but not all of~~

1 the rights and responsibilities of a person who is 18 years
2 of age or older.

3 (14) "Social worker" means an employee of the
4 department of family services whose duties generally involve
5 the provision of either child or adult protective services,
6 or both."

7 Section 36. Section 41-3-108, MCA, is amended to read:

8 "41-3-108. Child protective teams. The county attorney
9 or the county--welfare department of family services may
10 convene one or more temporary or permanent interdisciplinary
11 child protective teams. These teams may assist in assessing
12 the needs of, formulating and monitoring a treatment plan
13 for, and coordinating services to the child and his family.
14 The supervisor of child protective services of-the-county
15 welfare-department in a local service area or his designee
16 shall serve as the team's coordinator. Members shall include
17 a social worker, a member of a local law enforcement agency,
18 a representative of the medical profession, and a county
19 attorney."

20 Section 37. Section 41-3-204, MCA, is amended to read:

21 "41-3-204. Admissibility and preservation of evidence.

22 (1) In any proceeding resulting from a report made pursuant
23 to the provisions of this chapter or in any proceeding where
24 the report or its contents are sought to be introduced into
25 evidence, the report or its contents or any other fact

1 related to the report or to the condition of the child who
2 is the subject of the report shall not be excluded on the
3 ground that the matter is or may be the subject of a
4 privilege related to the examination or treatment of the
5 child and granted in Title 26, chapter 1, part 8, except the
6 attorney-client privilege granted by 26-1-803.

7 (2) Any person or official required to report under
8 41-3-201 may take or cause to be taken photographs of the
9 area of trauma visible on a child who is the subject of a
10 report. The cost of photographs taken under this section
11 shall be paid by the county-child-protective-service-agency
12 department.

13 (3) When any person required to report under 41-3-201
14 finds visible evidence that a child has suffered abuse or
15 neglect, he must include in his report either a written
16 description or photographs of the evidence.

17 (4) A physician, either in the course of his providing
18 medical care to a minor or after consultation with child
19 protective services, the county attorney, or a law
20 enforcement officer may require x-rays to be taken when in
21 his professional opinion there is a need for radiological
22 evidence of suspected abuse or neglect. X-rays may be taken
23 under this section without the permission of the parent or
24 guardian. The cost of the x-rays ordered and taken under
25 this section shall be paid by the county child protective

1 service agency.

2 (5) All written, photographic, or radiological
3 evidence gathered under this section shall be sent to the
4 ~~local child-protective--services--agency~~ affiliate of the
5 department at the time the written confirmation report is
6 sent or as soon thereafter as is possible."

7 Section 38. Section 41-3-205, MCA, is amended to read:

8 "41-3-205. Confidentiality. (1) The case records of
9 the department of social and rehabilitation services, the
10 department of family services and its local affiliate, the
11 county welfare department, the county attorney, and the
12 court concerning actions taken under this chapter and all
13 records concerning reports of child abuse and neglect shall
14 be kept confidential except as provided by this section.
15 Any person who permits or encourages the unauthorized
16 dissemination of their contents is guilty of a misdemeanor.

17 (2) Records may be used by interagency
18 interdisciplinary child protective teams as authorized under
19 41-3-108 for the purposes of assessing the needs of the
20 child and family, formulating a treatment plan, and
21 monitoring the plan. Members of the team are required to
22 keep information about the subject individuals confidential.

23 (3) Records may be disclosed to a court for in camera
24 inspection if relevant to an issue before it. The court may
25 permit public disclosure if it finds such disclosure to be

1 necessary for the fair resolution of an issue before it.

2 (4) Nothing in this section is intended to affect the
3 confidentiality of criminal court records or records of law
4 enforcement agencies."

5 Section 39. Section 41-3-208, MCA, is amended to read:

6 "41-3-208. Rulemaking authority. The department of
7 ~~social--and-rehabilitation~~ family services shall adopt rules
8 to govern the procedures used by department personnel ~~and-by~~
9 ~~employees-of-county-welfare--departments~~ in preparing and
10 processing reports and in making investigations authorized
11 by this chapter or 41-3-1123."

12 Section 40. Section 41-3-301, MCA, is amended to read:

13 "41-3-301. Emergency protective service. (1) Any child
14 protective social worker of the department of ~~social--and~~
15 ~~rehabilitation~~ family services, ~~the---county---welfare~~
16 ~~department~~, a peace officer, or the county attorney who has
17 reason to believe any youth is in immediate or apparent
18 danger of harm may immediately remove the youth and place
19 him in a protective facility. The department may make a
20 request for further assistance from the law enforcement
21 agency or take appropriate legal action. The person or
22 agency placing the child shall notify the parents, parent,
23 guardian, or other person having legal custody of the youth
24 at the time the placement is made or as soon thereafter as
25 possible.

(2) No child who has been removed from his home or any other place for his protection or care may be placed in a jail.

(3) A petition shall be filed within 48 hours of emergency placement of a child unless arrangements acceptable to the agency for the care of the child have been made by the parents.

(4) The department of ~~social-and-rehabilitation~~ family services and-the-county-welfare-department shall make such necessary arrangements for the youth's well-being as are required prior to the court hearing."

Section 41. Section 41-3-302, MCA, is amended to read:

"41-3-302. Responsibility of providing protective services. (1) The department of ~~social-and-rehabilitation~~ family services and-the-county-welfare-department shall have the primary responsibility to provide the protective services authorized by this chapter and shall have the authority pursuant to this chapter to take temporary or permanent custody of a child when ordered to do so by the court, including the right to give consent to adoption.

(2) The ~~county-welfare~~ department shall respond to emergency reports of known or suspected child abuse or neglect 24 hours a day, 7 days a week."

Section 42. Section 41-3-401, MCA, is amended to read:

"41-3-401. Abuse, neglect, and dependency petitions.

(1) The county attorney, attorney general, or an attorney hired by the county ~~welfare-department-or-office-of-human services~~ WELFARE DEPARTMENT OR OFFICE OF HUMAN SERVICES shall be responsible for filing all petitions alleging abuse, neglect, or dependency. The county attorney or attorney general, or an attorney hired by the county ~~welfare department-or-office-of-human-services~~ WELFARE DEPARTMENT OR OFFICE OF HUMAN SERVICES with the written consent of the county attorney or attorney general, may require all state, county, and municipal agencies, including law enforcement agencies, to conduct such investigations and furnish such reports as may be necessary. Investigations as to financial status may not be made prior to the adjudicatory hearing provided for in 41-3-404.

(2) Upon receipt of a petition, the court shall set a date for an adjudicatory hearing on the petition. Such petitions shall be given preference by the court in setting hearing dates and must be heard within 20 days of the filing of the petition.

(3) A petition alleging abuse, neglect, or dependency is a civil action brought in the name of the state of Montana. The rules of civil procedure shall apply except as herein modified. Proceedings under a petition are not a bar to criminal prosecution.

(4) The parents or parent, guardian, or other person

1 or agency having legal custody of the youth named in the
 2 petition, if residing in the state, shall be served
 3 personally with a copy of the petition and summons at least
 4 5 days prior to the date set for hearing. If such person or
 5 agency resides out of state or is not found within the
 6 state, the rules of civil procedure relating to service of
 7 process in such cases shall apply.

8 (5) In the event service cannot be made upon the
 9 parents or parent, guardian, or other person or agency
 10 having legal custody, the court shall appoint an attorney to
 11 represent the unavailable party where in the opinion of the
 12 court the interests of justice require.

13 (6) If a parent of the child is a minor, notice shall
 14 be given to the minor parent's parents or guardian, and if
 15 there is no guardian the court shall appoint one.

16 (7) Any person interested in any cause under this
 17 chapter has the right to appear.

18 (8) Except where the proceeding is instituted or
 19 commenced by--a--representative--of at the request of the
 20 department of ~~social-and-rehabilitation~~ family services, a
 21 citation shall be issued and served upon a representative of
 22 the department prior to the court hearing.

23 (9) The petition shall:

24 (a) state the nature of the alleged abuse, neglect, or
 25 dependency;

1 (b) state the full name, age, and address of the youth
 2 and the name and address of his parents or guardian or
 3 person having legal custody of the youth;

4 (c) state the names, addresses, and relationship to
 5 the youth of all persons who are necessary parties to the
 6 action.

7 (10) The petition may ask for the following relief:

8 (a) temporary investigative authority and protective
 9 services;

10 (b) temporary legal custody;

11 (c) termination of the parent-child legal
 12 relationship;

13 (d) any combination of the above or such other relief
 14 as may be required for the best interest of the youth.

15 (11) The petition may be modified for different relief
 16 at any time within the discretion of the court.

17 (12) The court may at any time on its own motion or the
 18 motion of any party appoint counsel for any indigent party."

19 Section 43. Section 41-3-402, MCA, is amended to read:

20 "41-3-402. Petition for temporary investigative
 21 authority and protective services. (1) In cases where it
 22 appears that a youth is abused or neglected or is in danger
 23 of being abused or neglected, the county attorney, attorney
 24 general, or an attorney hired by the county ~~welfare~~
 25 ~~department-or-office-of-human-services~~ WELFARE DEPARTMENT OR

1 OFFICE OF HUMAN SERVICES may file a petition for temporary
2 investigative authority and protective services.

3 (2) A petition for temporary investigative authority
4 and protective services shall state the specific authority
5 requested and the facts establishing probable cause that a
6 youth is abused or neglected or is in danger of being abused
7 or neglected.

8 (3) The petition for temporary investigative authority
9 and protective services shall be supported by an affidavit
10 signed by the county attorney, attorney general, or an
11 attorney hired by the county welfare-department-attorney, or
12 office--of--human--services--attorney WELFARE DEPARTMENT OR
13 OFFICE OF HUMAN SERVICES or a department of social--and
14 rehabilitation family services report stating in detail the
15 facts upon which the request is based."

16 Section 44. Section 41-3-607, MCA, is amended to read:

17 "41-3-607. Petition for termination -- separate
18 hearing -- right to counsel -- no jury trial. (1) The
19 termination of a parent-child legal relationship shall be
20 considered only after the filing of a petition pursuant to
21 41-3-401 alleging the factual grounds for termination.
22 Termination of a parent-child legal relationship shall be
23 considered at a dispositional hearing held pursuant to
24 41-3-406, following or together with an adjudicatory hearing
25 held pursuant to 41-3-404, within 180 days after the filing

1 of the petition.

2 (2) After the county attorney, attorney general, or an
3 attorney hired by the county ~~welfare-department-or-office-of~~
4 ~~human--services~~ WELFARE DEPARTMENT OR OFFICE OF HUMAN
5 SERVICES files a petition for termination of a parent-child
6 relationship pursuant to this part, parents shall be advised
7 of the right to counsel, and counsel shall be appointed in
8 accordance with 41-3-401(12).

9 (3) A guardian ad litem shall be appointed to
10 represent the child's best interests in any hearing
11 determining the involuntary termination of the parent-child
12 legal relationship. The guardian ad litem shall continue to
13 represent the child until the child is returned home or
14 placed in an appropriate permanent placement. If a
15 respondent parent is a minor, a guardian ad litem must be
16 appointed to serve the minor parent in addition to any
17 counsel requested by the parent.

18 (4) There is no right to a jury trial at proceedings
19 held to consider the termination of a parent-child legal
20 relationship."

21 Section 45. Section 41-3-1102, MCA, is amended to
22 read:

23 "41-3-1102. Definitions. For the purposes of this
24 part, the following definitions apply:

25 (1) "Child-care agency" means a youth care facility in

1 which substitute care is provided to 13 or more children or
2 youth.

3 (2) "Department" means the department of ~~social--and~~
4 ~~rehabilitation~~ family services provided for in [section 2].

5 (3) "Operator of a youth care facility" means any
6 person owning or operating a youth care facility into which
7 he takes any child or children for the purpose of caring for
8 them and maintaining them and for which care and maintenance
9 he receives money or other consideration of value, and which
10 child is neither his son, daughter, nor ward, except that
11 this part shall not apply when any person accepts such care
12 and custody of such child on a temporary basis and simply as
13 a temporary accommodation for the parent or parents,
14 guardian, or relative of such child.

15 (4) "Person" means any individual, partnership,
16 voluntary association, or corporation.

17 (5) "Substitute care" means full-time care of youth in
18 a residential setting for the purpose of providing food,
19 shelter, security and safety, guidance, direction, and if
20 necessary, treatment to youth who are removed from or
21 without the care and supervision of their parents or
22 guardian.

23 (6) "Youth care facility" means a facility, licensed
24 ~~in--accordance--with--41-3-1141--through--41-3-1143,~~ by the
25 department or by the appropriate licensing authority in

1 another state and in which facility substitute care is
2 provided to youth, and The term includes youth foster homes,
3 youth group homes, and child-care agencies.

4 (7) "Youth foster home" means a youth care facility in
5 which substitute care is provided to one to six children or
6 youth other than the foster parents' own children,
7 stepchildren, or wards.

8 (8) "Youth group home" means a youth care facility in
9 which substitute care is provided to 7 to 12 children or
10 youth."

11 Section 46. Section 41-3-1103, MCA, is amended to
12 read:

13 "41-3-1103. Powers and duties of department. (1) The
14 department shall:

15 (a) administer all state and federal funds allocated
16 to the department for youth foster homes, youth group homes,
17 and child-care agencies for youth in need of care, youth in
18 need of supervision, and delinquent youth;

19 (b) exercise licensing authority over all youth foster
20 homes, youth group homes, and child-care agencies;

21 (c) collect and disseminate information relating to
22 youth in need of care, youth in need of supervision, and
23 delinquent youth;

24 (d) provide for training of program personnel
25 delivering services;

1 (e) in cooperation with ~~the department of institutions~~
2 and youth care facility providers, develop and implement
3 standards for youth care facilities;

4 ~~{f}--apportion-and-allocate-placement--budgets--to--all~~
5 ~~judicial-districts service-areas;~~

6 ~~{g}~~(F) maintain adequate data on placements it funds
7 in order to keep the legislature properly informed of the
8 following:

9 (i) the breakdown of youth in need of care, youth in
10 need of supervision, and delinquent youth by category in
11 out-of-home care facilities;

12 (ii) the cost per facility for services rendered;

13 (iii) the type and level of care of services provided
14 by each facility;

15 (iv) a profile of out-of-home care placements by level
16 of care; and

17 (v) a profile of public institutional placements; and

18 ~~{h}~~(G) administer all funds allocated to the
19 department for residential alcohol and drug abuse treatment
20 for indigent youths in need of care, indigent youths in need
21 of supervision, and indigent delinquent youths who require
22 such treatment.

23 (2) The department may:

24 (a) enter into contracts with nonprofit corporations
25 or associations or private organizations to provide

1 facilities and services for youth in need of care, youth in
2 need of supervision, and delinquent youth;

3 (b) accept gifts, grants, and donations of money and
4 property from public and private sources to initiate and
5 maintain community-based services to youth;

6 (c) adopt rules to carry out the administration and
7 purposes of this part.

8 (3) The department shall pay for room, board,
9 clothing, personal needs, transportation, and treatment in
10 youth foster care homes and youth group homes ~~other-than~~
11 ~~aftercare-homes~~ for youths committed to the department of
12 ~~institutions~~ who need to be placed in such facilities.
13 ~~Youths-committed-to-the-department-of-institutions-and~~
14 ~~placed-in-residential-facilities-other-than-those-described~~
15 ~~above-shall-not-be-the-financial-responsibility-of-the~~
16 ~~department-of-social-and-rehabilitation-services-unless-such~~
17 ~~placements-have-been-approved-in-advance-by-the-department~~
18 ~~of-social-and-rehabilitation-services."~~

19 Section 47. Section 41-3-1104, MCA, is amended to
20 read:

21 "41-3-1104. Aftercare facilities. The department of
22 ~~institutions~~ family services may establish, maintain, and
23 administer youth correction correctional facilities,
24 evaluation facilities, mental health facilities and
25 services, aftercare programs, and aftercare facilities for

1 the care, custody, and treatment of youth who have been
2 committed to the department of institutions."

3 Section 48. Section 41-3-1112, MCA, is amended to
4 read:

5 "41-3-1112. Petition for placement in facility or
6 home. Any person between the ages of 18 and 21 years who is
7 still within the jurisdiction of the youth court or any
8 person under the age of 18 years may petition the youth
9 court of a district in which a licensed youth care facility
10 has been established to be placed in such a facility ~~or in~~
11 ~~any other home approved by the court~~ for any period of time
12 up to the person's 21st birthday."

13 Section 49. Section 41-3-1113, MCA, is amended to
14 read:

15 "41-3-1114. Continuing jurisdiction of youth court.
16 The youth court ~~placing~~ committing a delinquent youth or a
17 ~~child youth~~ in need of supervision ~~in a youth care facility~~
18 to the department of family services retains continuing
19 jurisdiction over the youth until the youth becomes 21 years
20 of age or is otherwise discharged by ~~order of the court~~ the
21 department after notice to the youth court of original
22 jurisdiction."

23 Section 50. Section 41-3-1115, MCA, is amended to
24 read:

25 "41-3-1115. Foster care review committee. (1) In every

1 judicial district the youth court judge, in consultation
2 with the department, shall appoint a foster care review
3 committee. The members of the committee must be willing to
4 act without compensation. The committee shall be composed of
5 not less than five or more than seven members. The members
6 shall include:

7 (a) a representative of the department;

8 ~~(b) a representative of the youth court;~~

9 (B) A REPRESENTATIVE OF THE YOUTH COURT;

10 ~~(c) (b) (C)~~ someone knowledgeable in the needs of
11 children in foster care placements who is not employed by
12 the department or the youth court;

13 ~~(d) (e) (D)~~ a representative of a local school district;

14 and

15 ~~(e) (d) (E)~~ if there is one, the foster parent of the
16 child whose care is under review. The foster parent's
17 appointment is effective only for and during that review.

18 (2) When a child is in foster care under the
19 supervision of the department ~~or the youth court~~ or if
20 payment for care is made pursuant to 41-3-1122 or
21 ~~41-3-1121(2)~~, the committee shall conduct a review of the
22 foster care status of the child. The review must be
23 conducted within a time limit established by the department.
24 The time limit must comply with federal law and may not be
25 later than the 12-month anniversary date of the child's

1 placement into foster care.

2 (3) The department shall provide the committee with
3 guidelines for operation of the committee. Within 30 days of
4 the foster care review, the committee shall provide the
5 youth court and the department a written report of its
6 findings and recommendations for further action by the youth
7 court or the department.

8 (4) The department shall adopt rules necessary to
9 carry out the purposes of this section.

10 (5) Because of the individual privacy involved,
11 meetings of the committee, reports of the committee, and
12 information on individuals' cases shared by committee
13 members is confidential and subject to the confidentiality
14 requirements of the department.

15 (6) The committee is subject to the call of the youth
16 court judge to meet and confer with him on all matters
17 pertaining to the foster care of a child before the youth
18 court."

19 Section 51. Section 41-3-1122, MCA, is amended to
20 read:

21 "41-3-1122. Payment for support of youth in need of
22 care, youth in need of supervision, or delinquent youth --
23 reimbursement by county. (1) Whenever a youth who is a youth
24 in need of care, a youth in need of supervision, or a
25 delinquent youth is placed by the youth--court--or-the

1 department of family services in a youth care facility, the
2 department shall pay, within the limits of the appropriation
3 for that purpose, a foster care payment to the youth care
4 facility at a rate established by the department for board,
5 clothing, personal needs, treatment, and room of the youth.

6 (2) On or before the 20th of each month the department
7 shall present a claim to the county of residence of the
8 youth for no more than one-half the payments so made during
9 the month. The county must make reimbursement to the
10 department within 20 days after the claim is presented.

11 (3) THE COUNTY SHALL REIMBURSE THE DEPARTMENT FOR
12 ONE-HALF OF THE PAYMENTS NOT REIMBURSED TO THE DEPARTMENT BY
13 THE FEDERAL GOVERNMENT UNTIL THE COUNTY EXPENDITURES REACH A
14 LEVEL EQUAL TO THE COUNTY'S LEVEL OF EXPENDITURES FOR FOSTER
15 CARE IN FISCAL YEAR 1987, EXCEPT AS PROVIDED IN SUBSECTION
16 (4). IF A COUNTY'S LEVEL OF EXPENDITURE FOR ANY YEAR REACHES
17 THE LEVEL OF EXPENDITURE FOR FOSTER CARE IN FISCAL YEAR
18 1987, THE COUNTY SHALL REIMBURSE THE DEPARTMENT FOR
19 ONE-QUARTER OF THE PAYMENTS ABOVE THE FISCAL YEAR 1987
20 EXPENDITURE LEVEL.

21 (4) IF A COUNTY'S LEVEL OF EXPENDITURE FOR FOSTER CARE
22 IN FISCAL YEAR 1987 IS \$10,000 OR LESS, THE COUNTY'S LEVEL
23 OF EXPENDITURE FOR PURPOSES OF DETERMINING THE COUNTY'S
24 PERCENTAGE OF REIMBURSEMENT SPECIFIED IN SUBSECTION (3) IS
25 THE LEVEL OF EXPENDITURES FOR FISCAL YEAR 1987 OR THE

AVERAGE OF EXPENDITURES FOR FISCAL YEARS 1984 THROUGH 1987,
WHICHEVER IS LESS.

~~{3}{5}~~ The department shall conduct or arrange for the review required under 41-3-1115 of a youth placed in a youth care facility if the youth is placed ~~under the supervision of the department or placed by the department or the department pays for the care of the youth as set forth in this section.~~

Section 52. Section 41-3-1123, MCA, is amended to read:

"41-3-1123. Investigation of parents' or guardians' financial ability -- financial status report. (1) Whenever a disposition under 41-3-404, 41-5-403, 41-5-523, or 41-5-524 involves placement in a youth care facility or youth correctional facility and the department is responsible for all or part of the cost of such placement, ~~the probation officer or the court shall notify the department and order the county welfare department in the youth's county of residence to conduct an investigation of the financial status of the youth's parents or guardianship assets. Following an adjudicatory hearing in which a youth is determined to be a delinquent youth or a youth in need of supervision, the court may order the county welfare department to conduct a financial status investigation.~~

(2) (a) Upon receipt of the order, the ~~county welfare~~

department shall make an investigation for the purpose of ascertaining the residence of the parents or guardian of the youth and the financial ability of the parents or the adequacy of the guardianship assets to pay the cost of supporting the youth:

(i) in the youth care facility or youth correctional facility; or

(ii) as a child of limited emancipation, as may be ordered under 41-3-406.

(b) A written report of the investigation shall be filed with the court having jurisdiction, and the department ~~of social and rehabilitation services, and the department of institutions~~, and a copy shall be sent to the parents or guardian of the youth or to any other party to the proceeding.

(3) A copy of the written report shall be provided to all parties to the proceeding before the time set for the dispositional hearing."

Section 53. 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 any entity of state or local

government authorized by law to be responsible for the care or rehabilitation of youth.

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

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

(5) "Department" means the department of family services provided for in [section 2].

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

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

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

(9) (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.

(10) "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.

~~(11) "Probation officer" means an employee of the department whose duties generally involve the provision of services to alleged and adjudicated youth in need of supervision or delinquent youth, as provided in this chapter.~~

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

~~(13) "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 youth court judge, and probation officers any court-appointed staff PROBATION OFFICERS.~~

(14) "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

1 delinquent youth or a youth in need of supervision, violates
2 any condition of his probation.

3 ~~(13)~~~~(15)~~~~(14)~~ "Youth in need of supervision" means a
4 youth who commits an offense prohibited by law which, if
5 committed by an adult, would not constitute a criminal
6 offense, including but not limited to a youth who:

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

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

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

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

17 ~~(14)~~~~(16)~~~~(15)~~ "Youth in need of care" means a youth as
18 defined in 41-3-102.

19 ~~(15)~~~~(17)~~~~(16)~~ "Custodian" means a person other than a
20 parent or guardian to whom legal custody of the youth has
21 been given but does not include a person who has only
22 physical custody.

23 ~~(16)~~~~(18)~~~~(17)~~ "Necessary parties" include the youth, his
24 parents, guardian, custodian, or spouse.

25 ~~(17)~~~~(19)~~~~(18)~~ "State youth correctional facility" means

1 a residential facility for the rehabilitation of delinquent
2 youth such as Pine Hills school in Miles City, and Mountain
3 View school in Helena.

4 ~~(18)~~~~(20)~~~~(19)~~ "Shelter care" means the temporary
5 substitute care of youth in physically unrestricting
6 facilities.

7 ~~(19)~~~~(21)~~~~(20)~~ "Detention" means the temporary substitute
8 care of youth in physically restricting facilities.

9 ~~(20)~~~~(22)~~~~(21)~~ "Restitution" means payments in cash to
10 the victim or with services to the victim or the general
11 community when these payments are made under--the
12 jurisdiction-of-a-youth-court-proceeding pursuant to an
13 informal adjustment, consent decree, or other youth court
14 order.

15 ~~(21)~~~~(23)~~~~(22)~~ "Substitute care" means full-time care of
16 youth in a residential setting for the purpose of providing
17 food, shelter, security and safety, guidance, direction, and
18 if necessary, treatment to youth who are removed from or
19 without the care and supervision of their parents or
20 guardian. ~~Nothing-in-this-definition-is-intended-to-include~~
21 ~~juvenile--correctional--facilities,--evaluation--facilities,~~
22 ~~mental--health--facilities--and--services,--and--aftercare~~
23 ~~programs-operated-by-the-department-of-institutions;~~

24 ~~(24)~~~~(23)~~ "Serious juvenile offender" means a youth who
25 has committed an offense against the person, an offense

1 against property, or an offense involving dangerous drugs
 2 which would be considered a felony offense if committed by
 3 an adult."

4 Section 50. Section 41-5-104, MCA, is amended to read:

5 "41-5-104. County commissioners authorized to provide
 6 funds:--(1)--The county commissioners of all counties are
 7 hereby authorized, empowered, and required to provide the
 8 necessary funds and to make all needful appropriations to
 9 carry out the provisions of this chapter:

10 (2)--Each The department shall annually bill each
 11 county shall pay for its portion of the costs of the youth
 12 court, based:

13 (a)--on actual costs incurred in or on behalf of the
 14 county; or

15 (b)--if actual costs cannot be identified, on each
 16 county's proportion of the total youth court workload in the
 17 judicial district during the calendar year preceding the
 18 setting of the budget;

19 (3)--The youth court judge shall, in January of each
 20 year, establish the proportion of the workload of the court
 21 to be attributed to each county in the ensuing budget year
 22 for purposes of any necessary application of subsection

23 (2)(b): Each county's payment must be equal to the amount
 24 initially budgeted by that county for funding and support of
 25 the youth probation operations in that county for fiscal

1 year--1987;--Payments are due July 1 and January 1 of each
 2 fiscal year and must be deposited in the state special
 3 revenue fund in the state treasury for the purpose of paying
 4 the expenses of the department."

5 Section 51. Section 41-5-105, MCA, is amended to read:

6 "41-5-105. Youth court committee:--in every county of
 7 the state the judge having jurisdiction may appoint a
 8 committee, willing to act without compensation, composed of
 9 not less than three or more than seven reputable citizens,
 10 including youth representatives, which committee shall be
 11 designated as a youth court committee. This committee shall
 12 be subject to the call of the judge to meet and confer with
 13 him on all matters pertaining to the youth department of the
 14 court, including the appointment of probation officers, and
 15 shall act as a supervisory committee of youth detention
 16 homes."

17 Section 54. Section 41-5-106, MCA, is amended to read:

18 "41-5-106. Order of adjudication -- noncriminal. No
 19 commitment placement of any youth to in any state youth
 20 correctional facility under this chapter shall be deemed
 21 commitment to a penal institution. No adjudication upon the
 22 status of any youth in the jurisdiction of the court shall
 23 operate to impose any of the civil disability imposed on a
 24 person by reason of conviction of a criminal offense, nor
 25 shall such adjudication be deemed a criminal conviction, nor

shall any youth be charged with or convicted of any crime in any court except as provided in this chapter. Neither the disposition of a youth under this chapter nor evidence given in youth court proceedings under this chapter shall be admissible in evidence except as otherwise provided in this chapter."

~~Section 53. 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) (a) conduct hearings on youth court proceedings under this chapter; and~~

~~(c) (b) 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."~~

Section 55. Section 41-5-205, MCA, is amended to read:

"41-5-205. Retention of jurisdiction. Once a court obtains jurisdiction over a youth, the court retains jurisdiction unless terminated by the court or by mandatory termination in the following cases:

(1) at the time the proceedings are transferred to adult criminal court;

(2) at the time of commitment of the youth to the custody of the department of institutions; the youth is discharged by the department; and

(3) in any event, at the time the youth reaches the age of 21 years."

Section 56. Section 41-5-206, MCA, is amended to read:

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

(a) (i) the youth charged was 12 years of age or more at the time of the conduct alleged to be unlawful and the unlawful act would constitute sexual intercourse without consent as defined in 45-5-503, deliberate homicide as

1 defined in 45-5-102, or mitigated deliberate homicide as
 2 defined in 45-5-103, or the attempt, as defined in 45-4-103,
 3 of either deliberate or mitigated deliberate homicide if the
 4 act had been committed by an adult; or

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

8 (A) negligent homicide as defined in 45-5-104;

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

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

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

12 (E) burglary or aggravated burglary as defined in
 13 45-6-204;

14 ~~{P}--sexual--intercourse--without-consent-as-defined-in~~
 15 ~~45-5-503;~~

16 ~~{G}~~{F} aggravated kidnapping as defined in 45-5-303;

17 ~~{H}~~{G} possession of explosives as defined in
 18 45-8-335;

19 ~~{I}~~{H} criminal sale of dangerous drugs for profit as
 20 included in 45-9-101;

21 ~~{J}~~{I} attempt as defined in 45-4-103 of any of the
 22 acts enumerated in subsections (1)(a)(ii)(A) through
 23 (1)(a)(ii)~~{I}~~{H};

24 (b) a hearing on whether the transfer should be made
 25 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) notice in writing of the time, place, and purpose
 4 of the hearing is given to the youth, his counsel, and his
 5 parents, guardian, or custodian at least 10 days before the
 6 hearing; and

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

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

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

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

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

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

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

1 history with youth courts will not of itself be grounds for
2 denying the transfer.

3 (c) the severity of the offense;

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

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

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

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

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

24 (a) tried in youth court;

25 (b) transferred to district court with an offense

1 enumerated in subsection (1), upon motion of the county
2 attorney and acceptance by the district court judge.

3 (7) If a youth is found guilty in district court of
4 any of the offenses enumerated in subsection (1) of this
5 section and is sentenced to the state prison, his commitment
6 shall be to the department of institutions which shall
7 confine the youth in whatever institution it considers
8 proper, including a state youth correctional facility under
9 the procedures of 53-30-212; however, no youth under 16
10 years of age may be confined in the state prison."

11 Section 57. Section 41-5-301, MCA, is amended to read:

12 "41-5-301. Preliminary investigation and disposition.

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

20 (2) The probation officer may:

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

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

25 (c) require investigation of the matter by any law

1 enforcement agency or any other appropriate state or local
2 agency.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 (7) If no petition is filed under this section, the
24 complainant and victim, if any, shall be informed by the
25 probation officer of the action and the reasons therefor and

1 shall be advised of the right to submit the matter to the
 2 county attorney for review. The county attorney, upon
 3 receiving a request for review, shall consider the facts,
 4 consult with the probation officer, and make the final
 5 decision as to whether a petition shall ~~or--shall--not~~ be
 6 filed."

7 Section 58. Section 41-5-403, MCA, is amended to read:

8 "41-5-403. Disposition permitted under informal
 9 adjustment. (1) The following dispositions may be imposed by
 10 informal adjustment:

11 (a) probation;

12 (b) placement of the youth for substitute care into a
 13 youth care facility as defined in 41-3-1102 ~~or-into-a-home~~
 14 ~~approved-by-the-court~~ AND AS DETERMINED BY THE DEPARTMENT;

15 (c) placement of the youth in a private agency
 16 responsible for the care and rehabilitation of such a youth
 17 AS DETERMINED BY THE DEPARTMENT;

18 ~~{d}--transfer--of--legal--custody--to--the--department--of~~
 19 ~~institutions--for--a--period--of--6--months--which--period--may--be~~
 20 ~~extended--for--6--months--upon--further--order--of--the--court--after~~
 21 ~~notice--and--hearing;~~

22 ~~{e}~~(d) restitution upon approval of the youth court
 23 judge.

24 (2) In determining whether restitution is appropriate
 25 in a particular case, the following factors may be

1 considered in addition to any other evidence:

2 (a) age of the youth;

3 (b) ability of the youth to pay;

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

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

6 (e) legal remedies of the victim; however, the ability
 7 of the victim or his insurer to stand any loss may not be
 8 considered in any case.

9 ~~{3}--If--the--court--finds--that--placement--in--a--youth--care~~
 10 ~~facility--other--than--a--youth--group--home--or--youth--foster--home~~
 11 ~~is--necessary--and--in--the--best--interests--of--the--youth--and--the~~
 12 ~~community--the--court--shall--determine--if--the--youth--can~~
 13 ~~receive--appropriate--treatment--in--a--youth--care--facility~~
 14 ~~located--in--Montana--as--follows:~~

15 ~~{a}--If--the--court--finds--the--youth--can--receive~~
 16 ~~appropriate--treatment--in--a--youth--care--facility--located--in~~
 17 ~~Montana--that--will--accept--the--youth--the--court--may--not--place~~
 18 ~~the--youth--in--a--youth--care--facility--located--outside--this~~
 19 ~~state--unless--an--out--of--state--facility--can--provide~~
 20 ~~appropriate--treatment--that:~~

21 ~~{i}--can--be--obtained--at--a--cost--less--than--that--offered~~
 22 ~~by--any--available--facility--in--this--state--and~~

23 ~~{ii}--is--available--in--closer--proximity--to--the--youth's~~
 24 ~~place--of--residence--than--any--facility--located--in--this--state--~~

25 ~~{b}--When--the--department--of--social--and--rehabilitation~~

~~services-is-ordered-to-pay-the-costs-of-caring-for-the-child
in--a--youth-care-facility-other-than-a-youth-foster-home-or
youth-group-home,-the-court--shall--provide--the--department
with--at--least-5-days--written-notice-and-opportunity-to-be
heard-before-ordering-the-placement-of-the-youth.~~

~~(4)~~ (3) If the youth violates his aftercare agreement as provided for in 53-30-226, he must be returned to the court for further disposition. No youth may be placed in a state youth correctional facility under informal adjustment."

Section 59. Section 41-5-511, MCA, is amended to read:

"41-5-511. Right to counsel. In all proceedings following the filing of a petition alleging a delinquent youth or youth in need of supervision, the youth and the parents or guardian of the youth shall be advised by the court or, in the absence of the court, by its representative that the youth may be represented by counsel at all stages of the proceedings. If counsel is not retained or if it appears that counsel will not be retained, counsel shall be appointed for the youth if the parents and the youth are unable to provide counsel unless the right to appointed counsel is waived by the youth and the parents or guardian. Neither the youth nor his parent or guardian may waive counsel after a petition has been filed if commitment to a state--correctional--facility--or to the department of

institutions for a period of more than 6 months may result from adjudication."

Section 60. Section 41-5-522, MCA, is amended to read:

"41-5-522. Disposition hearing. (1) As soon as practicable after a youth is found to be a delinquent youth or a youth in need of supervision, the court shall conduct a dispositional hearing. The dispositional hearing may involve a determination of financial liability as provided in 41-3-1123 and 41-3-1124.

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

1 right to cross-examine said parties at the dispositional
2 hearing.

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

6 (4) The dispositional hearing shall be conducted in
7 the manner set forth in subsections (3), (4), and (5) of
8 41-5-521. The court shall hear all evidence relevant to a
9 proper disposition of the case best serving the interests of
10 the youth and the public. Such evidence shall include, but
11 not be limited to, the social summary and predisposition
12 report provided for in subsection (2) of this section.

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

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

- 22 (a) age of the youth;
- 23 (b) ability of the youth to pay;
- 24 (c) ability of the parents or legal guardian to pay;
- 25 (d) amount of damage to the victim; and

1 (e) legal remedies of the victim; however the ability
2 of the victim or his insurer to stand any loss may not be
3 considered in any case."

4 Section 61. Section 41-5-523, MCA, is amended to read:

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

10 (a) place the youth on probation;

11 ~~(b) place the youth for substitute care into a youth~~
12 ~~care facility as defined in 41-3-1102 or a home approved by~~
13 ~~the court;~~

14 ~~(c) place the youth in a private agency responsible~~
15 ~~for the care and rehabilitation of such a youth;~~

16 ~~(d) transfer legal custody~~ commit the youth to the
17 department of institutions ~~The department shall thereafter~~
18 determine the appropriate placement, supervision, and
19 rehabilitation program for the youth AFTER CONSIDERING THE
20 RECOMMENDATION OF THE YOUTH PLACEMENT COMMITTEE AS PROVIDED
21 IN [SECTION 17]; provided, however, that:

22 (i) in the case of a youth in need of supervision,
23 such transfer of custody commitment does not authorize the
24 department of institutions to place the youth in a state
25 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;~~

(ii) in the case of a delinquent youth who is a serious
juvenile offender, the judge may specify that the youth be
placed in physical confinement in an appropriate facility
only if the judge finds that such confinement is necessary
for the protection of the public; and

(iii) a youth may not be held in physical confinement
for a period of time in excess of the maximum period of
imprisonment that could be imposed on an adult convicted of
the offense or offenses that brought the youth under the
jurisdiction of the youth court. Nothing in this section
limits the power of the department to enter into an
aftercare agreement with the youth pursuant to 53-30-226.

(IV) A YOUTH IS UNDER THE SUPERVISION OF A YOUTH
PROBATION OFFICER, EXCEPT THAT A YOUTH PLACED IN A YOUTH
CORRECTIONAL FACILITY IS SUPERVISED BY THE DEPARTMENT;

{e}{c} order such further care and treatment or
evaluation that the court considers beneficial to the youth
recommended by the department THAT DOES NOT OBLIGATE FUNDING
FROM THE DEPARTMENT WITHOUT THE DEPARTMENT'S APPROVAL; or

{f}{d} 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, 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. The department shall
determine the place and manner of evaluation.

(3) No evaluation of a youth may be performed at the
Montana state hospital unless such youth is transferred to
the district court under 41-5-206.

{4}--If--the--court--finds--that--placement--in--a--youth--care
facility--other--than--a--youth--group--home--or--youth--foster--home
is--necessary--and--in--the--best--interests--of--the--youth--and--the
community,--the--court--shall--determine--if--the--youth--can
receive--appropriate--treatment--in--a--youth--care--facility
located--in--Montana--as--follows:

{a}--If--the--court--finds--the--youth--can--receive
appropriate--treatment--in--a--youth--care--facility--located--in
Montana--that--will--accept--the--youth,--the--court--may--not--place
the--youth--in--a--youth--care--facility--located--outside--this
state--unless--an--out--of--state--facility--can--provide
appropriate--treatment--that:

{i}--can--be--obtained--at--a--cost--less--than--that--offered
by--any--available--facility--in--this--state;--and

{ii}--is--available--in--closer--proximity--to--the--youth's
place--of--residence--than--any--facility--located--in--this--state--

~~{b}~~--When the department of social and rehabilitation services is ordered to pay the costs of caring for the child in a youth care facility other than a youth foster home or youth group home, the court shall provide the department at least 5 days written notice and opportunity to be heard before ordering the placement of the youth.

~~{5}~~(4) 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.

~~{6}~~(5) Any order of the court may be modified at any time. In the case of a youth committed to the department of institutions, an order pertaining to the youth may be modified only upon notice to the department and subsequent hearing.

~~{7}~~(6) 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.

~~{8}~~(7) 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 family services.

It is ordered that be committed to the department of institutions family services 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 62. Section 41-5-602, MCA, is amended to read:

"41-5-602. Law enforcement records. (1) No law enforcement records concerning a youth, except traffic records, may be open to public inspection or their contents disclosed to the public unless the records are directly

related to an offense to which publicity must be allowed under subsection (2) of 41-5-601 or unless inspection is ordered by the court.

(2) Inspection of law enforcement records concerning a youth, which records are not open to public inspection under subsection (1), is permitted prior to the sealing of the records by:

(a) a youth court having the youth currently before it in any proceeding;

(b) the department if it is investigating, supervising, or providing services to the youth;

(c) the officers of agencies having legal custody of the youth and those responsible for his supervision after release;

(d) any other person, by order of the court, having a legitimate interest in the case or in the work of the law enforcement agency;

(e) law enforcement officers of Montana, when necessary for the discharge of their immediate duties;

(f) a district court in which the youth is convicted of a criminal offense, for the purpose of a presentence investigation;

(g) the county attorney; or

(h) the youth, his parent, guardian, or counsel."

Section 63. Section 41-5-603, MCA, is amended to read:

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

(a) the youth court and its professional staff;

(b) representatives of any agency providing supervision and having legal custody of a youth;

(c) any other person, by order of the court, having a legitimate interest in the case or in the work of the court;

(d) any court and its ~~professional--staff--and-the department's~~ probation and other professional staff or the attorney for a convicted party who had been a party to proceedings in the youth court when considering the sentence to be imposed upon such party;

(e) the county attorney;

(f) the youth who is the subject of the report or record, after he has been emancipated or reaches the age of majority.

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

1 for the parties to the proceedings.

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

8 (4) All information obtained in discharge of an
9 official duty by any officer or other employee of the youth
10 court or the department shall be privileged and shall not be
11 disclosed to anyone other than the judge and others entitled
12 under this chapter to receive such information, unless
13 otherwise ordered by the judge.

14 (5) After youth court and department records, reports
15 of preliminary inquiries, predispositional studies, and
16 supervision records of probationers are sealed, they are not
17 open to inspection except, upon order of the youth court,
18 for good cause to:

19 (a) those persons and agencies listed in subsection
20 (1); and

21 (b) adult probation professional staff preparing a
22 presentence report on a youth who has reached the age of
23 majority."

24 Section-63:--Section-41-5-701:--MCA:--is-amended-to-read:

25 "41-5-701:--Appointment Employment of---probation

1 officers:--The--youth-court-judge-of-each-judicial-district
2 department shall appoint employ such--necessary--probation
3 officers-as-are-required-to-carry-out-the-purpose-and-intent
4 of--this--chapter:--He-shall-appoint-such-part-time-probation
5 officers--as--shall--be--required:--The--qualifications--for
6 part-time-probation-officers-must-approximate-those-required
7 for--probation--officers--insofar--as--possible:--A--chief
8 probation--officer--must--be--appointed--by--the--judge--to
9 supervise--the--youth--division--offices--in--the--judicial
10 district:--The--judge--shall--also--insure--that--the--youth
11 division-offices-are-staffed-with-necessary-office-personnel
12 and--that--the--offices-are-properly-equipped-to-effectively
13 carry-out-the-purpose-and-intent-of-this-chapter:--No--person
14 while--serving-as-a-law-enforcement-officer-may-be-appointed
15 or-perform-the-duties-of-a-full-time-or-part-time--probation
16 officer."

17 Section-64:--Section-41-5-703:--MCA:--is-amended-to-read:

18 "41-5-703:--Powers--and--duties--of-probation-officers:

19 (1)-A-probation-officer-shall:

20 (a)--perform-the-duties-set-out-in-41-5-401;

21 (b)--make-predisposition-studies-and-submit-reports-and
22 recommendations-to-the-court;

23 (c)--supervise, assist, and--counsel--youth--placed--on
24 probation-or-under-his-supervision; and

25 (d)--perform--any--other--functions--designated--by-the

1 court department.

2 ~~(2) A probation officer shall have no power to make~~
 3 ~~arrests or to perform any other law enforcement functions in~~
 4 ~~carrying out his duties except that a probation officer may~~
 5 ~~take into custody any youth who violates either his~~
 6 ~~probation or a lawful order of the court.~~"

7 Section 64. Section 45-5-624, MCA, is amended to read:

8 "45-5-624. Unlawful possession of an intoxicating
 9 substance -- interference with sentence or court order. (1)
 10 A person under the age of 18 years commits the offense of
 11 possession of an intoxicating substance if he knowingly has
 12 in his possession an intoxicating substance other than an
 13 alcoholic beverage. A person under the age of 19 commits the
 14 offense of possession of an intoxicating substance if he
 15 knowingly has in his possession an alcoholic beverage,
 16 except that he does not commit the offense when in the
 17 course of his employment it is necessary to possess
 18 alcoholic beverages.

19 (2) A person convicted of the offense of possession of
 20 an intoxicating substance shall:

21 (a) be fined not to exceed \$50;

22 (b) be ordered to complete and, if financially able,
 23 pay all costs of his participation in a community-based
 24 substance abuse information course;

25 (c) have his driver's license confiscated by the court

1 for not more than 90 days and be ordered not to drive during
 2 that period if he was driving or otherwise in actual
 3 physical control of a motor vehicle when the offense
 4 occurred; or

5 (d) be sentenced to any combination of these
 6 penalties.

7 (3) A defendant who fails to comply with a sentence
 8 and is under 21 years of age and was under 18 years of age
 9 when he failed to comply must be transferred to the youth
 10 court. If proceedings for violation of subsection (1) are
 11 held in the youth court, the penalties in subsection (2) do
 12 not apply. If proceedings for violation of subsection (1) or
 13 for failure to comply with a sentence are held in the youth
 14 court, the offender shall be treated as an alleged youth in
 15 need of supervision as defined in 41-5-103~~(13)~~. In such
 16 case, the youth court may enter its judgment under 41-5-523.

17 (4) A person commits the offense of interference with
 18 a sentence or court order if he purposely or knowingly
 19 causes his child or ward to fail to comply with a sentence
 20 imposed under this section or a youth court disposition
 21 order for a youth found to have violated this section and
 22 upon conviction shall be fined \$100 or imprisoned in the
 23 county jail for 10 days, or both."

24 Section 65. Section 50-8-101, MCA, is amended to read:

25 "50-8-101. Definitions. As used in this part, the

1 following definitions apply:

2 (1) "Department" means the department of institutions,
3 the department of health and environmental sciences, and the
4 department of ~~social-and-rehabilitation~~ family services.

5 (2) "Facility" means:

6 (a) for the department of institutions, nonmedical
7 facilities including:

8 (i) mental health transitional living facilities; and

9 (ii) inpatient freestanding or intermediate
10 transitional living facilities for alcohol/drug treatment or
11 emergency detoxification;

12 (b) for the department of ~~social-and-rehabilitation~~
13 family services:

14 (i) ~~adult---services~~ community homes for the
15 developmentally disabled, ~~adult---independent---and~~
16 ~~semi-independent---living---facilities~~ community homes for
17 physically disabled persons, and adult foster care
18 facilities homes; and

19 (ii) ~~children's-services-achievement--homes;--maternity~~
20 ~~homes;--attention--homes;--aftercare--group--homes;--district~~
21 ~~youth--guidance--homes;--foster--family---care---facilities;~~
22 ~~child-care---agencies;---and---community---homes---for---the~~
23 developmentally-disabled youth care facilities; and

24 (c) for the department of health and environmental
25 sciences:

1 (i) public accommodations, including roominghouses and
2 retirement homes, hotels, and motels;

3 (ii) health care facilities or services, including
4 hospitals, skilled and intermediate nursing home services,
5 and intermediate care nursing home services for the mentally
6 retarded;

7 (iii) freestanding medical facilities or care,
8 including infirmaries, kidney treatment centers, and home
9 health agencies; and

10 (iv) personal care facilities.

11 (3) "Inspecting authority" means the department or
12 agency authorized by statute to perform a given inspection
13 necessary for certification for licensure.

14 (4) "Licensing agency" means the agency that is
15 authorized by statute to issue the license."

16 Section 66. Section 50-15-206, MCA, is amended to
17 read:

18 "50-15-206. Permissible disclosure of illegitimate
19 birth. (1) Disclosure of illegitimacy of birth or
20 information from which illegitimacy can be ascertained may
21 be made only:

22 (a) upon an order of a court to determine personal or
23 property rights. An adopted person of legal age may apply to
24 the court for such an order.

25 (b) upon request of the department of social and

1 rehabilitation services, the department of family services,
 2 or a licensed adoption agency for purposes of custody
 3 action, social security eligibility determinations, or
 4 Indian tribal enrollment determinations;

5 (c) upon request of the natural parent during the
 6 child's minority unless the child has been placed for
 7 adoption.

8 (2) Except when an order of the court is sought, prior
 9 to disclosure, the requesting party must submit in writing
 10 to the department:

11 (a) proof of identity when appropriate;

12 (b) the need for the information; and

13 (c) the specific purpose for which the information is
 14 to be used. The information may be used only for that
 15 purpose."

16 Section 67. Section 53-1-104, MCA, is amended to read:

17 "53-1-104. Release of arsonist -- notification of
 18 department of justice. (1) Each of the following
 19 institutions or facilities having the charge or custody of a
 20 person convicted of arson or of a person acquitted of arson
 21 on the ground of mental disease or defect shall give written
 22 notification to the department of justice whenever such a
 23 person is admitted or released by it:

24 (a) Montana state hospital;

25 (b) State prison;

1 (c) Mountain View school;

2 (d) Pine Hills school;

3 (e) Swan River youth forest camp; or

4 (f) Any county or city detention facility.

5 (2) The notification shall disclose:

6 (a) the name of the person;

7 (b) where the person is or will be located; and

8 (c) the type of fire the person was involved in."

9 Section 68. Section 53-1-201, MCA, is amended to read:

10 "53-1-201. Purpose of department. The department shall
 11 utilize at maximum efficiency the resources of state
 12 government in a coordinated effort to:

13 (1) restore the physically or mentally disabled;

14 (2) rehabilitate the violators of law;

15 (3) sustain the vigor and dignity of the aged;

16 ~~(4) provide for children in need of temporary~~
 17 ~~protection or correctional counseling;~~

18 ~~(5) train~~ (4) train children of limited mental capacity to
 19 their best potential;

20 ~~(6) rededicate~~ (5) rededicate the resources of the state to the
 21 productive independence of its now dependent citizens; and

22 ~~(7) coordinate~~ (6) coordinate and apply the principles of modern
 23 institutional administration to the institutions of the
 24 state."

25 Section 69. Section 53-1-202, MCA, is amended to read:

1 "53-1-202. Institutions in department. (1) The
2 following institutions are in the department:

3 (a) Montana state hospital;

4 (b) Montana veterans' home;

5 (c) State prison;

6 ~~{d}--Mountain-View-school;~~

7 ~~{e}--Pine-Hills-school;~~

8 ~~{f}{(d)}~~ Montana developmental center;

9 ~~{g}{(e)}~~ Montana center for the aged;

10 ~~{h}{(f)}~~ Swan River youth forest camp; and

11 ~~{i}{(g)}~~ Eastmont human services center; and.

12 ~~{j}--Any-other--institution--which--provides--care--and~~
13 ~~services-for-juvenile-delinquents--including-but-not-limited~~
14 ~~to--youth-forest-camps-and-juvenile-reception-and-evaluation~~
15 ~~centers.~~

16 (2) A state institution may not be moved,
17 discontinued, or abandoned without prior consent of the
18 legislature."

19 Section 70. Section 53-2-101, MCA, is amended to read:

20 "53-2-101. Definitions. Unless the context requires
21 otherwise, in this chapter the following definitions apply:

22 (1) "Department" means the department of social and
23 rehabilitation services provided for in Title 2, chapter 15,
24 part 22.

25 (2) "Protective services" means services to children

1 and adults to be provided by the department of family
2 services as permitted by Titles 41 and 53.

3 ~~{2}{(3)}~~ "Public assistance" or "assistance" means any
4 type of monetary or other assistance furnished under this
5 title to a person by a state or county agency, regardless of
6 the original source of the assistance.

7 ~~{3}{(4)}~~ "Needy person" is one who is eligible for
8 public assistance under the laws of this state.

9 ~~{4}{(5)}~~ "Net monthly income" means one-twelfth of the
10 difference between the net income for the taxable year as
11 the term net income is defined in 15-30-101 and the state
12 income tax paid as determined by the state income tax return
13 filed during the current year.

14 ~~{5}{(6)}~~ "Ward Indian" is hereby defined as an Indian
15 who is living on an Indian reservation set aside for tribal
16 use or is a member of a tribe or nation accorded certain
17 rights and privileges by treaty or by federal statutes. If
18 and when the federal Social Security Act is amended to
19 define a "ward Indian", such definition shall supersede the
20 foregoing definition."

21 Section 71. Section 53-2-201, MCA, is amended to read:

22 "53-2-201. Powers and duties of department. (1) The
23 department shall:

24 (a) administer or supervise ~~all--forms--of~~ public
25 assistance, ~~child--protection--and-child-welfare~~, including

the provision of medical care payments in behalf of recipients of public assistance;

~~(b) administer or supervise all child welfare activities, including:~~

~~(i) importation and exportation of children;~~

~~(ii) licensing of all children's foster family homes, group homes, child care agencies and child placing agencies;~~

~~(iii) the care of dependent and neglected children in substitute care placement and children who are free for adoption;~~

~~(iv) the maintenance of supplemental day care for children; and~~

~~(v) all state and federal funds allocated to the department for youth foster homes, youth group homes, child care agencies, and state programs for youth in need of care, youth in need of supervision, and delinquent youth;~~

~~(c)(b)~~ give consultant service to private institutions providing care for the needy, indigent, handicapped, or dependent adults;

~~(d)(c)~~ cooperate with other state agencies and develop provisions for services to the blind, including the prevention of blindness, the location of blind persons, medical services for eye conditions, and vocational guidance and training of the blind;

~~(e)(d)~~ provide services in respect to organization and

supervise county departments of public welfare and county boards of public welfare in the administration of public assistance functions and for efficiency and economy;

~~(f)(e)~~ assist and cooperate with other state and federal departments, bureaus, agencies, and institutions, when so requested, by performing services in conformity with public assistance purposes;

~~(g)(f)~~ administer all state and federal funds allocated to the department for public assistance and do all things necessary, in conformity with federal and state law, for the proper fulfillment of public assistance purposes; and

~~(h)(g)~~ make rules governing payment for services and supplies provided to recipients of public assistance.

(2) The department may:

(a) purchase, exchange, condemn, or receive by gift either real or personal property which is necessary to carry out its public assistance functions. Title to property obtained under this subsection shall be taken in the name of the state of Montana for the use and benefit of the department.

(b) contract with the federal government to carry out its public assistance functions. The department may do all things necessary in order to avail itself of federal aid and assistance.

(c) make rules, consistent with state and federal law, establishing the amount, scope, and duration of services to be provided to recipients of public assistance."

Section 72. Section 53-2-301, MCA, is amended to read:

"53-2-301. County departments to be established. There shall be established in each county of the state, except in a county that has transferred its public assistance and protective services responsibilities to the department--of social--and--rehabilitation--services state under the provisions of part 8 of this chapter, a county department of public welfare, which shall consist of a county board of public welfare and such staff personnel as may be necessary for the efficient performance of the public assistance activities of the county. If conditions warrant and if two or more county boards enter into an agreement, two or more counties may combine into one administrative unit and use the same staff personnel throughout the administrative unit."

Section 73. Section 53-2-302, MCA, is amended to read:

"53-2-302. County commissioners ex officio county welfare board. Except in a county that has transferred its public assistance and protective services responsibilities to the department--of--social--and--rehabilitation--services state under part 8 of this chapter, the board of county commissioners shall be the ex officio county welfare board

and is hereby authorized to devote such additional time for public assistance matters as may be found necessary. The members of the county welfare board shall receive the same compensation for their services and the same mileage when acting as the county board of public welfare as they receive when acting as the board of county commissioners and shall be limited as to meetings as now provided by law, and the compensation and mileage of the members of the board shall be paid from county funds. They may transact business as a board of county commissioners and as a county welfare board on the same day, and in such cases they shall be paid as a board of county commissioners but may not receive compensation for more than 1 day's work for all services performed on the same calendar day."

Section 74. Section 53-2-304, MCA, is amended to read:

"53-2-304. Staff personnel of county department. (1) Each county board shall select and appoint from a list of qualified persons furnished by the department of social and rehabilitation services such staff personnel as are necessary. The staff personnel in each county shall consist of at least one qualified staff worker (or investigator) and such clerks and stenographers as may be decided necessary. If conditions warrant, the county board, with the approval of the department of social and rehabilitation services, may appoint some fully qualified person listed by the department

1 as supervisor of its staff personnel. The staff personnel of
 2 each county department are directly responsible to the
 3 county board, but the department of social and
 4 rehabilitation services may supervise such county employees
 5 in respect to the efficient and proper performance of their
 6 duties. The county board of public welfare may not dismiss
 7 any member of the staff personnel without the approval of
 8 the department of social and rehabilitation services, but
 9 the department may request the county board to dismiss any
 10 member of the staff personnel for inefficiency,
 11 incompetence, or similar cause.

12 (2) Public assistance staff personnel attached to the
 13 county board shall be paid from state public assistance
 14 funds both their salaries and their travel expenses as
 15 provided for in 2-18-501 through 2-18-503 when away from the
 16 county seat in the performance of their duties, but the
 17 county board of public welfare shall reimburse the
 18 department of social and rehabilitation services from county
 19 poor funds the full amount of the salaries and travel
 20 expenses not reimbursed to the department by the federal
 21 government and the full amount of the department's
 22 administrative costs which are allocated by the department
 23 to the county for the administration of county welfare
 24 programs and not reimbursed to the department by the federal
 25 government. Under circumstances prescribed by the department

1 of social and rehabilitation services, the reimbursement by
 2 the county board of public welfare may be less than the
 3 county share as prescribed above. All other administrative
 4 costs of the county department shall also be paid from
 5 county poor funds.

6 (3) On or before the 20th day of the month following
 7 the month for which the payments to the public assistance
 8 staff personnel of the county were made, the department of
 9 social and rehabilitation services shall present to the
 10 county department of public welfare a claim for the required
 11 reimbursements. The county board shall make such
 12 reimbursements within 20 days after the presentation of the
 13 claim, and the department of social and rehabilitation
 14 services shall credit (add) all such reimbursements to its
 15 account for administrative costs.

16 (4) If a county has transferred its public assistance
 17 and protective services responsibilities to the department
 18 ~~of--social-and-rehabilitation-services~~ state under part 8 of
 19 this chapter, the appropriate department shall select,
 20 appoint, and supervise all necessary public assistance and
 21 protective services personnel, including if necessary a
 22 supervisor of staff personnel. All such personnel are
 23 directly responsible to the department."

24 Section 75. Section 53-2-306, MCA, is amended to read:
 25 "53-2-306. County department charged with local

1 administration of public assistance. Except in a county that
 2 has transferred its public assistance and protective
 3 services responsibilities to the ~~department--of--social--and~~
 4 ~~rehabilitation--services~~ state under part 8 of this chapter,
 5 the county department of public welfare shall be charged
 6 with the local administration of all forms of public
 7 assistance operations in the county, ~~including--but--not~~
 8 ~~limited-to-food-stamp-programs-and-social-services-programs.~~
 9 All such local administration must conform to federal and
 10 state law and the rules as established by the department of
 11 social and rehabilitation services."

12 Section 76. Section 53-2-322, MCA, is amended to read:

13 "53-2-322. County to levy taxes, budget, and make
 14 expenditures for public assistance activities. (1) The board
 15 of county commissioners in each county shall levy 13.5 mills
 16 for the county poor fund as provided by law or so much
 17 thereof as may be necessary. Counties transferring public
 18 assistance and protective services responsibilities to the
 19 ~~department-of-social-and-rehabilitation-services~~ state under
 20 part 8 of this chapter may not levy more than the difference
 21 between 13.5 mills and the state levy pursuant to 53-2-813.

22 (2) The board shall budget and expend so much of the
 23 funds in the county poor fund for public assistance and
 24 protective services purposes as will enable the county
 25 welfare department to pay the general relief activities of

1 the county and to reimburse the department of social and
 2 rehabilitation services and the department of family
 3 services for the county's proportionate share of the
 4 administrative costs of the county welfare department and of
 5 all public assistance and protective services and its
 6 proportionate share of any other public assistance activity
 7 that may be carried on jointly by the state and the county.

8 (3) The amounts set up in the budget for the
 9 reimbursements to the department of social and
 10 rehabilitation services and the department of family
 11 services shall be sufficient to make all of these
 12 reimbursements in full. The budget shall make separate
 13 provision for each one of these public assistance and
 14 protective services activities, and proper accounts shall be
 15 established for the funds for all such activities.

16 (4) As soon as the county proposed budget provided for
 17 in 7-6-2315 has been agreed upon, a copy thereof shall
 18 without delay be mailed to the department of social and
 19 rehabilitation services, and at any time before the final
 20 adoption of the budget, the department shall make such
 21 recommendations with regard to changes in any part of the
 22 budget relating to the county poor fund as considered
 23 necessary in order to enable the county to discharge its
 24 obligations under the public assistance laws.

25 (5) The department of social and rehabilitation

1 services shall promptly examine the county proposed budget
 2 in order to ascertain if the amounts provided for
 3 reimbursements to the department are likely to be sufficient
 4 and shall notify the county clerk of its findings. The board
 5 shall make such changes in the amounts provided for
 6 reimbursements, if any are required, in order that the
 7 county will be able to make the reimbursements in full.

8 (6) The board of county commissioners may not make any
 9 transfer from the amounts budgeted for reimbursing the
 10 department of social and rehabilitation services without
 11 having first obtained a statement in writing from the
 12 department to the effect that the amount to be transferred
 13 will not be required during the fiscal year for the purposes
 14 for which the amounts were provided in the budget.

15 (7) No part of the county poor fund, irrespective of
 16 the source of any part thereof, may be used directly or
 17 indirectly for the erection or improvement of any county
 18 building so long as the fund is needed for general relief
 19 expenditures by the county or is needed for paying the
 20 county's proportionate share of public assistance and
 21 protective services or its proportionate share of any other
 22 public assistance activity that may be carried on jointly by
 23 the state and the county. Expenditures for improvement of
 24 any county buildings used directly for care of the poor,
 25 except a county hospital or county nursing home, may be made

1 out of any moneys in the county poor fund, whether such
 2 moneys are produced by the 13.5-mill levy provided for in
 3 subsection (1) of this section or from any additional levy
 4 authorized or to be authorized by law. Such expenditure
 5 shall be authorized only when any county building used for
 6 the care of the poor must be improved in order to meet legal
 7 standards required for such buildings by the department of
 8 health and environmental sciences and when such expenditure
 9 has been approved by the department of social and
 10 rehabilitation services and the department of family
 11 services."

12 Section 77. Section 53-2-323, MCA, is amended to read:

13 "53-2-323. Emergency grants from state funds to
 14 counties. Except when a county has transferred its public
 15 assistance and protective services responsibilities to the
 16 ~~department-of-social-and-rehabilitation-services~~ state under
 17 part 8 of this chapter, a county may apply to the department
 18 for an emergency grant-in-aid, and the grant shall be made
 19 to the county upon the following conditions:

20 (1) The board of county commissioners or a duly
 21 elected or appointed executive officer of the county shall
 22 make written application to the department for emergency
 23 assistance and shall show by written report and sworn
 24 affidavit of the county clerk and recorder and chairman of
 25 the board of county commissioners or other duly elected or

1 appointed executive officer of the county the following:

2 (a) that the county will not be able to meet its
3 obligations under law to provide assistance to the needy of
4 the county or meet its proportionate share of any public
5 assistance activity carried on jointly with the department;

6 (b) that all lawful sources of revenue and other
7 income to the county poor fund will be exhausted;

8 (c) that all expenditures from the county poor fund
9 have been lawfully made; and

10 (d) that all expenditures from the county poor fund
11 have been reasonable and necessary, according to criteria
12 set by the department in rules adopted for that purpose, for
13 the county to meet its obligations under law to provide
14 assistance to the needy.

15 (2) Within 10 days of receipt of the application and
16 affidavit, the department shall determine whether the county
17 poor fund will be depleted and shall give notice to the
18 county of the department's intention to deny or allow the
19 grant-in-aid. Before a grant-in-aid for any fiscal year may
20 be made to a county under this section, any money credited
21 during that fiscal year to the depletion allowance reserve
22 fund from the sources provided by 7-34-2402(2) shall be
23 transferred to the county poor fund to be used for lawful
24 poor fund expenditures. The amount of the grant-in-aid shall
25 be determined after all sources of income available to the

1 poor fund, including the depletion allowance reserve fund
2 transfers, have been exhausted.

3 (3) Within 10 days of receiving notice from the
4 department that a grant-in-aid will be made to the county,
5 the board of county commissioners or other duly elected or
6 appointed executive officer of the county shall adopt an
7 emergency budget. There is no requirement of notice and
8 hearing for that emergency budget. The emergency budget
9 shall state the amount required to meet the obligation of
10 the county and shall allocate that whole amount among the
11 various classes of expenditures for which the grant was
12 made.

13 (4) Upon receipt and approval of the county emergency
14 budget, the department shall issue a warrant to the county
15 treasurer of the county for the total amount stated in the
16 approved emergency budget.

17 (5) The grant-in-aid received by the county shall be
18 placed in an emergency fund account to be kept separate and
19 distinct from the poor fund account. All expenditures from
20 the emergency fund account shall be made by a separate
21 series of warrants or checks marked as emergency warrants or
22 checks.

23 (6) The grants-in-aid from the department may be used
24 only for public assistance activities lawfully conducted by
25 the county, including but not limited to medical aid,

1 hospitalization, and institutional care. No part of a
2 grant-in-aid may be used, directly or indirectly, to pay for
3 the erection or improvement of any county building or for
4 furniture, fixtures, appliances, or equipment for a county
5 building.

6 (7) In the event the county poor fund is replenished
7 by other lawful sources of revenue, the county shall issue
8 warrants to meet its obligations from the county poor fund
9 until such time as that fund is again so depleted that
10 warrants can no longer lawfully be drawn on that account.
11 Upon depletion of the county poor fund, the county may again
12 make disbursements from the emergency fund account as
13 provided in subsection (5). At the close of the county
14 fiscal year, the county shall return to the department any
15 amounts remaining in the county poor fund and the emergency
16 fund account, but the remaining amount to be returned may
17 not exceed the total amount of the emergency grant-in-aid
18 for that fiscal year.

19 (8) Any amount which is unlawfully disbursed or
20 transferred from the emergency fund account or used for a
21 purpose other than that specified in the grant-in-aid shall
22 be returned by the county to the department."

23 Section 78. Section 53-2-801, MCA, is amended to read:

24 "53-2-801. Purpose. The purpose of this part is to
25 provide for the department of social and rehabilitation

1 services to assume all responsibilities for public
2 assistance programs and for the department of family
3 services to assume all responsibilities for protective
4 services for children and adults that, as of July 1, 1983,
5 are provided by the counties pursuant to Titles 41 and 53.
6 The assumption may become effective only at the option and
7 with the express consent of each individual county
8 requesting state assumption."

9 Section 79. Section 53-2-802, MCA, is amended to read:

10 "53-2-802. Definitions. Unless the context requires
11 otherwise, in this part the following definitions apply:

12 (1) "County department" means the county department of
13 public welfare provided for in part 3 of this chapter.

14 ~~†2†~~ "Department" means the department of social and
15 ~~rehabilitation services provided for in Title 27, chapter 15,~~
16 ~~part 22.~~

17 ~~†3†~~(2) "Mill levy equivalent" means the prior year's
18 expenditure divided by the value of 1 mill.

19 ~~†4†~~(3) "Needy person" is one who is eligible for
20 public assistance under the laws of this state.

21 ~~†5†~~(4) "Protective services" means services to
22 children and adults to be provided by the department of
23 family services as permitted by Titles 41 and 53.

24 ~~†6†~~(5) "Public assistance" or "assistance" means any
25 type of monetary or other assistance furnished under this

1 title to a person by a state or county department,
2 regardless of the original source of assistance.

3 ~~{7}~~(6) "State assumption" means the transfer to the
4 department of social and rehabilitation services and the
5 department of family services for the county by the board of
6 county commissioners of all powers and duties, including
7 staff personnel as provided in 53-2-301 through 53-2-306 and
8 public assistance and protective services, respectively,
9 provided by the county department pursuant to Titles 41 and
10 53, except as otherwise specifically provided in this part."

11 Section 80. Section 53-2-803, MCA, is amended to read:

12 "53-2-803. Authority to adopt rules. (1) The
13 department of social and rehabilitation services and the
14 department of family services may adopt rules necessary to
15 carry out the purposes of this part, including implementing
16 transfer of the county programs to the each department,
17 respectively.

18 (2) The department of social and rehabilitation
19 services may adopt rules:

20 ~~{1}~~(a) to determine the amount, scope, and duration of
21 general relief, which may not exceed those services and
22 amounts payable under the department's department of social
23 and rehabilitation services' programs of medicaid and aid to
24 families with dependent children as necessary to carry out
25 the purposes of this part; and

1 ~~{2}~~(b) establishing a system of penalties and
2 sanctions applicable to providers of health-related services
3 to state-assumed counties in accordance with 53-6-111(2)
4 through (5)."

5 Section 81. Section 53-2-811, MCA, is amended to read:

6 "53-2-811. Transfer of county public assistance and
7 protective services to state department departments. (1) All
8 authority granted to the board of county commissioners to
9 establish and operate a public assistance program and
10 provide protective services for children and adults pursuant
11 to Titles 41 and 53 may be transferred to the department of
12 social and rehabilitation services and the department of
13 family services, respectively, except that the county
14 attorney shall continue to provide legal assistance and
15 representation for the purposes of adult and child
16 protective services without charge and all debts and
17 obligations incurred prior to the effective date of state
18 assumption continue as the responsibility of the county.

19 (2) The board of county commissioners, after public
20 hearing, may by resolution or ordinance transfer to the
21 department of social and rehabilitation services and the
22 department of family services all powers and duties for
23 public assistance and protective services for children and
24 adults, respectively, including the selection, supervision,
25 and termination of staff personnel associated with the

performance of these activities. Upon the effective date of such transfer, the department of social and rehabilitation services and the department of family services shall assume all powers and duties related to public assistance and protective services, respectively, and accorded by law to the county welfare department. If the notice required in subsection (3) is given, the transfer is effective at the start of the next state fiscal year.

(3) Counties opting for state assumption shall notify the department of social and rehabilitation services and the department of family services at least 90 days prior to the start of the state fiscal year unless the time period is waived in whole or in part by the director of the each department.

(4) Counties opting for state assumption shall permit the department of social and rehabilitation services and the department of family services to use the same facilities currently occupied by the county department or substantially equal facilities, with fair rental value for such facilities to be paid by the each department. Counties opting for state assumption shall transfer to the appropriate department all materials, equipment, and supplies used in the operation of the county department and which were paid for in whole or in part with federal or state funds."

Section 82. Section 53-2-812, MCA, is amended to read:

"53-2-812. State assumption -- permanent transfer to department state -- exceptions. (1) A county opting for state assumption does so on a complete and permanent basis, unless the county requests to retain or reassume responsibility for medical assistance or monetary payments to needy persons as provided in Title 53, chapter 3, pursuant to the adoption of a resolution or ordinance as provided in 53-2-811(2) and notice to the department of social and rehabilitation services as provided in 53-2-811(3). Under such a retention or reassumption, staff personnel continue under the supervision and control of the department of social and rehabilitation services but the department may contract with the counties for the operation of programs provided in Title 53, chapter 3. A county may not retain or reassume assistance programs partially funded by the federal government.

(2) A county transferring all duties and responsibilities to the department state may reassume limited responsibility for medical assistance or monetary payments to needy persons as provided in subsection (1) but may not thereafter request full state assumption. A county initially requesting limited state assumption may not thereafter request full state assumption. A county opting for limited or full state assumption does so on a permanent basis, except as provided in this section."

Section 83. Section 53-2-813, MCA, is amended to read:

"53-2-813. Mill levy for counties transferring public assistance and protective services. (1) (a) Except as provided in subsection (1)(b), for the purpose of this part, 12 mills must be levied annually in those counties opting for state assumption.

(b) A county that levied an amount less than 12 mills for purposes of its county poor fund during fiscal year 1982 must levy an equivalent amount to the poor fund mill levy assessed by that county during fiscal year 1982 plus 1.5 mills, not to exceed a total of 12 mills, less a mill levy equivalent to an amount the county can demonstrate was spent during fiscal year 1982 for the building or operation of a medical facility. The reduced mill levy exception provided in this subsection (1)(b) continues in effect until June 30, 1984. After that date 12 mills must be levied in all counties where state assumption is in effect.

(2) For a county electing state assumption before July 1, 1986, the proceeds of the mill levy established in subsection (1) must be deposited in the state special revenue fund in the state treasury for the purpose of paying the expenses of the department of social and rehabilitation services. The mill levy may not exceed 12 mills, notwithstanding actual expenditures made by the department.

(3) For a county electing state assumption on or after

July 1, 1986, the proceeds of the mill levy established in subsection (1) must be deposited in the state special revenue fund in the state treasury to the credit of the department of social and rehabilitation services. The general fund authority of the department of social and rehabilitation services shall be reduced and the general fund authority of the department of family services shall be increased by an amount equal to the county's expenditures for child and adult protective services in the fiscal year immediately preceding state assumption. The mill levy may not exceed 12 mills, notwithstanding actual expenditures made by the department of social and rehabilitation services and the department of family services.

~~(3)~~(4) For a county retaining or reassuming operational responsibility for medical assistance or monetary payments to needy persons as provided in 53-2-812, the levy provided in subsection (1) must be reduced by the mill levy equivalent expended by that county or the department for such purposes in the fiscal year immediately preceding the option to retain or reassume such responsibility."

Section 84. Section 53-2-821, MCA, is amended to read:

"53-2-821. Creation of advisory councils. (1) The department of social and rehabilitation services may establish one or more advisory councils to advise the

department on policies relating to public assistance or ~~protective-services~~. The director of the department shall appoint members of the advisory council for a term set by him, and they may be dismissed at his discretion.

(2) Upon request of the governing body of a county having opted for state assumption, the department of social and rehabilitation services shall establish a county advisory council for the county. The advisory council shall consist of the board of county commissioners of the county or, if the county governing body consists of greater than three members, three members of the governing body chosen by the governing body. The department may appoint two other members to the advisory council as provided in subsection (1).

(3) No compensation or expenses may be paid advisory council members for their service on the advisory council. The requirements of 2-15-122 do not apply to an advisory council appointed pursuant to this section."

Section 85. Section 53-2-822, MCA, is amended to read:

"53-2-822. Work program required. The department of social and rehabilitation services shall establish a work program as provided in 53-3-304. The department of social and rehabilitation services may contract with the county, a municipality, or state agency that has work available for recipients of general relief."

Section 86. Section 53-4-101, MCA, is amended to read:

"53-4-101. Definitions. As used in this part, the following definitions apply:

(1) "Child welfare services" means the establishing, extending, and strengthening of child welfare services (especially in predominantly rural areas) for the protection and care of ~~homeless, dependent, and neglected children and children-in-danger-of-becoming-delinquent children-alleged to-be-youth-in-need-of-care, youth-in-need-of-supervision, and-delinquent-youth~~ ABUSED, DEPENDENT, OR NEGLECTED CHILDREN.

~~(2) "Child welfare worker" means staff personnel who have had education and training in the field of child welfare and who are qualified and accepted as such in conformity with the standards established by the department.~~

~~(3) (2)~~ "Department" means the department of ~~social and rehabilitation family~~ family services provided for in ~~Title 27 chapter 15, part 22~~ [section 2].

~~(4) (3)~~ "Public assistance" or "assistance" means any type of monetary or other assistance furnished under this title to a person by a state or county agency, regardless of the original source of the assistance."

Section 87. Section 53-4-111, MCA, is amended to read:

"53-4-111. Administrative duties of department. Subject to the authority and regulations of the department

1 and in cooperation with the federal government, the
2 department shall:

3 (1) adopt rules necessary to carry out the purposes of
4 this part;

5 (2) administer or supervise all child welfare
6 ~~activities~~ services of the state except the child welfare
7 ~~activities~~ services which are administered by the department
8 of health and environmental sciences and the department of
9 social and rehabilitation services."

10 Section 88. Section 53-4-113, MCA, is amended to read:

11 "53-4-113. Child protection and rehabilitation --
12 duties of department. The department shall:

13 (1) enforce all laws pertaining to children and take
14 the initiative in all matters involving the interest of
15 illegitimate, dependent, neglected, and delinquent children
16 where adequate provision therefor has not been made by law;

17 (2) use funds available for cases where special
18 medical or material assistance is necessary to rehabilitate
19 subnormal developmentally disabled or physically handicapped
20 children and where it is not otherwise provided for by law;

21 (3) cooperate for the purposes hereof with all
22 reputable child-helping and child-placing agencies; and

23 (4) inspect, license, and supervise ~~public-and-private~~
24 ~~infants--homes-and-child-caring youth care facilities~~ and
25 child-placing ~~institutions-and~~ agencies."

1 Section 89. Section 53-4-115, MCA, is amended to read:

2 "53-4-115. Department to accept custody of children
3 committed by courts. The department shall accept the
4 guardianship or custody of children committed by the courts
5 to the department and arrange provide for their care in
6 ~~family--foster-homes-or-otherwise-in-cooperation-with-county~~
7 ~~departments-of-public-welfare."~~

8 Section 90. Section 53-4-401, MCA, is amended to read:

9 "53-4-401. Definitions. As used in this part, the
10 following definitions apply:

11 (1) "Person" includes any individual, partnership,
12 voluntary association, or corporation.

13 (2) "Agency" includes a person not related by blood or
14 marriage to a minor child to be adopted.

15 (3) "Department" means the department of ~~social--and~~
16 ~~rehabilitation~~ family services provided for in ~~Title-2,~~
17 ~~chapter-15,-part-22 [section 2]."~~

18 Section 91. Section 53-4-501, MCA, is amended to read:

19 "53-4-501. Purpose -- definitions. (1) The purpose of
20 this part is to assure that children requiring supplemental
21 parental care be provided such food, shelter, security and
22 safety, guidance and direction, nurture and comfort, and
23 learning experiences commensurate to their ages and
24 capabilities so as to safeguard the growth and development
25 of such children, thereby facilitating their proper physical

1 and emotional maturation.

2 (2) In this part, the following definitions apply:

3 (a) "Child" means a person under 12 years of age.

4 (b) "Day-care facility" means a person, association,
5 or place, incorporated or unincorporated, that provides
6 supplemental parental care on a regular basis. It includes a
7 family day-care home, a day-care center, or a group day-care
8 home. It does not include a person who limits care to
9 children who are related to him by blood or marriage or
10 under his legal guardianship or any group facility
11 established chiefly for educational purposes.

12 (c) "Day-care center" means a place in which
13 supplemental parental care is provided to 13 or more
14 children on a regular basis.

15 (d) "Department" means the department of ~~social and~~
16 ~~rehabilitation~~ family services provided for in ~~Title--2,~~
17 ~~chapter-157-part-22~~ [section 2].

18 (e) "Day care" means supplemental parental child care.

19 (f) "Supplemental parental child care" means the
20 provision of food, shelter, and learning experiences
21 commensurate with a child's age and capabilities so as to
22 safeguard the child's growth and development on a
23 supplemental basis outside of the child's home by an adult
24 other than a parent, guardian, person in loco parentis, or
25 relative on a regular basis for daily periods of less than

1 24 hours.

2 (g) "Regular basis" means providing supplemental
3 parental care to children of separate families for any daily
4 periods of less than 24 hours and within 3 or more
5 consecutive weeks.

6 (h) "Family day-care home" means a private residence
7 in which supplemental parental care is provided to three to
8 six children from separate families on a regular basis.

9 (i) "Group day-care home" means a private residence in
10 which supplemental parental care is provided to 7 to 12
11 children on a regular basis.

12 (j) "Registration" means the process whereby the
13 department maintains a record of all family day-care homes
14 and group day-care homes, prescribes standards, promulgates
15 rules, and requires the operator of a family day-care home
16 or a group day-care home to certify that he has complied
17 with the prescribed standards and promulgated rules.

18 (k) "Registrant" means the holder of a registration
19 certificate issued by the department in accordance with the
20 provisions of this part.

21 (l) "Registration certificate" means a written
22 instrument issued by the department to publicly document
23 that the certificate holder has, in writing, certified to
24 the department his compliance with this part and the
25 applicable standards for family day-care homes and group

1 day-care homes.

2 (m) "License" means a written document issued by the
3 department that the license holder has complied with this
4 part and the applicable standards and rules for day-care
5 centers.

6 (n) "Licensee" means the holder of a license issued by
7 the department in accordance with the provisions of this
8 part."

9 Section 92. Section 53-20-203, MCA, is amended to
10 read:

11 "53-20-203. Responsibilities of department. The
12 department shall:

13 (1) take cognizance of matters affecting the
14 developmentally disabled citizens of the state;

15 (2) initiate a preventive developmental disabilities
16 program which shall include but not be limited to the
17 implementation of developmental disabilities care,
18 treatment, prevention, and research as can best be
19 accomplished by community-centered services. Every means
20 shall be utilized to initiate and operate the service
21 program in cooperation with local agencies under the
22 provisions of 53-20-205 and 53-20-207.

23 (3) collect and disseminate information relating to
24 developmental disabilities;

25 (4) prepare, with the assistance of the planning and

1 advisory council, an annual comprehensive plan for the
2 initiation and maintenance of developmental disabilities
3 services in the state. The services shall include but not
4 be limited to community comprehensive developmental
5 disabilities services as referred to in 53-20-202.

6 (5) provide to the planning and advisory council a
7 written quarterly report of planning, program, and fiscal
8 activities of the department in regard to community-based
9 services for the developmentally disabled;

10 (6) provide by rule for the evaluation of persons who
11 apply for services or persons admitted into a program at a
12 developmental disability facility;

13 (7) provide state personnel to assist regional
14 councils provided for in 53-20-207;

15 (8) receive from agencies of the government of the
16 United States and other agencies, persons or groups of
17 persons, associations, firms, or corporations grants of
18 money, receipts from fees, gifts, supplies, materials, and
19 contributions to initiate and maintain developmental
20 disabilities services within the state; and

21 (9) require that habilitation plans be developed,
22 implemented, and continuously maintained for all
23 developmentally disabled persons who are served through a
24 community-based program funded by the state; and

25 (10) use funds available for cases in which special

medical or material assistance is necessary to rehabilitate developmentally disabled or physically handicapped children if such assistance is not otherwise provided for by law."

Section 93. Section 53-20-213, MCA, is amended to read:

"53-20-213. Departments to cooperate. The department of institutions, the department of social and rehabilitation services, the department of health and environmental sciences, the department of family services, and the office of superintendent of public instruction shall cooperate on all aspects of each agency's respective programs for the developmentally disabled."

Section 94. Section 53-20-305, MCA, is amended to read:

"53-20-305. Local control of community homes -- departmental licensing, administration, operation, health and safety standards. (1) Community homes for the developmentally disabled may be under local control, and the nonprofit corporations or associations operating community homes are authorized to establish homes and programs they believe in the best interest of their homes.

(2) (a) A community home for the developmentally disabled shall be licensed annually by the department of ~~social-and-rehabilitation~~ family services.

(b) One temporary license may be issued for no longer

than 60 days if there are unavoidable delays in the certification process.

(3) (a) The department of family services for the purpose of licensing shall adopt standards and rules concerning the administration, operation, health, and safety of community homes for the developmentally disabled.

(b) The department of health and environmental sciences shall provide advice and recommendations to the department of social and rehabilitation services and the department of family services concerning the standards for health and safety."

Section 95. Section 53-20-307, MCA, is amended to read:

"53-20-307. Health and safety standards for licensing.

(1) (a) After initial certification by the state fire marshal, community homes must be certified annually for fire and life safety by the state fire marshal.

(b) The state fire marshal shall notify the department of social and rehabilitation services and the department of family services when a community home has been certified.

(2) (a) Local health officers shall certify community homes for compliance with health and safety standards. If for any reason the local authority cannot complete the certification in a timely manner, the department of health and environmental sciences is authorized to make the

1 determination on certification.

2 (b) A reasonable fee may be charged to authorized
3 parties as defined in 53-20-303 for the health and safety
4 certification."

5 Section 96. Section 53-20-401, MCA, is amended to
6 read:

7 "53-20-401. Definitions. As used in this part, unless
8 the context otherwise requires, the following definitions
9 apply:

10 (1) "Client" means a person for whom voluntary
11 protective services are rendered pursuant to provisions of
12 this part.

13 (1)(2) "Department" means the department of ~~social and~~
14 ~~rehabilitation~~ family services provided for in [section 2].

15 (2)(3) "Developmentally disabled person" means a
16 person who by reason of a developmental disability is not
17 able, unassisted, to properly manage or care for his person
18 or his property.

19 (3)(4) "Ward" means a person for whom protective
20 ~~services are rendered pursuant to the provisions of this~~
21 ~~part~~ the department has been appointed guardian under Title
22 72, chapter 5, part 3.

23 (4) ~~"Respondent" means a person in whose interest~~
24 ~~proceedings are brought under this part.~~

25 (5) "Protective services" means case management of

1 services directed at preventing or remedying neglect, abuse,
2 or exploitation of developmentally disabled persons."

3 Section 97. Section 53-20-402, MCA, is amended to
4 read:

5 "53-20-402. Legislative findings and directives. (1)
6 In recognition of the need to provide supervision and
7 protection from abuse, neglect, and exploitation for the
8 developmentally disabled and in acknowledgment of the
9 desirability of providing such services outside the state
10 institutions, the legislature hereby finds and declares that
11 a program should be established by the department to provide
12 protective services for the developmentally disabled. Such a
13 program should be designed to provide the services set forth
14 in this part for developmentally disabled persons.

15 (2) The director of the department shall adopt rules
16 for the administration of this part. The department shall
17 develop a statewide system of protective service services in
18 accordance with regulations and standards established by the
19 department with respect to this program. The department
20 may:

21 (a) provide direct services;

22 (b) enter into a contract with any responsible agency,
23 public or private, for provision of protective service
24 services by the agency;

25 (c) accept appointment by any district court as

1 guardian, ~~or conservator, trustee, protector, or trustee and~~
 2 ~~protector~~ of a mentally retarded or other developmentally
 3 disabled person. However, this subsection does not relieve
 4 the department of the duty to comply with the requirements
 5 of Title 72, chapter 5, for the appointment of a guardian or
 6 conservator or the requirements of 53-20-406."

7 Section 98. Section 53-20-405, MCA, is amended to
 8 read:

9 "53-20-405. Protective and supportive services
 10 provided. (1) The department shall ~~provide, in the manner~~
 11 ~~set forth, for~~ assist each of its clients or wards to obtain
 12 those protective and supportive services which ~~the~~
 13 ~~department believes~~ may be necessary to help the client or
 14 ward function to the extent of his capabilities as an
 15 independent, self-sufficient member of society. Services
 16 under this part may include but shall not be limited to
 17 assistance in obtaining:

- 18 (a) housing, clothing, and food;
- 19 (b) education and training for living in society and,
- 20 where possible, for employment;
- 21 (c) employment;
- 22 (d) financial benefits to which the client or ward may
- 23 be entitled;
- 24 (e) medical services and supplies;
- 25 (f) necessary legal services;

1 (g) marshaling, protection, and insurance of the
 2 client's or ward's property;

3 (h) financial advice and services; and

4 (i) participation in cultural and recreational
 5 activities.

6 (2) Services under this part may also include but
 7 shall not be limited to assistance in preventing
 8 exploitation of the client or ward by others and in
 9 preventing ~~injury to~~ abuse or neglect of the client or ward
 10 and injury ~~by the ward~~ to others.

11 (3) The provision of protective services pursuant to
 12 this part does not create a guardianship relationship
 13 between the department and the developmentally disabled
 14 person unless a guardianship is created in accordance with
 15 the requirements of Title 72, chapter 5, part 3.

16 (4) The department may not provide a developmentally
 17 disabled person protective services that impose a legal
 18 limitation or restriction on the person unless the
 19 department has been appointed the legal guardian of or
 20 conservator for the person under the provisions of Title 72,
 21 chapter 5."

22 Section 99. Section 53-20-409, MCA, is amended to
 23 read:

24 "53-20-409. Costs of protective services. (1) If the
 25 income from the assets available to a ward suffice, the

1 department may require such ward, the custodian, guardian,
 2 or conservator of such ward or, if the governing instrument
 3 permits, the trustee of such ward to pay all reasonable and
 4 proper costs of proceedings in the interest of such ward
 5 under this part or Title 72, chapter 5, including, without
 6 limitation, court costs, sheriff fees, attorney fees, and
 7 costs of diagnostic services, and to pay for protective
 8 services rendered to the ward or to reimburse the department
 9 for funds expended for such costs or services.

10 (2) Upon a written petition filed by the department,
 11 the court by which the department was appointed may permit
 12 annual expenditure of up to 3% of the principal assets if
 13 such expenditure be shown to be of special advantage for the
 14 ward. The department shall file an accounting each year, and
 15 the court by which the department was appointed shall
 16 conduct a hearing to determine the propriety of any charge
 17 or charges to a ward. ~~All of the provisions of subsections~~
 18 ~~(2) and (3) of 53-20-404 concerning notice and hearings~~
 19 ~~shall apply to hearings under this section.~~ Upon such
 20 hearing, the court shall enter its order approving,
 21 disapproving, or modifying such charge or charges. The order
 22 of the court may be prospective as to charges of a recurring
 23 nature which reasonably may be anticipated.

24 (3) Except as provided in subsections (1) and (2) of
 25 this section, the net cost of proceedings under this part

1 and of services provided by the department shall be paid
 2 from moneys appropriated for that purpose by the legislature
 3 or from moneys available from any other governmental or
 4 private source. Claims for state reimbursements shall be
 5 presented to the department at such times and in such manner
 6 as the department may prescribe. The department shall
 7 certify the amount to the department of administration. The
 8 amount so certified shall be paid from the state treasury
 9 upon the voucher of the department and the warrant of the
 10 department of administration."

11 Section 100. Section 53-20-410, MCA, is amended to
 12 read:

13 "53-20-410. Reports required. With respect to each
 14 client or ward, designated field staff shall file a written
 15 report with the director of the department no later than
 16 June 30, 1974, and annually thereafter setting forth the
 17 services which have been provided for the client or ward,
 18 including specifically an accounting for any transactions
 19 with property of the client or ward other than as a
 20 court-appointed conservator, the current condition of the
 21 client or ward, and the recommendations of the department as
 22 to whether its services should continue or be terminated and
 23 whether other proceedings should be instituted. ~~if the~~
 24 ~~department is serving pursuant to court order under~~
 25 ~~53-20-404, a copy of such report also shall be filed with~~

1 ~~such-court-"~~

2 Section 101. Section 53-30-202, MCA, is amended to
3 read:

4 "53-30-202. Establishment of juvenile youth
5 correctional facilities. The department of institutions
6 family services, within the annual or biennial budgetary
7 appropriation, may establish, maintain, and operate
8 facilities to properly diagnose, care for, train, educate,
9 and rehabilitate children in need of these services. The
10 children must be 10 years of age or older and under 21 years
11 of age. The facilities include but are not limited to the
12 Mountain View school and the Pine Hills school ~~but-do-not~~
13 ~~include-the-youth-forest-camp."~~

14 Section 102. Section 53-30-203, MCA, is amended to
15 read:

16 "53-30-203. Control and management of juvenile youth
17 correctional facilities. The facilities provided for in
18 53-30-202 shall exercise their functions under the
19 supervision and general management of the department of
20 institutions family services. Except where otherwise
21 provided by law, the department by rules shall establish
22 standards of care, policies of admission, transfers,
23 discharge, and aftercare supervision in order to provide
24 adequate care for children and adequate service to the
25 courts. The department shall develop special programs within

1 each facility which are adaptable to the particular needs of
2 its operation."

3 Section 103. Section 53-30-204, MCA, is amended to
4 read:

5 "53-30-204. Cooperative agreements for services with
6 governing body of Indian tribe. (1) The department of
7 institutions family services may enter into agreements with
8 the governing body of an Indian tribe within the state for
9 residential, and educational, evaluation, and aftercare
10 services at--Mountain--View--school,--Pine--Hills--school,
11 aftercare-division, or other juvenile facility maintained by
12 the department for children who have been adjudicated
13 delinquent by the tribal court, subject to the provisions of
14 this part and parts 1 and 2 of chapter 1.

15 (2) Any agreement entered into under subsection (1)
16 must also satisfy the requirements of Title 18, chapter 11."

17 Section 104. Section 53-30-208, MCA, is amended to
18 read:

19 "53-30-208. Maximum age of commitment. No child who
20 has attained the age of 18 years shall be committed by any
21 juvenile youth court to the Mountain-View-school,--Pine-Hills
22 school, or other--juvenile--facility department of family
23 services, except, however, that any person under 21 years
24 who prior to attaining the age of 18 years came under the
25 jurisdiction of the juvenile youth court by reason of

delinquent conduct and whose adjudication of delinquency, including the finding that commitment to some institution was necessary, is not made until after the child reaches the age of 18 years shall be committed to the department of ~~institutions~~ family services. The department shall then have the obligation to test and evaluate the person to determine the proper place of detention for the person, who shall thereupon be confined at that institution until the person shall have attained the age of 21 years unless sooner discharged by the department."

Section 105. Section 53-30-211, MCA, is amended to read:

"53-30-211. Transfer of child to other facility or institution -- notice. The department of ~~institutions~~ family services upon recommendation of the superintendent of a facility may transfer a child resident in one of its ~~juvenile youth correctional~~ facilities to any other facility or institution under the jurisdiction and control of the department."

Section 106. Section 53-30-212, MCA, is amended to read:

"53-30-212. Commutation of sentence to state prison and transfer of prisoner to ~~juvenile youth~~ correctional facility ~~or Swan River forest camp~~. (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 the department of family services and with the approval of the board of pardons, commute the sentence by committing such person to the department of family services until he is 21 years of age or until sooner placed or discharged.

(2) If such person's behavior after being committed to the department of family services indicates that he is not a proper person to reside at one of the ~~department's-juvenile youth~~ correctional facilities, the governor, after consulting with the department of institutions and the department of family services and with the approval of the board of pardons, may revoke the commutation and return him to the state prison to serve out his unexpired term, and the time spent by him at one of the ~~department's-juvenile youth~~ correctional facilities or while a refugee from one of the ~~department's-juvenile youth correctional~~ facilities shall not be considered as a part of his original sentence.

(3) Upon recommendation of the warden and with the approval of the department of institutions and the department of family services, a person under 21 years of age who has been sentenced to the state prison may be transferred to any ~~juvenile youth~~ correctional facility under the jurisdiction and control of the department of

1 family services.

2 (4) Upon recommendation of the warden and approval of
3 a person sentenced to the state prison or application of a
4 person sentenced to the state prison and approval of the
5 warden and with the approval of the department of
6 institutions, such person sentenced to the state prison who
7 is 25 years of age or younger may be transferred to the Swan
8 River youth forest camp. Prior to departmental approval of
9 the transfer, the person must undergo an evaluation by the
10 department to determine his suitability for transfer to the
11 camp. The results of the evaluation must include a finding
12 that a minimum security facility is an appropriate placement
13 for such person or the transfer shall be denied. If the
14 person is transferred, he shall be under the supervision and
15 control of the facility to which he is transferred.

16 (5) If such person's behavior after transfer to such
17 juvenile a youth correctional facility or the Swan River
18 forest camp indicates he might be released on parole or his
19 sentence be commuted and he be discharged from custody, the
20 superintendent of such facility, with the approval of the
21 department of institutions and the department of family
22 services in the case of a youth correctional facility or
23 with the approval of the department of institutions in the
24 case of the Swan River forest camp, may make an appropriate
25 recommendation to the state board of pardons and the

1 governor, who may in their discretion parole such person or
2 commute his sentence.

3 (6) If such person's behavior after transfer to a
4 juvenile youth correctional facility or the Swan River
5 forest camp indicates he is not a proper person to reside in
6 such facility, upon recommendation of the superintendent and
7 with the approval of the department of institutions and the
8 department of family services in the case of a youth
9 correctional facility or with the approval of the department
10 of institutions in the case of the Swan River forest camp,
11 such person shall be returned to the state prison to serve
12 out his unexpired term."

13 Section 107. Section 53-30-214, MCA, is amended to
14 read:

15 "53-30-214. Apprehension and return of child youth
16 leaving juvenile youth correctional facility without
17 permission. A child youth who has left a juvenile youth
18 correctional facility of the department of institutions
19 family services without permission may be apprehended and
20 returned by any citizen. The term "juvenile youth
21 correctional facility of the department" means any facility
22 under the supervision and control of the department of
23 institutions family services which has as its primary
24 function the care, training, custody, and control of
25 children youth and specifically includes the Pine Hills

1 school for boys and the Mountain View school for girls."

2 Section 108. Section 53-30-215, MCA, is amended to
3 read:

4 "53-30-215. Penalty for aiding resident in leaving
5 juvenile youth correctional facility. A person who permits
6 or assists a resident of any juvenile youth correctional
7 facility to leave a facility without permission or who
8 furnishes or attempts to furnish to such a resident a tool,
9 weapon, or other article with the intent of aiding him to
10 leave without permission or who harbors or conceals a
11 resident who has left without permission shall on conviction
12 be punished by imprisonment for a term of not less than 6
13 months or more than 2 years or by a fine not exceeding
14 \$1,000 or by both such fine and imprisonment."

15 Section 109. Section 53-30-226, MCA, is amended to
16 read:

17 "53-30-226. Youth aftercare agreement. A youth
18 released by the department of institutions family services
19 from one of the state-juvenile youth correctional facilities
20 to the supervision, custody, and control of the department
21 shall, before his release, sign an aftercare agreement
22 containing:

23 (1) a statement of the terms and conditions of his
24 release, including a list of the acts which, if committed by
25 the youth, may result in his return to the facility; and

1 (2) a statement that if the department or any person
2 alleges any violation of the terms and conditions of the
3 agreement, the youth is entitled to a hearing as provided
4 for in 53-30-229 before he may be returned to the facility."

5 Section 110. Section 53-30-229, MCA, is amended to
6 read:

7 "53-30-229. Hearing on alleged violation of aftercare
8 agreement -- right to appeal outcome. (1) When it is alleged
9 by an aftercare counselor that a youth has violated the
10 terms of his aftercare agreement, the youth shall be granted
11 a hearing at the site of the alleged violation or in the
12 county where the youth is residing or is found within 10
13 days after notice has been served on the youth or the youth
14 is detained, whichever is earlier. The purpose of the
15 hearing is to determine whether the youth committed the
16 violation and, if so, whether the violation is of such a
17 nature that he should be returned to the juvenile youth
18 correctional facility from which he was released or a
19 different plan for treatment should be pursued by the
20 department of institutions family services.

21 (2) The youth, upon advice of an attorney, may waive
22 his right to a hearing.

23 (3) With regard to this hearing, the youth shall be
24 given:

25 (a) written notice of the alleged violation of his

1 aftercare agreement, including notice of the purpose of the
2 hearing;

3 (b) disclosure of the evidence against him and the
4 facts constituting the alleged violation;

5 (c) opportunity to be heard in person and to present
6 witnesses and documentary evidence to controvert the
7 evidence against him and to show that there are compelling
8 reasons which justify or mitigate the violation;

9 (d) opportunity to have the referee subpoena
10 witnesses;

11 (e) the right to confront and cross-examine adverse
12 witnesses;

13 (f) the right to be represented by an attorney;

14 (g) a record of the hearing; and

15 (h) notice that a written statement as to the evidence
16 relied upon in reaching the final decision and the reasons
17 for the final decision will be provided by the referee.

18 (4) The department shall appoint a referee, who shall
19 not be an employee of the department, to conduct the
20 hearing. In the conduct of the hearing, the department may
21 request the county attorney's assistance as necessary. The
22 department shall adopt rules necessary to effect a prompt
23 and full review.

24 (5) If the referee finds, by a preponderance of the
25 evidence, that the youth did in fact commit the violation,

1 he shall make a recommendation to the department for the
2 placement of the youth. In making this recommendation, the
3 referee may consider mitigating circumstances. Final
4 approval rests with the department and must be made within
5 10 days of the referee's recommendation.

6 (6) The youth may appeal from the decision at the
7 hearing to the district court of the county in which the
8 hearing was held by serving and filing a notice of appeal
9 with the court within 10 days of the department's decision.
10 The youth may obtain a written transcript of the hearing
11 from the department by giving written notice of appeal. The
12 district court, upon receipt of a notice of appeal, shall
13 order the department to promptly certify to the court a
14 record of all proceedings before the department and shall
15 proceed to a prompt hearing on the appeal based upon the
16 record on appeal. The decision of the department shall not
17 be altered except for abuse of discretion or manifest
18 injustice.

19 (7) Pending the hearing on a violation and pending the
20 department's decision, a youth may not be detained except
21 when his detention or care is required to protect the person
22 or property of the youth or of others or he may abscond or
23 be removed from the community. Procedures for taking into
24 custody and detention of a youth charged with violation of
25 his aftercare agreement shall be as provided in 41-3-1111

1 and 41-5-306.

2 (8) If the decision is made to return the youth to the
3 institution youth correctional facility from which he was
4 released and the youth appeals that decision, he shall await
5 the outcome of the appeal at such institution facility."

6 NEW SECTION. Section 111. Repealer. Sections
7 40-3-115, 41-3-1106, 41-3-1113, 41-3-1121, 41-5-702,
8 41-5-704, ---41-5-705, 53-4-121, 53-4-122, 53-20-404,
9 53-20-407, 53-20-411, and 53-20-412, MCA, are repealed.

10 NEW SECTION. Section 112. Extension of authority. Any
11 existing authority of the department of social and
12 rehabilitation services, the department of family services,
13 or the department of institutions to make rules on the
14 various functions transferred by the provisions of this act
15 is extended to the provisions of this act.

16 NEW SECTION. Section 113. Codification instructions.
17 (1) Section 2 is intended to be codified as an integral part
18 of Title 2, chapter 15, and the provisions of Title 2,
19 chapter 15, apply to section 2. Section 2-15-2211 is
20 intended to be renumbered and codified in the same part as
21 section 2.

22 (2) Section 53-20-414 is intended to be renumbered and
23 codified by the code commissioner as an integral part of
24 Title 53, chapter 20, part 1. The code commissioner shall
25 conform internal references and grammar to this change.

1 (3) SECTIONS 15 THROUGH 19 ARE INTENDED TO BE CODIFIED
2 AS AN INTEGRAL PART OF TITLE 41, CHAPTER 5, AND THE
3 PROVISIONS OF TITLE 41, CHAPTER 5, APPLY TO SECTIONS 15
4 THROUGH 19.

5 NEW SECTION. Section 114. Severability. If a part of
6 this act is invalid, all valid parts that are severable from
7 the invalid part remain in effect. If a part of this act is
8 invalid in one or more of its applications, the part remains
9 in effect in all valid applications that are severable from
10 the invalid applications.

11 NEW SECTION. Section 115. Reorganization procedure.
12 The provisions of sections 2-15-131 through 2-15-137 govern
13 the creation of the department of family services and the
14 transfer of the various functions contained in this act from
15 the department of social and rehabilitation services, county
16 welfare offices and departments, the department of
17 institutions, and the youth court of the district court to
18 the department of family services.

19 NEW SECTION. Section 116. Implementation. (1) The
20 governor shall by executive order implement the provisions
21 of this act.

22 (2) The governor may by executive order assign to the
23 department of family services in a manner consistent with
24 this act functions allocated to the department of social and
25 rehabilitation services, county welfare offices or

1 departments, the department of institutions, or the youth
2 court of the district court by the 50th legislature and not
3 transferred by this act.

4 NEW SECTION. Section 117. Effective dates. (1)
5 Section ~~117~~ 116 is effective on passage and approval.

6 (2) Sections 1 through ~~116~~ 115 and this section are
7 effective upon signing of the executive order under section
8 ~~117~~ 116(1) or on October 1, 1987, whichever occurs first.

-End-

1 STATEMENT OF INTENT

2 HOUSE BILL 325

3 House State Administration Committee
4

5 A statement of intent is required for this bill because
6 section 5 grants rulemaking authority to the department of
7 family services to adopt rules necessary to carry out the
8 purposes of sections 3 through 10 and 15 through 19.

9 Rules are primarily necessary to implement sections 7
10 and 8 of the bill. These sections require that a state youth
11 services council and local youth services advisory councils
12 be established to advise the director of the department on
13 policies related to children and youth, to make an annual
14 written review and evaluation of local needs and services,
15 and to develop a local plan for a system of community-based
16 services for children and youth.

17 The rules to be adopted would address:

18 (1) the composition, membership requirements, and
19 operating procedures for the state and local advisory
20 councils;

21 (2) procedures for the development and format of the
22 annual written review and evaluation of services;

23 (3) procedures for the preparation and format of the
24 state plan; and

25 (4) other guidelines necessary for the administration

The total text of HB 325 will not
be re-printed for third reading
due to size. Attached please find
the 5 amended pages.

Refer to second reading (yellow) for
complete text.

1 40-4-218, and 41-3-107, AND 53-5-505. The code commissioner
2 shall conform internal references and grammar to these
3 changes.

4 NEW SECTION. Section 13. Certain functions of
5 department of institutions transferred to department of
6 family services. (1) The following functions of the
7 department of institutions in Title 53 relating to the
8 evaluation, detention, and aftercare of youth who are
9 alleged to be or have been adjudicated to be youth in need
10 of care, youth in need of supervision, or delinquent youth
11 and of emotionally disturbed youth are transferred to the
12 department of family services:

13 (a) intake, investigation, case management, and client
14 supervision;

15 (b) contracting for services such as evaluations,
16 in-home services, and counseling;

17 (c) institutional services at department institutions;

18 (d) supervision, custody, and control of youth
19 released from a state juvenile correctional facility; and

20 (e) community-based programs for evaluation or
21 residential care.

22 (2) Unless inconsistent with this act, any reference
23 in the following sections to "department of institutions" or
24 to "department" (of institutions) referring to the functions
25 listed in subsection (1) or any related reference to

1 "department" (of institutions) referring to the functions
2 listed in subsection (1) in related sections is changed to
3 "department of family services": 53-21-502, 53-30-209,
4 53-30-210, 53-30-213, 53-30-227, and 53-30-228. The code
5 commissioner shall conform internal references and grammar
6 to these changes.

7 NEW SECTION. Section 14. Certain functions of youth
8 court of district court transferred to department of family
9 services. (1) The following functions of the youth court of
10 the district court contained in Title 41, chapter 5, and
11 related to youth who are alleged to be or have been
12 adjudicated to be youth in need of care, youth in need of
13 supervision, or delinquent youth are transferred to the
14 department of family services:

15 (a) intake, investigation, case management, and client
16 supervision;

17 (b) out-of-home placements; and

18 (c) contracting for services such as evaluations,
19 in-home services, and counseling;

20 (2) Unless inconsistent with this act, any reference
21 in Title 41, chapter 5, to "youth court", "youth court",
22 or "probation officer" referring to the functions listed in
23 subsection (1) or related reference to "youth court",
24 "youth court", or "probation officer" referring to the
25 functions listed in subsection (1) in related sections is

changed--to--"department--of--family--services".--The--code
commissioner--shall--conform--internal--references--and--grammar
to--these--changes;

NEW SECTION.--Section 15.--Pay of youth court employees
upon transfer to department of family services.--(1)--Upon
the--transfer--of--certain--functions--of--the--youth--court--of--the
district--court--to--the--department--of--family--services,--as
provided--in--(section 14), all probation officers, clerical
staff, and all other persons employed by the youth court
probation--office--become--state--employees--and--are--subject--to
all--laws--concerning--state--employees;

(2)--The--rate--of--pay--of--the--persons--referred--to--in
subsection--(1)--shall--be--established--according--to--the
provisions--of--Title 27, chapter 18, parts 1, 2, and 3.--Each
person--shall--be--placed--on--a--step--of--the--established--grade--in
the--state--pay--plan--that--most--closely--matches--his--pay--rate--at
the--time--of--transfer;

(3)--If--a--person's--current--rate--of--pay--at--the--time--of
transfer--is--greater--than--that--allowed--under--step 13--for--his
assigned--grade--on--the--state--pay--plan--matrix,--his--rate--of--pay
must--remain--the--same--until--increases--in--the--state--pay--plan
matrix--cause--a--step 13--for--his--assigned--grade--to--match--or
exceed--his--salary,--at--which--time--he--shall--be--assigned--a--step
13--for--that--grade;

(4)--After--the--transfer--provided--for--in--subsection (1),

subsequent--pay--changes--due--to--reclassification--or--transfer
shall--be--determined--according--to--the--pay--plan--rules--adopted
by--the--department--of--administration--under--the--authority--of
2-18-301;

NEW SECTION. SECTION 14. COUNTY CONTRIBUTION FOR
SALARIES AND TRAVEL OF PROTECTIVE SERVICES EMPLOYEES. (1)
UPON TRANSFER OF CERTAIN FUNCTIONS OF THE COUNTY WELFARE
DEPARTMENT TO THE DEPARTMENT OF FAMILY SERVICES AS PROVIDED
IN [SECTION 12], THE SALARIES AND TRAVEL EXPENSES, AS
PROVIDED IN 2-18-501 THROUGH 2-18-503, OF PROTECTIVE
SERVICES EMPLOYEES MUST BE PAID BY THE DEPARTMENT OF FAMILY
SERVICES. THE BOARD OF COUNTY COMMISSIONERS SHALL REIMBURSE
THE DEPARTMENT OF FAMILY SERVICES FROM COUNTY POOR FUNDS IN
AN AMOUNT EQUAL TO THAT COUNTY'S EXPENDITURES FOR SALARIES
AND TRAVEL EXPENSES OF PROTECTIVE SERVICES EMPLOYEES IN
FISCAL YEAR 1987, ADJUSTED FOR ANNUAL INFLATION.

(2) ON OR BEFORE THE 20TH DAY OF THE MONTH FOLLOWING
THE MONTH FOR WHICH PAYMENTS WERE MADE FOR PROTECTIVE
SERVICES EMPLOYEES' SALARIES AND TRAVEL, THE DEPARTMENT OF
FAMILY SERVICES SHALL PRESENT TO THE BOARD OF COUNTY
COMMISSIONERS A CLAIM FOR THE REQUIRED REIMBURSEMENT. THE
BOARD OF COUNTY COMMISSIONERS SHALL MAKE SUCH REIMBURSEMENT
WITHIN 20 DAYS AFTER THE PRESENTATION OF THE CLAIM.

NEW SECTION. SECTION 15. YOUTH PLACEMENT COMMITTEES
-- COMPOSITION. (1) IN EACH JUDICIAL DISTRICT, THE

1 PLACED ACCORDING TO THE RECOMMENDATION.

2 (6) IF THE DEPARTMENT REJECTS THE COMMITTEE'S
 3 RECOMMENDATION FOR ALTERNATIVE PLACEMENT, THE DEPARTMENT
 4 PROMPTLY SHALL NOTIFY THE COMMITTEE IN WRITING OF THE
 5 REASONS FOR REJECTING THE RECOMMENDATION, AND THE YOUTH MUST
 6 BE PLACED IN AN APPROPRIATE FACILITY AS DETERMINED BY THE
 7 DEPARTMENT.

8 NEW SECTION. SECTION 18. TEMPORARY AND EMERGENCY
 9 PLACEMENTS -- LIMIT. (1) A TEMPORARY PLACEMENT OF A YOUTH IN
 10 A SHELTER CARE FACILITY OR AN EMERGENCY PLACEMENT OF A YOUTH
 11 IN A YOUTH CARE FACILITY IS EXEMPT FROM THE REQUIREMENTS OF
 12 [SECTION 17].

13 (2) IF A TEMPORARY OR EMERGENCY PLACEMENT OF A YOUTH
 14 CONTINUES FOR 45 OR MORE DAYS, THE DEPARTMENT SHALL REFER
 15 THE PLACEMENT OF THE YOUTH TO THE APPROPRIATE YOUTH
 16 PLACEMENT COMMITTEE FOR REVIEW. THE COMMITTEE SHALL MAKE A
 17 RECOMMENDATION FOR PLACEMENT TO THE DEPARTMENT IN ACCORDANCE
 18 WITH [SECTION 17].

19 NEW SECTION. SECTION 19. CONFIDENTIALITY OF YOUTH
 20 PLACEMENT COMMITTEE MEETINGS AND RECORDS. (1) MEETINGS OF A
 21 YOUTH PLACEMENT COMMITTEE ARE CLOSED TO THE PUBLIC TO
 22 PROTECT A YOUTH'S RIGHT TO INDIVIDUAL PRIVACY.

23 (2) INFORMATION PRESENTED TO THE COMMITTEE ABOUT A
 24 YOUTH AND COMMITTEE RECORDS ARE CONFIDENTIAL AND SUBJECT TO
 25 CONFIDENTIALITY REQUIREMENTS ESTABLISHED BY RULE BY THE

1 DEPARTMENT.

2 NEW SECTION. SECTION 20. STATUS OF EMPLOYEES UPON
 3 TRANSFER TO THE DEPARTMENT OF FAMILY SERVICES. A CURRENT
 4 STATE EMPLOYEE WHO IS A MEMBER OF A COLLECTIVE BARGAINING
 5 UNIT AND WHO OCCUPIES A POSITION THAT IS TRANSFERRED TO THE
 6 DEPARTMENT OF FAMILY SERVICES BECOMES AN EMPLOYEE OF THE
 7 DEPARTMENT OF FAMILY SERVICES UPON SIGNING OF THE EXECUTIVE
 8 ORDER PROVIDED IN [SECTION 116] AND MAY NOT RECEIVE A
 9 REDUCTION IN WAGES UPON SUCH TRANSFER. ANY SUBSEQUENT
 10 CHANGES THAT MAY AFFECT SUCH EMPLOYEE MUST BE MADE ACCORDING
 11 TO EXISTING LAWS AND RULES.

12 Section 21. Section 20-5-301, MCA, is amended to read:

13 "20-5-301. Elementary tuition with mandatory approval.

14 (1) Any child may be enrolled in and attend an elementary
 15 school outside of the elementary district in which he
 16 resides when such elementary school is located in:

17 (a) any other district of the county of his residence;

18 (b) a county adjoining his county of residence; or

19 (c) a district of another state that is adjacent to
 20 the county of his residence.

21 (2) When a parent or guardian of a child wishes to
 22 have his child attend a school under the provisions of this
 23 section, he shall apply to the county superintendent of the
 24 county of his residence before July 1 of the school fiscal
 25 year for which he seeks approval except in those cases when

1 later than the 12-month anniversary date of the child's
2 placement into foster care.

3 (3) The department shall provide the committee with
4 guidelines for operation of the committee. Within 30 days of
5 the foster care review, the committee shall provide the
6 youth court and the department a written report of its
7 findings and recommendations for further action by the youth
8 court or the department.

9 (4) The department shall adopt rules necessary to
10 carry out the purposes of this section.

11 (5) Because of the individual privacy involved,
12 meetings of the committee, reports of the committee, and
13 information on individuals' cases shared by committee
14 members is confidential and subject to the confidentiality
15 requirements of the department.

16 (6) The committee is subject to the call of the youth
17 court judge to meet and confer with him on all matters
18 pertaining to the foster care of a child before the youth
19 court."

20 Section 51. Section 41-3-1122, MCA, is amended to
21 read:

22 "41-3-1122. Payment for support of youth in need of
23 care, youth in need of supervision, or delinquent youth --
24 reimbursement by county. (1) Whenever a youth who is a youth
25 in need of care, a youth in need of supervision, or a

1 delinquent youth is placed by the youth--court--or--the
2 department of family services in a youth care facility, the
3 department shall pay, within the limits of the appropriation
4 for that purpose, a foster care payment to the youth care
5 facility at a rate established by the department for board,
6 clothing, personal needs, treatment, and room of the youth.

7 (2) On or before the 20th of each month the department
8 shall present a claim to the county of residence of the
9 youth for no more than one-half the payments so made during
10 the month. The county must make reimbursement to the
11 department within 20 days after the claim is presented.

12 (3) THE COUNTY SHALL REIMBURSE THE DEPARTMENT FOR
13 ONE-HALF OF THE PAYMENTS NOT REIMBURSED TO THE DEPARTMENT BY
14 THE FEDERAL GOVERNMENT UNTIL THE COUNTY EXPENDITURES REACH A
15 LEVEL EQUAL TO THE COUNTY'S LEVEL OF EXPENDITURES FOR FOSTER
16 CARE IN FISCAL YEAR 1987, ADJUSTED FOR ANNUAL INFLATION,
17 EXCEPT AS PROVIDED IN SUBSECTION (4). IF A COUNTY'S LEVEL OF
18 EXPENDITURE FOR ANY YEAR REACHES THE LEVEL OF EXPENDITURE
19 FOR FOSTER CARE IN FISCAL YEAR 1987, THE COUNTY SHALL
20 REIMBURSE THE DEPARTMENT FOR ONE-QUARTER OF THE PAYMENTS
21 ABOVE THE FISCAL YEAR 1987 EXPENDITURE LEVEL.

22 (4) IF A COUNTY'S LEVEL OF EXPENDITURE FOR FOSTER CARE
23 IN FISCAL YEAR 1987 IS \$10,000 OR LESS, THE COUNTY'S LEVEL
24 OF EXPENDITURE FOR PURPOSES OF DETERMINING THE COUNTY'S
25 PERCENTAGE OF REIMBURSEMENT SPECIFIED IN SUBSECTION (3) IS

1 his aftercare agreement shall be as provided in 41-3-1111
2 and 41-5-306.

3 (8) If the decision is made to return the youth to the
4 institution youth correctional facility from which he was
5 released and the youth appeals that decision, he shall await
6 the outcome of the appeal at such institution facility."

7 NEW SECTION. Section 111. Repealer. Sections
8 40-3-115, 41-3-1106, 41-3-1113, 41-3-1121, 41-5-702,
9 41-5-704,---41-5-705, 53-4-121, 53-4-122, 53-20-404,
10 53-20-407, 53-20-411, and 53-20-412, MCA, are repealed.

11 NEW SECTION. Section 112. Extension of authority. Any
12 existing authority of the department of social and
13 rehabilitation services, the department of family services,
14 or the department of institutions to make rules on the
15 various functions transferred by the provisions of this act
16 is extended to the provisions of this act.

17 NEW SECTION. Section 113. Codification instructions.
18 (1) Section 2 is intended to be codified as an integral part
19 of Title 2, chapter 15, and the provisions of Title 2,
20 chapter 15, apply to section 2. Section 2-15-2211 is
21 intended to be renumbered and codified in the same part as
22 section 2.

23 (2) Section 53-20-414 is intended to be renumbered and
24 codified by the code commissioner as an integral part of
25 Title 53, chapter 20, part 1. The code commissioner shall

1 conform internal references and grammar to this change.

2 (3) SECTIONS 15 THROUGH 19 ARE INTENDED TO BE CODIFIED
3 AS AN INTEGRAL PART OF TITLE 41, CHAPTER 5, AND THE
4 PROVISIONS OF TITLE 41, CHAPTER 5, APPLY TO SECTIONS 15
5 THROUGH 19.

6 (4) SECTION 53-2-204 IS INTENDED TO BE RENUMBERED AND
7 CODIFIED BY THE CODE COMMISSIONER IN THE SAME TITLE,
8 CHAPTER, AND PART AS SECTION 5.

9 NEW SECTION. Section 114. Severability. If a part of
10 this act is invalid, all valid parts that are severable from
11 the invalid part remain in effect. If a part of this act is
12 invalid in one or more of its applications, the part remains
13 in effect in all valid applications that are severable from
14 the invalid applications.

15 NEW SECTION. Section 115. Reorganization procedure.
16 The provisions of sections 2-15-131 through 2-15-137 govern
17 the creation of the department of family services and the
18 transfer of the various functions contained in this act from
19 the department of social and rehabilitation services, county
20 welfare offices and departments, the department of
21 institutions, and the youth court of the district court to
22 the department of family services.

23 NEW SECTION. Section 116. Implementation. (1) The
24 governor shall by executive order implement the provisions
25 of this act.

1 STATEMENT OF INTENT

2 HOUSE BILL 325

3 House State Administration Committee

4
5 A statement of intent is required for this bill because
6 section 5 grants rulemaking authority to the department of
7 family services to adopt rules necessary to carry out the
8 purposes of sections 3 through 10 and 15 through 19.

9 Rules are primarily necessary to implement sections 7
10 and 8 of the bill. These sections require that a state youth
11 services council and local youth services advisory councils
12 be established to advise the director of the department on
13 policies related to children and youth, to make an annual
14 written review and evaluation of local needs and services,
15 and to develop a local plan for a system of community-based
16 services for children and youth.

17 The rules to be adopted would address:

18 (1) the composition, membership requirements, and
19 operating procedures for the state and local advisory
20 councils;

21 (2) procedures for the development and format of the
22 annual written review and evaluation of services;

23 (3) procedures for the preparation and format of the
24 state plan; and

25 (4) other guidelines necessary for the administration

1 and operation of the state and local advisory councils.

2 It is also intended that the department adopt rules
3 necessary to carry out its duties and responsibilities set
4 forth in section 5. These rules will be adopted in a manner
5 consistent with the expressed purposes of the legislation
6 and the existing rulemaking authority of the department of
7 social and rehabilitation services that are transferred to
8 the department of family services.

9 In addition, the department will adopt rules governing
10 the establishment and administration of youth placement
11 committees as provided in sections 15 through 19.

1 HOUSE BILL NO. 325

2 INTRODUCED BY MERCER, MAZUREK, COBB, REAM, SQUIRES
 3 M. WILLIAMS, PECK, LORY, CAMPBELL, KADAS, O'CONNELL, FRITZ,
 4 DONALDSON, ADDY, MILES, SPAETH, GRADY, HARRINGTON,
 5 WINSLOW, HANSEN, ECK, BACHINI, PATTERSON, MILLER,
 6 JERGESON, MANUEL, BLAYLOCK, REGAN, B. BROWN, DARKO
 7 BY REQUEST OF THE GOVERNOR'S OFFICE

8
 9 A BILL FOR AN ACT ENTITLED: "AN ACT REORGANIZING THE
 10 EXECUTIVE BRANCH OF STATE GOVERNMENT; CREATING A NEW
 11 DEPARTMENT OF FAMILY SERVICES; TRANSFERRING CERTAIN
 12 FUNCTIONS OF THE DEPARTMENT OF SOCIAL AND REHABILITATION
 13 SERVICES, COUNTY WELFARE DEPARTMENTS, THE DEPARTMENT OF
 14 INSTITUTIONS, AND THE YOUTH COURT OF THE DISTRICT COURT TO
 15 THE DEPARTMENT OF FAMILY SERVICES; TRANSFERRING---YOUTH
 16 PROBATION-OFFICERS-FROM-THE-YOUTH-COURT-TO-THE-DEPARTMENT-OF
 17 FAMILY--SERVICES; GENERALLY REVISING THE LAWS RELATING TO
 18 CHILD WELFARE SERVICES, CHILD AND ADULT PROTECTIVE SERVICES,
 19 AND THE YOUTH COURT TO CONFORM TO THE REORGANIZATION;
 20 AMENDING SECTION 2-18-303, MCA; REPEALING SECTIONS 40-3-1157
 21 41-3-1106, 41-3-1113, 41-3-1121, 41-5-7027---41-5-7047
 22 41-5-7057, 53-4-121, 53-4-122, 53-20-404, 53-20-407,
 23 53-20-411, AND 53-20-412, MCA; AND PROVIDING EFFECTIVE
 24 DATES."

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

2 Section 1. Section 2-15-104, MCA, is amended to read:

3 "2-15-104. Structure of executive branch. (1) In
 4 accordance with the constitution, all executive and
 5 administrative offices, boards, commissions, agencies, and
 6 instrumentalities of the executive branch of state
 7 government and their respective functions are allocated by
 8 this chapter among and within the following departments or
 9 entities:

- 10 (a) department of administration;
- 11 (b) department of military affairs;
- 12 (c) department of revenue;
- 13 (d) state board of education;
- 14 (e) department of labor and industry;
- 15 (f) department of commerce;
- 16 (g) department of justice;
- 17 (h) department of health and environmental sciences;
- 18 (i) department of social and rehabilitation services;
- 19 (j) department of institutions;
- 20 (k) department of highways;
- 21 (l) department of public service regulation;
- 22 (m) department of agriculture;
- 23 (n) department of livestock;
- 24 (o) department of state lands;
- 25 (p) department of natural resources and conservation;

(q) department of fish, wildlife, and parks;

(r) department of family services.

(2) For its internal structure, each department shall adhere to the following standard terms:

(a) The principal unit of a department is a division. Each division shall be headed by an administrator.

(b) The principal unit of a division is a bureau. Each bureau shall be headed by a chief.

(c) The principal unit of a bureau is a section. Each section shall be headed by a supervisor."

NEW SECTION. Section 2. Department of family services -- head. There is a department of family services. The department head is a director of family services appointed by the governor in accordance with 2-15-111.

NEW SECTION. Section 3. Purpose. It is the public policy of the legislature to reduce duplication and fragmentation of services to youth, families, and senior citizens by creating a department that shall develop and maintain consolidated programs and services, within available resources, and a planned continuum of services to:

(1) provide protective services to ensure the health, welfare, and safety of children and adults who are in danger of abuse, neglect, or exploitation within communities;

(2) provide for the care, protection, and mental and physical development of youth alleged to be youth in need of

supervision or delinquent youth ~~and-to-provide-programs--for the--supervision--and--rehabilitation-of-these-youth~~ WHO ARE REFERRED OR COMMITTED TO THE DEPARTMENT; and

(3) provide supportive services to enable senior citizens to maintain their independence.

NEW SECTION. Section 4. Definitions. Unless the context requires otherwise, in this title the following definitions apply:

(1) "Department" means the department of family services provided for in [section 2].

(2) "Director" means the director of family services provided for in [section 2].

NEW SECTION. Section 5. Powers and duties of department. The department shall:

(1) administer and supervise all forms of child and adult protective services;

(2) ~~administer--and--supervise-all-services-to~~ PROVIDE FUNDING FOR AND PLACE youth alleged or adjudicated to be delinquent or in need of supervision WHO ARE REFERRED OR COMMITTED TO THE DEPARTMENT;

(3) provide the following functions, as necessary, for the youth served IN NEED OF CARE:

(a) intake, investigation, case management, and client supervision;

(b) placement in youth care facilities;

(c) contracting for necessary services;

(d) protective services day care; AND

(e) adoption;

~~{f}--institutional-services;-and~~

(4) ADMINISTER YOUTH CORRECTIONAL FACILITIES;

~~{g}~~(5) PROVIDE supervision, care, and control of youth released from a state youth correctional facility;

~~{4}~~(6) license youth care facilities, child placing agencies, day-care facilities, community homes for developmentally disabled persons, community homes for physically disabled persons, and adult foster care facilities;

~~{5}~~(7) administer interstate compacts for children and delinquent youth;

~~{6}~~(8) (a) administer child abuse prevention services funded through child abuse grants and the Montana children's trust fund provided for in Title 41, chapter 3, part 7; and

(b) administer elder abuse prevention services;

~~{7}~~(9) (A) MAKE A WRITTEN EVALUATION OF EACH PLAN DEVELOPED BY THE LOCAL YOUTH SERVICES ADVISORY COUNCILS, AS PROVIDED IN [SECTION B], INDICATING THOSE PORTIONS OF EACH PLAN THAT WILL BE IMPLEMENTED BY THE DEPARTMENT, THOSE PORTIONS THAT WILL NOT BE IMPLEMENTED, AND THE REASONS FOR NOT IMPLEMENTING THOSE PORTIONS;

(B) develop a statewide youth services and resources

plan that takes into consideration local needs as reflected in plans developed by the local youth services advisory councils,~~as provided in {section 8};~~

~~{8}~~(10) administer services to the aged;

~~{9}~~(11) provide consultant services to:

(a) facilities providing care for needy, indigent, handicapped, or dependent adults; and

(b) youth care facilities;

~~{10}~~(12) utilize at maximum efficiency the resources of state government in a coordinated effort to:

(a) provide for children in need of temporary protection or correctional services; and

(b) coordinate and apply the principles of modern institutional administration to the institutions in the department;

~~{11}~~(13) subject to the functions of the department of administration, lease or purchase lands for use by institutions in the department and classify those lands to determine which are of such character as to be most profitably used for agricultural purposes, taking into consideration:

(a) the needs of all institutions in the department for the food products that can be grown or produced on the lands; and

(b) the relative value of agricultural programs in the

1 treatment or rehabilitation of the persons confined in the
2 institutions in the department;

3 ~~(12)~~(14) utilize the staff and services of other state
4 agencies and units of the Montana university system, within
5 their respective statutory functions, to carry out its
6 functions under this title;

7 ~~(13)~~(15) propose programs WITH SPECIFIC GOALS AND
8 OBJECTIVES to the legislature to meet the projected
9 long-range needs of institutions in the department,
10 including programs and facilities for the diagnosis,
11 treatment, care, and aftercare of persons placed in
12 institutions in the department; and

13 (16) CONTRACT WITH THE COUNTY BOARD OF WELFARE FOR
14 ADMINISTRATION OF CHILD AND ADULT PROTECTION SERVICES FOR
15 THAT COUNTY; AND

16 ~~(14)~~(16)(17) adopt rules necessary to carry out the
17 purposes of [sections 3 through 10 AND 17 THROUGH 19].

18 NEW SECTION. Section 6. Local service areas. The
19 department shall organize its field offices into local
20 service areas. The director shall take into consideration
21 geographic boundaries used by local governments, judicial
22 districts, and service agencies when creating local service
23 areas.

24 NEW SECTION. Section 7. State youth services council
25 -- membership. (1) The governor may appoint a state planning

1 and advisory council or designate an existing council to
2 advise the director on policies relating to services to
3 children and youth.

4 (2) A member of the council must have knowledge of and
5 experience in at least one of the following areas:

6 (a) services to:

7 (i) youth in need of care;

8 (ii) youth in need of supervision;

9 (iii) delinquent youth;

10 (iv) emotionally disturbed youth; or

11 (v) chemically dependent youth; or

12 (b) domestic violence issues.

13 (3) Membership of the council must include as many of
14 these areas of expertise as possible.

15 (4) Members must be compensated and reimbursed as
16 provided for in 2-15-122.

17 NEW SECTION. Section 8. Local youth services advisory
18 councils. (1) The department shall establish a local youth
19 services advisory council within each local service area to
20 ensure a broad-based community plan for children and youth
21 services within the area. A local youth services advisory
22 council may act in an advisory capacity only. Each local
23 advisory council consists of seven members. The director
24 shall appoint members to each local advisory council. At
25 least two members must be nominated by the county

commissioners within the area, and at least two members must be nominated by district court judges within the area. Members of the local advisory councils must be broadly representative of the local service area and may not be employed by or under contract to the department OR THE YOUTH COURT.

(2) The department shall provide technical assistance to the local advisory councils as necessary.

(3) Each local advisory council shall:

(a) make an annual written review and evaluation of needs and services within the local service area and provide a copy of the review and evaluation to the state planning and advisory council;

(b) advise the department, other state agencies, councils, local governments, and private organizations on programs for services to the children and youth within the local service area; and

(c) develop a plan WITH SPECIFIC GOALS AND OBJECTIVES for a system of community-based services for the children and youth within the local service area and provide a copy of the plan to the state planning and advisory council.

(4) Members must be compensated and reimbursed as provided for in 2-15-122.

NEW SECTION. Section 9. Institutions in department.

(1) The following institutions are in the department:

(a) Mountain View school;

(b) Pine Hills school; and

(c) any other institution that provides care and services for delinquent youth.

(2) A state institution may not be moved, discontinued, or abandoned without prior consent of the legislature.

NEW SECTION. Section 10. Debt to state by natural or adoptive parents -- limitations. If a child has been placed in substitute care, as defined in 41-5-103 and 41-3-1102, and a written agreement for payment of support has been entered into by the responsible parent or parents and the department, the debt for support is limited to the amount provided for in the agreement. However, if a court order for support is or has been entered, the order prevails over the agreement.

NEW SECTION. Section 11. Certain functions of department of social and rehabilitation services transferred to department of family services. (1) The functions of the department of social and rehabilitation services in Title 41 and Title 53 relating to child welfare services and child and adult protective services for youth in need of care, youth in need of supervision, delinquent youth, children and adults in need of protective services, and senior citizens are transferred to the department of family services. The

1 transferred functions include:

2 (a) intake, investigation, case management, and client

3 supervision;

4 (b) out-of-home placements;

5 (c) contracting for services such as evaluations,

6 in-home services, and counseling;

7 (d) protective services day care;

8 (e) adoption;

9 (f) licensure of youth care facilities, child-placing

10 agencies, day-care facilities, community homes for

11 developmentally disabled persons, community homes for

12 physically disabled persons, and adult foster care

13 facilities;

14 (g) child abuse prevention services funded through

15 child abuse grants and the Montana children's trust fund

16 provided for in Title 41, chapter 3, part 7;

17 (h) elder abuse prevention services;

18 (i) adult protective services and services for the

19 aged; and

20 (j) any other functions necessary to provide child

21 welfare services and child and adult protective services.

22 (2) Unless inconsistent with this act, any reference

23 in the following sections to "department of social and

24 rehabilitation services" or to "department" (of social and

25 rehabilitation services) referring to the functions listed

1 in subsection (1) or any related reference to "department"

2 (of social and rehabilitation services) referring to the

3 functions listed in subsection (1) in related sections is

4 changed to "department of family services": 2-15-2211,

5 15-6-209, 20-5-301, 27-1-718, 40-2-401 through 40-2-404,

6 40-8-111, 40-8-121, 40-8-124, 41-3-201, 41-3-202, 41-3-208,

7 41-3-403, 41-3-406, 41-3-702, 41-3-704, 41-3-1101, 41-4-103,

8 41-4-104, 41-5-301, ~~41-5-403~~, ~~41-5-523~~, 53-4-303, 53-5-101

9 through 53-5-103, 53-5-111, 53-5-202, 53-5-302, 53-5-504,

10 53-5-511, 53-5-601, and 53-20-302. The code commissioner

11 shall conform internal references and grammar to these

12 changes.

13 NEW SECTION. Section 12. Certain functions of county

14 welfare offices or departments transferred to department of

15 family services. (1) The functions of county welfare offices

16 or departments in Title 40, Title 41, and Title 53 relating

17 to child welfare services and child and adult protective

18 services for youth in need of care, youth in need of

19 supervision, delinquent youth, and children and adults in

20 need of protective services are transferred to the

21 department of family services.

22 (2) Unless inconsistent with this act, any reference

23 in the following sections to "county welfare office" or

24 "county welfare department" or to (county welfare) "office"

25 or (county welfare) "department" referring to the functions

1 listed in subsection (1) or related reference to (county
2 welfare) "office" or (county welfare) "department" referring
3 to the functions listed in subsection (1) in related
4 sections is changed to "department of family services":
5 40-4-218, and 41-3-107, AND 53-5-505. The code commissioner
6 shall conform internal references and grammar to these
7 changes.

8 NEW SECTION. Section 13. Certain functions of
9 department of institutions transferred to department of
10 family services. (1) The following functions of the
11 department of institutions in Title 53 relating to the
12 evaluation, detention, and aftercare of youth who are
13 alleged to be or have been adjudicated to be youth in need
14 of care, youth in need of supervision, or delinquent youth
15 and of emotionally disturbed youth are transferred to the
16 department of family services:

17 (a) intake, investigation, case management, and client
18 supervision;

19 (b) contracting for services such as evaluations,
20 in-home services, and counseling;

21 (c) institutional services at department institutions;

22 (d) supervision, custody, and control of youth
23 released from a state juvenile correctional facility; and

24 (e) community-based programs for evaluation or
25 residential care.

1 (2) Unless inconsistent with this act, any reference
2 in the following sections to "department of institutions" or
3 to "department" (of institutions) referring to the functions
4 listed in subsection (1) or any related reference to
5 "department" (of institutions) referring to the functions
6 listed in subsection (1) in related sections is changed to
7 "department of family services": 53-21-502, 53-30-209,
8 53-30-210, 53-30-213, 53-30-227, and 53-30-228. The code
9 commissioner shall conform internal references and grammar
10 to these changes.

11 NEW-SECTION:--Section-14:--Certain-functions--of--youth
12 court--of-district-court-transferred-to-department-of-family
13 services:--(1)--The-following-functions-of-the-youth-court-of
14 the-district-court-contained-in-Title--41:--chapter--5:--and
15 related--to--youth--who--are--alleged--to--be--or--have--been
16 adjudicated-to-be-youth-in-need-of-care; youth--in--need--of
17 supervision;--or--delinquent--youth--are--transferred-to-the
18 department-of-family-services:

19 (a)--intake; investigation; case management; and client
20 supervision;

21 (b)--out-of-home-placements; and

22 (c)--contracting--for--services--such--as--evaluations;
23 in-home services; and counseling;

24 (2)--Unless--inconsistent--with--this--act, any reference
25 in Title 41: chapter 5, to "youth court", "(youth)" "court",

or--"probation-officer"-referring-to-the-functions-listed-in subsection--(1)--or--related--reference--to--"youth--court", (youth)--"court",--or--"probation--officer"-referring-to-the functions-listed-in-subsection--(1)--in--related--sections--is changed--to--"department--of--family--services";--The--code commissioner--shall--conform--internal--references--and--grammar to--these--changes.

NEW SECTION.--Section 15.--Pay-of-youth-court-employees upon--transfer--to--department-of-family-services.--(1) Upon the-transfer-of-certain-functions-of-the-youth-court-of--the district--court--to--the--department--of--family-services, as provided-in-(section-14), all-probation--officers,--clerical staff,--and--all--other--persons-employed-by-the-youth-court probation-office-become-state-employees-and-are--subject--to all-laws-concerning-state-employees.

(2)--The--rate--of--pay--of--the-persons-referred-to-in subsection--(1)--shall--be--established--according--to--the provisions--of--Title-27-chapter-18, parts 1, 2, and 3. Each person-shall-be-placed-on-a-step-of-the-established-grade-in the-state-pay-plan-that-most-closely-matches-his-pay-rate-at the-time-of-transfer.

(3)--If-a-person's-current-rate-of-pay-at-the--time--of transfer--is-greater-than-that-allowed-under-step-13-for-his assigned-grade-on-the-state-pay-plan-matrix, his-rate-of-pay must-remain-the-same-until-increases-in-the-state--pay--plan

matrix--cause--a--step-13-for-his-assigned-grade-to-match-or exceed-his-salary, at-which-time-he-shall-be-assigned-a-step 13-for-that-grade.

(4)--After-the-transfer-provided-for-in-subsection--(1), subsequent-pay-changes-due-to-reclassification--or--transfer shall--be-determined-according-to-the-pay-plan-rules-adopted by-the-department-of-administration-under-the--authority--of 2-18-301.

NEW SECTION. SECTION 14. COUNTY CONTRIBUTION FOR SALARIES AND TRAVEL OF PROTECTIVE SERVICES EMPLOYEES. (1) UPON TRANSFER OF CERTAIN FUNCTIONS OF THE COUNTY WELFARE DEPARTMENT TO THE DEPARTMENT OF FAMILY SERVICES AS PROVIDED IN [SECTION 12], THE SALARIES AND TRAVEL EXPENSES, AS PROVIDED IN 2-18-501 THROUGH 2-18-503, OF PROTECTIVE SERVICES EMPLOYEES MUST BE PAID BY THE DEPARTMENT OF FAMILY SERVICES. THE BOARD OF COUNTY COMMISSIONERS SHALL REIMBURSE THE DEPARTMENT OF FAMILY SERVICES FROM COUNTY POOR FUNDS IN AN AMOUNT EQUAL TO THAT COUNTY'S EXPENDITURES FOR SALARIES AND, TRAVEL EXPENSES, AND INDIRECT COSTS OF PROTECTIVE SERVICES EMPLOYEES IN FISCAL YEAR 1987, ADJUSTED FOR ANNUAL INFLATION.

(2) ON OR BEFORE THE 20TH DAY OF THE MONTH FOLLOWING THE MONTH FOR WHICH PAYMENTS WERE MADE FOR PROTECTIVE SERVICES EMPLOYEES' SALARIES AND, TRAVEL, AND INDIRECT COSTS, THE DEPARTMENT OF FAMILY SERVICES SHALL PRESENT TO THE BOARD

1 OF COUNTY COMMISSIONERS A CLAIM FOR THE REQUIRED
 2 REIMBURSEMENT. THE BOARD OF COUNTY COMMISSIONERS SHALL MAKE
 3 SUCH REIMBURSEMENT WITHIN 20 DAYS AFTER THE PRESENTATION OF
 4 THE CLAIM.

5 NEW SECTION. SECTION 15. YOUTH PLACEMENT COMMITTEES
 6 -- COMPOSITION. (1) IN EACH JUDICIAL DISTRICT, THE
 7 DEPARTMENT SHALL ESTABLISH A YOUTH PLACEMENT COMMITTEE FOR
 8 THE PURPOSES OF RECOMMENDING AN APPROPRIATE PLACEMENT OF A
 9 YOUTH REFERRED TO THE DEPARTMENT UNDER 41-5-403 OR COMMITTED
 10 TO THE DEPARTMENT UNDER 41-5-523.

11 (2) THE COMMITTEE CONSISTS OF NOT LESS THAN FOUR FIVE
 12 MEMBERS APPOINTED BY THE DEPARTMENT AND MUST INCLUDE A
 13 REPRESENTATIVE OF THE DEPARTMENT, A REPRESENTATIVE OF A
 14 COUNTY DEPARTMENT OF PUBLIC WELFARE, A YOUTH PROBATION
 15 OFFICER, A MENTAL HEALTH PROFESSIONAL, AND A REPRESENTATIVE
 16 OF A SCHOOL DISTRICT LOCATED WITHIN THE BOUNDARIES OF THE
 17 JUDICIAL DISTRICT. COMMITTEE MEMBERS SERVE WITHOUT
 18 COMPENSATION.

19 NEW SECTION. SECTION 16. DUTIES OF THE YOUTH
 20 PLACEMENT COMMITTEE. A YOUTH PLACEMENT COMMITTEE SHALL:

21 (1) REVIEW ALL INFORMATION RELEVANT TO THE PLACEMENT
 22 OF A YOUTH REFERRED OR COMMITTED TO THE DEPARTMENT;

23 (2) CONSIDER AVAILABLE RESOURCES APPROPRIATE TO MEET
 24 THE NEEDS OF THE YOUTH;

25 (3) CONSIDER THE TREATMENT RECOMMENDATIONS OF ANY

1 PROFESSIONAL PERSON WHO HAS EVALUATED THE YOUTH;

2 (4) RECOMMEND IN WRITING TO THE DEPARTMENT AN
 3 APPROPRIATE PLACEMENT FOR THE YOUTH IN A LICENSED FACILITY,
 4 CONSIDERING THE AGE AND TREATMENT NEEDS OF THE YOUTH AND THE
 5 RELATIVE COSTS OF CARE IN THE FACILITIES CONSIDERED
 6 APPROPRIATE FOR PLACEMENT;

7 (5) REVIEW TEMPORARY AND EMERGENCY PLACEMENTS AS
 8 REQUIRED UNDER [SECTION 18]; AND

9 (6) CONDUCT PLACEMENT REVIEWS AS REQUESTED BY THE
 10 DEPARTMENT.

11 NEW SECTION. SECTION 17. YOUTH PLACEMENT COMMITTEE TO
 12 SUBMIT RECOMMENDATION TO DEPARTMENT -- ACCEPTANCE OR
 13 REJECTION OF RECOMMENDATION BY DEPARTMENT. (1) WHEN A YOUTH
 14 HAS BEEN REFERRED OR COMMITTED TO THE DEPARTMENT FOR
 15 PLACEMENT, THE DEPARTMENT SHALL NOTIFY THE APPROPRIATE YOUTH
 16 PLACEMENT COMMITTEE. THE COMMITTEE SHALL SUBMIT IN WRITING
 17 TO THE DEPARTMENT ITS RECOMMENDATION FOR PLACEMENT OF THE
 18 YOUTH. THE COMMITTEE SHALL SEND A COPY OF THE RECOMMENDATION
 19 TO THE APPROPRIATE YOUTH COURT JUDGE.

20 (2) IF THE DEPARTMENT ACCEPTS THE COMMITTEE'S
 21 RECOMMENDATION, THE YOUTH MUST BE PLACED ACCORDING TO THE
 22 RECOMMENDATION.

23 (3) IF THE DEPARTMENT REJECTS THE COMMITTEE'S
 24 RECOMMENDATION, IT PROMPTLY SHALL NOTIFY THE COMMITTEE IN
 25 WRITING OF THE REASONS FOR REJECTING THE RECOMMENDATION. THE

1 DEPARTMENT SHALL SEND A COPY OF THE NOTICE TO THE
2 APPROPRIATE YOUTH COURT JUDGE.

3 (4) AFTER RECEIVING A NOTICE UNDER SUBSECTION (3), THE
4 COMMITTEE SHALL SUBMIT IN WRITING TO THE DEPARTMENT A
5 RECOMMENDATION FOR AN ALTERNATIVE PLACEMENT OF THE YOUTH.

6 (5) IF THE DEPARTMENT ACCEPTS THE COMMITTEE'S
7 RECOMMENDATION FOR ALTERNATIVE PLACEMENT, THE YOUTH MUST BE
8 PLACED ACCORDING TO THE RECOMMENDATION.

9 (6) IF THE DEPARTMENT REJECTS THE COMMITTEE'S
10 RECOMMENDATION FOR ALTERNATIVE PLACEMENT, THE DEPARTMENT
11 PROMPTLY SHALL NOTIFY THE COMMITTEE IN WRITING OF THE
12 REASONS FOR REJECTING THE RECOMMENDATION, AND THE YOUTH MUST
13 BE PLACED IN AN APPROPRIATE FACILITY AS DETERMINED BY THE
14 DEPARTMENT.

15 NEW SECTION. SECTION 18. TEMPORARY AND EMERGENCY
16 PLACEMENTS -- LIMIT. (1) A TEMPORARY PLACEMENT OF A YOUTH IN
17 A SHELTER CARE FACILITY OR AN EMERGENCY PLACEMENT OF A YOUTH
18 IN A YOUTH CARE FACILITY IS EXEMPT FROM THE REQUIREMENTS OF
19 [SECTION 17].

20 (2) IF A TEMPORARY OR EMERGENCY PLACEMENT OF A YOUTH
21 CONTINUES FOR 45 OR MORE DAYS, THE DEPARTMENT SHALL REFER
22 THE PLACEMENT OF THE YOUTH TO THE APPROPRIATE YOUTH
23 PLACEMENT COMMITTEE FOR REVIEW. THE COMMITTEE SHALL MAKE A
24 RECOMMENDATION FOR PLACEMENT TO THE DEPARTMENT IN ACCORDANCE
25 WITH [SECTION 17].

1 NEW SECTION. SECTION 19. CONFIDENTIALITY OF YOUTH
2 PLACEMENT COMMITTEE MEETINGS AND RECORDS. (1) MEETINGS OF A
3 YOUTH PLACEMENT COMMITTEE ARE CLOSED TO THE PUBLIC TO
4 PROTECT A YOUTH'S RIGHT TO INDIVIDUAL PRIVACY.

5 (2) INFORMATION PRESENTED TO THE COMMITTEE ABOUT A
6 YOUTH AND COMMITTEE RECORDS ARE CONFIDENTIAL AND SUBJECT TO
7 CONFIDENTIALITY REQUIREMENTS ESTABLISHED BY RULE BY THE
8 DEPARTMENT.

9 NEW SECTION. SECTION 20. STATUS OF EMPLOYEES UPON
10 TRANSFER TO THE DEPARTMENT OF FAMILY SERVICES. A CURRENT
11 STATE EMPLOYEE WHO--IS-A-MEMBER-OF-A-COLLECTIVE-BARGAINING
12 UNIT-AND WHO OCCUPIES A POSITION THAT IS TRANSFERRED TO THE
13 DEPARTMENT OF FAMILY SERVICES BECOMES AN EMPLOYEE OF THE
14 DEPARTMENT OF FAMILY SERVICES UPON SIGNING OF THE EXECUTIVE
15 ORDER PROVIDED IN [SECTION 116 117] AND MAY NOT RECEIVE A
16 REDUCTION IN WAGES UPON SUCH TRANSFER. ANY SUBSEQUENT
17 CHANGES THAT MAY AFFECT SUCH EMPLOYEE MUST BE MADE ACCORDING
18 TO EXISTING LAWS AND RULES.

19 SECTION 21. SECTION 2-18-303, MCA, IS AMENDED TO READ:
20 "2-18-303. Procedures for utilizing pay schedules. (1)
21 The pay schedules provided in 2-18-311 and 2-18-312 shall be
22 implemented as follows:

23 (a) The pay schedule provided in 2-18-311 indicates
24 the annual compensation for the fiscal year ending June 30,
25 1986, for each grade and step for positions classified under

1 the provisions of part 2 of this chapter.

2 (b) The pay schedule provided in 2-18-312 indicates
3 the annual compensation for the fiscal year ending June 30,
4 1987, for each grade and step for positions classified under
5 the provisions of part 2 of this chapter.

6 (c) Each new employee shall advance from step 1 to
7 step 2 of a grade after successfully completing 6 months of
8 probationary service. The anniversary date of an employee
9 shall be established at the end of the probationary period
10 in accordance with rules promulgated by the department.

11 (d) (i) The compensation of each employee on the first
12 day of the first pay period in fiscal year 1986 shall be
13 that amount which corresponds to the grade and step occupied
14 on the last day of the preceding fiscal year of 1985.

15 (ii) The compensation of each employee on the first day
16 of the first pay period in fiscal year 1987 shall be that
17 amount which corresponds to the grade and step occupied on
18 the last day of the fiscal year 1985.

19 (iii) In compliance with rules adopted to implement
20 this part, each employee is eligible on his anniversary date
21 to advance one step in the pay matrix for fiscal year 1987.
22 However, if the employee's anniversary date falls between
23 (inclusive) July 1 and the first day of the first pay period
24 of fiscal year 1987, he will advance one step on the first
25 day of that pay period.

1 (2) The pay schedules provided in 2-18-311 and
2 2-18-312 and the provisions of subsection (1) of this
3 section do not apply to those institutional teachers, liquor
4 store occupations, or blue-collar occupations compensated
5 under the pay schedules provided in 2-18-313, 2-18-314, or
6 2-18-315.

7 (3) The pay schedules provided in 2-18-313, 2-18-314,
8 or 2-18-315 shall be implemented as follows:

9 (a) (i) The pay schedules provided in 2-18-313
10 indicate the annual compensation for the contracted school
11 term for teachers employed by institutions under the
12 authority of the department of institutions or the
13 department of family services for fiscal years 1986 and
14 1987.

15 (ii) The compensation of each teacher on the first day
16 of the first pay period in July, 1985, shall be that amount
17 which corresponds to his level of academic achievement and
18 the step occupied on June 30, 1985.

19 (iii) The compensation of each teacher on the first day
20 of the first pay period in July, 1986, shall be that amount
21 which corresponds to his level of achievement and the step
22 occupied on June 30, 1985.

23 (b) (i) The pay schedules provided in 2-18-314
24 indicate the maximum hourly compensation for fiscal years
25 ending June 30, 1986, and June 30, 1987, for those employees

1 in liquor store occupations who have collectively bargained
2 separate classification and pay plans.

3 (ii) The compensation of each employee on the first day
4 of the first pay period in fiscal year 1986 or 1987, as the
5 case may be, shall be that amount which corresponds to that
6 grade occupied on the last day of the preceding fiscal year.

7 (c) (i) The pay schedules provided in 2-18-315
8 indicate the maximum hourly compensation for fiscal years
9 ending June 30, 1986, and June 30, 1987, for employees in
10 apprentice trades and crafts and other blue-collar
11 occupations recognized in the state blue-collar
12 classification plan who are members of units that have
13 collectively bargained separate classification and pay
14 plans.

15 (ii) The compensation of each employee on the first day
16 of the first pay period in fiscal year 1986 or 1987, as the
17 case may be, shall be that amount which corresponds to that
18 grade occupied on the last day of the preceding fiscal year.

19 (4) (a) (i) No member of a bargaining unit may receive
20 the amounts indicated in the respective pay schedules
21 provided in 2-18-311 through 2-18-315 until the bargaining
22 unit of which he is a member ratifies a completely
23 integrated collective bargaining agreement covering the
24 biennium ending June 30, 1987.

25 (ii) In the event that negotiation and ratification of

1 a completely integrated collective bargaining agreement as
2 required by subsection (4)(a)(i) of this section are not
3 completed by July 1, 1985, retroactivity to that date may be
4 negotiated.

5 (iii) In the event that negotiation and ratification of
6 a completely integrated collective bargaining agreement as
7 required by subsection (4)(a)(i) of this section are not
8 completed by July 1, 1985, members of the bargaining unit
9 involved will continue to receive the compensation they were
10 receiving as of June 30, 1985.

11 (b) Methods of administration not inconsistent with
12 the purpose of this part and necessary to properly implement
13 the pay schedules provided in 2-18-313 through 2-18-315 may
14 be provided for in collective bargaining agreements.

15 (5) The current wage or salary of an employee shall
16 not be reduced by the implementation of the pay schedules
17 provided for in 2-18-311 through 2-18-315.

18 (6) The department may authorize a separate pay
19 schedule for medical doctors if the rates provided in
20 2-18-311 and 2-18-312 are not sufficient to attract and
21 retain fully licensed and qualified physicians at the state
22 institutions.

23 (7) The department may develop programs which will
24 enable the department to mitigate problems associated with
25 difficult recruitment, retention, transfer, or other

1 exceptional circumstances. Insofar as the program may apply
2 to employees within a collective bargaining unit, it shall
3 be a negotiable subject under 39-31-305."

4 Section 22. Section 20-5-301, MCA, is amended to read:

5 "20-5-301. Elementary tuition with mandatory approval.

6 (1) Any child may be enrolled in and attend an elementary
7 school outside of the elementary district in which he
8 resides when such elementary school is located in:

9 (a) any other district of the county of his residence;

10 (b) a county adjoining his county of residence; or

11 (c) a district of another state that is adjacent to
12 the county of his residence.

13 (2) When a parent or guardian of a child wishes to
14 have his child attend a school under the provisions of this
15 section, he shall apply to the county superintendent of the
16 county of his residence before July 1 of the school fiscal
17 year for which he seeks approval except in those cases when
18 substantial changes in circumstances occurred subsequently
19 to justify later application. The application shall be made
20 on a tuition agreement form supplied by the county
21 superintendent and shall be approved, before permission to
22 enroll in and attend school outside of the district under
23 the provisions of this section may be granted, by:

24 (a) the trustees of the elementary district in which
25 the child resides;

1 (b) the trustees of the district where the child
2 wishes to attend school; and

3 (c) the county superintendent of the child's
4 residence.

5 (3) In considering the approval of a tuition
6 application, the tuition approval agents prescribed in this
7 section shall approve such application for a resident child
8 when:

9 (a) the child resides less than 3 miles from the
10 school which he wishes to attend and more than 3 miles from
11 any school of his resident elementary district;

12 (b) the child resides more than 3 miles from any
13 school of his resident elementary district and such district
14 does not provide transportation under the provisions of this
15 title;

16 (c) the child resides more than 3 miles from any
17 school of his resident elementary district, the resident
18 district does not provide transportation under the
19 provisions of this title, and school bus transportation is
20 furnished by the district operating the school which he
21 wishes to attend;

22 (d) the child is a member of a family who must send
23 another child outside of the elementary district to attend
24 high school and the child of elementary age may more
25 conveniently attend an elementary school where the high

1 school is located, provided the child resides more than 3
2 miles from an elementary school of the resident district or
3 the parent must move to the elementary district where the
4 high school is located in order to enroll the other child in
5 high school;

6 (e) the child has been declared by a court of
7 competent jurisdiction to be an abused, neglected, or
8 dependent child, as defined in 41-3-102, or a delinquent
9 youth, as defined in 41-5-103, and has been ordered to be
10 placed in a licensed ~~child-care-institution~~ YOUTH CARE
11 FACILITY which is approved by the department of ~~social-and-~~
12 ~~rehabilitation family~~ services and as a result of the order
13 the child is required to attend elementary school outside of
14 the district of his residence. For purposes of this
15 subsection the prescribed geographic relationship of the
16 receiving district to the district of residence does not
17 apply.

18 (f) the child is required to attend elementary school
19 outside the district of residence as the result of an order
20 of a court of competent jurisdiction. For the purposes of
21 this subsection (f), the following do not apply:

22 (i) the prescribed geographic relationship of the
23 receiving district to the district of residence in this
24 subsection (3); or

25 (ii) an order issued under Title 40, chapter 4, part 2.

1 (4) The trustees of the district where the school to
2 be attended is located may disapprove a tuition agreement
3 that satisfies any of the mandatory approval conditions
4 specified in subsection (3) above when they find that, due
5 to insufficient room and overcrowding, the accreditation of
6 the school would be adversely affected by the acceptance of
7 the child. In the event of disapproval, the trustees shall
8 so notify the parent in writing within 15 days of the first
9 receipt of the application."

10 Section 23. Section 20-7-404, MCA, is amended to read:

11 "20-7-404. Cooperation of state agencies. The state
12 department of health, the department of ~~institutions,--the~~
13 ~~department-of-social-and-rehabilitation family~~ services, and
14 the state school for the deaf and blind shall cooperate with
15 the superintendent of public instruction in assisting school
16 districts in discovering children in need of special
17 education. Nothing herein shall be construed to interfere
18 with the purpose and function of these state agencies."

19 Section 24. Section 20-7-422, MCA, is amended to read:

20 "20-7-422. Out-of-state tuition for special education
21 children. (1) If the trustees of any district recommend to
22 the superintendent of public instruction the attendance of
23 a child in need of special education in a special education
24 program offered outside of the state of Montana, such
25 arrangements shall not be subject to the out-of-state

1 attendance provisions of the laws governing the attendance
2 of pupils in schools outside the state of Montana.

3 (2) Whenever the attendance of a child at an
4 out-of-state special education program is approved by the
5 superintendent of public instruction, it shall be the
6 responsibility of the superintendent of public instruction,
7 in cooperation with the department of ~~social---and~~
8 ~~rehabilitation~~ family services ~~and--the--department--of~~
9 ~~institutions~~, to negotiate the program for the child and the
10 amount and manner of payment of tuition. The amount of
11 tuition shall be included as a contracted service in
12 20-7-431(1)(a)(iii)(A) in the maximum-budget-without-a-vote
13 for special education."

14 Section 25. Section 20-9-304, MCA, is amended to read:

15 "20-9-304. Eligibility for and payment of state impact
16 aid. Any district which shall have children of employees of
17 a public institution may be eligible for state impact aid
18 under the following provisions:

19 (1) An "employee" means an employee of a public
20 institution under the administration of the department of
21 institutions, as defined in 53-1-202, or the department of
22 family services, as defined in [section 2], who resides on
23 the property of such a public institution.

24 (2) A school district shall receive annually from
25 moneys available for state equalization aid \$150 for each

1 elementary pupil and \$250 for each high school pupil whose
2 parents are employees of an institution located in the
3 school district where the pupil attends school or in a
4 school district which has a tuition agreement with the
5 district where the pupil attends school.

6 (3) A district which is eligible for state impact aid
7 shall apply for such aid to the superintendent of public
8 instruction in the manner prescribed by the rules prescribed
9 by the superintendent of public instruction.

10 (4) The distribution of state impact aid shall be
11 deposited in the general fund of the district and shall not
12 be considered as a part of the state equalization aid but
13 shall be used to reduce the property tax in support of the
14 general fund of the district."

15 ~~Section-20-9-304-MCA-is-amended-to-read:~~

16 ~~"40-3-122-Petition-form-and-contents--(1)--The~~
17 ~~petition-shall-be-captioned-substantially-as-follows:~~

18 ~~District-Court-of-the-State-of-Montana~~

19 ~~For-the-County-of----~~

20 ~~Upon-the-petition-of~~ ~~Petition-for-Conciliation~~

21 ~~-----~~ ~~(Under-the-Conciliation~~

22 ~~Petitioner~~ ~~Court-law}~~

23 ~~And-concerning~~ ~~--~~

24 ~~-----and~~ ~~--~~

25 ~~-----~~ ~~--~~

1 Respondents; --
 2 To the Conciliation Court;
 3 {2}--The petition shall:
 4 {a}--allege that a controversy exists between the
 5 spouses and request the aid of the court to effect a
 6 reconciliation or an amicable settlement of the controversy;
 7 {b}--state the name and age of each minor child whose
 8 welfare may be affected by the controversy;
 9 {c}--state the name and address of the petitioner or
 10 the names and addresses of the petitioners;
 11 {d}--if the petition is presented by one spouse only,
 12 name the other spouse as a respondent and state the address
 13 of that spouse;
 14 {e}--also name as a respondent any other person who has
 15 any relation to the controversy and state the address of the
 16 person, if known to the petitioner;
 17 {f}--state such other information as the court may by
 18 rule require;
 19 {3}--The clerk of the court shall provide at the
 20 expense of the county, blank forms for petitions for filing
 21 pursuant to this chapter; The probation officers of the
 22 county and the attaches and employees of the conciliation
 23 court shall assist any person in the preparation and
 24 presentation of any such petition when any person requests
 25 such assistance. All public officers in each county shall

1 refer to the conciliation court all petitions and complaints
 2 made to them in respect to controversies within the
 3 jurisdiction of the conciliation court."

4 Section 26. Section 40-4-209, MCA, is amended to read:
 5 "40-4-209. Security or guaranty to secure support. (1)
 6 Upon verified application by a person authorized to enforce
 7 or collect a child support obligation, the department of
 8 revenue, the department of family services, or the
 9 department of social and rehabilitation services showing
 10 that a person obligated to pay child support or maintenance
 11 pursuant to court or administrative order is delinquent in
 12 an amount equal to the total of 6 months' support payments,
 13 the court may direct the obligated person to appear and show
 14 cause why an order should not be entered ordering that he
 15 post bond, give a mortgage, or provide other security or
 16 guaranty for the payment of the delinquency.

17 (2) If the court finds that a delinquency greater than
 18 the total of 6 months of support is owed and that the
 19 obligated person has the ability to post bond, give a
 20 mortgage, or provide security or other guaranty, the court
 21 may enter an order requiring him to post bond, give a
 22 mortgage, or provide security or guaranty for so long as
 23 there is a support delinquency.

24 (3) The bond or other security may be in an amount up
 25 to the total support due for a 2-year period and must be

1 approved by the court. The bond must include the name and
2 address of the issuer. Any person issuing a bond under this
3 section must, if the bond is cancelled, notify the court and
4 the person or public agency entitled to receive payments
5 under the support order.

6 (4) If the person obligated to pay child support or
7 maintenance fails to make payments as required by the court
8 or administrative order, the person or public agency
9 entitled to receive payment may recover on the bond or other
10 security. The amount recovered on the bond or other security
11 must first be applied toward satisfaction of any support
12 arrearages.

13 (5) The department of revenue shall adopt guidelines
14 which take into account the payment record of the obligated
15 person, the availability of other remedies, and other
16 considerations which it determines relevant for determining
17 whether the procedure provided in this section would carry
18 out the purpose of enforcing payments of child support or
19 would be appropriate in the circumstances. If after
20 application of the guidelines the department of revenue
21 determines an application for an order requiring security is
22 not appropriate, it may not request the order."

23 Section 27. Section 40-5-112, MCA, is amended to read:

24 "40-5-112. Contents and filing of petition for support
25 -- venue. (1) The petition shall be verified and shall state

1 the name and, so far as known to the obligee, the address
2 and circumstances of the obligor and the persons for whom
3 support is sought and all other pertinent information. The
4 obligee may include in or attach to the petition any
5 information which may help in locating or identifying the
6 obligor, including a photograph of the obligor, a
7 description of any distinguishing marks on his person, other
8 names and aliases by which he has been or is known, the name
9 of his employer, his fingerprints, and his social security
10 number.

11 (2) At the time of filing the petition, the obligee
12 shall also file with the court an affidavit as required by
13 53-4-248 stating whether he has received public assistance
14 from any source and, if he has received public assistance,
15 that he has notified the department of social and
16 rehabilitation services and the department of family
17 services in writing of the pending action.

18 (3) The petition may be filed in the appropriate court
19 of any state in which the obligee resides. The court may not
20 decline or refuse to accept and forward the petition on the
21 ground that it should be filed with some other court of this
22 or any other state where there is pending another action for
23 separation, annulment, dissolution, habeas corpus, adoption,
24 or custody between the same parties or where another court
25 has already issued a support order in some other proceeding

and has retained jurisdiction for its enforcement."

Section 28. Section 40-5-113, MCA, is amended to read:

"40-5-113. Officials to represent obligee. If this state is acting as an initiating state, the prosecuting attorney, upon the request of the court, the department of social and rehabilitation services, the department of revenue, the department of family services, a county commissioner, or other local welfare officer, shall represent the obligee in any proceeding under this part. If the prosecuting attorney neglects or refuses to represent the obligee, the attorney general may order him to comply with the request of the court or may undertake the representation."

Section 29. Section 40-5-139, MCA, is amended to read:

"40-5-139. Official to represent obligee. (1) If this state is acting either as a rendering or a registering state, the prosecuting attorney, upon the request of the court, a state department of social and rehabilitation services, a state department of family services, a county commissioner, or other local welfare official, shall represent the obligee in proceeding under this part.

(2) If the prosecuting attorney neglects or refuses to represent the obligee, the attorney general may order him to comply with the request of the court or may undertake the representation."

Section 30. Section 40-5-202, MCA, is amended to read:

"40-5-202. Department of revenue -- powers and duties regarding collection of support debt. (1) Whenever the department of social and rehabilitation services or the department of family services receives an application for public assistance on behalf of a child and it appears to the satisfaction of that department that the child has been abandoned by his parents; the child and one parent have been abandoned by the other parent; or the parent or other person who has a responsibility for the care, support, or maintenance of such child has failed or neglected to give proper care or support to the child, the department of social and rehabilitation services or the department of family services shall promptly refer the matter to the department of revenue for action under the provisions of this part, the abandonment or nonsupport statutes, or other appropriate statutes of this state to insure that the parent or other person responsible pays for the care, support, or maintenance of the dependent child.

(2) In the event that public assistance is furnished by a state or county agency or in instances where the department has contracted to collect support, the department shall become trustee of any cause of action of the dependent child or the person having legal custody of the dependent child to recover support due to that obligee from any person

1 and may bring and maintain the action either in the
2 department's own name or in the name of the obligee.

3 (3) The department has the power of attorney to act in
4 the name of any recipient of public assistance in endorsing
5 and cashing any and all drafts, checks, money orders, or
6 other negotiable instruments received by the department and
7 representing support payments for children in whose behalf
8 public assistance has been previously paid.

9 (4) For purposes of prosecuting any civil action
10 pursuant to this part, the department is a real party in
11 interest upon the payment of public assistance. No obligee
12 shall act to prejudice the rights of the department after
13 the receipt of public assistance.

14 (5) No agreement between any obligee and any obligor
15 either relieving an obligor of any duty of support or
16 purporting to settle past, present, or future support
17 obligations either as settlement or prepayment may act to
18 reduce or terminate any rights of the department to recover
19 from that obligor for support debt provided unless the
20 department has consented to the agreement in writing.

21 (6) The department may petition a court for
22 modification of any court order on the same basis as a party
23 to that action would have been entitled to do.

24 (7) The department shall be subrogated to the right of
25 the child or children or person having the care, custody,

1 and control of the child or children to maintain any civil
2 action or execute any administrative remedy existing under
3 the laws of the state to obtain reimbursement of money thus
4 spent.

5 (8) If a district court orders an amount of support to
6 be paid by a responsible parent, the department shall be
7 subrogated to the debt created by the order and the money
8 judgment shall be determined to be in favor of the
9 department. This subrogation applies both to:

10 (a) the lesser of the amount paid by the department of
11 social and rehabilitation services or the department of
12 family services in public assistance money to or for the
13 benefit of a dependent child or children of the responsible
14 parent or the amount of support contained in the court
15 order; and

16 (b) to any amount allocated to the benefit of the
17 children on the basis of providing necessities for the
18 caretaker of the children.

19 (9) The department may adopt and enforce such rules as
20 may be necessary to carry out the provisions of this part.

21 (10) The department, for the purposes mentioned in this
22 part, through its director or the director's authorized
23 representatives, may administer oaths to certify official
24 acts, issue subpoenas, and compel witnesses and the
25 production of books, accounts, documents, and evidence."

Section 31. Section 40-5-303, MCA, is amended to read:

"40-5-303. Petition for income deduction -- who may initiate. A petition for an income deduction for the payment of delinquent child support payments may be made by:

(1) the person named as the recipient of the child support payments in the child support order;

(2) the child or the guardian of the child named in the child support order; or

(3) the department of revenue, the department of family services, or the department of social and rehabilitation services of the state of Montana."

Section 32. Section 40-6-107, MCA, is amended to read:

"40-6-107. Determination of father and child relationship -- who may bring action. (1) Any interested party may bring an action for the purpose of determining the existence or nonexistence of the father and child relationship presumed pursuant to 40-6-105.

(2) An action to determine the existence of the father and child relationship with respect to a child who has no presumed father under 40-6-105 may be brought by the child, the mother or personal representative of the child, the department of social and rehabilitation services or its appropriate local affiliate, the department of family services or its appropriate local affiliate, the personal representative or a parent of the mother if the mother has

died, a man alleged or alleging himself to be the father, or the personal representative or a parent of the alleged father if the alleged father has died or is a minor.

(3) Regardless of its terms, an agreement, other than an agreement approved by the court in accordance with 40-6-114(2), between an alleged or presumed father and the mother or child does not bar an action under this section.

(4) If an action under this section is brought before the birth of the child, all proceedings shall be stayed until after the birth, except service of process and the taking of depositions to perpetuate testimony."

Section 33. Section 40-6-110, MCA, is amended to read:

"40-6-110. Parties. The child shall be made a party to the action. If he is a minor, he shall be represented by his general guardian or a guardian ad litem appointed by the court. The child's mother or father may not represent the child as guardian or otherwise. The court may appoint the department of ~~social-and-rehabilitation~~ family services or ~~the-appropriate-county-welfare--department~~ as guardian ad litem for the child. The natural mother, each man presumed to be the father under 40-6-105, and each man alleged to be the natural father shall be made parties or, if not subject to the jurisdiction of the court, shall be given notice of the action in a manner prescribed by the court and an opportunity to be heard. The court may align the parties."

1 Section 34. Section 40-8-103, MCA, is amended to read:

2 "40-8-103. Definitions. As used in this chapter,
3 unless the context otherwise requires the following
4 definitions apply:

5 (1) "Adoption" means the act of creating the legal
6 relationship between parent and child when it does not exist
7 genetically.

8 (2) "Adoptive parent" means an adult who has become
9 the mother or father of a child through the legal process of
10 adoption.

11 (3) "Agency" means a public or voluntary agency
12 licensed by any jurisdiction within the United States and
13 expressly empowered to place children as a preliminary to a
14 possible adoption.

15 (4) "Birth parent" means the mother or father of
16 genetic origin of a child but does not include a putative
17 father of a child.

18 (5) "Child" means any person under 18 years of age.

19 (6) "Court" means a Montana district court or a tribal
20 court of any Montana Indian reservation.

21 (7) "Department" means the department of social--and
22 rehabilitation family services, as established and provided
23 for in ~~Title 27, chapter 157, part 22~~ [section 2].

24 (8) "Extended family member" means an adult who is the
25 child's grandparent, aunt or uncle, brother or sister, niece

1 or nephew, or first cousin.

2 (9) "Parent" means the birth or adoptive mother or the
3 birth, adoptive, or legal father whose parental rights have
4 not been terminated.

5 (10) "Placement for adoption" means the transfer of
6 physical custody of a child with respect to whom all
7 parental rights have been terminated and who is otherwise
8 legally free for adoption to a person who intends to adopt
9 the child.

10 (11) "Relinquishment" means the informed and voluntary
11 release in writing of all parental rights with respect to a
12 child by a parent to an agency or individual pursuant to
13 40-6-135 or 40-8-109, whichever is applicable."

14 Section 35. Section 40-8-126, MCA, is amended to read:

15 "40-8-126. Confidentiality of record and proceedings.

16 (1) Unless the court shall otherwise order, all hearings
17 held in proceedings under this part shall be confidential
18 and shall be held in closed court without admittance of any
19 person other than interested parties and their counsel.

20 (2) All papers and records pertaining to the adoption
21 shall be kept as a permanent record of the court and
22 withheld from inspection. No person shall have access to
23 such records except:

24 (a) for good cause shown, on order of the judge of the
25 court in which the decree of adoption was entered; or

(b) as provided in 50-15-206.

(3) All files and records pertaining to said adoption proceedings in the county departments of public welfare, the department of social and rehabilitation services, the department of family services, or any authorized agencies shall be confidential and withheld from inspection except upon order of court for good cause shown or as provided in 50-15-206."

Section 36. Section 41-3-102, MCA, is amended to read:

"41-3-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Child" or "youth" means any person under 18 years of age.

(2) An "abused or neglected child" means a child whose normal physical or mental health or welfare is harmed or threatened with harm by the acts or omissions of his parent or other person responsible for his welfare.

(3) "Harm to a child's health or welfare" means the harm that occurs whenever the parent or other person responsible for the child's welfare:

(a) inflicts or allows to be inflicted upon the child physical or mental injury, including injuries sustained as a result of excessive corporal punishment;

(b) commits or allows to be committed a sexual assault against the child or exploits the child or allows the child

to be exploited for sexual purposes or commits or allows to be committed the act of sexual abuse of children as defined in subsection (1) of 45-5-625;

(c) causes failure to thrive or otherwise fails to supply the child with adequate food or fails to supply clothing, shelter, education, or health care, though financially able to do so or offered financial or other reasonable means to do so;

(d) abandons the child by leaving him under circumstances that make reasonable the belief that the parent or other person does not intend to resume care of the child in the future or by willfully surrendering physical custody for a period of 6 months and during that period does not manifest to the child and the person having physical custody of the child a firm intention to resume physical custody or to make permanent legal arrangements for the care of the child; or

(e) is unknown and has been unknown for a period of 90 days and reasonable efforts to identify and locate the parents have failed.

(4) "Adequate health care" means any medical or nonmedical remedial health care, including the prevention of the withholding of medically indicated treatment, permitted or authorized under state law.

(5) "Withholding of medically indicated treatment"

1 means the failure to respond to an infant's life-threatening
 2 conditions by providing treatment (including appropriate
 3 nutrition, hydration, and medication) that, in the treating
 4 physician's or physicians' reasonable medical judgment, will
 5 be most likely to be effective in ameliorating or correcting
 6 all such conditions. However, the term does not include the
 7 failure to provide treatment (other than appropriate
 8 nutrition, hydration, or medication) to an infant when, in
 9 the treating physician's or physicians' reasonable medical
 10 judgment:

11 (a) the infant is chronically and irreversibly
 12 comatose;

13 (b) the provision of such treatment would:

14 (i) merely prolong dying;

15 (ii) not be effective in ameliorating or correcting all
 16 of the infant's life-threatening conditions; or

17 (iii) otherwise be futile in terms of the survival of
 18 the infant; or

19 (c) the provision of such treatment would be virtually
 20 futile in terms of the survival of the infant and the
 21 treatment itself under such circumstances would be inhumane.

22 For purposes of this subsection, "infant" means an infant
 23 less than 1 year of age or an infant 1 year of age or older
 24 who has been continuously hospitalized since birth, who was
 25 born extremely prematurely, or who has a long-term

1 disability. The reference to less than 1 year of age may not
 2 be construed to imply that treatment should be changed or
 3 discontinued when an infant reaches 1 year of age or to
 4 affect or limit any existing protections available under
 5 state laws regarding medical neglect of children over 1 year
 6 of age.

7 (6) "Threatened harm" means imminent risk of harm.

8 (7) "A person responsible for a child's welfare" means
 9 the child's parent, guardian, or foster parent; an employee
 10 of a public or private residential institution, facility,
 11 home, or agency; or any other person legally responsible for
 12 the child's welfare in a residential setting.

13 (8) "Physical injury" means death, permanent or
 14 temporary disfigurement, or impairment of any bodily organ
 15 or function.

16 (9) "Mental injury" means an identifiable and
 17 substantial impairment of the child's intellectual or
 18 psychological functioning.

19 (10) "Dependent youth" means a youth:

20 (a) who is abandoned;

21 (b) who is without parents or guardian or not under
 22 the care and supervision of a suitable adult;

23 (c) who has no proper guidance to provide for his
 24 necessary physical, moral, and emotional well-being;

25 (d) who is destitute;

(e) who is dependent upon the public for support; or
 (f) whose parent or parents have voluntarily
 relinquished custody of the child and whose legal custody
 has been transferred to a licensed agency.

(11) "Youth in need of care" means a youth who is
 dependent, abused, or neglected as defined in this section.

~~{12} "Supervision" means the authority granted by a
 youth court or by a voluntary agreement of a parent to
 determine the foster care placement of a child and the
 length of stay of a child in foster care and provide for the
 needs of a child under subsection (1) of 41-3-1122.~~

~~{13} (12) "Department" means the department of social
 and rehabilitation family services provided for in 2-15-2201
 [section 2].~~

~~{14} (13) "Limited emancipation" means a status
 conferred on a dependent youth by a court after a
 dispositional hearing in accordance with 41-3-406 under
 which the youth is entitled to exercise some but not all of
 the rights and responsibilities of a person who is 18 years
 of age or older.~~

(14) "Social worker" means an employee of the
 department of family services whose duties generally involve
 the provision of either child or adult protective services,
 or both."

Section 37. Section 41-3-108, MCA, is amended to read:

"41-3-108. Child protective teams. The county attorney
 or the ~~county-welfare~~ department of family services may
 convene one or more temporary or permanent interdisciplinary
 child protective teams. These teams may assist in assessing
 the needs of, formulating and monitoring a treatment plan
 for, and coordinating services to the child and his family.
 The supervisor of child protective services ~~of the county~~
~~welfare department~~ in a local service area or his designee
 shall serve as the team's coordinator. Members shall include
 a social worker, a member of a local law enforcement agency,
 a representative of the medical profession, and a county
 attorney."

Section 38. Section 41-3-204, MCA, is amended to read:

"41-3-204. Admissibility and preservation of evidence.

(1) In any proceeding resulting from a report made pursuant
 to the provisions of this chapter or in any proceeding where
 the report or its contents are sought to be introduced into
 evidence, the report or its contents or any other fact
 related to the report or to the condition of the child who
 is the subject of the report shall not be excluded on the
 ground that the matter is or may be the subject of a
 privilege related to the examination or treatment of the
 child and granted in Title 26, chapter 1, part 8, except the
 attorney-client privilege granted by 26-1-803.

(2) Any person or official required to report under

41-3-201 may take or cause to be taken photographs of the area of trauma visible on a child who is the subject of a report. The cost of photographs taken under this section shall be paid by the ~~county-child-protective-service--agency~~ department.

(3) When any person required to report under 41-3-201 finds visible evidence that a child has suffered abuse or neglect, he must include in his report either a written description or photographs of the evidence.

(4) A physician, either in the course of his providing medical care to a minor or after consultation with child protective services, the county attorney, or a law enforcement officer may require x-rays to be taken when in his professional opinion there is a need for radiological evidence of suspected abuse or neglect. X-rays may be taken under this section without the permission of the parent or guardian. The cost of the x-rays ordered and taken under this section shall be paid by the county child protective service agency.

(5) All written, photographic, or radiological evidence gathered under this section shall be sent to the local ~~child--protective--services--agency~~ affiliate of the department at the time the written confirmation report is sent or as soon thereafter as is possible."

Section 39. Section 41-3-205, MCA, is amended to read:

"41-3-205. Confidentiality. (1) The case records of the department of social and rehabilitation services, the department of family services and its local affiliate, the county welfare department, the county attorney, and the court concerning actions taken under this chapter and all records concerning reports of child abuse and neglect shall be kept confidential except as provided by this section. Any person who permits or encourages the unauthorized dissemination of their contents is guilty of a misdemeanor.

(2) Records may be used by interagency interdisciplinary child protective teams as authorized under 41-3-108 for the purposes of assessing the needs of the child and family, formulating a treatment plan, and monitoring the plan. Members of the team are required to keep information about the subject individuals confidential.

(3) Records may be disclosed to a court for in camera inspection if relevant to an issue before it. The court may permit public disclosure if it finds such disclosure to be necessary for the fair resolution of an issue before it.

(4) Nothing in this section is intended to affect the confidentiality of criminal court records or records of law enforcement agencies."

Section 40. Section 41-3-208, MCA, is amended to read:

"41-3-208. Rulemaking authority. The department of ~~social-and-rehabilitation~~ family services shall adopt rules

to govern the procedures used by department personnel ~~and-by employees--of--county--welfare--departments~~ in preparing and processing reports and in making investigations authorized by this chapter or 41-3-1123."

Section 41. Section 41-3-301, MCA, is amended to read:

"41-3-301. Emergency protective service. (1) Any child protective social worker of the department of ~~social-and-rehabilitation~~ family services, ~~the---county---welfare department;~~ a peace officer, or the county attorney who has reason to believe any youth is in immediate or apparent danger of harm may immediately remove the youth and place him in a protective facility. The department may make a request for further assistance from the law enforcement agency or take appropriate legal action. The person or agency placing the child shall notify the parents, parent, guardian, or other person having legal custody of the youth at the time the placement is made or as soon thereafter as possible.

(2) No child who has been removed from his home or any other place for his protection or care may be placed in a jail.

(3) A petition shall be filed within 48 hours of emergency placement of a child unless arrangements acceptable to the agency for the care of the child have been made by the parents.

(4) The department of ~~social-and-rehabilitation~~ family services ~~and--the-county-welfare-department~~ shall make such necessary arrangements for the youth's well-being as are required prior to the court hearing."

Section 42. Section 41-3-302, MCA, is amended to read:

"41-3-302. Responsibility of providing protective services. (1) The department of ~~social--and--rehabilitation~~ family services ~~and-the-county-welfare-department~~ shall have the primary responsibility to provide the protective services authorized by this chapter and shall have the authority pursuant to this chapter to take temporary or permanent custody of a child when ordered to do so by the court, including the right to give consent to adoption.

(2) The ~~county--welfare~~ department shall respond to emergency reports of known or suspected child abuse or neglect 24 hours a day, 7 days a week."

Section 43. Section 41-3-401, MCA, is amended to read:

"41-3-401. Abuse, neglect, and dependency petitions. (1) The county attorney, attorney general, or an attorney hired by the county ~~welfare-department-or-office-of-human services~~ WELFARE DEPARTMENT OR OFFICE OF HUMAN SERVICES shall be responsible for filing all petitions alleging abuse, neglect, or dependency. The county attorney or attorney general, or an attorney hired by the county ~~welfare department-or-office-of-human-services~~ WELFARE DEPARTMENT OR

OFFICE OF HUMAN SERVICES with the written consent of the county attorney or attorney general, may require all state, county, and municipal agencies, including law enforcement agencies, to conduct such investigations and furnish such reports as may be necessary. Investigations as to financial status may not be made prior to the adjudicatory hearing provided for in 41-3-404.

(2) Upon receipt of a petition, the court shall set a date for an adjudicatory hearing on the petition. Such petitions shall be given preference by the court in setting hearing dates and must be heard within 20 days of the filing of the petition.

(3) A petition alleging abuse, neglect, or dependency is a civil action brought in the name of the state of Montana. The rules of civil procedure shall apply except as herein modified. Proceedings under a petition are not a bar to criminal prosecution.

(4) The parents or parent, guardian, or other person or agency having legal custody of the youth named in the petition, if residing in the state, shall be served personally with a copy of the petition and summons at least 5 days prior to the date set for hearing. If such person or agency resides out of state or is not found within the state, the rules of civil procedure relating to service of process in such cases shall apply.

(5) In the event service cannot be made upon the parents or parent, guardian, or other person or agency having legal custody, the court shall appoint an attorney to represent the unavailable party where in the opinion of the court the interests of justice require.

(6) If a parent of the child is a minor, notice shall be given to the minor parent's parents or guardian, and if there is no guardian the court shall appoint one.

(7) Any person interested in any cause under this chapter has the right to appear.

(8) Except where the proceeding is instituted or commenced ~~by a representative--of~~ at the request of the department of ~~social-and-rehabilitation~~ family services, a citation shall be issued and served upon a representative of the department prior to the court hearing.

(9) The petition shall:

(a) state the nature of the alleged abuse, neglect, or dependency;

(b) state the full name, age, and address of the youth and the name and address of his parents or guardian or person having legal custody of the youth;

(c) state the names, addresses, and relationship to the youth of all persons who are necessary parties to the action.

(10) The petition may ask for the following relief:

(a) temporary investigative authority and protective services;

(b) temporary legal custody;

(c) termination of the parent-child legal relationship;

(d) any combination of the above or such other relief as may be required for the best interest of the youth.

(11) The petition may be modified for different relief at any time within the discretion of the court.

(12) The court may at any time on its own motion or the motion of any party appoint counsel for any indigent party."

Section 44. Section 41-3-402, MCA, is amended to read:

"41-3-402. Petition for temporary investigative authority and protective services. (1) In cases where it appears that a youth is abused or neglected or is in danger of being abused or neglected, the county attorney, attorney general, or an attorney hired by the county ~~welfare department-or-office-of-human-services~~ WELFARE DEPARTMENT OR OFFICE OF HUMAN SERVICES may file a petition for temporary investigative authority and protective services.

(2) A petition for temporary investigative authority and protective services shall state the specific authority requested and the facts establishing probable cause that a youth is abused or neglected or is in danger of being abused or neglected.

(3) The petition for temporary investigative authority and protective services shall be supported by an affidavit signed by the county attorney, attorney general, or an ~~attorney hired by the county welfare-department-attorney, or office-of-human--services--attorney~~ WELFARE DEPARTMENT OR OFFICE OF HUMAN SERVICES or a department of ~~social-and rehabilitation~~ family services report stating in detail the facts upon which the request is based."

Section 45. Section 41-3-607, MCA, is amended to read:

"41-3-607. Petition for termination -- separate hearing -- right to counsel -- no jury trial. (1) The termination of a parent-child legal relationship shall be considered only after the filing of a petition pursuant to 41-3-401 alleging the factual grounds for termination. Termination of a parent-child legal relationship shall be considered at a dispositional hearing held pursuant to 41-3-406, following or together with an adjudicatory hearing held pursuant to 41-3-404, within 180 days after the filing of the petition.

(2) After the county attorney, attorney general, or an attorney hired by the county ~~welfare-department-or-office-of-human---services~~ WELFARE DEPARTMENT OR OFFICE OF HUMAN SERVICES files a petition for termination of a parent-child relationship pursuant to this part, parents shall be advised of the right to counsel, and counsel shall be appointed in

1 accordance with 41-3-401(12).

2 (3) A guardian ad litem shall be appointed to
3 represent the child's best interests in any hearing
4 determining the involuntary termination of the parent-child
5 legal relationship. The guardian ad litem shall continue to
6 represent the child until the child is returned home or
7 placed in an appropriate permanent placement. If a
8 respondent parent is a minor, a guardian ad litem must be
9 appointed to serve the minor parent in addition to any
10 counsel requested by the parent.

11 (4) There is no right to a jury trial at proceedings
12 held to consider the termination of a parent-child legal
13 relationship."

14 Section 46. Section 41-3-1102, MCA, is amended to
15 read:

16 "41-3-1102. Definitions. For the purposes of this
17 part, the following definitions apply:

18 (1) "Child-care agency" means a youth care facility in
19 which substitute care is provided to 13 or more children or
20 youth.

21 (2) "Department" means the department of ~~social and~~
22 ~~rehabilitation family services provided for in [section 2].~~

23 (3) "Operator of a youth care facility" means any
24 person owning or operating a youth care facility into which
25 he takes any child or children for the purpose of caring for

1 them and maintaining them and for which care and maintenance
2 he receives money or other consideration of value, and which
3 child is neither his son, daughter, nor ward, except that
4 this part shall not apply when any person accepts such care
5 and custody of such child on a temporary basis and simply as
6 a temporary accommodation for the parent or parents,
7 guardian, or relative of such child.

8 (4) "Person" means any individual, partnership,
9 voluntary association, or corporation.

10 (5) "Substitute care" means full-time care of youth in
11 a residential setting for the purpose of providing food,
12 shelter, security and safety, guidance, direction, and if
13 necessary, treatment to youth who are removed from or
14 without the care and supervision of their parents or
15 guardian.

16 (6) "Youth care facility" means a facility, licensed
17 ~~in accordance with 41-3-1141 through 41-3-1143, by the~~
18 ~~department or by the appropriate licensing authority in~~
19 ~~another state and in which facility~~ substitute care is
20 provided to youth. ~~and The term~~ includes youth foster homes,
21 youth group homes, and child-care agencies.

22 (7) "Youth foster home" means a youth care facility in
23 which substitute care is provided to one to six children or
24 youth other than the foster parents' own children,
25 stepchildren, or wards.

(8) "Youth group home" means a youth care facility in which substitute care is provided to 7 to 12 children or youth."

Section 47. Section 41-3-1103, MCA, is amended to read:

"41-3-1103. Powers and duties of department. (1) The department shall:

(a) administer all state and federal funds allocated to the department for youth foster homes, youth group homes, and child-care agencies for youth in need of care, youth in need of supervision, and delinquent youth;

(b) exercise licensing authority over all youth foster homes, youth group homes, and child-care agencies;

(c) collect and disseminate information relating to youth in need of care, youth in need of supervision, and delinquent youth;

(d) provide for training of program personnel delivering services;

(e) in cooperation with the department of institutions and youth care facility providers, develop and implement standards for youth care facilities;

~~(f) apportion and allocate placement budgets to all judicial districts service areas;~~

~~(g)~~(F) maintain adequate data on placements it funds in order to keep the legislature properly informed of the

following:

(i) the breakdown of youth in need of care, youth in need of supervision, and delinquent youth by category in out-of-home care facilities;

(ii) the cost per facility for services rendered;

(iii) the type and level of care of services provided by each facility;

(iv) a profile of out-of-home care placements by level of care; and

(v) a profile of public institutional placements; and

~~(h)~~(G) administer all funds allocated to the department for residential alcohol and drug abuse treatment for indigent youths in need of care, indigent youths in need of supervision, and indigent delinquent youths who require such treatment.

(2) The department may:

(a) enter into contracts with nonprofit corporations or associations or private organizations to provide facilities and services for youth in need of care, youth in need of supervision, and delinquent youth;

(b) accept gifts, grants, and donations of money and property from public and private sources to initiate and maintain community-based services to youth;

(c) adopt rules to carry out the administration and purposes of this part.

1 (3) The department shall pay for room, board,
 2 clothing, personal needs, transportation, and treatment in
 3 youth foster care homes and youth group homes other--than
 4 aftercare--homes for youths committed to the department of
 5 institutions who need to be placed in such facilities.
 6 Youths--committed--to--the--department--of--institutions--and
 7 placed-in-residential-facilities-other-than-those--described
 8 above--shall--not--be--the--financial--responsibility-of-the
 9 department-of-social-and-rehabilitation-services-unless-such
 10 placements-have-been-approved-in-advance-by--the--department
 11 of-social-and-rehabilitation-services."

12 Section 48. Section 41-3-1104, MCA, is amended to
 13 read:

14 "41-3-1104. Aftercare facilities. The department of
 15 institutions family services may establish, maintain, and
 16 administer youth correction correctional facilities,
 17 evaluation facilities, mental health facilities and
 18 services, aftercare programs, and aftercare facilities for
 19 the care, custody, and treatment of youth who have been
 20 committed to the department of-institutions."

21 Section 49. Section 41-3-1112, MCA, is amended to
 22 read:

23 "41-3-1112. Petition for placement in facility or
 24 home. Any person between the ages of 18 and 21 years who is
 25 still within the jurisdiction of the youth court or any

1 person under the age of 18 years may petition the youth
 2 court of a district in which a licensed youth care facility
 3 has been established to be placed in such a facility ~~or--in~~
 4 ~~any--other-home-approved-by-the-court~~ for any period of time
 5 up to the person's 21st birthday."

6 Section 50. Section 41-3-1114, MCA, is amended to
 7 read:

8 "41-3-1114. Continuing jurisdiction of youth court.
 9 The youth court ~~placing~~ committing a delinquent youth or a
 10 ~~child~~ youth in need of supervision ~~in-a-youth-care-facility~~
 11 to the department of family services retains continuing
 12 jurisdiction over the youth until the youth becomes 21 years
 13 of age or is otherwise discharged by ~~order-of-the-court~~ the
 14 department after notice to the youth court of original
 15 jurisdiction."

16 Section 51. Section 41-3-1115, MCA, is amended to
 17 read:

18 "41-3-1115. Foster care review committee. (1) In every
 19 judicial district the youth court judge, in consultation
 20 with the department, shall appoint a foster care review
 21 committee. The members of the committee must be willing to
 22 act without compensation. The committee shall be composed of
 23 not less than five or more than seven members. The members
 24 shall include:

25 (a) a representative of the department;

~~(b)--a-representative-of-the-youth-court;~~

(B) A REPRESENTATIVE OF THE YOUTH COURT;

~~(c)(b)(C)~~ someone knowledgeable in the needs of children in foster care placements who is not employed by the department or the youth court;

~~(d)(c)(D)~~ a representative of a local school district; and

~~(e)(d)(E)~~ if there is one, the foster parent of the child whose care is under review. The foster parent's appointment is effective only for and during that review.

(2) When a child is in foster care under the supervision of the department ~~or--the--youth-court~~ or if payment for care is made pursuant to 41-3-1122 ~~or 41-3-1121(2)~~, the committee shall conduct a review of the foster care status of the child. The review must be conducted within a time limit established by the department. The time limit must comply with federal law and may not be later than the 12-month anniversary date of the child's placement into foster care.

(3) The department shall provide the committee with guidelines for operation of the committee. Within 30 days of the foster care review, the committee shall provide the youth court and the department a written report of its findings and recommendations for further action by the youth court or the department.

(4) The department shall adopt rules necessary to carry out the purposes of this section.

(5) Because of the individual privacy involved, meetings of the committee, reports of the committee, and information on individuals' cases shared by committee members is confidential and subject to the confidentiality requirements of the department.

(6) The committee is subject to the call of the youth court judge to meet and confer with him on all matters pertaining to the foster care of a child before the youth court."

Section 52. Section 41-3-1122, MCA, is amended to read:

"41-3-1122. Payment for support of youth in need of care, youth in need of supervision, or delinquent youth -- reimbursement by county. (1) Whenever a youth who is a youth in need of care, a youth in need of supervision, or a delinquent youth is placed by the ~~youth--court--or--the~~ department of family services in a youth care facility, the department shall pay, within the limits of the appropriation for that purpose, a foster care payment to the youth care facility at a rate established by the department for board, clothing, personal needs, treatment, and room of the youth.

(2) On or before the 20th of each month the department shall present a claim to the county of residence of the

youth for no more than one-half OF THE NONFEDERAL SHARE OF
the payments so made during the month. The county must make
reimbursement to the department within 20 days after the
claim is presented.

(3) THE--COUNTY--SHALL--REIMBURSE--THE--DEPARTMENT--FOR
ONE-HALF-OF-THE-PAYMENTS-NOT-REIMBURSED-TO-THE-DEPARTMENT-BY
THE-FEDERAL-GOVERNMENT-UNTIL-THE-COUNTY-EXPENDITURES-REACH-A
LEVEL-EQUAL-TO-THE-COUNTY'S-LEVEL-OF-EXPENDITURES-FOR-FOSTER
CARE-IN-FISCAL-YEAR-1987--ADJUSTED-FOR-ANNUAL-INFLATION,
EXCEPT EXCEPT AS PROVIDED IN SUBSECTION (4)--IF, WHEN A
COUNTY'S LEVEL OF EXPENDITURE FOR ANY YEAR REACHES THE LEVEL
OF EXPENDITURE REIMBURSEMENT FOR FOSTER CARE IN FISCAL YEAR
1987, THE--COUNTY--SHALL--REIMBURSE--THE--DEPARTMENT--FOR
ONE-QUARTER-OF-THE--PAYMENTS--ABOVE--THE--FISCAL--YEAR--1987
EXPENDITURE--LEVEL THE COUNTY HAS NO FURTHER OBLIGATION FOR
FOSTER CARE EXPENDITURES.

(4) IF A COUNTY'S LEVEL OF EXPENDITURE FOR FOSTER CARE
IN FISCAL YEAR 1987 IS \$10,000 OR LESS, THE COUNTY'S LEVEL
OF EXPENDITURE FOR PURPOSES OF DETERMINING THE COUNTY'S
PERCENTAGE-OF REIMBURSEMENT SPECIFIED IN SUBSECTION (3) IS
THE LEVEL OF EXPENDITURES FOR FISCAL YEAR 1987 OR THE
AVERAGE OF EXPENDITURES FOR FISCAL YEARS 1984 THROUGH 1987,
WHICHEVER IS LESS.

(5) The department shall conduct or arrange for the
review required under 41-3-1115 of a youth placed in a youth

care facility if the youth is placed under-the-supervision
of-the-department--or--placed by the department or--the
department--pays--for--the-care-of-the-youth-as-set-forth-in
this-section."

Section 53. Section 41-3-1123, MCA, is amended to
read:

"41-3-1123. Investigation of parents' or guardians'
financial ability -- financial status report.
(1) (A) Whenever a disposition under 41-3-404, 41-5-403,
41-5-523, or 41-5-524 involves placement in a youth care
facility or--youth-correctional-facility and the department
is responsible for all or part of the cost of such
placement, the--probation-officer-or the court shall notify
the-department-and order the county--welfare department in
the--youth's-county-of-residence to conduct an investigation
of the financial status of the youth's parents or
guardianship assets. Following--an-adjudicatory-hearing-in
which-a-youth-is-determined-to-be-a-delinquent--youth--or--a
youth-in-need-of-supervision, the-court-may-order-the-county
welfare--department---to---conduct---a---financial---status
investigation.

(B) WHENEVER A DISPOSITION UNDER 41-5-403, 41-5-523,
OR 41-5-524 INVOLVES PLACEMENT IN A YOUTH CARE FACILITY OR
YOUTH CORRECTIONAL FACILITY AND THE DEPARTMENT IS
RESPONSIBLE FOR ALL OR PART OF THE COST OF SUCH PLACEMENT,

1 THE COURT SHALL ORDER THE PROBATION OFFICER TO CONDUCT AN
 2 INVESTIGATION OF THE FINANCIAL STATUS OF THE YOUTH'S PARENTS
 3 OR GUARDIANSHIP ASSETS.

4 (2) (a) Upon receipt of the order, the county-welfare
 5 department shall make an investigation for the purpose of
 6 ascertaining the residence of the parents or guardian of the
 7 youth and the financial ability of the parents or the
 8 adequacy of the guardianship assets to pay the cost of
 9 supporting the youth:

10 (i) in the youth care facility or youth correctional
 11 facility; or

12 (ii) as a child of limited emancipation, as may be
 13 ordered under 41-3-406.

14 (b) A written report of the investigation shall be
 15 filed with the court having jurisdiction, and the department
 16 ~~of-social-and-rehabilitation-services,-and-the-department-of~~
 17 ~~institutions~~, and a copy shall be sent to the parents or
 18 guardian of the youth or to any other party to the
 19 proceeding.

20 (3) A copy of the written report shall be provided to
 21 all parties to the proceeding before the time set for the
 22 dispositional hearing."

23 Section 54. Section 41-5-103, MCA, is amended to read:

24 "41-5-103. Definitions. For the purposes of the
 25 Montana Youth Court Act, unless otherwise stated the

1 following definitions apply:

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

4 (2) "Agency" means any entity of state or local
 5 government authorized by law to be responsible for the care
 6 or rehabilitation of youth.

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

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

10 (5) "Department" means the department of family
 11 services provided for in [section 2].

12 ~~†5†~~(6) "Foster home" means a private residence
 13 approved licensed by the court department for placement of a
 14 youth.

15 ~~†6†~~(7) "Guardianship" means the status created and
 16 defined by law between a youth and an adult with the
 17 reciprocal rights, duties, and responsibilities.

18 ~~†7†~~(8) "Judge", when used without further
 19 qualification, means the judge of the youth court.

20 ~~†8†~~(9) (a) "Legal custody" means the legal status
 21 created by order of a court of competent jurisdiction that
 22 gives a person the right and duty to:

23 (i) have physical custody of the youth;

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

1 (iii) protect, train, and discipline the youth; and
 2 (iv) provide the youth with food, shelter, education,
 3 and ordinary medical care.

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

7 ~~{9}{10}~~ "Parent" means the natural or adoptive parent
 8 but does not include a person whose parental rights have
 9 been judicially terminated, nor does it include the putative
 10 father of an illegitimate youth unless his paternity is
 11 established by an adjudication or by other clear and
 12 convincing proof.

13 ~~{11} "Probation--officer"--means--an--employee--of--the~~
 14 ~~department--whose--duties--generally--involve--the--provision--of~~
 15 ~~services--to--alleged--and--adjudicated--youth--in--need--of~~
 16 ~~supervision--or--delinquent--youth,--as--provided--in--this~~
 17 ~~chapter;~~

18 ~~{10}{12}{11}~~ "Youth" means an individual who is less
 19 than 18 years of age without regard to sex or emancipation.

20 ~~{11}{13}{12}~~ "Youth court" means the court established
 21 pursuant to this chapter to hear all proceedings in which a
 22 youth is alleged to be a delinquent youth, a youth in need
 23 of supervision, or a youth in need of care and includes the
 24 youth court, the youth court judge, and probation--officers
 25 any court-appointed staff PROBATION OFFICERS.

1 ~~{12}{14}{13}~~ "Delinquent youth" means a youth:

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

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

7 ~~{13}{15}{14}~~ "Youth in need of supervision" means a
 8 youth who commits an offense prohibited by law which, if
 9 committed by an adult, would not constitute a criminal
 10 offense, including but not limited to a youth who:

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

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

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

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

21 ~~{14}{16}{15}~~ "Youth in need of care" means a youth as
 22 defined in 41-3-102.

23 ~~{15}{17}{16}~~ "Custodian" means a person other than a
 24 parent or guardian to whom legal custody of the youth has
 25 been given but does not include a person who has only

1 physical custody.

2 ~~(16)~~(17) "Necessary parties" include the youth, his
3 parents, guardian, custodian, or spouse.

4 ~~(17)~~(18) "State youth correctional facility" means
5 a residential facility for the rehabilitation of delinquent
6 youth such as Pine Hills school in Miles City, and Mountain
7 View school in Helena.

8 ~~(18)~~(19) "Shelter care" means the temporary
9 substitute care of youth in physically unrestricting
10 facilities.

11 ~~(19)~~(20) "Detention" means the temporary substitute
12 care of youth in physically restricting facilities.

13 ~~(20)~~(21) "Restitution" means payments in cash to
14 the victim or with services to the victim or the general
15 community when these payments are made under--the
16 jurisdiction of a youth court proceeding pursuant to an
17 informal adjustment, consent decree, or other youth court
18 order.

19 ~~(21)~~(22) "Substitute care" means full-time care of
20 youth in a residential setting for the purpose of providing
21 food, shelter, security and safety, guidance, direction, and
22 if necessary, treatment to youth who are removed from or
23 without the care and supervision of their parents or
24 guardian. ~~Nothing in this definition is intended to include~~
25 ~~juvenile correctional facilities, evaluation facilities,~~

1 ~~mental--health--facilities--and--services,--and--aftercare~~
2 ~~programs operated by the department of institutions.~~

3 ~~(24)~~(23) "Serious juvenile offender" means a youth who
4 has committed an offense against the person, an offense
5 against property, or an offense involving dangerous drugs
6 which would be considered a felony offense if committed by
7 an adult."

8 ~~Section 50. Section 41-5-104, MCA, is amended to read:~~

9 ~~"41-5-104. County commissioners authorized to provide~~
10 ~~funds:--(1)--The county commissioners of all counties are~~
11 ~~hereby authorized, empowered, and required to provide the~~
12 ~~necessary funds and to make all needful appropriations to~~
13 ~~carry out the provisions of this chapter.~~

14 ~~(2)--Each The department shall annually bill each~~
15 ~~county shall pay for its portion of the costs of the youth~~
16 ~~court based:~~

17 ~~(a)--on actual costs incurred in or on behalf of the~~
18 ~~county, or~~

19 ~~(b)--if actual costs cannot be identified, on each~~
20 ~~county's proportion of the total youth court workload in the~~
21 ~~judicial district during the calendar year preceding the~~
22 ~~setting of the budget.~~

23 ~~(3)--The youth court judge shall, in January of each~~
24 ~~year, establish the proportion of the workload of the court~~
25 ~~to be attributed to each county in the ensuing budget year~~

~~for purposes of any necessary application of subsection (2)(b); Each county's payment must be equal to the amount initially budgeted by that county for funding and support of the youth probation operations in that county for fiscal year 1987. Payments are due July 1 and January 1 of each fiscal year and must be deposited in the state special revenue fund in the state treasury for the purpose of paying the expenses of the department."~~

Section 51. Section 41-5-105, MCA, is amended to read:

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

Section 55. Section 41-5-106, MCA, is amended to read:

"41-5-106. Order of adjudication -- noncriminal. No commitment placement of any youth to in any state youth correctional facility under this chapter shall be deemed commitment to a penal institution. No adjudication upon the

status of any youth in the jurisdiction of the court shall operate to impose any of the civil disability imposed on a person by reason of conviction of a criminal offense, nor shall such adjudication be deemed a criminal conviction, nor shall any youth be charged with or convicted of any crime in any court except as provided in this chapter. Neither the disposition of a youth under this chapter nor evidence given in youth court proceedings under this chapter shall be admissible in evidence except as otherwise provided in this chapter."

Section 53. 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) ~~(a)~~ conduct hearings on youth court proceedings under this chapter; and

(c) ~~(b)~~ 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

1 judge may be rotated among the different judges of the
 2 judicial district and among the individual counties within
 3 the judicial district for given periods of time. Continuity
 4 of service of a given judge as youth court judge and
 5 continuity in the operation and policies of the youth court
 6 in the county having the largest population in the judicial
 7 district shall be the principal consideration of the rule."

8 Section 56. Section 41-5-205, MCA, is amended to read:

9 "41-5-205. Retention of jurisdiction. Once a court
 10 obtains jurisdiction over a youth, the court retains
 11 jurisdiction unless terminated by the court or by mandatory
 12 termination in the following cases:

13 (1) at the time the proceedings are transferred to
 14 adult criminal court;

15 (2) at the time of commitment of the youth to the
 16 custody of the department of institutions; the youth is
 17 discharged by the department; and

18 (3) in any event, at the time the youth reaches the
 19 age of 21 years."

20 Section 57. 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:

1 (a) (i) the youth charged was 12 years of age or more
 2 at the time of the conduct alleged to be unlawful and the
 3 unlawful act would constitute sexual intercourse without
 4 consent as defined in 45-5-503, deliberate homicide as
 5 defined in 45-5-102, or mitigated deliberate homicide as
 6 defined in 45-5-103, or the attempt, as defined in 45-4-103,
 7 of either deliberate or mitigated deliberate homicide if the
 8 act had been committed by an adult; or

9 (ii) the youth charged was 16 years of age or more at
 10 the time of the conduct alleged to be unlawful and the
 11 unlawful act is one or more of the following:

12 (A) negligent homicide as defined in 45-5-104;

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

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

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

16 (E) burglary or aggravated burglary as defined in
 17 45-6-204;

18 ~~(F) sexual intercourse without consent as defined in~~
 19 ~~45-5-503;~~

20 ~~(G)~~ (F) aggravated kidnapping as defined in 45-5-303;

21 ~~(H)~~ (G) possession of explosives as defined in
 22 45-8-335;

23 ~~(I)~~ (H) criminal sale of dangerous drugs for profit as
 24 included in 45-9-101;

25 ~~(J)~~ (I) attempt as defined in 45-4-103 of any of the

1 acts enumerated in subsections (1)(a)(ii)(A) through
2 (1)(a)(ii)(~~F~~)(H);

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

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

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

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

14 (ii) the seriousness of the offense and the protection
15 of the community require treatment of the youth beyond that
16 afforded by juvenile facilities; and

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

19 (2) In transferring the matter of prosecution to the
20 district court, the court may also consider the following
21 factors:

22 (a) the sophistication and maturity of the youth,
23 determined by consideration of his home, environmental
24 situation, and emotional attitude and pattern of living;

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

1 including previous contacts with the youth court, law
2 enforcement agencies, youth courts in other jurisdictions,
3 prior periods of probation, and prior commitments to
4 juvenile institutions. However, lack of a prior juvenile
5 history with youth courts will not of itself be grounds for
6 denying the transfer.

7 (c) the severity of the offense;

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

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

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

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

25 (6) Any offense not enumerated in subsection (1) that

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

3 (a) tried in youth court;

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

7 (7) If a youth is found guilty in district court of
8 any of the offenses enumerated in subsection (1) of this
9 section and is sentenced to the state prison, his commitment
10 shall be to the department of institutions which shall
11 confine the youth in whatever institution it considers
12 proper, including a state youth correctional facility under
13 the procedures of 53-30-212; however, no youth under 16
14 years of age may be confined in the state prison."

15 Section 58. Section 41-5-301, MCA, is amended to read:

16 "41-5-301. Preliminary investigation and disposition.

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

24 (2) The probation officer may:

25 (a) require the presence of any person relevant to the

1 inquiry;

2 (b) request subpoenas from the judge to accomplish
3 this purpose;

4 (c) require investigation of the matter by any law
5 enforcement agency or any other appropriate state or local
6 agency.

7 (3) If the probation officer determines that the facts
8 indicate a youth in need of care, the matter shall be
9 immediately referred to the appropriate-staff-within-the
10 department of-social-and-rehabilitation-services.

11 (4) (a) The probation officer in the conduct of the
12 preliminary inquiry shall:

13 (i) advise the youth of the youth's rights under this
14 chapter and the constitutions of the state of Montana and
15 the United States;

16 (ii) determine whether the matter is within the
17 jurisdiction of the court;

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

21 (b) Once relevant information is secured, the
22 probation officer shall:

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

25 (ii) terminate the inquiry upon the determination that

1 no further action be taken; and
 2 (iii) release the youth immediately upon the
 3 determination that the filing of a petition is not
 4 authorized.
 5 (5) The probation officer upon determining that
 6 further action is required may:
 7 (a) provide counseling, refer the youth and his
 8 parents to another agency providing appropriate services, or
 9 take any other action or make any informal adjustment that
 10 does not involve probation or detention;
 11 (b) provide for treatment or adjustment involving
 12 probation or other disposition authorized under 41-5-401
 13 through 41-5-403, provided such treatment or adjustment is
 14 voluntarily accepted by the youth's parents or guardian and
 15 the youth, and provided further that said matter is referred
 16 immediately to the county attorney for review and that the
 17 probation officer proceed no further unless authorized by
 18 the county attorney; or
 19 (c) refer the matter to the county attorney for filing
 20 a petition charging the youth to be a delinquent youth or a
 21 youth in need of supervision.
 22 (6) A petition charging a youth held in detention must
 23 be filed within 5 working days from the date the youth was
 24 first detained or the petition shall be dismissed and the
 25 youth released unless good cause is shown to further detain

1 such youth.
 2 (7) If no petition is filed under this section, the
 3 complainant and victim, if any, shall be informed by the
 4 probation officer of the action and the reasons therefor and
 5 shall be advised of the right to submit the matter to the
 6 county attorney for review. The county attorney, upon
 7 receiving a request for review, shall consider the facts,
 8 consult with the probation officer, and make the final
 9 decision as to whether a petition shall ~~or--shall--not~~ be
 10 filed."
 11 Section 59. Section 41-5-403, MCA, is amended to read:
 12 "41-5-403. Disposition permitted under informal
 13 adjustment. (1) The following dispositions may be imposed by
 14 informal adjustment:
 15 (a) probation;
 16 (b) placement of the youth for substitute care into a
 17 youth care facility as defined in 41-3-1102 ~~or-into-a-home~~
 18 ~~approved-by-the-court~~ AND AS DETERMINED BY THE DEPARTMENT;
 19 (c) placement of the youth in a private agency
 20 responsible for the care and rehabilitation of such a youth
 21 AS DETERMINED BY THE DEPARTMENT;
 22 ~~{d}--transfer--of--legal--custody--to--the--department--of~~
 23 ~~institutions--for--a--period--of--6--months--which--period--may--be~~
 24 ~~extended--for--6--months--upon--further--order--of--the--court--after~~
 25 ~~notice--and--hearing;~~

1 ~~(e)~~(d) restitution upon approval of the youth court
2 judge.

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

6 (a) age of the youth;

7 (b) ability of the youth to pay;

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

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

10 (e) legal remedies of the victim; however, the ability
11 of the victim or his insurer to stand any loss may not be
12 considered in any case.

13 ~~(3)--if--the--court--finds--that--placement--in--a--youth--care~~
14 ~~facility--other--than--a--youth--group--home--or--youth--foster--home~~
15 ~~is--necessary--and--in--the--best--interests--of--the--youth--and--the~~
16 ~~community--the--court--shall--determine--if--the--youth--can~~
17 ~~receive--appropriate--treatment--in--a--youth--care--facility~~
18 ~~located--in--Montana--as--follows:~~

19 ~~(a)--if--the--court--finds--the--youth--can--receive~~
20 ~~appropriate--treatment--in--a--youth--care--facility--located--in~~
21 ~~Montana--that--will--accept--the--youth--the--court--may--not--place~~
22 ~~the--youth--in--a--youth--care--facility--located--outside--this~~
23 ~~state--unless--an--out-of-state--facility--can--provide~~
24 ~~appropriate--treatment--that:~~

25 ~~(i)--can--be--obtained--at--a--cost--less--than--that--offered~~

1 ~~by--any--available--facility--in--this--state--and~~

2 ~~(ii)--is--available--in--closer--proximity--to--the--youth's~~
3 ~~place--of--residence--than--any--facility--located--in--this--state.~~

4 ~~(b)--When--the--department--of--social--and--rehabilitation~~
5 ~~services--is--ordered--to--pay--the--costs--of--caring--for--the--child~~
6 ~~in--a--youth--care--facility--other--than--a--youth--foster--home--or~~
7 ~~youth--group--home--the--court--shall--provide--the--department~~
8 ~~with--at--least--5--days--written--notice--and--opportunity--to--be~~
9 ~~heard--before--ordering--the--placement--of--the--youth.~~

10 ~~(4)~~(3) If the youth violates his aftercare agreement
11 as provided for in 53-30-226, he must be returned to the
12 court for further disposition. No youth may be placed in a
13 state youth correctional facility under informal
14 adjustment."

15 Section 60. Section 41-5-511, MCA, is amended to read:

16 "41-5-511. Right to counsel. In all proceedings
17 following the filing of a petition alleging a delinquent
18 youth or youth in need of supervision, the youth and the
19 parents or guardian of the youth shall be advised by the
20 court or, in the absence of the court, by its representative
21 that the youth may be represented by counsel at all stages
22 of the proceedings. If counsel is not retained or if it
23 appears that counsel will not be retained, counsel shall be
24 appointed for the youth if the parents and the youth are
25 unable to provide counsel unless the right to appointed

1 counsel is waived by the youth and the parents or guardian.
 2 Neither the youth nor his parent or guardian may waive
 3 counsel after a petition has been filed if commitment to-a
 4 state--correctional--facility--or to the department of
 5 institutions for a period of more than 6 months may result
 6 from adjudication."

7 Section 61. Section 41-5-522, MCA, is amended to read:

8 "41-5-522. Dispositional hearing. (1) As soon as
 9 practicable after a youth is found to be a delinquent youth
 10 or a youth in need of supervision, the court shall conduct a
 11 dispositional hearing. The dispositional hearing may involve
 12 a determination of financial liability as provided in
 13 41-3-1123 and 41-3-1124.

14 (2) Before conducting the dispositional hearing, the
 15 court shall direct that a social summary or predisposition
 16 report be made in writing by a probation officer concerning
 17 the youth, his family, his environment, and other matters
 18 relevant to the need for care or rehabilitation or
 19 disposition of the case. The youth court may have the youth
 20 examined, and the results of the examination shall be made
 21 available to the court as part of the social summary or
 22 predisposition report. The court may order the examination
 23 of a parent or guardian who gives his consent and whose
 24 ability to care for or supervise a youth is at issue before
 25 the court. The results of such examination shall be included

1 in the social summary or predisposition report. The youth,
 2 his parents, guardian, or counsel shall have the right to
 3 subpoena all persons who have prepared any portion of the
 4 social summary or predisposition report and shall have the
 5 right to cross-examine said parties at the dispositional
 6 hearing.

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

10 (4) The dispositional hearing shall be conducted in
 11 the manner set forth in subsections (3), (4), and (5) of
 12 41-5-521. The court shall hear all evidence relevant to a
 13 proper disposition of the case best serving the interests of
 14 the youth and the public. Such evidence shall include, but
 15 not be limited to, the social summary and predisposition
 16 report provided for in subsection (2) of this section.

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

22 (6) In determining whether restitution, as authorized
 23 by 41-5-523{1}{ff}, is appropriate in a particular case, the
 24 following factors may be considered in addition to any other
 25 evidence:

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

8 Section 62. Section 41-5-523, MCA, is amended to read:
 9 "41-5-523. Disposition of delinquent youth and youth
 10 in need of supervision. (1) If a youth is found to be
 11 delinquent or in need of supervision, the court may enter
 12 its judgment making any of the following disposition
 13 dispositions:

14 (a) place the youth on probation;
 15 ~~(b)--place--the--youth--for--substitute--care--into--a--youth~~
 16 ~~care--facility--as--defined--in--41-3-1102--or--a--home--approved--by~~
 17 ~~the--court;~~
 18 ~~(c)--place--the--youth--in--a--private--agency--responsible~~
 19 ~~for--the--care--and--rehabilitation--of--such--a--youth;~~
 20 ~~(d)(b)~~ transfer-legal-custody commit the youth to the
 21 department. of-institutions The department shall thereafter
 22 determine the appropriate placement, supervision, and
 23 rehabilitation program for the youth AFTER CONSIDERING THE
 24 RECOMMENDATION OF THE YOUTH PLACEMENT COMMITTEE AS PROVIDED
 25 IN [SECTION 17]; provided, however, that:

1 (i) in the case of a youth in need of supervision,
 2 such transfer-of-custody commitment does not authorize the
 3 department of--institutions to place the youth in a state
 4 youth correctional facility and--such--custody--may--not
 5 continue--for--a--period--of--more--than--6--months--without--a
 6 subsequent-court-order-after-notice-and-hearing; THE COURT
 7 SHALL DETERMINE WHETHER CONTINUATION IN THE HOME WOULD BE
 8 CONTRARY TO THE WELFARE OF THE CHILD AND WHETHER REASONABLE
 9 EFFORTS HAVE BEEN MADE TO PREVENT OR ELIMINATE THE NEED FOR
 10 REMOVAL OF THE CHILD FROM HIS HOME. THE COURT SHALL INCLUDE
 11 SUCH DETERMINATION IN THE ORDER COMMITTING THE YOUTH TO THE
 12 DEPARTMENT.

13 (ii) in the case of a delinquent youth who is a serious
 14 juvenile offender, the judge may specify that the youth be
 15 placed in physical confinement in an appropriate facility
 16 only if the judge finds that such confinement is necessary
 17 for the protection of the public; and

18 (iii) a youth may not be held in physical confinement
 19 for a period of time in excess of the maximum period of
 20 imprisonment that could be imposed on an adult convicted of
 21 the offense or offenses that brought the youth under the
 22 jurisdiction of the youth court. Nothing in this section
 23 limits the power of the department to enter into an
 24 aftercare agreement with the youth pursuant to 53-30-226.

25 (IV) A YOUTH IS UNDER THE SUPERVISION OF A YOUTH

1 PROBATION OFFICER, EXCEPT THAT A YOUTH PLACED IN A YOUTH
2 CORRECTIONAL FACILITY IS SUPERVISED BY THE DEPARTMENT;

3 {e}{c} order such further care and treatment or
4 evaluation that-the-court-considers-beneficial-to-the-youth
5 recommended-by-the-department THAT DOES NOT OBLIGATE FUNDING
6 FROM THE DEPARTMENT WITHOUT THE DEPARTMENT'S APPROVAL; or

7 {f}{d} order: restitution by the youth.

8 (2) At any time after the youth has been taken into
9 custody, the court may, with the consent of the youth in the
10 manner provided in 41-5-303 for consent by a youth to waiver
11 of his constitutional rights or after the youth has been
12 adjudicated delinquent or in need of supervision, order the
13 youth to be evaluated by the department of institutions for
14 a period not to exceed 45 days of evaluation-at-a-reception
15 and-evaluation-center-for-youths. The department shall
16 determine the place and manner of evaluation.

17 (3) No evaluation of a youth may be performed at the
18 Montana state hospital unless such youth is transferred to
19 the district court under 41-5-206.

20 {4}{--If--the-court-finds-that-placement-in-a-youth-care
21 facility-other-than-a-youth-group-home-or-youth-foster--home
22 is--necessary-and-in-the-best-interests-of-the-youth-and-the
23 community, the-court--shall--determine--if--the--youth--can
24 receive--appropriate--treatment--in--a--youth-care-facility
25 located-in-Montana-as-follows:

1 {a}{--If--the--court--finds--the---youth---can---receive
2 appropriate--treatment--in--a-youth-care-facility-located-in
3 Montana-that-will-accept-the-youth, the-court-may-not--place
4 the--youth--in--a--youth-care-facility-located-outside-this
5 state--unless--an--out-of-state--facility---can---provide
6 appropriate-treatment-that:

7 {i}{--can--be--obtained-at-a-cost-less-than-that-offered
8 by-any-available-facility-in-this-state; and

9 {ii}{--is-available-in-closer-proximity--to--the--youth's
10 place--of-residence-than-any-facility-located-in-this-state.

11 {b}{--When-the-department-of-social--and--rehabilitation
12 services-is-ordered-to-pay-the-costs-of-caring-for-the-child
13 in--a--youth-care-facility-other-than-a-youth-foster-home-or
14 youth-group-home, the-court-shall-provide-the-department--at
15 least--5--days--written--notice-and-opportunity-to-be-heard
16 before-ordering-the-placement-of-the-youth.

17 {5}{4} No youth may be committed or transferred to a
18 penal institution or other facility used for the execution
19 of sentence of adult persons convicted of crimes.

20 {6}{5} Any order of the court may be modified at any
21 time. In the case of a youth committed to the department of
22 institutions, an order pertaining to the youth may be
23 modified only upon notice to the department and subsequent
24 hearing.

25 {7}{6} Whenever the court vests legal custody in an

1 agency, institution, or department, it must transmit with
2 the dispositional judgment copies of a medical report and
3 such other clinical, predisposition, or other reports and
4 information pertinent to the care and treatment of the
5 youth.

6 ~~†b~~(7) The order of commitment to the department of
7 institutions shall read as follows:

8 ORDER OF COMMITMENT

9 State of Montana)

10) ss.

11 County of)

12 In the district court for the Judicial District.

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

18 It is ordered that be committed to the department
19 of institutions family services until

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

22 Name	Address	Occupation
23		
24		

25 The names and addresses of their nearest relatives are:

1
2
3 Witness my hand this day of, A.D. 19...

4
5 Judge"

6 Section 63. Section 41-5-602, MCA, is amended to read:
7 "41-5-602. Law enforcement records. (1) No law
8 enforcement records concerning a youth, except traffic
9 records, may be open to public inspection or their contents
10 disclosed to the public unless the records are directly
11 related to an offense to which publicity must be allowed
12 under subsection (2) of 41-5-601 or unless inspection is
13 ordered by the court.

14 (2) Inspection of law enforcement records concerning a
15 youth, which records are not open to public inspection under
16 subsection (1), is permitted prior to the sealing of the
17 records by:

18 (a) a youth court having the youth currently before it
19 in any proceeding;

20 (b) the department if it is investigating,
21 supervising, or providing services to the youth;

22 ~~†b~~(c) the officers of agencies having legal custody
23 of the youth and those responsible for his supervision after
24 release;

25 ~~†c~~(d) any other person, by order of the court, having

a legitimate interest in the case or in the work of the law enforcement agency;

~~(d)~~(e) law enforcement officers of Montana, when necessary for the discharge of their immediate duties;

~~(e)~~(f) a district court in which the youth is convicted of a criminal offense, for the purpose of a presentence investigation;

~~(f)~~(g) the county attorney; or

~~(g)~~(h) the youth, his parent, guardian, or counsel."

Section 64. Section 41-5-603, MCA, is amended to read:

"41-5-603. Youth court and department records. (1)

Youth court and youth court-related department records, including social, medical, and psychological records, reports of preliminary inquiries, predispositional studies, and supervision records of probationers, are open to inspection prior to the sealing of the records only to the following:

(a) the youth court and its professional staff;

(b) representatives of any agency providing supervision and having legal custody of a youth;

(c) any other person, by order of the court, having a legitimate interest in the case or in the work of the court;

(d) any court and its ~~professional--staff--and-the~~ department's probation and other professional staff or the attorney for a convicted party who had been a party to

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

(e) the county attorney;

(f) the youth who is the subject of the report or record, after he has been emancipated or reaches the age of majority.

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

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

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

(5) After youth court and department records, reports of preliminary inquiries, predispositional studies, and

1 supervision records of probationers are sealed, they are not
2 open to inspection except, upon order of the youth court,
3 for good cause to:

4 (a) those persons and agencies listed in subsection
5 (1); and

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

9 Section 63. Section 41-5-701, MCA, is amended to read:

10 "41-5-701. Appointment Employment of ---probation
11 officers.---The---youth-court-judge-of-each-judicial-district
12 department shall appoint employ such---necessary---probation
13 officers-as-are-required-to-carry-out-the-purpose-and-intent
14 of---this---chapter.---He-shall-appoint-such-part-time-probation
15 officers---as---shall-be---required.---The---qualifications---for
16 part-time-probation-officers-must-approximate-those-required
17 for---probation---officers---insofar---as---possible.---A---chief
18 probation---officer---must---be---appointed---by---the---judge---to
19 supervise---the---youth---division---offices---in---the---judicial
20 district.---The---judge---shall---also---insure---that---the---youth
21 division-offices-are-staffed-with-necessary-office-personnel
22 and---that---the---offices-are-properly-equipped-to-effectively
23 carry-out-the-purpose-and-intent-of-this-chapter.---No---person
24 while---serving-as-a-law-enforcement-officer-may-be-appointed
25 or-perform-the-duties-of-a-full-time-or-part-time-probation

1 officer."

2 Section 64. Section 41-5-703, MCA, is amended to read:

3 "41-5-703. Powers and duties of probation officers:

4 (1) A probation officer shall:

5 (a) perform the duties set out in 41-5-401;

6 (b) make predisposition studies and submit reports and
7 recommendations to the court;

8 (c) supervise, assist, and counsel youth placed on
9 probation or under his supervision; and

10 (d) perform any other functions designated by the
11 court department;

12 (2) A probation officer shall have no power to make
13 arrests or to perform any other law enforcement functions in
14 carrying out his duties except that a probation officer may
15 take into custody any youth who violates either his
16 probation or a lawful order of the court."

17 Section 65. Section 45-5-624, MCA, is amended to read:

18 "45-5-624. Unlawful possession of an intoxicating
19 substance -- interference with sentence or court order. (1)
20 A person under the age of 18 years commits the offense of
21 possession of an intoxicating substance if he knowingly has
22 in his possession an intoxicating substance other than an
23 alcoholic beverage. A person under the age of 19 commits the
24 offense of possession of an intoxicating substance if he
25 knowingly has in his possession an alcoholic beverage,

1 except that he does not commit the offense when in the
2 course of his employment it is necessary to possess
3 alcoholic beverages.

4 (2) A person convicted of the offense of possession of
5 an intoxicating substance shall:

6 (a) be fined not to exceed \$50;

7 (b) be ordered to complete and, if financially able,
8 pay all costs of his participation in a community-based
9 substance abuse information course;

10 (c) have his driver's license confiscated by the court
11 for not more than 90 days and be ordered not to drive during
12 that period if he was driving or otherwise in actual
13 physical control of a motor vehicle when the offense
14 occurred; or

15 (d) be sentenced to any combination of these
16 penalties.

17 (3) A defendant who fails to comply with a sentence
18 and is under 21 years of age and was under 18 years of age
19 when he failed to comply must be transferred to the youth
20 court. If proceedings for violation of subsection (1) are
21 held in the youth court, the penalties in subsection (2) do
22 not apply. If proceedings for violation of subsection (1) or
23 for failure to comply with a sentence are held in the youth
24 court, the offender shall be treated as an alleged youth in
25 need of supervision as defined in 41-5-103~~†††~~. In such

1 case, the youth court may enter its judgment under 41-5-523.

2 (4) A person commits the offense of interference with
3 a sentence or court order if he purposely or knowingly
4 causes his child or ward to fail to comply with a sentence
5 imposed under this section or a youth court disposition
6 order for a youth found to have violated this section and
7 upon conviction shall be fined \$100 or imprisoned in the
8 county jail for 10 days, or both."

9 Section 66. Section 50-8-101, MCA, is amended to read:

10 "50-8-101. Definitions. As used in this part, the
11 following definitions apply:

12 (1) "Department" means the department of institutions,
13 the department of health and environmental sciences, and the
14 department of ~~social-and-rehabilitation~~ family services.

15 (2) "Facility" means:

16 (a) for the department of institutions, nonmedical
17 facilities including:

18 (i) mental health transitional living facilities; and

19 (ii) inpatient freestanding or intermediate
20 transitional living facilities for alcohol/drug treatment or
21 emergency detoxification;

22 (b) for the department of ~~social-and-rehabilitation~~
23 family services:

24 (i) ~~adult---services~~ community homes for the
25 developmentally disabled, ~~adult---independent---and~~

1 ~~semi-independent--living--facilities~~ community homes for
 2 physically disabled persons, and adult foster care
 3 facilities homes; and

4 (ii) ~~children's-services-achievement--homes;--maternity~~
 5 ~~homes;--attention--homes;--aftercare--group--homes;--district~~
 6 ~~youth--guidance--homes;--foster--family---care---facilities;~~
 7 ~~child-care---agencies;---and---community---homes---for---the~~
 8 developmentally-disabled youth care facilities; and

9 (c) for the department of health and environmental
 10 sciences:

11 (i) public accommodations, including roominghouses and
 12 retirement homes, hotels, and motels;

13 (ii) health care facilities or services, including
 14 hospitals, skilled and intermediate nursing home services,
 15 and intermediate care nursing home services for the mentally
 16 retarded;

17 (iii) freestanding medical facilities or care,
 18 including infirmaries, kidney treatment centers, and home
 19 health agencies; and

20 (iv) personal care facilities.

21 (3) "Inspecting authority" means the department or
 22 agency authorized by statute to perform a given inspection
 23 necessary for certification for licensure.

24 (4) "Licensing agency" means the agency that is
 25 authorized by statute to issue the license."

1 Section 67. Section 50-15-206, MCA, is amended to
 2 read:

3 "50-15-206. Permissible disclosure of illegitimate
 4 birth. (1) Disclosure of illegitimacy of birth or
 5 information from which illegitimacy can be ascertained may
 6 be made only:

7 (a) upon an order of a court to determine personal or
 8 property rights. An adopted person of legal age may apply to
 9 the court for such an order.

10 (b) upon request of the department of social and
 11 rehabilitation services, the department of family services,
 12 or a licensed adoption agency for purposes of custody
 13 action, social security eligibility determinations, or
 14 Indian tribal enrollment determinations;

15 (c) upon request of the natural parent during the
 16 child's minority unless the child has been placed for
 17 adoption.

18 (2) Except when an order of the court is sought, prior
 19 to disclosure, the requesting party must submit in writing
 20 to the department:

21 (a) proof of identity when appropriate;

22 (b) the need for the information; and

23 (c) the specific purpose for which the information is
 24 to be used. The information may be used only for that
 25 purpose."

Section 68. Section 53-1-104, MCA, is amended to read:

"53-1-104. Release of arsonist -- notification of department of justice. (1) Each of the following institutions or facilities having the charge or custody of a person convicted of arson or of a person acquitted of arson on the ground of mental disease or defect shall give written notification to the department of justice whenever such a person is admitted or released by it:

- (a) Montana state hospital;
 - (b) State prison;
 - (c) Mountain View school;
 - (d) Pine Hills school;
 - (e) Swan River youth forest camp; or
 - (f) Any county or city detention facility.
- (2) The notification shall disclose:
- (a) the name of the person;
 - (b) where the person is or will be located; and
 - (c) the type of fire the person was involved in."

Section 69. Section 53-1-201, MCA, is amended to read:

"53-1-201. Purpose of department. The department shall utilize at maximum efficiency the resources of state government in a coordinated effort to:

- (1) restore the physically or mentally disabled;
- (2) rehabilitate the violators of law;
- (3) sustain the vigor and dignity of the aged;

~~(4) provide for children in need of temporary protection or correctional counseling;~~

~~(5)(4)~~ train children of limited mental capacity to their best potential;

~~(6)(5)~~ rededicate the resources of the state to the productive independence of its now dependent citizens; and

~~(7)(6)~~ coordinate and apply the principles of modern institutional administration to the institutions of the state."

Section 70. Section 53-1-202, MCA, is amended to read:

"53-1-202. Institutions in department. (1) The following institutions are in the department:

- (a) Montana state hospital;
- (b) Montana veterans' home;
- (c) State prison;
- ~~(d) Mountain View school;~~
- ~~(e) Pine Hills school;~~
- ~~(f)(d)~~ Montana developmental center;

~~(g)(e)~~ Montana center for the aged;

~~(h)(f)~~ Swan River youth forest camp; and

~~(i)(g)~~ Eastmont human services center; and

~~(j) Any other institution which provides care and services for juvenile delinquents, including but not limited to youth forest camps and juvenile reception and evaluation centers;~~

(2) A state institution may not be moved, discontinued, or abandoned without prior consent of the legislature."

Section 71. Section 53-2-101, MCA, is amended to read:

"53-2-101. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Department" means the department of social and rehabilitation services provided for in Title 2, chapter 15, part 22.

(2) "Protective services" means services to children and adults to be provided by the department of family services as permitted by Titles 41 and 53.

(3) "Public assistance" or "assistance" means any type of monetary or other assistance furnished under this title to a person by a state or county agency, regardless of the original source of the assistance.

(4) "Needy person" is one who is eligible for public assistance under the laws of this state.

(5) "Net monthly income" means one-twelfth of the difference between the net income for the taxable year as the term net income is defined in 15-30-101 and the state income tax paid as determined by the state income tax return filed during the current year.

(6) "Ward Indian" is hereby defined as an Indian who is living on an Indian reservation set aside for tribal

use or is a member of a tribe or nation accorded certain rights and privileges by treaty or by federal statutes. If and when the federal Social Security Act is amended to define a "ward Indian", such definition shall supersede the foregoing definition."

Section 72. Section 53-2-201, MCA, is amended to read:

"53-2-201. Powers and duties of department. (1) The department shall:

(a) administer or supervise ~~all forms of~~ public assistance, ~~child protection, and child welfare~~, including the provision of medical care payments in behalf of recipients of public assistance;

~~(b) administer or supervise all child welfare activities, including:~~

~~(i) importation and exportation of children;~~

~~(ii) licensing of all children's foster family homes, group homes, child care agencies and child placing agencies;~~

~~(iii) the care of dependent and neglected children in substitute care placement and children who are free for adoption;~~

~~(iv) the maintenance of supplemental day care for children; and~~

~~(v) all state and federal funds allocated to the department for youth foster homes, youth group homes, child care agencies, and state programs for youth in need of~~

care, youth-in-need-of-supervision, and delinquent youth;

(b) give consultant service to private institutions providing care for the needy, indigent, handicapped, or dependent adults;

(c) cooperate with other state agencies and develop provisions for services to the blind, including the prevention of blindness, the location of blind persons, medical services for eye conditions, and vocational guidance and training of the blind;

(d) provide services in respect to organization and supervise county departments of public welfare and county boards of public welfare in the administration of public assistance functions and for efficiency and economy;

(e) assist and cooperate with other state and federal departments, bureaus, agencies, and institutions, when so requested, by performing services in conformity with public assistance purposes;

(f) administer all state and federal funds allocated to the department for public assistance and do all things necessary, in conformity with federal and state law, for the proper fulfillment of public assistance purposes; and

(g) make rules governing payment for services and supplies provided to recipients of public assistance.

(2) The department may:

(a) purchase, exchange, condemn, or receive by gift either real or personal property which is necessary to carry out its public assistance functions. Title to property obtained under this subsection shall be taken in the name of the state of Montana for the use and benefit of the department.

(b) contract with the federal government to carry out its public assistance functions. The department may do all things necessary in order to avail itself of federal aid and assistance.

(c) make rules, consistent with state and federal law, establishing the amount, scope, and duration of services to be provided to recipients of public assistance."

Section 73. Section 53-2-301, MCA, is amended to read:

"53-2-301. County departments to be established. There shall be established in each county of the state, except in a county that has transferred its public assistance and protective services responsibilities to the ~~department--of social---and---rehabilitation---services~~ state under the provisions of part 8 of this chapter, a county department of public welfare, which shall consist of a county board of public welfare and such staff personnel as may be necessary for the efficient performance of the public assistance activities of the county. If conditions warrant and if two or more county boards enter into an agreement, two or more

counties may combine into one administrative unit and use the same staff personnel throughout the administrative unit."

Section 74. Section 53-2-302, MCA, is amended to read:

"53-2-302. County commissioners ex officio county welfare board. Except in a county that has transferred its public assistance and protective services responsibilities to the ~~department--of--social--and--rehabilitation--services~~ state under part 8 of this chapter, the board of county commissioners shall be the ex officio county welfare board and is hereby authorized to devote such additional time for public assistance matters as may be found necessary. The members of the county welfare board shall receive the same compensation for their services and the same mileage when acting as the county board of public welfare as they receive when acting as the board of county commissioners and shall be limited as to meetings as now provided by law, and the compensation and mileage of the members of the board shall be paid from county funds. They may transact business as a board of county commissioners and as a county welfare board on the same day, and in such cases they shall be paid as a board of county commissioners but may not receive compensation for more than 1 day's work for all services performed on the same calendar day."

Section 75. Section 53-2-304, MCA, is amended to read:

"53-2-304. Staff personnel of county department. (1) Each county board shall select and appoint from a list of qualified persons furnished by the department of social and rehabilitation services such staff personnel as are necessary. The staff personnel in each county shall consist of at least one qualified staff worker (or investigator) and such clerks and stenographers as may be decided necessary. If conditions warrant, the county board, with the approval of the department of social and rehabilitation services, may appoint some fully qualified person listed by the department as supervisor of its staff personnel. The staff personnel of each county department are directly responsible to the county board, but the department of social and rehabilitation services may supervise such county employees in respect to the efficient and proper performance of their duties. The county board of public welfare may not dismiss any member of the staff personnel without the approval of the department of social and rehabilitation services, but the department may request the county board to dismiss any member of the staff personnel for inefficiency, incompetence, or similar cause.

(2) Public assistance staff personnel attached to the county board shall be paid from state public assistance funds both their salaries and their travel expenses as provided for in 2-18-501 through 2-18-503 when away from the

1 county seat in the performance of their duties, but the
 2 county board of public welfare shall reimburse the
 3 department of social and rehabilitation services from county
 4 poor funds the full amount of the salaries and travel
 5 expenses not reimbursed to the department by the federal
 6 government and the full amount of the department's
 7 administrative costs which are allocated by the department
 8 to the county for the administration of county welfare
 9 programs and not reimbursed to the department by the federal
 10 government. Under circumstances prescribed by the department
 11 of social and rehabilitation services, the reimbursement by
 12 the county board of public welfare may be less than the
 13 county share as prescribed above. All other administrative
 14 costs of the county department shall also be paid from
 15 county poor funds.

16 (3) On or before the 20th day of the month following
 17 the month for which the payments to the public assistance
 18 staff personnel of the county were made, the department of
 19 social and rehabilitation services shall present to the
 20 county department of public welfare a claim for the required
 21 reimbursements. The county board shall make such
 22 reimbursements within 20 days after the presentation of the
 23 claim, and the department of social and rehabilitation
 24 services shall credit (add) all such reimbursements to its
 25 account for administrative costs.

1 (4) If a county has transferred its public assistance
 2 and protective services responsibilities to the department
 3 of--social-and-rehabilitation-services state under part 8 of
 4 this chapter, the appropriate department shall select,
 5 appoint, and supervise all necessary public assistance and
 6 protective services personnel, including if necessary a
 7 supervisor of staff personnel. All such personnel are
 8 directly responsible to the department."

9 Section 76. Section 53-2-306, MCA, is amended to read:
 10 "53-2-306. County department charged with local
 11 administration of public assistance. Except in a county that
 12 has transferred its public assistance and protective
 13 services responsibilities to the department--of--social--and
 14 rehabilitation--services state under part 8 of this chapter,
 15 the county department of public welfare shall be charged
 16 with the local administration of all forms of public
 17 assistance operations in the county--including--but--not
 18 limited-to-food-stamp-programs-and-social-services-programs.
 19 All such local administration must conform to federal and
 20 state law and the rules as established by the department of
 21 social and rehabilitation services."

22 Section 77. Section 53-2-322, MCA, is amended to read:
 23 "53-2-322. County to levy taxes, budget, and make
 24 expenditures for public assistance activities. (1) The board
 25 of county commissioners in each county shall levy 13.5 mills

1 for the county poor fund as provided by law or so much
2 thereof as may be necessary. Counties transferring public
3 assistance and protective services responsibilities to the
4 ~~department-of-social-and-rehabilitation-services~~ state under
5 part 8 of this chapter may not levy more than the difference
6 between 13.5 mills and the state levy pursuant to 53-2-813.

7 (2) The board shall budget and expend so much of the
8 funds in the county poor fund for public assistance and
9 protective services purposes as will enable the county
10 welfare department to pay the general relief activities of
11 the county and to reimburse the department of social and
12 rehabilitation services and the department of family
13 services for the county's proportionate share of the
14 administrative costs of the county welfare department and of
15 all public assistance and protective services and its
16 proportionate share of any other public assistance activity
17 that may be carried on jointly by the state and the county.

18 (3) The amounts set up in the budget for the
19 reimbursements to the department of social and
20 rehabilitation services and the department of family
21 services shall be sufficient to make all of these
22 reimbursements in full. The budget shall make separate
23 provision for each one of these public assistance and
24 protective services activities, and proper accounts shall be
25 established for the funds for all such activities.

1 (4) As soon as the county proposed budget provided for
2 in 7-6-2315 has been agreed upon, a copy thereof shall
3 without delay be mailed to the department of social and
4 rehabilitation services, and at any time before the final
5 adoption of the budget, the department shall make such
6 recommendations with regard to changes in any part of the
7 budget relating to the county poor fund as considered
8 necessary in order to enable the county to discharge its
9 obligations under the public assistance laws.

10 (5) The department of social and rehabilitation
11 services shall promptly examine the county proposed budget
12 in order to ascertain if the amounts provided for
13 reimbursements to the department are likely to be sufficient
14 and shall notify the county clerk of its findings. The board
15 shall make such changes in the amounts provided for
16 reimbursements, if any are required, in order that the
17 county will be able to make the reimbursements in full.

18 (6) The board of county commissioners may not make any
19 transfer from the amounts budgeted for reimbursing the
20 department of social and rehabilitation services without
21 having first obtained a statement in writing from the
22 department to the effect that the amount to be transferred
23 will not be required during the fiscal year for the purposes
24 for which the amounts were provided in the budget.

25 (7) No part of the county poor fund, irrespective of

the source of any part thereof, may be used directly or indirectly for the erection or improvement of any county building so long as the fund is needed for general relief expenditures by the county or is needed for paying the county's proportionate share of public assistance and protective services or its proportionate share of any other public assistance activity that may be carried on jointly by the state and the county. Expenditures for improvement of any county buildings used directly for care of the poor, except a county hospital or county nursing home, may be made out of any moneys in the county poor fund, whether such moneys are produced by the 13.5-mill levy provided for in subsection (1) of this section or from any additional levy authorized or to be authorized by law. Such expenditure shall be authorized only when any county building used for the care of the poor must be improved in order to meet legal standards required for such buildings by the department of health and environmental sciences and when such expenditure has been approved by the department of social and rehabilitation services and the department of family services."

Section 78. Section 53-2-323, MCA, is amended to read:

"53-2-323. Emergency grants from state funds to counties. Except when a county has transferred its public assistance and protective services responsibilities to the

~~department-of-social-and-rehabilitation-services~~ state under part 8 of this chapter, a county may apply to the department for an emergency grant-in-aid, and the grant shall be made to the county upon the following conditions:

(1) The board of county commissioners or a duly elected or appointed executive officer of the county shall make written application to the department for emergency assistance and shall show by written report and sworn affidavit of the county clerk and recorder and chairman of the board of county commissioners or other duly elected or appointed executive officer of the county the following:

(a) that the county will not be able to meet its obligations under law to provide assistance to the needy of the county or meet its proportionate share of any public assistance activity carried on jointly with the department;

(b) that all lawful sources of revenue and other income to the county poor fund will be exhausted;

(c) that all expenditures from the county poor fund have been lawfully made; and

(d) that all expenditures from the county poor fund have been reasonable and necessary, according to criteria set by the department in rules adopted for that purpose, for the county to meet its obligations under law to provide assistance to the needy.

(2) Within 10 days of receipt of the application and

1 affidavit, the department shall determine whether the county
2 poor fund will be depleted and shall give notice to the
3 county of the department's intention to deny or allow the
4 grant-in-aid. Before a grant-in-aid for any fiscal year may
5 be made to a county under this section, any money credited
6 during that fiscal year to the depletion allowance reserve
7 fund from the sources provided by 7-34-2402(2) shall be
8 transferred to the county poor fund to be used for lawful
9 poor fund expenditures. The amount of the grant-in-aid shall
10 be determined after all sources of income available to the
11 poor fund, including the depletion allowance reserve fund
12 transfers, have been exhausted.

13 (3) Within 10 days of receiving notice from the
14 department that a grant-in-aid will be made to the county,
15 the board of county commissioners or other duly elected or
16 appointed executive officer of the county shall adopt an
17 emergency budget. There is no requirement of notice and
18 hearing for that emergency budget. The emergency budget
19 shall state the amount required to meet the obligation of
20 the county and shall allocate that whole amount among the
21 various classes of expenditures for which the grant was
22 made.

23 (4) Upon receipt and approval of the county emergency
24 budget, the department shall issue a warrant to the county
25 treasurer of the county for the total amount stated in the

1 approved emergency budget.

2 (5) The grant-in-aid received by the county shall be
3 placed in an emergency fund account to be kept separate and
4 distinct from the poor fund account. All expenditures from
5 the emergency fund account shall be made by a separate
6 series of warrants or checks marked as emergency warrants or
7 checks.

8 (6) The grants-in-aid from the department may be used
9 only for public assistance activities lawfully conducted by
10 the county, including but not limited to medical aid,
11 hospitalization, and institutional care. No part of a
12 grant-in-aid may be used, directly or indirectly, to pay for
13 the erection or improvement of any county building or for
14 furniture, fixtures, appliances, or equipment for a county
15 building.

16 (7) In the event the county poor fund is replenished
17 by other lawful sources of revenue, the county shall issue
18 warrants to meet its obligations from the county poor fund
19 until such time as that fund is again so depleted that
20 warrants can no longer lawfully be drawn on that account.
21 Upon depletion of the county poor fund, the county may again
22 make disbursements from the emergency fund account as
23 provided in subsection (5). At the close of the county
24 fiscal year, the county shall return to the department any
25 amounts remaining in the county poor fund and the emergency

fund account, but the remaining amount to be returned may not exceed the total amount of the emergency grant-in-aid for that fiscal year.

(8) Any amount which is unlawfully disbursed or transferred from the emergency fund account or used for a purpose other than that specified in the grant-in-aid shall be returned by the county to the department."

Section 79. Section 53-2-801, MCA, is amended to read:

"53-2-801. Purpose. The purpose of this part is to provide for the department of social and rehabilitation services to assume all responsibilities for public assistance programs and for the department of family services to assume all responsibilities for protective services for children and adults that, as of July 1, 1983, are provided by the counties pursuant to Titles 41 and 53. The assumption may become effective only at the option and with the express consent of each individual county requesting state assumption."

Section 80. Section 53-2-802, MCA, is amended to read:

"53-2-802. Definitions. Unless the context requires otherwise, in this part the following definitions apply:

(1) "County department" means the county department of public welfare provided for in part 3 of this chapter.

~~(2) "Department" means the department of social and rehabilitation services provided for in Title 27, Chapter 15,~~

~~part-22:~~

~~(3)(2)~~ "Mill levy equivalent" means the prior year's expenditure divided by the value of 1 mill.

~~(4)(3)~~ "Needy person" is one who is eligible for public assistance under the laws of this state.

~~(5)(4)~~ "Protective services" means services to children and adults to be provided by the department of family services as permitted by Titles 41 and 53.

~~(6)(5)~~ "Public assistance" or "assistance" means any type of monetary or other assistance furnished under this title to a person by a state or county department, regardless of the original source of assistance.

~~(7)(6)~~ "State assumption" means the transfer to the department of social and rehabilitation services and the department of family services for the county by the board of county commissioners of all powers and duties, including staff personnel as provided in 53-2-301 through 53-2-306 and public assistance and protective services, respectively, provided by the county department pursuant to Titles 41 and 53, except as otherwise specifically provided in this part."

Section 81. Section 53-2-803, MCA, is amended to read:

"53-2-803. Authority to adopt rules. ~~(1)~~ The department of social and rehabilitation services and the department of family services may adopt rules necessary to carry out the purposes of this part, including implementing

transfer of the county programs to the each department,
respectively.

(2) The department of social and rehabilitation
services may adopt rules:

(1)(a) to determine the amount, scope, and duration of
general relief, which may not exceed those services and
amounts payable under the department's department of social
and rehabilitation services' programs of medicaid and aid to
families with dependent children as necessary to carry out
the purposes of this part; and

(2)(b) establishing a system of penalties and
sanctions applicable to providers of health-related services
to state-assumed counties in accordance with 53-6-111(2)
through (5)."

Section 82. Section 53-2-811, MCA, is amended to read:

"53-2-811. Transfer of county public assistance and
protective services to state department departments. (1) All
authority granted to the board of county commissioners to
establish and operate a public assistance program and
provide protective services for children and adults pursuant
to Titles 41 and 53 may be transferred to the department of
social and rehabilitation services and the department of
family services, respectively, except that the county
attorney shall continue to provide legal assistance and
representation for the purposes of adult and child

protective services without charge and all debts and
obligations incurred prior to the effective date of state
assumption continue as the responsibility of the county.

(2) The board of county commissioners, after public
hearing, may by resolution or ordinance transfer to the
department of social and rehabilitation services and the
department of family services all powers and duties for
public assistance and protective services for children and
adults, respectively, including the selection, supervision,
and termination of staff personnel associated with the
performance of these activities. Upon the effective date of
such transfer, the department of social and rehabilitation
services and the department of family services shall assume
all powers and duties related to public assistance and
protective services, respectively, and accorded by law to
the county welfare department. If the notice required in
subsection (3) is given, the transfer is effective at the
start of the next state fiscal year.

(3) Counties opting for state assumption shall notify
the department of social and rehabilitation services and the
department of family services at least 90 days prior to the
start of the state fiscal year unless the time period is
waived in whole or in part by the director of the each
department.

(4) Counties opting for state assumption shall permit

the department of social and rehabilitation services and the department of family services to use the same facilities currently occupied by the county department or substantially equal facilities, with fair rental value for such facilities to be paid by the each department. Counties opting for state assumption shall transfer to the appropriate department all materials, equipment, and supplies used in the operation of the county department and which were paid for in whole or in part with federal or state funds."

Section 83. Section 53-2-812, MCA, is amended to read:

"53-2-812. State assumption -- permanent transfer to department state -- exceptions. (1) A county opting for state assumption does so on a complete and permanent basis, unless the county requests to retain or reassume responsibility for medical assistance or monetary payments to needy persons as provided in Title 53, chapter 3, pursuant to the adoption of a resolution or ordinance as provided in 53-2-811(2) and notice to the department of social and rehabilitation services as provided in 53-2-811(3). Under such a retention or reassumption, staff personnel continue under the supervision and control of the department of social and rehabilitation services but the department may contract with the counties for the operation of programs provided in Title 53, chapter 3. A county may not retain or reassume assistance programs partially funded

by the federal government.

(2) A county transferring all duties and responsibilities to the department state may reassume limited responsibility for medical assistance or monetary payments to needy persons as provided in subsection (1) but may not thereafter request full state assumption. A county initially requesting limited state assumption may not thereafter request full state assumption. A county opting for limited or full state assumption does so on a permanent basis, except as provided in this section."

Section 84. Section 53-2-813, MCA, is amended to read:

"53-2-813. Mill levy for counties transferring public assistance and protective services. (1) (a) Except as provided in subsection (1)(b), for the purpose of this part, 12 mills must be levied annually in those counties opting for state assumption.

(b) A county that levied an amount less than 12 mills for purposes of its county poor fund during fiscal year 1982 must levy an equivalent amount to the poor fund mill levy assessed by that county during fiscal year 1982 plus 1.5 mills, not to exceed a total of 12 mills, less a mill levy equivalent to an amount the county can demonstrate was spent during fiscal year 1982 for the building or operation of a medical facility. The reduced mill levy exception provided in this subsection (1)(b) continues in effect until June 30,

1984. After that date 12 mills must be levied in all counties where state assumption is in effect.

(2) The For a county electing state assumption before July 1, 1986, the proceeds of the mill levy established in subsection (1) must be deposited in the state special revenue fund in the state treasury for the purpose of paying the expenses of the department of social and rehabilitation services. The mill levy may not exceed 12 mills, notwithstanding actual expenditures made by the department.

(3) For a county electing state assumption on or after July 1, 1986, the proceeds of the mill levy established in subsection (1) must be deposited in the state special revenue fund in the state treasury to the credit of the department of social and rehabilitation services. The general fund authority of the department of social and rehabilitation services shall be reduced and the general fund authority of the department of family services shall be increased by an amount equal to the county's expenditures for child and adult protective services in the fiscal year immediately preceding state assumption. The mill levy may not exceed 12 mills, notwithstanding actual expenditures made by the department of social and rehabilitation services and the department of family services.

~~(3)~~(4) For a county retaining or reassuming operational responsibility for medical assistance or

monetary payments to needy persons as provided in 53-2-812, the levy provided in subsection (1) must be reduced by the mill levy equivalent expended by that county or the department for such purposes in the fiscal year immediately preceding the option to retain or reassume such responsibility."

Section 85. Section 53-2-821, MCA, is amended to read:

"53-2-821. Creation of advisory councils. (1) The department of social and rehabilitation services may establish one or more advisory councils to advise the department on policies relating to public assistance or protective-services. The director of the department shall appoint members of the advisory council for a term set by him, and they may be dismissed at his discretion.

(2) Upon request of the governing body of a county having opted for state assumption, the department of social and rehabilitation services shall establish a county advisory council for the county. The advisory council shall consist of the board of county commissioners of the county or, if the county governing body consists of greater than three members, three members of the governing body chosen by the governing body. The department may appoint two other members to the advisory council as provided in subsection (1).

(3) No compensation or expenses may be paid advisory

council members for their service on the advisory council. The requirements of 2-15-122 do not apply to an advisory council appointed pursuant to this section."

Section 86. Section 53-2-822, MCA, is amended to read:

"53-2-822. Work program required. The department of social and rehabilitation services shall establish a work program as provided in 53-3-304. The department of social and rehabilitation services may contract with the county, a municipality, or state agency that has work available for recipients of general relief."

Section 87. Section 53-4-101, MCA, is amended to read:

"53-4-101. Definitions. As used in this part, the following definitions apply:

(1) "Child welfare services" means the establishing, extending, and strengthening of child welfare services (especially in predominantly rural areas) for the protection and care of ~~homeless, dependent, and neglected children and children in danger of becoming delinquent~~ children alleged to be youth in need of care, youth in need of supervision, and delinquent youth ABUSED, DEPENDENT, OR NEGLECTED CHILDREN.

(2) ~~"Child welfare worker" means staff personnel who have had education and training in the field of child welfare and who are qualified and accepted as such in conformity with the standards established by the department.~~

(3)(2) "Department" means the department of ~~social and rehabilitation family~~ services provided for in ~~Title 2, chapter 15, part 22~~ [section 2].

(4)(3) "Public assistance" or "assistance" means any type of monetary or other assistance furnished under this title to a person by a state or county agency, regardless of the original source of the assistance."

Section 88. Section 53-4-111, MCA, is amended to read:

"53-4-111. Administrative duties of department. Subject to the authority and regulations of the department and in cooperation with the federal government, the department shall:

(1) adopt rules necessary to carry out the purposes of this part;

(2) administer or supervise all child welfare ~~activities~~ services of the state except the child welfare ~~activities~~ services which are administered by the department of health and environmental sciences and the department of social and rehabilitation services."

Section 89. Section 53-4-113, MCA, is amended to read:

"53-4-113. Child protection and rehabilitation -- duties of department. The department shall:

(1) enforce all laws pertaining to children and take the initiative in all matters involving the interest of illegitimate, dependent, neglected, and delinquent children

where adequate provision therefor has not been made by law;

(2) use funds available for cases where special medical or material assistance is necessary to rehabilitate ~~subnormal~~ developmentally disabled or physically handicapped children and where it is not otherwise provided for by law;

(3) cooperate for the purposes hereof with all reputable child-helping and child-placing agencies; and

(4) inspect, license, and supervise ~~public-and-private infants-homes-and-child-caring youth care facilities~~ and child-placing ~~institutions-and agencies.~~"

Section 90. Section 53-4-115, MCA, is amended to read:

"53-4-115. Department to accept custody of children committed by courts. The department shall accept the guardianship or custody of children committed by the courts to the department and ~~arrange provide~~ ARRANGE for their care ~~in-family-foster-homes--or--otherwise--in--cooperation--with county-departments-of-public-welfare.~~"

Section 91. Section 53-4-401, MCA, is amended to read:

"53-4-401. Definitions. As used in this part, the following definitions apply:

(1) "Person" includes any individual, partnership, voluntary association, or corporation.

(2) "Agency" includes a person not related by blood or marriage to a minor child to be adopted.

(3) "Department" means the department of ~~social-and~~

~~rehabilitation family services provided for in Title--2, chapter--15, part--22 [section 2]."~~

Section 92. Section 53-4-501, MCA, is amended to read:

"53-4-501. Purpose -- definitions. (1) The purpose of this part is to assure that children requiring supplemental parental care be provided such food, shelter, security and safety, guidance and direction, nurture and comfort, and learning experiences commensurate to their ages and capabilities so as to safeguard the growth and development of such children, thereby facilitating their proper physical and emotional maturation.

(2) In this part, the following definitions apply:

(a) "Child" means a person under 12 years of age.

(b) "Day-care facility" means a person, association, or place, incorporated or unincorporated, that provides supplemental parental care on a regular basis. It includes a family day-care home, a day-care center, or a group day-care home. It does not include a person who limits care to children who are related to him by blood or marriage or under his legal guardianship or any group facility established chiefly for educational purposes.

(c) "Day-care center" means a place in which supplemental parental care is provided to 13 or more children on a regular basis.

(d) "Department" means the department of ~~social--and~~

rehabilitation family services provided for in ~~Title-2,~~
chapter-15, part-22 [section 2].

(e) "Day care" means supplemental parental child care.

(f) "Supplemental parental child care" means the provision of food, shelter, and learning experiences commensurate with a child's age and capabilities so as to safeguard the child's growth and development on a supplemental basis outside of the child's home by an adult other than a parent, guardian, person in loco parentis, or relative on a regular basis for daily periods of less than 24 hours.

(g) "Regular basis" means providing supplemental parental care to children of separate families for any daily periods of less than 24 hours and within 3 or more consecutive weeks.

(h) "Family day-care home" means a private residence in which supplemental parental care is provided to three to six children from separate families on a regular basis.

(i) "Group day-care home" means a private residence in which supplemental parental care is provided to 7 to 12 children on a regular basis.

(j) "Registration" means the process whereby the department maintains a record of all family day-care homes and group day-care homes, prescribes standards, promulgates rules, and requires the operator of a family day-care home

or a group day-care home to certify that he has complied with the prescribed standards and promulgated rules.

(k) "Registrant" means the holder of a registration certificate issued by the department in accordance with the provisions of this part.

(l) "Registration certificate" means a written instrument issued by the department to publicly document that the certificate holder has, in writing, certified to the department his compliance with this part and the applicable standards for family day-care homes and group day-care homes.

(m) "License" means a written document issued by the department that the license holder has complied with this part and the applicable standards and rules for day-care centers.

(n) "Licensee" means the holder of a license issued by the department in accordance with the provisions of this part."

Section 93. Section 53-20-203, MCA, is amended to read:

"53-20-203. Responsibilities of department. The department shall:

(1) take cognizance of matters affecting the developmentally disabled citizens of the state;

(2) initiate a preventive developmental disabilities

1 program which shall include but not be limited to the
 2 implementation of developmental disabilities care,
 3 treatment, prevention, and research as can best be
 4 accomplished by community-centered services. Every means
 5 shall be utilized to initiate and operate the service
 6 program in cooperation with local agencies under the
 7 provisions of 53-20-205 and 53-20-207.

8 (3) collect and disseminate information relating to
 9 developmental disabilities;

10 (4) prepare, with the assistance of the planning and
 11 advisory council, an annual comprehensive plan for the
 12 initiation and maintenance of developmental disabilities
 13 services in the state. The services shall include but not
 14 be limited to community comprehensive developmental
 15 disabilities services as referred to in 53-20-202.

16 (5) provide to the planning and advisory council a
 17 written quarterly report of planning, program, and fiscal
 18 activities of the department in regard to community-based
 19 services for the developmentally disabled;

20 (6) provide by rule for the evaluation of persons who
 21 apply for services or persons admitted into a program at a
 22 developmental disability facility;

23 (7) provide state personnel to assist regional
 24 councils provided for in 53-20-207;

25 (8) receive from agencies of the government of the

1 United States and other agencies, persons or groups of
 2 persons, associations, firms, or corporations grants of
 3 money, receipts from fees, gifts, supplies, materials, and
 4 contributions to initiate and maintain developmental
 5 disabilities services within the state; and

6 (9) require that habilitation plans be developed,
 7 implemented, and continuously maintained for all
 8 developmentally disabled persons who are served through a
 9 community-based program funded by the state; and

10 (10) use funds available for cases in which special
 11 medical or material assistance is necessary to rehabilitate
 12 developmentally disabled or physically handicapped children
 13 if such assistance is not otherwise provided for by law."

14 Section 94. Section 53-20-213, MCA, is amended to
 15 read:

16 "53-20-213. Departments to cooperate. The department
 17 of institutions, the department of social and rehabilitation
 18 services, the department of health and environmental
 19 sciences, the department of family services, and the office
 20 of superintendent of public instruction shall cooperate on
 21 all aspects of each agency's respective programs for the
 22 developmentally disabled."

23 Section 95. Section 53-20-305, MCA, is amended to
 24 read:

25 "53-20-305. Local control of community homes --

departmental licensing, administration, operation, health and safety standards. (1) Community homes for the developmentally disabled may be under local control, and the nonprofit corporations or associations operating community homes are authorized to establish homes and programs they believe in the best interest of their homes.

(2) (a) A community home for the developmentally disabled shall be licensed annually by the department of social-and-rehabilitation family services.

(b) One temporary license may be issued for no longer than 60 days if there are unavoidable delays in the certification process.

(3) (a) The department of family services for the purpose of licensing shall adopt standards and rules concerning the administration, operation, health, and safety of community homes for the developmentally disabled.

(b) The department of health and environmental sciences shall provide advice and recommendations to the department of social and rehabilitation services and the department of family services concerning the standards for health and safety."

Section 96. Section 53-20-307, MCA, is amended to read:

"53-20-307. Health and safety standards for licensing.

(1) (a) After initial certification by the state fire

marshal, community homes must be certified annually for fire and life safety by the state fire marshal.

(b) The state fire marshal shall notify the department of social and rehabilitation services and the department of family services when a community home has been certified.

(2) (a) Local health officers shall certify community homes for compliance with health and safety standards. If for any reason the local authority cannot complete the certification in a timely manner, the department of health and environmental sciences is authorized to make the determination on certification.

(b) A reasonable fee may be charged to authorized parties as defined in 53-20-303 for the health and safety certification."

Section 97. Section 53-20-401, MCA, is amended to read:

"53-20-401. Definitions. As used in this part, unless the context otherwise requires, the following definitions apply:

(1) "Client" means a person for whom voluntary protective services are rendered pursuant to provisions of this part.

(2) "Department" means the department of ~~social-and-rehabilitation~~ family services provided for in [section 2].

(3) "Developmentally disabled person" means a

person who by reason of a developmental disability is not able, unassisted, to properly manage or care for his person or his property.

~~{3}~~(4) "Ward" means a person for whom protective services--are--rendered--pursuant--to--the--provisions--of--this part the department has been appointed guardian under Title 72, chapter 5, part 3.

~~{4}~~--"Respondent"--means--a--person--in--whose--interest proceedings--are--brought--under--this--part--.

(5) "Protective services" means case management of services directed at preventing or remedying neglect, abuse, or exploitation of developmentally disabled persons."

Section 98. Section 53-20-402, MCA, is amended to read:

"53-20-402. Legislative findings and directives. (1) In recognition of the need to provide supervision and protection from abuse, neglect, and exploitation for the developmentally disabled and in acknowledgment of the desirability of providing such services outside the state institutions, the legislature hereby finds and declares that a program should be established by the department to provide protective services for the developmentally disabled. Such a program should be designed to provide the services set forth in this part for developmentally disabled persons.

(2) The director of the department shall adopt rules

for the administration of this part. The department shall develop a statewide system of protective service services in accordance with regulations and standards established by the department with respect to this program. The department may:

(a) provide direct services;

(b) enter into a contract with any responsible agency, public or private, for provision of protective service services by the agency;

(c) accept appointment by any district court as guardian, ~~or conservator, trustee, protector, or trustee and protector~~ of a mentally retarded or other developmentally disabled person. However, this subsection does not relieve the department of the duty to comply with the requirements of Title 72, chapter 5, for the appointment of a guardian or conservator or the requirements of 53-20-406."

Section 99. Section 53-20-405, MCA, is amended to read:

"53-20-405. Protective and supportive services provided. (1) The department shall ~~provide, in the manner set forth, for~~ assist each of its clients or wards to obtain those protective and supportive services which the ~~department--believes~~ may be necessary to help the client or ward function to the extent of his capabilities as an independent, self-sufficient member of society. Services

under this part may include but shall not be limited to assistance in obtaining:

- (a) housing, clothing, and food;
- (b) education and training for living in society and, where possible, for employment;
- (c) employment;
- (d) financial benefits to which the client or ward may be entitled;
- (e) medical services and supplies;
- (f) necessary legal services;
- (g) marshaling, protection, and insurance of the client's or ward's property;
- (h) financial advice and services; and
- (i) participation in cultural and recreational activities.

(2) Services under this part may also include but shall not be limited to assistance in preventing exploitation of the client or ward by others and in preventing injury-to abuse or neglect of the client or ward and injury by-the-ward to others.

(3) The provision of protective services pursuant to this part does not create a guardianship relationship between the department and the developmentally disabled person unless a guardianship is created in accordance with the requirements of Title 72, chapter 5, part 3.

(4) The department may not provide a developmentally disabled person protective services that impose a legal limitation or restriction on the person unless the department has been appointed the legal guardian of or conservator for the person under the provisions of Title 72, chapter 5."

Section 100. Section 53-20-409, MCA, is amended to read:

"53-20-409. Costs of protective services. (1) If the income from the assets available to a ward suffice, the department may require such ward, the custodian, guardian, or conservator of such ward or, if the governing instrument permits, the trustee of such ward to pay all reasonable and proper costs of proceedings in the interest of such ward under this part or Title 72, chapter 5, including, without limitation, court costs, sheriff fees, attorney fees, and costs of diagnostic services, and to pay for protective services rendered to the ward or to reimburse the department for funds expended for such costs or services.

(2) Upon a written petition filed by the department, the court by which the department was appointed may permit annual expenditure of up to 3% of the principal assets if such expenditure be shown to be of special advantage for the ward. The department shall file an accounting each year, and the court by which the department was appointed shall

conduct a hearing to determine the propriety of any charge or charges to a ward. ~~All-of-the-provisions-of-subsections (2)-and-(3)-of--53-20-404--concerning--notice--and--hearings shall--apply--to--hearings--under--this--section.~~ Upon such hearing, the court shall enter its order approving, disapproving, or modifying such charge or charges. The order of the court may be prospective as to charges of a recurring nature which reasonably may be anticipated.

(3) Except as provided in subsections (1) and (2) of this section, the net cost of proceedings under this part and of services provided by the department shall be paid from moneys appropriated for that purpose by the legislature or from moneys available from any other governmental or private source. Claims for state reimbursements shall be presented to the department at such times and in such manner as the department may prescribe. The department shall certify the amount to the department of administration. The amount so certified shall be paid from the state treasury upon the voucher of the department and the warrant of the department of administration."

Section 101. Section 53-20-410, MCA, is amended to read:

"53-20-410. Reports required. With respect to each client or ward, designated field staff shall file a written report with the director of the department no later than

June 30, 1974, and annually thereafter setting forth the services which have been provided for the client or ward, including specifically an accounting for any transactions with property of the client or ward other than as a court-appointed conservator, the current condition of the client or ward, and the recommendations of the department as to whether its services should continue or be terminated and whether other proceedings should be instituted. ~~if-the department--is--serving--pursuant--to--court---order---under 53-20-404,--a--copy--of--such-report--also--shall--be--filed--with such-court.~~"

Section 102. Section 53-30-202, MCA, is amended to read:

"53-30-202. Establishment of juvenile youth correctional facilities. The department of institutions family services, within the annual or biennial budgetary appropriation, may establish, maintain, and operate facilities to properly diagnose, care for, train, educate, and rehabilitate children in need of these services. The children must be 10 years of age or older and under 21 years of age. The facilities include but are not limited to the Mountain View school and the Pine Hills school ~~but--do--not include-the-youth-forest-camp.~~"

Section 103. Section 53-30-203, MCA, is amended to read:

1 "53-30-203. Control and management of juvenile youth
 2 correctional facilities. The facilities provided for in
 3 53-30-202 shall exercise their functions under the
 4 supervision and general management of the department of
 5 institutions family services. Except where otherwise
 6 provided by law, the department by rules shall establish
 7 standards of care, policies of admission, transfers,
 8 discharge, and aftercare supervision in order to provide
 9 adequate care for children and adequate service to the
 10 courts. The department shall develop special programs within
 11 each facility which are adaptable to the particular needs of
 12 its operation."

13 Section 104. Section 53-30-204, MCA, is amended to
 14 read:

15 "53-30-204. Cooperative agreements for services with
 16 governing body of Indian tribe. (1) The department of
 17 institutions family services may enter into agreements with
 18 the governing body of an Indian tribe within the state for
 19 residential, and educational, evaluation, and aftercare
 20 services at--Mountain--View--school;--Pine--Hills--school;
 21 aftercare-division;--or--other--juvenile-facility maintained by
 22 the department for children who have been adjudicated
 23 delinquent by the tribal court, subject to the provisions of
 24 this part and parts 1 and 2 of chapter 1.

25 (2) Any agreement entered into under subsection (1)

1 must also satisfy the requirements of Title 18, chapter 11."

2 Section 105. Section 53-30-208, MCA, is amended to
 3 read:

4 "53-30-208. Maximum age of commitment. No child who
 5 has attained the age of 18 years shall be committed by any
 6 juvenile youth court to the Mountain-View-school;--Pine-Hills
 7 school;--or--other--juvenile--facility department of family
 8 services, except, however, that any person under 21 years
 9 who prior to attaining the age of 18 years came under the
 10 jurisdiction of the juvenile youth court by reason of
 11 delinquent conduct and whose adjudication of delinquency,
 12 including the finding that commitment to some institution
 13 was necessary, is not made until after the child reaches the
 14 age of 18 years shall be committed to the department of
 15 institutions family services. The department shall then have
 16 the obligation to test and evaluate the person to determine
 17 the proper place of detention for the person, who shall
 18 thereupon be confined at that institution until the person
 19 shall have attained the age of 21 years unless sooner
 20 discharged by the department."

21 Section 106. Section 53-30-211, MCA, is amended to
 22 read:

23 "53-30-211. Transfer of child to other facility or
 24 institution -- notice. The department of institutions family
 25 services upon recommendation of the superintendent of a

1 facility may transfer a child resident in one of its
2 juvenile youth correctional facilities to any other facility
3 or institution under the jurisdiction and control of the
4 department."

5 Section 107. Section 53-30-212, MCA, is amended to
6 read:

7 "53-30-212. Commutation of sentence to state prison
8 and transfer of prisoner to juvenile youth correctional
9 facility or Swan River forest camp. (1) Upon the application
10 of a person under 21 years of age who has been sentenced to
11 the state prison or upon the application of his parents or
12 guardian, the governor may, after consulting with the
13 department of institutions and the department of family
14 services and with the approval of the board of pardons,
15 commute the sentence by committing such person to the
16 department of family services until he is 21 years of age or
17 until sooner placed or discharged.

18 (2) If such person's behavior after being committed to
19 the department of family services indicates that he is not a
20 proper person to reside at one of the department's--juvenile
21 youth correctional facilities, the governor, after
22 consulting with the department of institutions and the
23 department of family services and with the approval of the
24 board of pardons, may revoke the commutation and return him
25 to the state prison to serve out his unexpired term, and the

1 time spent by him at one of the department's--juvenile youth
2 correctional facilities or while a refugee from one of the
3 department's--juvenile youth correctional facilities shall
4 not be considered as a part of his original sentence.

5 (3) Upon recommendation of the warden and with the
6 approval of the department of institutions and the
7 department of family services, a person under 21 years of
8 age who has been sentenced to the state prison may be
9 transferred to any juvenile youth correctional facility
10 under the jurisdiction and control of the department of
11 family services.

12 (4) Upon recommendation of the warden and approval of
13 a person sentenced to the state prison or application of a
14 person sentenced to the state prison and approval of the
15 warden and with the approval of the department of
16 institutions, such person sentenced to the state prison who
17 is 25 years of age or younger may be transferred to the Swan
18 River youth forest camp. Prior to departmental approval of
19 the transfer, the person must undergo an evaluation by the
20 department to determine his suitability for transfer to the
21 camp. The results of the evaluation must include a finding
22 that a minimum security facility is an appropriate placement
23 for such person or the transfer shall be denied. If the
24 person is transferred, he shall be under the supervision and
25 control of the facility to which he is transferred.

1 (5) If such person's behavior after transfer to such
 2 juvenile a youth correctional facility or the Swan River
 3 forest camp indicates he might be released on parole or his
 4 sentence be commuted and he be discharged from custody, the
 5 superintendent of such facility, with the approval of the
 6 department of institutions and the department of family
 7 services in the case of a youth correctional facility or
 8 with the approval of the department of institutions in the
 9 case of the Swan River forest camp, may make an appropriate
 10 recommendation to the state board of pardons and the
 11 governor, who may in their discretion parole such person or
 12 commute his sentence.

13 (6) If such person's behavior after transfer to a
 14 juvenile youth correctional facility or the Swan River
 15 forest camp indicates he is not a proper person to reside in
 16 such facility, upon recommendation of the superintendent and
 17 with the approval of the department of institutions and the
 18 department of family services in the case of a youth
 19 correctional facility or with the approval of the department
 20 of institutions in the case of the Swan River forest camp,
 21 such person shall be returned to the state prison to serve
 22 out his unexpired term."

23 Section 108. Section 53-30-214, MCA, is amended to
 24 read:

25 "53-30-214. Apprehension and return of child youth

1 leaving juvenile youth correctional facility without
 2 permission. A child youth who has left a juvenile youth
 3 correctional facility of the department of institutions
 4 family services without permission may be apprehended and
 5 returned by any citizen. The term "juvenile youth
 6 correctional facility of the department" means any facility
 7 under the supervision and control of the department of
 8 institutions family services which has as its primary
 9 function the care, training, custody, and control of
 10 children youth and specifically includes the Pine Hills
 11 school for boys and the Mountain View school for girls."

12 Section 109. Section 53-30-215, MCA, is amended to
 13 read:

14 "53-30-215. Penalty for aiding resident in leaving
 15 juvenile youth correctional facility. A person who permits
 16 or assists a resident of any juvenile youth correctional
 17 facility to leave a facility without permission or who
 18 furnishes or attempts to furnish to such a resident a tool,
 19 weapon, or other article with the intent of aiding him to
 20 leave without permission or who harbors or conceals a
 21 resident who has left without permission shall on conviction
 22 be punished by imprisonment for a term of not less than 6
 23 months or more than 2 years or by a fine not exceeding
 24 \$1,000 or by both such fine and imprisonment."

25 Section 110. Section 53-30-226, MCA, is amended to

1 read:

2 "53-30-226. Youth aftercare agreement. A youth
3 released by the department of institutions family services
4 from one of the state-juvenile youth correctional facilities
5 to the supervision, custody, and control of the department
6 shall, before his release, sign an aftercare agreement
7 containing:

8 (1) a statement of the terms and conditions of his
9 release, including a list of the acts which, if committed by
10 the youth, may result in his return to the facility; and

11 (2) a statement that if the department or any person
12 alleges any violation of the terms and conditions of the
13 agreement, the youth is entitled to a hearing as provided
14 for in 53-30-229 before he may be returned to the facility."

15 Section 111. Section 53-30-229, MCA, is amended to
16 read:

17 "53-30-229. Hearing on alleged violation of aftercare
18 agreement -- right to appeal outcome. (1) When it is alleged
19 by an aftercare counselor that a youth has violated the
20 terms of his aftercare agreement, the youth shall be granted
21 a hearing at the site of the alleged violation or in the
22 county where the youth is residing or is found within 10
23 days after notice has been served on the youth or the youth
24 is detained, whichever is earlier. The purpose of the
25 hearing is to determine whether the youth committed the

1 violation and, if so, whether the violation is of such a
2 nature that he should be returned to the juvenile youth
3 correctional facility from which he was released or a
4 different plan for treatment should be pursued by the
5 department of institutions family services.

6 (2) The youth, upon advice of an attorney, may waive
7 his right to a hearing.

8 (3) With regard to this hearing, the youth shall be
9 given:

10 (a) written notice of the alleged violation of his
11 aftercare agreement, including notice of the purpose of the
12 hearing;

13 (b) disclosure of the evidence against him and the
14 facts constituting the alleged violation;

15 (c) opportunity to be heard in person and to present
16 witnesses and documentary evidence to controvert the
17 evidence against him and to show that there are compelling
18 reasons which justify or mitigate the violation;

19 (d) opportunity to have the referee subpoena
20 witnesses;

21 (e) the right to confront and cross-examine adverse
22 witnesses;

23 (f) the right to be represented by an attorney;

24 (g) a record of the hearing; and

25 (h) notice that a written statement as to the evidence

1 relied upon in reaching the final decision and the reasons
2 for the final decision will be provided by the referee.

3 (4) The department shall appoint a referee, who shall
4 not be an employee of the department, to conduct the
5 hearing. In the conduct of the hearing, the department may
6 request the county attorney's assistance as necessary. The
7 department shall adopt rules necessary to effect a prompt
8 and full review.

9 (5) If the referee finds, by a preponderance of the
10 evidence, that the youth did in fact commit the violation,
11 he shall make a recommendation to the department for the
12 placement of the youth. In making this recommendation, the
13 referee may consider mitigating circumstances. Final
14 approval rests with the department and must be made within
15 10 days of the referee's recommendation.

16 (6) The youth may appeal from the decision at the
17 hearing to the district court of the county in which the
18 hearing was held by serving and filing a notice of appeal
19 with the court within 10 days of the department's decision.
20 The youth may obtain a written transcript of the hearing
21 from the department by giving written notice of appeal. The
22 district court, upon receipt of a notice of appeal, shall
23 order the department to promptly certify to the court a
24 record of all proceedings before the department and shall
25 proceed to a prompt hearing on the appeal based upon the

1 record on appeal. The decision of the department shall not
2 be altered except for abuse of discretion or manifest
3 injustice.

4 (7) Pending the hearing on a violation and pending the
5 department's decision, a youth may not be detained except
6 when his detention or care is required to protect the person
7 or property of the youth or of others or he may abscond or
8 be removed from the community. Procedures for taking into
9 custody and detention of a youth charged with violation of
10 his aftercare agreement shall be as provided in 41-3-1111
11 and 41-5-306.

12 (8) If the decision is made to return the youth to the
13 institution youth correctional facility from which he was
14 released and the youth appeals that decision, he shall await
15 the outcome of the appeal at such institution facility."

16 NEW SECTION. Section 112. Repealer. Sections
17 ~~40-3-1157~~, 41-3-1106, 41-3-1113, 41-3-1121, ~~41-5-7027~~,
18 ~~41-5-7047~~, ---~~41-5-7057~~, 53-4-121, 53-4-122, 53-20-404,
19 53-20-407, 53-20-411, and 53-20-412, MCA, are repealed.

20 NEW SECTION. Section 113. Extension of authority. Any
21 existing authority of the department of social and
22 rehabilitation services, the department of family services,
23 or the department of institutions to make rules on the
24 various functions transferred by the provisions of this act
25 is extended to the provisions of this act.

NEW SECTION. Section 114. Codification instructions.

(1) Section 2 is intended to be codified as an integral part of Title 2, chapter 15, and the provisions of Title 2, chapter 15, apply to section 2. Section 2-15-2211 is intended to be renumbered and codified in the same part as section 2.

(2) Section 53-20-414 is intended to be renumbered and codified by the code commissioner as an integral part of Title 53, chapter 20, part 1. The code commissioner shall conform internal references and grammar to this change.

(3) SECTIONS 15 THROUGH 19 ARE INTENDED TO BE CODIFIED AS AN INTEGRAL PART OF TITLE 41, CHAPTER 5, AND THE PROVISIONS OF TITLE 41, CHAPTER 5, APPLY TO SECTIONS 15 THROUGH 19.

(4) SECTION 53-2-204 IS INTENDED TO BE RENUMBERED AND CODIFIED BY THE CODE COMMISSIONER IN THE SAME TITLE, CHAPTER, AND PART AS SECTION 5.

NEW SECTION. Section 115. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 116. Reorganization procedure. The provisions of sections 2-15-131 through 2-15-137 govern

the creation of the department of family services and the transfer of the various functions contained in this act from the department of social and rehabilitation services, county welfare offices and departments, the department of institutions, and the youth court of the district court to the department of family services.

NEW SECTION. Section 117. Implementation. (1) The governor shall by executive order implement the provisions of this act.

(2) The governor may by executive order assign to the department of family services in a manner consistent with this act functions allocated to the department of social and rehabilitation services, county welfare offices or departments, the department of institutions, or the youth court of the district court by the 50th legislature and not transferred by this act.

NEW SECTION. Section 118. Effective dates. (1) Section ~~117~~ ~~116~~ 117 is effective on passage and approval.

(2) Sections 1 through ~~116~~ ~~115~~ 116 and this section are effective upon signing of the executive order under section ~~117(1)~~ ~~116(1)~~ 117(1) or on October 1, 1987, whichever occurs first.

-End-

STANDING COMMITTEE REPORT

SENATE

MARCH 25

87

19.....

MR. PRESIDENT

SENATE STATE ADMINISTRATION

We, your committee on.....

HOUSE BILL 325

having had under consideration..... No.....

third blue
reading copy (color)

CREATE DEPARTMENT OF FAMILY SERVICES
Mercer (Mazurek)

HOUSE BILL 325

Respectfully report as follows: That..... No.....

be amended as follows:

1. Page 7, lines 11 and 12.

Following: "department;"

Strike: "and"

Insert: "(16) contract with the county board of welfare for administration of child and adult protection services for that county; and"

Renumber: subsequent subsection

2. Page 16, line 15.

Strike: "AND"

Insert: ", "

Following: "EXPENSES"

Insert: ", and indirect costs"

3. Page 16, line 19.

Following: "SALARIES"

Strike: "AND"

Insert: ", "

Following: "TRAVEL,"

Insert: "and indirect costs,"

Senate State Administration

House Bill 325

Page 2 of 6

MARCH 25

19 87

4. Page 17, line 5.

Following: "THAN"

Strike: "FOUR"

Insert: "five"

5. Page 17, line 7.

Following: "DEPARTMENT,"

Insert: "a representative of a county department of public welfare,"

6. Page 20, line 8.

Strike: "116"

Insert: "117"

7. Page 20.

Following: line 11

Insert: "Section 21. Section 2-18-303, MCA, is amended to read: "2-18-303. Procedures for utilizing pay schedules. (1)

The pay schedules provided in 2-18-311 and 2-18-312 shall be implemented as follows:

(a) The pay schedule provided in 2-18-311 indicates the annual compensation for the fiscal year ending June 30, 1986, for each grade and step for positions classified under the provisions of part 2 of this chapter.

(b) The pay schedule provided in 2-18-312 indicates the annual compensation for the fiscal year ending June 30, 1987, for each grade and step for positions classified under the provisions of part 2 of this chapter.

(c) Each new employee shall advance from step 1 to step 2 of a grade after successfully completing 6 months of probationary service. The anniversary date of an employee shall be established at the end of the probationary period in accordance with rules promulgated by the department.

(d) (i) The compensation of each employee on the first day of the first pay period in fiscal year 1986 shall be that amount which corresponds to the grade and step occupied on the last day of the preceding fiscal year of 1985.

(ii) The compensation of each employee on the first day of the first pay period in fiscal year 1987 shall be that amount which corresponds to the grade and step occupied on the last day of the fiscal year 1985.

(iii) In compliance with rules adopted to implement this part, each employee is eligible on his anniversary date to advance one step in the pay matrix for fiscal year 1987. However, if the employee's anniversary date falls between

XXXXXX

XXXXXX

(Continued)

Chairman

(continued)

(inclusive) July 1 and the first day of the first pay period of fiscal year 1987, he will advance one step on the first day of that pay period.

(2) The pay schedules provided in 2-18-311 and 2-18-312 and the provisions of subsection (1) of this section do not apply to those institutional teachers, liquor store occupations, or blue-collar occupations compensated under the pay schedules provided in 2-18-313, 2-18-314, or 2-18-315.

(3) The pay schedules provided in 2-18-313, 2-18-314, or 2-18-315 shall be implemented as follows:

(a) (i) The pay schedules provided in 2-18-313 indicate the annual compensation for the contracted school term for teachers employed by institutions under the authority of the department of institutions or the department of family services for fiscal years 1986 and 1987.

(ii) The compensation of each teacher on the first day of the first pay period in July, 1985, shall be that amount which corresponds to his level of academic achievement and the step occupied on June 30, 1985.

(iii) The compensation of each teacher on the first day of the first pay period in July, 1986, shall be that amount which corresponds to his level of achievement and the step occupied on June 30, 1985.

(b) (i) The pay schedules provided in 2-18-314 indicate the maximum hourly compensation for fiscal years ending June 30, 1986, and June 30, 1987, for those employees in liquor store occupations who have collectively bargained separate classification and pay plans.

(ii) The compensation of each employee on the first day of the first pay period in fiscal year 1986 or 1987, as the case may be, shall be that amount which corresponds to that grade occupied on the last day of the preceding fiscal year.

(c) (i) The pay schedules provided in 2-18-315 indicate the maximum hourly compensation for fiscal years ending June 30, 1986, and June 30, 1987, for employees in apprentice trades and crafts and other blue-collar occupations recognized in the state blue-collar classification plan who are members of units that have collectively bargained separate classification and pay plans.

(ii) The compensation of each employee on the first day of the first pay period in fiscal year 1986 or 1987, as the

case may be, shall be that amount which corresponds to that grade occupied on the last day of the preceding fiscal year.

(4) (a) (i) No member of a bargaining unit may receive the amounts indicated in the respective pay schedules provided in 2-18-311 through 2-18-315 until the bargaining unit of which he is a member ratifies a completely integrated collective bargaining agreement covering the biennium ending June 30, 1987.

(ii) In the event that negotiation and ratification of a completely integrated collective bargaining agreement as required by subsection (4)(a)(i) of this section are not completed by July 1, 1985, retroactivity to that date may be negotiated.

(iii) In the event that negotiation and ratification of a completely integrated collective bargaining agreement as required by subsection (4)(a)(i) of this section are not completed by July 1, 1985, members of the bargaining unit involved will continue to receive the compensation they were receiving as of June 30, 1985.

(b) Methods of administration not inconsistent with the purpose of this part and necessary to properly implement the pay schedules provided in 2-18-313 through 2-18-315 may be provided for in collective bargaining agreements.

(5) The current wage or salary of an employee shall not be reduced by the implementation of the pay schedules provided for in 2-18-311 through 2-18-315.

(6) The department may authorize a separate pay schedule for medical doctors if the rates provided in 2-18-311 and 2-18-312 are not sufficient to attract and retain fully licensed and qualified physicians at the state institutions.

(7) The department may develop programs which will enable the department to mitigate problems associated with difficult recruitment, retention, transfer, or other exceptional circumstances. Insofar as the program may apply to employees within a collective bargaining unit, it shall be a negotiable subject under 39-31-305."

Renumber: subsequent sections

8. Page 60, line 9.
Following: "one-half"
Insert: "of the nonfederal share of"

(continued)

(continued)

9. Page 60, lines 12 through 16.

Following: "(3)"

Strike: the remainder of line 12 through line 16

10. Page 60, line 17.

Strike: "EXCEPT"

Insert: "Except"

Following: "(4)"

Strike: "IF"

Insert: ", when"

11. Page 60, line 18.

Following: "OF"

Strike: "EXPENDITURE"

Insert: "reimbursement"

12. Page 60, lines 19, 20, and 21.

Following: "1987,"

Strike: the remainder of line 19 through "LEVEL" on line 21

Insert: "the county has no further obligation for foster care expenditures"

13. Page 60, line 25.

Strike: "PERCENTAGE OF"

14. Page 61, line 13.

Following: "(1)"

Insert: "(a)"

15. Page 61, lines 14 through 16.

Following: "41-3-404"

Strike: ", 41-5-403, 41-5-523, or 41-5-524"

Following: "facility" on line 15

Strike: "or youth correctional facility"

16. Page 61.

Following: line 25

Insert: "(b) Whenever a disposition under 41-5-403, 41-5-523, or 41-5-524 involves placement in a youth care facility or youth correctional facility and the department is responsible for all or part of the cost of such placement, the court shall order the probation officer to conduct an investigation of the financial status of the youth's parents or guardianship assets."

(continued)

17. Page 83, line 3.

Strike: ";"

Insert: ". The court shall determine whether continuation in the home would be contrary to the welfare of the child and whether reasonable efforts have been made to prevent or eliminate the need for removal of the child from his home. The court shall include such determination in the order committing the youth to the department."

18. Page 122, line 6.

Following: "~~arrange~~"

Strike: "provide"

Insert: "arrange"

19. Page 147, line 9.

Strike: "116"

Insert: "117"

20. Page 147, line 10.

Strike: "115"

Insert: "116"

21. Page 147, line 12.

Strike: "116(1)"

Insert: "117(1)"

Amendments, HB 325
7082e/C:JEANNE\WP:jj

AND AS AMENDED
BE CONCURRED IN

Jack Blaffey
SENATOR JACK BLAFFEY, Chairman

CONFERENCE COMMITTEE REPORT

Report No. 1

April 11, 1977

MR. SPEAKER

We, your FREE Conference Committee onHOUSE BILL 325met and considered House Bill 325 in its entirety.

We recommend as follows:

THAT HOUSE BILL 325, reference copy salmon, BE AMENDED AS FOLLOWS:

1. Title, line 20.

Strike: "AMENDING SECTION 2-18-303, MCA;"

2. Page 7, line 13.

Following: " CONTRACT "Insert: ", as necessary,"

And that this Conference Committee report be adopted.

FOR THE SENATE

Mazurek
SENATOR MAZUREK, CHAIRMANFarrell
SENATOR FARRELLHirsch
SENATOR HIRSCH

FOR THE HOUSE

Mercer
REP. MERCERRep. Cody
REP. CODYNelson
REP. R. NELSON

ADOPT REJECT

1 STATEMENT OF INTENT

2 HOUSE BILL 325

3 House State Administration Committee

4
5 A statement of intent is required for this bill because
6 section 5 grants rulemaking authority to the department of
7 family services to adopt rules necessary to carry out the
8 purposes of sections 3 through 10 and 15 through 19.

9 Rules are primarily necessary to implement sections 7
10 and 8 of the bill. These sections require that a state youth
11 services council and local youth services advisory councils
12 be established to advise the director of the department on
13 policies related to children and youth, to make an annual
14 written review and evaluation of local needs and services,
15 and to develop a local plan for a system of community-based
16 services for children and youth.

17 The rules to be adopted would address:

18 (1) the composition, membership requirements, and
19 operating procedures for the state and local advisory
20 councils;

21 (2) procedures for the development and format of the
22 annual written review and evaluation of services;

23 (3) procedures for the preparation and format of the
24 state plan; and

25 (4) other guidelines necessary for the administration

1 and operation of the state and local advisory councils.

2 It is also intended that the department adopt rules
3 necessary to carry out its duties and responsibilities set
4 forth in section 5. These rules will be adopted in a manner
5 consistent with the expressed purposes of the legislation
6 and the existing rulemaking authority of the department of
7 social and rehabilitation services that are transferred to
8 the department of family services.

9 In addition, the department will adopt rules governing
10 the establishment and administration of youth placement
11 committees as provided in sections 15 through 19.

THE AMENDMENTS CONTAINED IN CONFERENCE COMMITTEE
REPORT #1 ON HB 325 ARE ON PAGES 1 AND 7 ONLY
AND DUE TO LENGTH THE BILL WILL NOT BE REPRINTED
IN IT'S ENTIRETY. THE ENTIRE TEXT CAN BE FOUND
IN THE REFERENCE COPY (SALMON).

HOUSE BILL NO. 325

INTRODUCED BY MERCER, MAZUREK, COBB, REAM, SQUIRES,
M. WILLIAMS, PECK, LORY, CAMPBELL, KADAS, O'CONNELL, FRITZ,
DONALDSON, ADDY, MILES, SPAETH, GRADY, HARRINGTON,
WINSLOW, HANSEN, ECK, BACHINI, PATTERSON, MILLER,
JERGESON, MANUEL, BLAYLOCK, REGAN, B. BROWN, DARKO
BY REQUEST OF THE GOVERNOR'S OFFICE

A BILL FOR AN ACT ENTITLED: "AN ACT REORGANIZING THE
EXECUTIVE BRANCH OF STATE GOVERNMENT; CREATING A NEW
DEPARTMENT OF FAMILY SERVICES; TRANSFERRING CERTAIN
FUNCTIONS OF THE DEPARTMENT OF SOCIAL AND REHABILITATION
SERVICES, COUNTY WELFARE DEPARTMENTS, THE DEPARTMENT OF
INSTITUTIONS, AND THE YOUTH COURT OF THE DISTRICT COURT TO
THE DEPARTMENT OF FAMILY SERVICES; TRANSFERRING---YOUTH
PROBATION-OFFICERS-FROM-THE-YOUTH-COURT-TO-THE-DEPARTMENT-OF
FAMILY--SERVICES; GENERALLY REVISING THE LAWS RELATING TO
CHILD WELFARE SERVICES, CHILD AND ADULT PROTECTIVE SERVICES,
AND THE YOUTH COURT TO CONFORM TO THE REORGANIZATION;
AMENDING-SECTION-2-10-303-MCA; REPEALING SECTIONS 40-3-115,
41-3-1106, 41-3-1113, 41-3-1121, 41-5-702,---41-5-704,
41-5-705, 53-4-121, 53-4-122, 53-20-404, 53-20-407,
53-20-411, AND 53-20-412, MCA; AND PROVIDING EFFECTIVE
DATES."

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

Section 1. Section 2-15-104, MCA, is amended to read:

"2-15-104. Structure of executive branch. (1) In
accordance with the constitution, all executive and
administrative offices, boards, commissions, agencies, and
instrumentalities of the executive branch of state
government and their respective functions are allocated by
this chapter among and within the following departments or
entities:

- (a) department of administration;
- (b) department of military affairs;
- (c) department of revenue;
- (d) state board of education;
- (e) department of labor and industry;
- (f) department of commerce;
- (g) department of justice;
- (h) department of health and environmental sciences;
- (i) department of social and rehabilitation services;
- (j) department of institutions;
- (k) department of highways;
- (l) department of public service regulation;
- (m) department of agriculture;
- (n) department of livestock;
- (o) department of state lands;
- (p) department of natural resources and conservation;

(q) department of fish, wildlife, and parks;

(r) department of family services.

(2) For its internal structure, each department shall adhere to the following standard terms:

(a) The principal unit of a department is a division. Each division shall be headed by an administrator.

(b) The principal unit of a division is a bureau. Each bureau shall be headed by a chief.

(c) The principal unit of a bureau is a section. Each section shall be headed by a supervisor."

NEW SECTION. Section 2. Department of family services -- head. There is a department of family services. The department head is a director of family services appointed by the governor in accordance with 2-15-111.

NEW SECTION. Section 3. Purpose. It is the public policy of the legislature to reduce duplication and fragmentation of services to youth, families, and senior citizens by creating a department that shall develop and maintain consolidated programs and services, within available resources, and a planned continuum of services to:

(1) provide protective services to ensure the health, welfare, and safety of children and adults who are in danger of abuse, neglect, or exploitation within communities;

(2) provide for the care, protection, and mental and physical development of youth alleged to be youth in need of

supervision or delinquent youth ~~and-to-provide-programs--for the--supervision--and--rehabilitation-of-these-youth~~ WHO ARE REFERRED OR COMMITTED TO THE DEPARTMENT; and

(3) provide supportive services to enable senior citizens to maintain their independence.

NEW SECTION. Section 4. Definitions. Unless the context requires otherwise, in this title the following definitions apply:

(1) "Department" means the department of family services provided for in [section 2].

(2) "Director" means the director of family services provided for in [section 2].

NEW SECTION. Section 5. Powers and duties of department. The department shall:

(1) administer and supervise all forms of child and adult protective services;

(2) ~~administer--and--supervise-all-services-to~~ PROVIDE FUNDING FOR AND PLACE youth alleged or adjudicated to be delinquent or in need of supervision WHO ARE REFERRED OR COMMITTED TO THE DEPARTMENT;

(3) provide the following functions, as necessary, for the youth served IN NEED OF CARE:

(a) intake, investigation, case management, and client supervision;

(b) placement in youth care facilities;

1 (c) contracting for necessary services;
 2 (d) protective services day care; AND
 3 (e) adoption;
 4 ~~(f)--institutional-services;-and~~
 5 (4) ADMINISTER YOUTH CORRECTIONAL FACILITIES;
 6 ~~(g)~~(5) PROVIDE supervision, care, and control of youth
 7 released from a state youth correctional facility;
 8 ~~(4)~~(6) license youth care facilities, child placing
 9 agencies, day-care facilities, community homes for
 10 developmentally disabled persons, community homes for
 11 physically disabled persons, and adult foster care
 12 facilities;
 13 ~~(5)~~(7) administer interstate compacts for children and
 14 delinquent youth;
 15 ~~(6)~~(8) (a) administer child abuse prevention services
 16 funded through child abuse grants and the Montana children's
 17 trust fund provided for in Title 41, chapter 3, part 7; and
 18 (b) administer elder abuse prevention services;
 19 ~~(7)~~(9) (A) MAKE A WRITTEN EVALUATION OF EACH PLAN
 20 DEVELOPED BY THE LOCAL YOUTH SERVICES ADVISORY COUNCILS, AS
 21 PROVIDED IN [SECTION 8], INDICATING THOSE PORTIONS OF EACH
 22 PLAN THAT WILL BE IMPLEMENTED BY THE DEPARTMENT, THOSE
 23 PORTIONS THAT WILL NOT BE IMPLEMENTED, AND THE REASONS FOR
 24 NOT IMPLEMENTING THOSE PORTIONS;
 25 (B) develop a statewide youth services and resources

1 plan that takes into consideration local needs as reflected
 2 in plans developed by the local youth services advisory
 3 councils,~~as provided in [section 8];~~
 4 ~~(8)~~(10) administer services to the aged;
 5 ~~(9)~~(11) provide consultant services to:
 6 (a) facilities providing care for needy, indigent,
 7 handicapped, or dependent adults; and
 8 (b) youth care facilities;
 9 ~~(10)~~(12) utilize at maximum efficiency the resources of
 10 state government in a coordinated effort to:
 11 (a) provide for children in need of temporary
 12 protection or correctional services; and
 13 (b) coordinate and apply the principles of modern
 14 institutional administration to the institutions in the
 15 department;
 16 ~~(11)~~(13) subject to the functions of the department of
 17 administration, lease or purchase lands for use by
 18 institutions in the department and classify those lands to
 19 determine which are of such character as to be most
 20 profitably used for agricultural purposes, taking into
 21 consideration:
 22 (a) the needs of all institutions in the department
 23 for the food products that can be grown or produced on the
 24 lands; and
 25 (b) the relative value of agricultural programs in the

1 treatment or rehabilitation of the persons confined in the
2 institutions in the department;

3 ~~{12}~~(14) utilize the staff and services of other state
4 agencies and units of the Montana university system, within
5 their respective statutory functions, to carry out its
6 functions under this title;

7 ~~{13}~~(15) propose programs WITH SPECIFIC GOALS AND
8 OBJECTIVES to the legislature to meet the projected
9 long-range needs of institutions in the department,
10 including programs and facilities for the diagnosis,
11 treatment, care, and aftercare of persons placed in
12 institutions in the department; and

13 (16) CONTRACT, AS NECESSARY, WITH THE COUNTY BOARD OF
14 WELFARE FOR ADMINISTRATION OF CHILD AND ADULT PROTECTION
15 SERVICES FOR THAT COUNTY; AND

16 ~~{14}~~~~{16}~~(17) adopt rules necessary to carry out the
17 purposes of [sections 3 through 10 AND 17 THROUGH 19].

18 NEW SECTION. Section 6. Local service areas. The
19 department shall organize its field offices into local
20 service areas. The director shall take into consideration
21 geographic boundaries used by local governments, judicial
22 districts, and service agencies when creating local service
23 areas.

24 NEW SECTION. Section 7. State youth services council
25 -- membership. (1) The governor may appoint a state planning

1 and advisory council or designate an existing council to
2 advise the director on policies relating to services to
3 children and youth.

4 (2) A member of the council must have knowledge of and
5 experience in at least one of the following areas:

6 (a) services to:

7 (i) youth in need of care;

8 (ii) youth in need of supervision;

9 (iii) delinquent youth;

10 (iv) emotionally disturbed youth; or

11 (v) chemically dependent youth; or

12 (b) domestic violence issues.

13 (3) Membership of the council must include as many of
14 these areas of expertise as possible.

15 (4) Members must be compensated and reimbursed as
16 provided for in 2-15-122.

17 NEW SECTION. Section 8. Local youth services advisory
18 councils. (1) The department shall establish a local youth
19 services advisory council within each local service area to
20 ensure a broad-based community plan for children and youth
21 services within the area. A local youth services advisory
22 council may act in an advisory capacity only. Each local
23 advisory council consists of seven members. The director
24 shall appoint members to each local advisory council. At
25 least two members must be nominated by the county