

HOUSE BILL NO. 470
INTRODUCED BY MILES, VAN VALKENBURG

IN THE HOUSE

JANUARY 26, 1987 INTRODUCED AND REFERRED TO COMMITTEE
 ON JUDICIARY.

FEBRUARY 18, 1987 COMMITTEE RECOMMEND BILL
 DO PASS AS AMENDED. REPORT ADOPTED.

FEBRUARY 19, 1987 PRINTING REPORT.

FEBRUARY 20, 1987 SECOND READING, DO PASS.

FEBRUARY 21, 1987 ENGROSSING REPORT.

 THIRD READING, PASSED.
 AYES, 91; NOES, 1.

 TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 23, 1987 INTRODUCED AND REFERRED TO COMMITTEE
 ON JUDICIARY.

MARCH 23, 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, 50; NOES, 0.

 RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

APRIL 7, 1987 RECEIVED FROM SENATE.

 SECOND READING, AMENDMENTS
 CONCURRED IN.

APRIL 8, 1987

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

1 House BILL NO. 470
2 INTRODUCED BY Niles Van Valkenburg
3

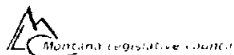
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE
5 YOUTH COURT PROCEDURES; REVISING TRANSFER TO DISTRICT COURT
6 PROVISIONS; ALLOWING WIDER INVESTIGATORY AUTHORITY FOR LAW
7 ENFORCEMENT PERSONNEL; REVISING PUBLICITY, RECORD RETENTION,
8 AND ACCESS TO RECORDS; ALLOWING A WIDER RANGE OF SENTENCES
9 FOR DELINQUENT YOUTH; AMENDING SECTIONS 41-5-103, 41-5-202,
10 41-5-206, 41-5-301, 41-5-303 THROUGH 41-5-305, 41-5-402,
11 41-5-502, 41-5-522, 41-5-523, AND 41-5-601 THROUGH 41-5-604,
12 MCA; AND REPEALING SECTION 41-5-516, MCA."
13

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

15 Section 1. Section 41-5-103, MCA, is amended to read:
16 "41-5-103. Definitions. For the purposes of the
17 Montana Youth Court Act, unless otherwise stated the
18 following definitions apply:

- 19 (1) "Adult" means an individual who is 18 years of age
20 or older.
- 21 (2) "Agency" means any entity of state or local
22 government authorized by law to be responsible for the care
23 or rehabilitation of youth.
- 24 (3) "Commit" means to transfer to legal custody.
- 25 (4) "Court", when used without further qualification,

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



1 convincing proof.

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

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

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

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

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

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

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

21 (b) habitually disobeys the reasonable and lawful
22 demands of his parents, foster parents, physical custodian,
23 or guardian or is ungovernable and beyond their control;

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

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

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

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

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

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

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

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

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

23 (21) "Substitute care" means full-time care of youth in
24 a residential setting for the purpose of providing food,
25 shelter, security and safety, guidance, direction, and if

1 necessary, treatment to youth who are removed from or
 2 without the care and supervision of their parents or
 3 guardian. Nothing in this definition is intended to include
 4 juvenile correctional facilities, evaluation facilities,
 5 mental health facilities and services, and aftercare
 6 programs operated by the department of institutions."

7 Section 2. Section 41-5-202, MCA, is amended to read:
 8 "41-5-202. Disqualification of judges. The statutes of
 9 the state of Montana relating to disqualification of judges
 10 in ~~civil~~ criminal proceedings shall apply to all proceedings
 11 under this chapter."

12 Section 3. Section 41-5-206, MCA, is amended to read:
 13 "41-5-206. Transfer to criminal court. (1) After a
 14 petition has been filed alleging delinquency, the court may,
 15 upon motion of the county attorney, before hearing the
 16 petition on its merits, transfer the matter of prosecution
 17 to the district court if:

18 (a) (i) the youth charged was 12 years of age or more
 19 at the time of the conduct alleged to be unlawful and the
 20 unlawful act would constitute sexual intercourse without
 21 consent as defined in 45-5-503, deliberate homicide as
 22 defined in 45-5-102, or mitigated deliberate homicide as
 23 defined in 45-5-103, or the attempt, as defined in 45-4-103,
 24 of either deliberate or mitigated deliberate homicide if the
 25 act had been committed by an adult; or

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

- 4 (A) negligent homicide as defined in 45-5-104;
 5 (B) arson as defined in 45-6-103;
 6 (C) aggravated or felony assault as defined in
 7 45-5-202;
 8 (D) robbery as defined in 45-5-401;
 9 (E) burglary or aggravated burglary as defined in
 10 45-6-204;
 11 ~~{P}--sexual-intercourse-without-consent-as--defined--in~~
 12 ~~45-5-503;~~
 13 ~~{G}~~{F} aggravated kidnapping as defined in 45-5-303;
 14 ~~{H}~~{G} possession of explosives as defined in
 15 45-8-335;
 16 ~~{I}~~{H} criminal sale of dangerous drugs ~~for-profit~~ as
 17 included in 45-9-101;
 18 ~~{J}~~{I} attempt as defined in 45-4-103 of any of the
 19 acts enumerated in subsections (1)(a)(ii)(A) through
 20 (1)(a)(ii)~~{J}~~{H};
 21 (b) a hearing on whether the transfer should be made
 22 is held in conformity with the rules on a hearing on a
 23 petition alleging delinquency, except that the hearing will
 24 be to the youth court without a jury;
 25 (c) notice in writing of the time, place, and purpose

1 of the hearing is given to the youth, his counsel, and his
2 parents, guardian, or custodian at least 10 days before the
3 hearing; and

4 (d) the court finds upon the hearing of all relevant
5 evidence that there ~~are reasonable grounds~~ is probable cause
6 to believe that:

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

8 (ii) the seriousness of the offense and the protection
9 of the community require treatment of the youth beyond that
10 afforded by juvenile facilities; and

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

13 (2) In transferring the matter of prosecution to the
14 district court, the court may also consider the following
15 factors:

16 (a) the sophistication and maturity of the youth,
17 determined by consideration of his home, environmental
18 situation, and emotional attitude and pattern of living;

19 (b) the record and previous history of the youth,
20 including previous contacts with the youth court, law
21 enforcement agencies, youth courts in other jurisdictions,
22 prior periods of probation, and prior commitments to
23 juvenile institutions. However, lack of a prior juvenile
24 history with youth courts will not of itself be grounds for
25 denying the transfer.

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

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

6 (3) The court shall grant the motion to transfer if
7 the youth was 16 years old or older at the time of the
8 conduct alleged to be unlawful and the unlawful act would
9 constitute deliberate homicide as defined in 45-5-102,
10 mitigated deliberate homicide as defined in 45-5-103, or the
11 attempt, as defined in 45-4-103, of either deliberate or
12 mitigated deliberate homicide if the act had been committed
13 by an adult.

14 ~~(3)(4)~~ Upon transfer to district court, the judge
15 shall make written findings of the reasons why the
16 jurisdiction of the youth court was waived and the case
17 transferred to district court.

18 ~~(4)(5)~~ The transfer terminates the jurisdiction of the
19 youth court over the youth with respect to the acts alleged
20 in the petition. No youth may be prosecuted in the district
21 court for a criminal offense originally subject to the
22 jurisdiction of the youth court unless the case has been
23 transferred as provided in this section.

24 ~~(5)(6)~~ Upon order of the youth court transferring the
25 case to the district court, the county attorney shall file

1 the information against the youth without unreasonable
2 delay.

3 ~~(6)~~(7) Any offense not enumerated in subsection (1)
4 that arises during the commission of a crime enumerated in
5 subsection (1) may be:

- 6 (a) tried in youth court;
7 (b) transferred to district court with an offense
8 enumerated in subsection (1), upon motion of the county
9 attorney and ~~acceptance-by order of~~ the district youth court
10 judge.

11 ~~(7)~~(8) If a youth is found guilty in district court of
12 any of the offenses ~~enumerated in--subsection--(1)--of--this~~
13 ~~section~~ transferred by the youth court and is sentenced to
14 the state prison, his commitment shall be to the department
15 of institutions which shall confine the youth in whatever
16 institution it considers proper; however, no youth under 16
17 years of age may be confined in the state prison."

18 Section 4. Section 41-5-301, MCA, is amended to read:

19 "41-5-301. Preliminary investigation and disposition.

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

1 (2) The probation officer may:

2 (a) require the presence of any person relevant to the
3 inquiry;

4 (b) request subpoenas from the judge to accomplish
5 this purpose;

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

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

13 (4) (a) The probation officer in the conduct of the
14 preliminary inquiry shall:

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

18 (ii) determine whether the matter is within the
19 jurisdiction of the court;

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

23 (b) Once relevant information is secured, the
24 probation officer shall:

25 (i) determine whether the interest of the public or

1 the youth requires that further action be taken;

2 (ii) terminate the inquiry upon the determination that
3 no further action be taken;

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

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

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

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

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

24 (6) The county attorney may apply to the youth court
25 for permission to file a petition charging a youth to be a

1 delinquent youth or a youth in need of supervision. The
2 application must be supported by such evidence as the youth
3 court may require. If it appears that there is probable
4 cause to believe that the allegations of the petition are
5 true, the youth court shall grant leave to file the
6 petition.

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

12 ~~(7)~~(8) If no petition is filed under this section, the
13 complainant and victim, if any, shall be informed by the
14 probation officer of the action and the reasons therefor and
15 shall be advised of the right to submit the matter to the
16 county attorney for review. The county attorney, upon
17 receiving a request for review, shall consider the facts,
18 consult with the probation officer, and make the final
19 decision as to whether a petition shall or shall not be
20 filed."

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

22 "41-5-303. Rights of youth upon apprehension
23 questioning. When a youth is detained for investigation-or
24 questioning upon a matter which could result in a petition
25 alleging that the youth being-detained is either delinquent

1 or in need of supervision, the following requirements must
2 be met:

3 (1) The youth shall be ~~immediately and effectively~~
4 advised of his ~~constitutional rights and his rights under~~
5 ~~this chapter~~ right against self-incrimination and his right
6 to counsel.

7 (2) The youth may waive such rights under the
8 following situations:

9 (a) when the youth is ~~under the age of 12~~ 16 years of
10 age or older, ~~the parents of~~ the youth may make an effective
11 waiver;

12 (b) when the youth is ~~over~~ under the age of ~~12~~ 16
13 years and the youth and ~~his parents~~ a parent or guardian
14 agree, they may make an effective waiver; and or

15 (c) when the youth is ~~over~~ under the age of ~~12~~ 16
16 years and the youth and his parents parent or guardian do
17 not agree, the youth may make an effective waiver only with
18 advice of counsel."

19 Section 6. Section 41-5-304, MCA, is amended to read:
20 "41-5-304. Fingerprints Investigation, Fingerprints,
21 and photographs. (1) ~~Title 46 shall apply to all~~ All law
22 enforcement investigations relating to ~~a complaint alleging~~
23 a delinquent youth or youth in need of supervision, ~~except~~
24 ~~that must be conducted in accordance with this chapter and~~
25 Title 46.

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

4 (a) if arrested for conduct alleged to be unlawful
5 that would be a felony if committed by an adult;

6 (b) pursuant to a search warrant, supported by
7 probable cause, issued by a judge, justice of the peace, or
8 magistrate; or

9 (c) upon the order of the youth court judge, after a
10 petition alleging delinquency has been filed in which the
11 unlawful act alleged would constitute a felony if the act
12 had been committed by an adult.

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

19 ~~(2)~~ (3) Fingerprint records and photographs ~~shall be~~
20 ~~retained by the originating agency only until the youth~~
21 ~~reaches the age of majority unless the judge orders the~~
22 ~~records destroyed at an earlier date. Any such record~~ may be
23 used by the originating agency for comparison and
24 identification purposes in any other investigation ~~only when~~
25 ~~probable cause is established before the youth court judge~~

1 ~~that the youth is a principal suspect."~~

2 Section 7. Section 41-5-305, MCA, is amended to read:

3 "41-5-305. Detention and shelter care of youth. (1) A
4 youth taken into custody may not be detained in a jail or
5 other facility for detention purposes unless:

6 (a) he has allegedly committed an act which if
7 committed by an adult would constitute a criminal offense;
8 and:

9 (a) the alleged act offense is one of ~~the following~~
10 specified in 41-5-206;

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

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

13 ~~(iii) aggravated or felony assault as defined in~~
14 ~~45-5-202;~~

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

16 ~~(v) burglary or aggravated burglary as defined in~~
17 ~~45-6-204;~~

18 ~~(vi) sexual intercourse without consent as defined in~~
19 ~~45-5-503;~~

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

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

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

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

1 (b) he has escaped from a correctional or detention
2 facility;

3 (c) he has violated a valid court order or an
4 aftercare agreement; or

5 (d) his detention is required to protect persons or
6 property;

7 (e) he has pending court or administrative action or
8 is awaiting a transfer to another jurisdiction and may
9 abscond or be removed from the jurisdiction of the court;

10 (f) there are not adequate assurances that he will
11 appear for court when required; or

12 (d)(g) he meets the additional criteria for detention
13 established by the youth court in the judicial district that
14 has current jurisdiction over him.

15 (2) A youth taken into custody may not be sheltered
16 prior to the hearing on the petition except when:

17 (a) the youth and his family need shelter care to
18 address their problematic situation when it is not possible
19 for the youth to remain at home;

20 (b) the youth needs to be protected from physical or
21 emotional harm;

22 (c) the youth needs to be deterred or prevented from
23 immediate repetition of his troubling behavior;

24 (d) shelter care is necessary to assess the youth and
25 his environment;

1 (e) shelter care is necessary to provide adequate time
2 for case planning and disposition; or

3 (f) shelter care is necessary to intervene in a crisis
4 situation and provide intensive services or attention that
5 might alleviate the problem and reunite the family."

6 Section 8. Section 41-5-402, MCA, is amended to read:

7 "41-5-402. Communications privileged. An incriminating
8 statement relating to any act or omission constituting
9 delinquency or need of supervision made by the participant
10 to the person giving counsel or advice in the discussions or
11 conferences incident thereto may not be used against the
12 declarant in any proceeding under this chapter, nor may the
13 incriminating statement be admissible in any criminal
14 proceeding against the declarant. This section does not
15 apply to the use of voluntary and reliable statements that
16 are offered for impeachment purposes."

17 Section 9. Section 41-5-502, MCA, is amended to read:

18 "41-5-502. Summons. (1) After a petition has been
19 filed, summons shall be served directly to:

- 20 (a) the youth;
- 21 (b) his parent or parents having actual custody of the
22 youth or his guardian or custodian, as the case may be; and
- 23 (c) such other persons as the court may direct.
- 24 (2) The summons shall:
- 25 (a) require the parties to whom directed to appear

1 personally before the court at the time fixed by the summons
2 to answer the allegations of the petition;

3 (b) advise the parties of their right to counsel under
4 the Montana Youth Court Act; and

5 (c) have attached to it a copy of the petition.

6 (3) The court may endorse upon the summons an order
7 directing the person or persons having the physical custody
8 or control of the youth to bring the youth to the hearing.

9 (4) If it appears ~~from any sworn statement presented~~
10 to the court that the youth needs to be placed in detention
11 or shelter care, the judge may endorse on the summons an
12 order directing the officer serving the summons to at once
13 take the youth into custody and to take him to the place of
14 detention or shelter care designated by the court, subject
15 to the rights of the youth and parent or person having
16 custody of the youth as set forth in the provisions of the
17 Montana Youth Court Act relating to detention and shelter
18 care criteria and postdetention proceedings.

19 (5) If any youth is in shelter care or detained under
20 any provision of this chapter pending an adjudication, the
21 court, upon petition of the youth, his parents or guardian,
22 or his counsel, shall, as soon as practicable, conduct a
23 hearing in order to determine whether the circumstances of
24 the case require such detention or shelter care and the form
25 the detention or shelter care should take. All mentioned

1 parties shall be notified of such petition process at the
2 time of initial detention or shelter care.

3 (6) The youth court judge may also admit the youth to
4 bail in accordance with Title 46, chapter 9."

5 Section 10. Section 41-5-522, MCA, is amended to read:

6 "41-5-522. Dispositional hearing. (1) As soon as
7 practicable after a youth is found to be a delinquent youth
8 or a youth in need of supervision, the court shall conduct a
9 dispositional hearing. The dispositional hearing may involve
10 a determination of financial liability as provided in
11 41-3-1123 and 41-3-1124.

12 (2) Before conducting the dispositional hearing, the
13 court shall direct that a social summary or predisposition
14 report be made in writing by a probation officer concerning
15 the youth, his family, his environment, and other matters
16 relevant to the need for care or rehabilitation or
17 disposition of the case. The youth court may have the youth
18 examined, and the results of the examination shall be made
19 available to the court as part of the social summary or
20 predisposition report. The court may order the examination
21 of a parent or guardian ~~who--gives--his--consent--and~~ whose
22 ability to care for or supervise a youth is at issue before
23 the court. The results of such examination shall be included
24 in the social summary or predisposition report. The youth,
25 his parents, guardian, or counsel shall have the right to

1 subpoena all persons who have prepared any portion of the
2 social summary or predisposition report and shall have the
3 right to cross-examine said parties at the dispositional
4 hearing.

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

8 (4) The dispositional hearing shall be conducted in
9 the manner set forth in subsections (3), (4), and (5) of
10 41-5-521. The court shall hear all evidence relevant to a
11 proper disposition of the case best serving the interests of
12 the youth and the public. Such evidence shall include, but
13 not be limited to, the social summary and predisposition
14 report provided for in subsection (2) of this section.

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

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

- 24 (a) age of the youth;
25 (b) ability of the youth to pay;

1 (c) ability of the parents or legal guardian to pay;
 2 (d) amount of damage to the victim; and
 3 (e) legal remedies of the victim, however the ability
 4 of the victim or his insurer to stand any loss may not be
 5 considered in any case."

6 Section 11. Section 41-5-523, MCA, is amended to read:

7 "41-5-523. Disposition of delinquent youth and youth
 8 in need of supervision. (1) If a youth is found to be
 9 delinquent or in need of supervision, the youth court may
 10 enter its judgment making the following disposition:

11 (a) place the youth on probation;

12 (b) place the youth for substitute care into a youth
 13 care facility as defined in 41-3-1102 or a home approved by
 14 the court;

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

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

24 ~~(e)--such-further-care-and-treatment-or-evaluation-that~~
 25 ~~the-court-considers-beneficial-to-the-youth;-or~~

1 ~~(f)(e) order restitution by the youth; or his parents;~~
 2 ~~(f) impose a fine as authorized by law if the~~
 3 ~~violation alleged would constitute a criminal offense if~~
 4 ~~committed by an adult;~~

5 ~~(g) require the performance of community service;~~

6 ~~(h) require the youth, his parents, his guardians, or~~
 7 ~~the persons having legal custody of the youth to receive~~
 8 ~~counseling services;~~

9 ~~(i) require the medical and psychological evaluation~~
 10 ~~of the youth, his parents, his guardians, or the persons~~
 11 ~~having legal custody of the youth;~~

12 ~~(j) require the parents, guardians, or other persons~~
 13 ~~having legal custody of the youth to furnish such services~~
 14 ~~as the court may designate; or~~

15 ~~(k) such further care, treatment, evaluation, or~~
 16 ~~relief that the court considers beneficial to the youth and~~
 17 ~~the community.~~

18 (2) At any time after the youth has been taken into
 19 custody, the court may, with the consent of the youth in the
 20 manner provided in 41-5-303 for consent by a youth to waiver
 21 of his constitutional rights or after the youth has been
 22 adjudicated delinquent or in need of supervision, order the
 23 youth to be evaluated by the department of institutions for
 24 a period not to exceed 45 days of evaluation at a reception
 25 and evaluation center for youths.

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

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

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

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

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

20 (b) When the department of social and rehabilitation
21 services is ordered to pay the costs of caring for the child
22 in a youth care facility other than a youth foster home or
23 youth group home, the court shall provide the department at
24 least 5 days' written notice and opportunity to be heard
25 before ordering the placement of the youth.

1 (5) No youth may be committed or transferred to a
2 penal institution or other facility used for the execution
3 of sentence of adult persons convicted of crimes.

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

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

15 (8) The order of commitment to the department of
16 institutions shall read as follows:

17 ORDER OF COMMITMENT

18 State of Montana)

19) ss.

20 County of)

21 In the district court for the Judicial District.

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

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

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

5 Name	Address	Occupation
6
7

8 The names and addresses of their nearest relatives are:
9
10

11 Witness my hand this day of, A.D. 19...
12
13 Judge"

14 Section 12. Section 41-5-601, MCA, is amended to read:

15 "41-5-601. Publicity Confidentiality. (1) No publicity
16 information shall be given ~~to the identity of an arrested~~
17 concerning a youth or to any matter or proceeding in the
18 youth court involving a youth proceeded against as, or found
19 to be, a ~~delinquent youth or~~ youth in need of supervision
20 ~~except as provided in subsection (2)~~.

21 (2) When a petition is filed under 41-5-501, publicity
22 may not be withheld ~~as to the identity of~~ regarding any
23 youth formally charged with or proceeded against as or found
24 to be a delinquent youth as a result of the commission of
25 any offense that would be punishable as a felony if the

1 youth were an adult. All court proceedings must be open to
2 the public with the exception of the transfer hearing
3 specified in 41-5-206 if the youth court finds that a
4 failure to close the hearing would jeopardize the right of
5 the youth to a fair trial.

6 (3) In all cases the victim is entitled to all
7 information concerning the identity and disposition of the
8 youth."

9 Section 13. Section 41-5-602, MCA, is amended to read:

10 "41-5-602. Law enforcement records. (1) No law
11 enforcement records concerning a youth, ~~except traffic~~
12 ~~records,~~ may be open to public inspection or their contents
13 disclosed to the public ~~unless the records are directly~~
14 ~~related to an offense to which publicity must be allowed~~
15 ~~under subsection (2) of 41-5-601 or~~ unless inspection is
16 ordered by the court.

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

21 (a) a youth court having the youth currently before it
22 in any proceeding;

23 (b) the officers of agencies having legal custody of
24 the youth and those responsible for his supervision after
25 release;

1 (c) any other person, by order of the court, having a
2 legitimate interest in the case or in the work of the law
3 enforcement agency;

4 (d) law enforcement officers of Montana, when
5 necessary for the discharge of their immediate duties;

6 (e) a district court in which the youth is convicted
7 of a criminal offense, for the purpose of a presentence
8 investigation;

9 (f) the county attorney; or

10 (g) the youth, his parent, guardian, or counsel."

11 Section 14. Section 41-5-603, MCA, is amended to read:

12 "41-5-603. Youth court records. (1) Youth court
13 records, including social, medical, and psychological
14 records, reports of preliminary inquiries, predispositional
15 studies, and supervision records of probationers, are open
16 to inspection prior to the sealing of the records only to
17 the following:

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

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

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

23 (d) any court and its probation and other professional
24 staff or the attorney for a convicted party who had been a
25 party to proceedings in the youth court when considering the

1 sentence to be imposed upon such party;

2 (e) the county attorney;

3 (f) the youth who is the subject of the report or
4 record, after he has been emancipated or reaches the age of
5 majority.

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

11 (3) ~~All other court records, including docket,~~
12 petitions, motions, and other papers pleadings
13 filed in a case, transcripts of testimony, including
14 findings, verdicts, orders, and decrees, shall be open to
15 public inspection by those persons and agencies listed in
16 subsection (1) of this section and the parties to the
17 proceedings and their counsel only when related to an
18 offense for which access must be allowed under 41-5-601.

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

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

1 inquiries, predispositional studies, and supervision records
2 of probationers are sealed, they are not open to inspection
3 except, upon order of the youth court, 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 15. Section 41-5-604, MCA, is amended to read:

10 "41-5-604. Disposition of records. (1) All youth court
11 findings, orders, judgments, and the legal and social files
12 and records of the court, probation services, and law
13 enforcement agencies records except fingerprints and
14 photographs pertaining to a youth coming under this chapter
15 shall be physically sealed when the youth reaches the age of
16 18 years.

17 (2) In those cases in which jurisdiction of the court
18 or any agency is extended beyond the youth's 18th birthday,
19 the above records and files shall be physically sealed upon
20 termination of the extended jurisdiction.

21 (3) Upon the physical sealing of the records
22 pertaining to a youth pursuant to this section, any agency
23 or department that has in its possession copies of the
24 records so sealed shall also seal or destroy such copies of
25 records. Anyone violating the provisions of this subsection

1 shall be subject to contempt of court.

2 (4) Nothing herein contained shall prohibit the
3 destruction of such records with the consent of the youth
4 court judge or county attorney after 10 years from the date
5 of sealing. ~~The records of youths who were 20 years old or~~
6 ~~older on July 17, 1974, may be destroyed with the consent of~~
7 ~~the youth court judge or county attorney.~~

8 (5) ~~This~~ The requirements for sealed records in this
9 section shall not apply to youth traffic records or to
10 records directly related to an offense to which publicity
11 access must be allowed under ~~subsection (2) of~~ 41-5-601."

12 NEW SECTION. Section 16. Youth court hearings --
13 priority. All hearings and other court appearances required
14 under Title 41, chapter 5, must be given priority by the
15 court and must be scheduled to be heard as expeditiously as
16 possible.

17 NEW SECTION. Section 17. Repealer. Section 41-5-516,
18 MCA, is repealed.

19 NEW SECTION. Section 18. Codification instruction.
20 Section 16 is intended to be codified as an integral part of
21 Title 41, chapter 5, and the provisions of Title 41, chapter
22 5, apply to section 16.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB470, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

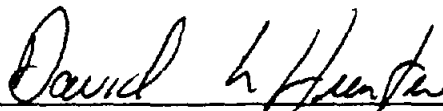
An act to generally revise youth court procedures; revising transfer to district court provisions; allowing wider investigatory authority for law enforcement personnel; revising publicity, record retention, and access to records; allowing a wider range of sentences for delinquent youth; amending sections 41-5-103, 41-5-202, 41-5-206, 41-5-301, 42-5-303 through 41-5-305, 41-5-402, 41-5-502, 41-5-522, 41-5-523, and 41-5-601 through 41-5-604, MCA; and repealing section 41-5-516, MCA.

ASSUMPTIONS:

1. The amendment made to 41-5-602(1) means that the Department of Justice may not issue motor vehicle reports (MVR) to requesting insurance companies.
2. The percentage of drivers under the age of 18 is the same percentage of the number of MVR requests for drivers under 18.
3. The MVR revenue collected in FY86 will continue constant in FY88 and FY89.
4. The Department of Justice would have to revise computerized motor vehicle report generation to edit records of drivers under the age of 18 from being released.
5. There is no fiscal impact on the Department of Social and Rehabilitation Services due to the proposed law.
6. There is no data available to adequately assess whether there would be a fiscal impact on the judiciary.

FISCAL IMPACT:

	<u>FY88</u>			<u>FY89</u>		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
<u>Expenditures:</u>	\$ 0	\$ 9,000	\$ 9,000	\$ 0	\$ 0	\$ 0
<u>Revenues:</u>						
General Fund	\$ 735,000	\$ 710,000	(\$ 25,000)	\$ 735,000	\$ 710,000	(\$ 25,000)
<u>Net General Fund Impact:</u>			(\$ 36,000)			(\$ 25,000)



DATE

1/31/87

DAVID L. HUNTER, BUDGET DIRECTOR
Office of Budget and Program Planning



DATE

JOAN MILES, PRIMARY SPONSOR

Fiscal Note for HB470, as introduced.

HB 470

APPROVED BY COMMITTEE
ON JUDICIARY

HOUSE BILL NO. 470

INTRODUCED BY MILES, VAN VALKENBURG

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE YOUTH COURT PROCEDURES; REVISING TRANSFER TO DISTRICT COURT PROVISIONS; ALLOWING WIDER INVESTIGATORY AUTHORITY FOR LAW ENFORCEMENT PERSONNEL; REVISING PUBLICITY, RECORD RETENTION, AND ACCESS TO RECORDS; ALLOWING A WIDER RANGE OF SENTENCES FOR DELINQUENT YOUTH; AMENDING SECTIONS 41-5-103, 41-5-202, 41-5-206, 41-5-301, 41-5-303 THROUGH 41-5-305, 41-5-402, 41-5-502, 41-5-522, 41-5-523, AND 41-5-601 THROUGH 41-5-604, MCA; AND REPEALING SECTION 41-5-516, MCA."

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

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

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

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

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

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

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

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

(i) have physical custody of the youth;

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

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

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

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

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

1 convincing proof.

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

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

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

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

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

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

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

21 (b) habitually disobeys the reasonable and lawful
22 demands of his parents, foster parents, physical custodian,
23 or guardian or is ungovernable and beyond their control;

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

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

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

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

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

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

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

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

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

23 (21) "Substitute care" means full-time care of youth in
24 a residential setting for the purpose of providing food,
25 shelter, security and safety, guidance, direction, and if

1 necessary, treatment to youth who are removed from or
 2 without the care and supervision of their parents or
 3 guardian. Nothing in this definition is intended to include
 4 juvenile correctional facilities, evaluation facilities,
 5 mental health facilities and services, and aftercare
 6 programs operated by the department of institutions."

7 Section 2. Section 41-5-202, MCA, is amended to read:

8 "41-5-202. Disqualification of judges. The statutes of
 9 the state of Montana relating to disqualification of judges
 10 in ~~civil~~ criminal proceedings shall apply to all proceedings
 11 under this chapter."

12 Section 3. Section 41-5-206, MCA, is amended to read:

13 "41-5-206. Transfer to criminal court. (1) After a
 14 petition has been filed alleging delinquency, the court may,
 15 upon motion of the county attorney, before hearing the
 16 petition on its merits, transfer the matter of prosecution
 17 to the district court if:

18 (a) (i) the youth charged was 12 years of age or more
 19 at the time of the conduct alleged to be unlawful and the
 20 unlawful act would constitute sexual intercourse without
 21 consent as defined in 45-5-503, deliberate homicide as
 22 defined in 45-5-102, or mitigated deliberate homicide as
 23 defined in 45-5-103, or the attempt, as defined in 45-4-103,
 24 of either deliberate or mitigated deliberate homicide if the
 25 act had been committed by an adult; or

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

4 (A) negligent homicide as defined in 45-5-104;

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

6 (C) aggravated or felony assault as defined in
 7 45-5-202;

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

9 (E) burglary or aggravated burglary as defined in
 10 45-6-204;

11 ~~{F}--sexual-intercourse-without-consent-as--defined--in~~
 12 ~~45-5-503;~~

13 ~~{G}~~{F} aggravated kidnapping as defined in 45-5-303;

14 ~~{H}~~{G} possession of explosives as defined in
 15 45-8-335;

16 ~~{I}~~{H} criminal sale of dangerous drugs ~~for-profit~~ as
 17 included in 45-9-101;

18 ~~{J}~~{I} attempt as defined in 45-4-103 of any of the
 19 acts enumerated in subsections (1)(a)(ii)(A) through
 20 (1)(a)(ii)~~{I}~~{H};

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

25 (c) notice in writing of the time, place, and purpose

1 of the hearing is given to the youth, his counsel, and his
2 parents, guardian, or custodian at least 10 days before the
3 hearing; and

4 (d) the court finds upon the hearing of all relevant
5 evidence that there ~~are reasonable grounds~~ is probable cause
6 to believe that:

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

8 (ii) the seriousness of the offense and the protection
9 of the community require treatment of the youth beyond that
10 afforded by juvenile facilities; and

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

13 (2) In transferring the matter of prosecution to the
14 district court, the court may also consider the following
15 factors:

16 (a) the sophistication and maturity of the youth,
17 determined by consideration of his home, environmental
18 situation, and emotional attitude and pattern of living;

19 (b) the record and previous history of the youth,
20 including previous contacts with the youth court, law
21 enforcement agencies, youth courts in other jurisdictions,
22 prior periods of probation, and prior commitments to
23 juvenile institutions. However, lack of a prior juvenile
24 history with youth courts will not of itself be grounds for
25 denying the transfer.

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

2 ~~(d) the prospects for adequate protection of the~~
3 ~~public and the likelihood of reasonable rehabilitation of~~
4 ~~the youth by the use of procedures, services, and facilities~~
5 ~~currently available to the youth court;~~

6 (3) The court shall grant the motion to transfer if
7 the youth was 16 years old or older at the time of the
8 conduct alleged to be unlawful and the unlawful act would
9 constitute deliberate homicide as defined in 45-5-102,
10 mitigated deliberate homicide as defined in 45-5-103, or the
11 attempt, as defined in 45-4-103, of either deliberate or
12 mitigated deliberate homicide if the act had been committed
13 by an adult.

14 ~~(3)(4)~~ Upon transfer to district court, the judge
15 shall make written findings of the reasons why the
16 jurisdiction of the youth court was waived and the case
17 transferred to district court.

18 ~~(4)(5)~~ The transfer terminates the jurisdiction of the
19 youth court over the youth with respect to the acts alleged
20 in the petition. No youth may be prosecuted in the district
21 court for a criminal offense originally subject to the
22 jurisdiction of the youth court unless the case has been
23 transferred as provided in this section.

24 ~~(5)(6)~~ Upon order of the youth court transferring the
25 case to the district court, the county attorney shall file

1 the information against the youth without unreasonable
2 delay.

3 ~~(6)~~(7) Any offense not enumerated in subsection (1)
4 that arises during the commission of a crime enumerated in
5 subsection (1) may be:

- 6 (a) tried in youth court;
- 7 (b) transferred to district court with an offense
8 enumerated in subsection (1), upon motion of the county
9 attorney and ~~acceptance-by~~ order of the district youth court
10 judge.

11 ~~(7)~~(8) If a youth is found guilty in district court of
12 any of the offenses ~~enumerated in subsection (1) of this~~
13 section transferred by the youth court and is sentenced to
14 the state prison, his commitment shall be to the department
15 of institutions which shall confine the youth in whatever
16 institution it considers proper; however, no youth under 16
17 years of age may be confined in the state prison."

18 Section 4. Section 41-5-301, MCA, is amended to read:

19 "41-5-301. Preliminary investigation and disposition.

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

1 (2) The probation officer may:

2 (a) require the presence of any person relevant to the
3 inquiry;

4 (b) request subpoenas from the judge to accomplish
5 this purpose;

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

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

13 (4) (a) The probation officer in the conduct of the
14 preliminary inquiry shall:

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

18 (ii) determine whether the matter is within the
19 jurisdiction of the court;

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

23 (b) Once relevant information is secured, the
24 probation officer shall:

25 (i) determine whether the interest of the public or

1 the youth requires that further action be taken;

2 (ii) terminate the inquiry upon the determination that
3 no further action be taken;

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

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

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

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

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

24 (6) The county attorney may apply to the youth court
25 for permission to file a petition charging a youth to be a

1 delinquent youth or a youth in need of supervision. The
2 application must be supported by such evidence as the youth
3 court may require. If it appears that there is probable
4 cause to believe that the allegations of the petition are
5 true, the youth court shall grant leave to file the
6 petition.

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

12 ~~(7)(8)~~ If no petition is filed under this section, the
13 complainant and victim, if any, shall be informed by the
14 probation officer of the action and the reasons therefor and
15 shall be advised of the right to submit the matter to the
16 county attorney for review. The county attorney, upon
17 receiving a request for review, shall consider the facts,
18 consult with the probation officer, and make the final
19 decision as to whether a petition shall or shall not be
20 filed."

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

22 "41-5-303. Rights of youth upon apprehension
23 questioning. When a youth is detained for investigation-or
24 questioning upon a matter which could result in a petition
25 alleging that the youth being-detained is either delinquent

1 or in need of supervision, the following requirements must
2 be met:

3 (1) The youth shall be ~~immediately and effectively~~
4 IMMEDIATELY AND EFFECTIVELY advised of his constitutional
5 ~~rights--and--his--rights--under--this--chapter right against~~
6 ~~self-incrimination and his right to counsel~~ CONSTITUTIONAL
7 RIGHTS AND HIS RIGHTS UNDER THIS CHAPTER.

8 (2) The youth may waive such rights under the
9 following situations:

10 (a) when the youth is ~~under the age of 12~~ 16 UNDER THE
11 AGE OF 12 years ~~of age or older~~, the parents of THE PARENTS
12 OF the youth may make an effective waiver;

13 (b) when the youth is ~~ever under~~ OVER the age of ~~12~~ 16
14 12 years and the youth and his parents ~~a parent or guardian~~
15 HIS PARENTS agree, they may make an effective waiver; and or
16 AND

17 (c) when the youth is ~~ever under~~ OVER the age of ~~12~~ 16
18 12 years and the youth and his parents ~~parent or guardian~~
19 PARENTS do not agree, the youth may make an effective waiver
20 only with advice of counsel."

21 Section 6. Section 41-5-304, MCA, is amended to read:

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

1 ~~that must be conducted in accordance with this chapter and~~
2 Title 46.

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

6 (a) if arrested for conduct alleged to be unlawful
7 that would be a felony if committed by an adult;

8 (b) pursuant to a search warrant, supported by
9 probable cause, issued by a judge, justice of the peace, or
10 magistrate; or

11 (c) upon the order of the youth court judge, after a
12 petition alleging delinquency has been filed in which the
13 unlawful act alleged would constitute a felony if the act
14 had been committed by an adult.

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

21 ~~(2)(3) Fingerprint records and photographs shall be~~
22 ~~retained by the originating agency only until the youth~~
23 ~~reaches the age of majority, unless the judge orders the~~
24 ~~records destroyed at an earlier date. Any such record may be~~
25 used by the originating agency for comparison and

1 identification purposes in any other investigation ~~only when~~
 2 ~~probable cause is established before the youth court judge~~
 3 ~~that the youth is a principal suspect."~~

4 Section 7. Section 41-5-305, MCA, is amended to read:

5 "41-5-305. Detention and shelter care of youth. (1) A
 6 youth taken into custody may not be detained in a jail or
 7 other facility for detention purposes unless:

8 (a) he has allegedly committed an act which if
 9 committed by an adult would constitute a criminal offense,
 10 and:

11 (a) the alleged act offense is one of ~~the following:~~
 12 specified in 41-5-206;

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

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

15 ~~(iii) aggravated or felony assault as defined in~~
 16 ~~45-5-202;~~

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

18 ~~(v) burglary or aggravated burglary as defined in~~
 19 ~~45-6-204;~~

20 ~~(vi) sexual intercourse without consent as defined in~~
 21 ~~45-5-503;~~

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

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

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

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

3 (b) he has escaped from a correctional or detention
 4 facility;

5 (c) he has violated a valid court order or an
 6 aftercare agreement; or

7 (d) his detention is required to protect persons or
 8 property;

9 (e) he has pending court or administrative action or
 10 is awaiting a transfer to another jurisdiction and may
 11 abscond or be removed from the jurisdiction of the court;

12 (f) there are not adequate assurances that he will
 13 appear for court when required; or

14 ~~(d)(g)~~ he meets the additional criteria for detention
 15 established by the youth court in the judicial district that
 16 has current jurisdiction over him.

17 (2) A youth taken into custody may not be sheltered
 18 prior to the hearing on the petition except when:

19 (a) the youth and his family need shelter care to
 20 address their problematic situation when it is not possible
 21 for the youth to remain at home;

22 (b) the youth needs to be protected from physical or
 23 emotional harm;

24 (c) the youth needs to be deterred or prevented from
 25 immediate repetition of his troubling behavior;

1 (d) shelter care is necessary to assess the youth and
2 his environment;

3 (e) shelter care is necessary to provide adequate time
4 for case planning and disposition; or

5 (f) shelter care is necessary to intervene in a crisis
6 situation and provide intensive services or attention that
7 might alleviate the problem and reunite the family."

8 Section 8. Section 41-5-402, MCA, is amended to read:

9 "41-5-402. Communications privileged. An incriminating
10 statement relating to any act or omission constituting
11 delinquency or need of supervision made by the participant
12 to the person giving counsel or advice in the discussions or
13 conferences incident thereto may not be used against the
14 declarant in any proceeding under this chapter, nor may the
15 incriminating statement be admissible in any criminal
16 proceeding against the declarant. This section does not
17 apply to the use of voluntary and reliable statements that
18 are offered for impeachment purposes."

19 Section 9. Section 41-5-502, MCA, is amended to read:

20 "41-5-502. Summons. (1) After a petition has been
21 filed, summons shall be served directly to:

- 22 (a) the youth;
- 23 (b) his parent or parents having actual custody of the
24 youth or his guardian or custodian, as the case may be; and
- 25 (c) such other persons as the court may direct.

1 (2) The summons shall:

2 (a) require the parties to whom directed to appear
3 personally before the court at the time fixed by the summons
4 to answer the allegations of the petition;

5 (b) advise the parties of their right to counsel under
6 the Montana Youth Court Act; and

7 (c) have attached to it a copy of the petition.

8 (3) The court may endorse upon the summons an order
9 directing the person or persons having the physical custody
10 or control of the youth to bring the youth to the hearing.

11 (4) If it appears ~~from any sworn statement presented~~
12 to the court that the youth needs to be placed in detention
13 or shelter care, the judge may endorse on the summons an
14 order directing the officer serving the summons to at once
15 take the youth into custody and to take him to the place of
16 detention or shelter care designated by the court, subject
17 to the rights of the youth and parent or person having
18 custody of the youth as set forth in the provisions of the
19 Montana Youth Court Act relating to detention and shelter
20 care criteria and postdetention proceedings.

21 (5) If any youth is in shelter care or detained under
22 any provision of this chapter pending an adjudication, the
23 court, upon petition of the youth, his parents or guardian,
24 or his counsel, shall, as soon as practicable, conduct a
25 hearing in order to determine whether the circumstances of

1 the case require such detention or shelter care and the form
 2 the detention or shelter care should take. All mentioned
 3 parties shall be notified of such petition process at the
 4 time of initial detention or shelter care.

5 (6) The youth court judge may also admit the youth to
 6 bail in accordance with Title 46, chapter 9."

7 Section 10. Section 41-5-522, MCA, is amended to read:

8 "41-5-522. Disposition 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)(f)~~, 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 11. 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 youth court may
 12 enter its judgment making the following disposition:

- 13 (a) place the youth on probation;
- 14 (b) place the youth for substitute care into a youth
- 15 care facility as defined in 41-3-1102 or a home approved by
- 16 the court;
- 17 (c) place the youth in a private agency responsible
- 18 for the care and rehabilitation of such a youth;
- 19 (d) transfer legal custody to the department of
- 20 institutions; provided, however, that in the case of a youth
- 21 in need of supervision, such transfer of custody does not
- 22 authorize the department of institutions to place the youth
- 23 in a state youth correctional facility and such custody may
- 24 not continue for a period of more than 6 months without a
- 25 subsequent court order after notice and hearing;

- 1 ~~(e)--such-further-care-and-treatment-or-evaluation-that~~
- 2 ~~the-court-considers-beneficial-to-the-youth;-or~~
- 3 ~~(f)(e) order restitution by the youth or his parents;~~
- 4 ~~(f) impose a fine as authorized by law if the~~
- 5 ~~violation alleged would constitute a criminal offense if~~
- 6 ~~committed by an adult;~~
- 7 ~~(g) require the performance of community service;~~
- 8 ~~(h) require the youth, his parents, his guardians, or~~
- 9 ~~the persons having legal custody of the youth to receive~~
- 10 ~~counseling services;~~
- 11 ~~(i) require the medical and psychological evaluation~~
- 12 ~~of the youth, his parents, his guardians, or the persons~~
- 13 ~~having legal custody of the youth;~~
- 14 ~~(j) require the parents, guardians, or other persons~~
- 15 ~~having legal custody of the youth to furnish such services~~
- 16 ~~as the court may designate; or~~
- 17 ~~(k) such further care, treatment, evaluation, or~~
- 18 ~~relief that the court considers beneficial to the youth and~~
- 19 ~~the community.~~

20 (2) At any time after the youth has been taken into
 21 custody, the court may, with the consent of the youth in the
 22 manner provided in 41-5-303 for consent by a youth to waiver
 23 of his constitutional rights or after the youth has been
 24 adjudicated delinquent or in need of supervision, order the
 25 youth to be evaluated by the department of institutions for

1 a period not to exceed 45 days of evaluation at a reception
2 and evaluation center for youths.

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

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

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

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

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

22 (b) When the department of social and rehabilitation
23 services is ordered to pay the costs of caring for the child
24 in a youth care facility other than a youth foster home or
25 youth group home, the court shall provide the department at

1 least 5 days' written notice and opportunity to be heard
2 before ordering the placement of the youth.

3 (5) No youth may be committed or transferred to a
4 penal institution or other facility used for the execution
5 of sentence of adult persons convicted of crimes.

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

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

17 (8) The order of commitment to the department of
18 institutions shall read as follows:

19 ORDER OF COMMITMENT

20 State of Montana)

21) ss.

22 County of)

23 In the district court for the Judicial District.

24 On the day of, 19...,, a minor of this
25 county, years of age, was brought before me charged

1 with Upon due proof I find that is a suitable
2 person to be committed to the department of institutions.

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

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

7 Name	Address	Occupation
8
9

10 The names and addresses of their nearest relatives are:
11
12

13 Witness my hand this day of, A.D. 19...
14

15 Judge"

16 Section 12. Section 41-5-601, MCA, is amended to read:

17 "41-5-601. Publicity Confidentiality. (1) No publicity
18 information shall be given ~~to the identity of an arrested~~
19 concerning a youth or to any matter or proceeding in the
20 youth court involving a youth proceeded against as, or found
21 to be, a ~~delinquent youth or~~ youth in need of supervision
22 ~~except as provided in subsection (2)~~.

23 (2) When a petition is filed under 41-5-501, publicity
24 may not be withheld ~~as to the identity of~~ regarding any
25 youth formally charged with or proceeded against as or found

1 to be a delinquent youth as a result of the commission of
2 any offense that would be punishable as a felony if the
3 youth were an adult. All court proceedings must be open to
4 the public with the exception of the transfer hearing
5 specified in 41-5-206 if the youth court finds that a
6 failure to close the hearing would jeopardize the right of
7 the youth to a fair trial.

8 (3) In all cases the victim is entitled to all
9 information concerning the identity and disposition of the
10 youth."

11 Section 13. Section 41-5-602, MCA, is amended to read:

12 "41-5-602. Law enforcement records. (1) No law
13 enforcement records concerning a youth ~~except traffic~~
14 records, EXCEPT TRAFFIC RECORDS, may be open to public
15 inspection or their contents disclosed to the public ~~unless~~
16 ~~the records are directly related to an offense to which~~
17 ~~publicity must be allowed under subsection (2) of 41-5-601~~
18 or unless inspection is ordered by the court.

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

23 (a) a youth court having the youth currently before it
24 in any proceeding;

25 (b) the officers of agencies having legal custody of

1 the youth and those responsible for his supervision after
2 release;

3 (c) any other person, by order of the court, having a
4 legitimate interest in the case or in the work of the law
5 enforcement agency;

6 (d) law enforcement officers of Montana, when
7 necessary for the discharge of their immediate duties;

8 (e) a district court in which the youth is convicted
9 of a criminal offense, for the purpose of a presentence
10 investigation;

11 (f) the county attorney; or

12 (g) the youth, his parent, guardian, or counsel."

13 Section 14. Section 41-5-603, MCA, is amended to read:

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

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

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

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

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

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

4 (e) the county attorney;

5 (f) the youth who is the subject of the report or
6 record, after he has been emancipated or reaches the age of
7 majority.

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

13 (3) ~~All other court records, including docket,~~
14 ~~petitions~~ Petitions, motions, and other papers pleadings
15 filed in a case, transcripts of testimony, including
16 findings, verdicts, orders, and decrees, shall be open to
17 public inspection by those persons and agencies listed in
18 subsection (1) of this section and the parties to the
19 proceedings and their counsel only when related to an
20 offense for which access must be allowed under 41-5-601.

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

1 ordered by the judge.

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

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

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

11 Section 15. Section 41-5-604, MCA, is amended to read:

12 "41-5-604. Disposition of records. (1) All youth court
13 findings, orders, judgments, and the legal and social files
14 and records of the court, probation services, and law
15 enforcement agencies records except fingerprints and
16 photographs pertaining to a youth coming under this chapter
17 shall be physically sealed when the youth reaches the age of
18 18 years.

19 (2) In those cases in which jurisdiction of the court
20 or any agency is extended beyond the youth's 18th birthday,
21 the above records and files shall be physically sealed upon
22 termination of the extended jurisdiction.

23 (3) Upon the physical sealing of the records
24 pertaining to a youth pursuant to this section, any agency
25 or department that has in its possession copies of the

1 records so sealed shall also seal or destroy such copies of
2 records. Anyone violating the provisions of this subsection
3 shall be subject to contempt of court.

4 (4) Nothing herein contained shall prohibit the
5 destruction of such records with the consent of the youth
6 court judge or county attorney after 10 years from the date
7 of sealing. ~~The records of youths who were 20 years old or~~
8 ~~older on July 1, 1974, may be destroyed with the consent of~~
9 ~~the youth court judge or county attorney.~~

10 (5) ~~This~~ The requirements for sealed records in this
11 section shall not apply to youth traffic records or to
12 records directly related to an offense to which publicity
13 access must be allowed under ~~subsection (2) of~~ 41-5-601."

14 NEW SECTION. Section 16. Youth court hearings --
15 priority. All hearings and other court appearances required
16 under Title 41, chapter 5, must be given priority by the
17 court and must be scheduled to be heard as expeditiously as
18 possible.

19 NEW SECTION. Section 17. Repealer. Section 41-5-516,
20 MCA, is repealed.

21 NEW SECTION. Section 18. Codification instruction.
22 Section 16 is intended to be codified as an integral part of
23 Title 41, chapter 5, and the provisions of Title 41, chapter
24 5, apply to section 16.

-End-

1 HOUSE BILL NO. 470

2 INTRODUCED BY MILES, VAN VALKENBURG

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE
5 YOUTH COURT PROCEDURES; REVISING TRANSFER TO DISTRICT COURT
6 PROVISIONS; ALLOWING WIDER INVESTIGATORY AUTHORITY FOR LAW
7 ENFORCEMENT PERSONNEL; REVISING PUBLICITY, RECORD RETENTION,
8 AND ACCESS TO RECORDS; ALLOWING A WIDER RANGE OF SENTENCES
9 FOR DELINQUENT YOUTH; AMENDING SECTIONS 41-5-103, 41-5-202,
10 41-5-206, 41-5-301, 41-5-303 THROUGH 41-5-305, 41-5-402,
11 41-5-502, 41-5-522, 41-5-523, AND 41-5-601 THROUGH 41-5-604,
12 MCA; AND REPEALING SECTION 41-5-516, MCA."

13

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

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

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

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

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

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

25 (4) "Court", when used without further qualification,

THERE ARE NO CHANGES ON HB 470 AND DUE
TO LENGTH WILL NOT BE RE RUN. PLEASE
REFER TO SECOND READING (YELLOW) COPY
FOR COMPLETE TEXT.

1 HOUSE BILL NO. 470

2 INTRODUCED BY MILES, VAN VALKENBURG

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE
5 YOUTH COURT PROCEDURES; REVISING TRANSFER TO DISTRICT COURT
6 PROVISIONS; ALLOWING WIDER INVESTIGATORY AUTHORITY FOR LAW
7 ENFORCEMENT PERSONNEL; REVISING PUBLICITY, RECORD RETENTION,
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9 FOR DELINQUENT YOUTH; AMENDING SECTIONS 41-5-103, 41-5-202,
10 41-5-206, 41-5-301, 41-5-303 THROUGH 41-5-305, 41-5-402,
11 41-5-502, 41-5-522, 41-5-523, AND 41-5-601 THROUGH
12 41-5-603, AND 41-5-604, MCA; AND REPEALING SECTION 41-5-516,
13 MCA."

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

16 Section 1. Section 41-5-103, MCA, is amended to read:
17 "41-5-103. Definitions. For the purposes of the
18 Montana Youth Court Act, unless otherwise stated the
19 following definitions apply:

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

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

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

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

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

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

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

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

13 (i) have physical custody of the youth;

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

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

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

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

22 (9) "Parent" means the natural or adoptive parent but
23 does not include a person whose parental rights have been
24 judicially terminated, nor does it include the putative
25 father of an illegitimate youth unless his paternity is

1 established by an adjudication or by other clear and
2 convincing proof.

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

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

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

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

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

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

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

22 (b) habitually disobeys the reasonable and lawful
23 demands of his parents, foster parents, physical custodian,
24 or guardian or is ungovernable and beyond their control;

25 (c) being subject to compulsory school attendance, is

1 habitually truant from school; or

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

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

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

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

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

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

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

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

24 (21) "Substitute care" means full-time care of youth in
25 a residential setting for the purpose of providing food,

1 shelter, security and safety, guidance, direction, and if
 2 necessary, treatment to youth who are removed from or
 3 without the care and supervision of their parents or
 4 guardian. Nothing in this definition is intended to include
 5 juvenile correctional facilities, evaluation facilities,
 6 mental health facilities and services, and aftercare
 7 programs operated by the department of institutions."

8 Section 2. Section 41-5-202, MCA, is amended to read:

9 "41-5-202. Disqualification of judges. The statutes of
 10 the state of Montana relating to disqualification of judges
 11 in ~~civil~~ criminal proceedings shall apply to all proceedings
 12 under this chapter."

13 Section 3. Section 41-5-206, MCA, is amended to read:

14 "41-5-206. Transfer to criminal court. (1) After a
 15 petition has been filed alleging delinquency, the court may,
 16 upon motion of the county attorney, before hearing the
 17 petition on its merits, transfer the matter of prosecution
 18 to the district court if:

19 (a) (i) the youth charged was 12 years of age or more
 20 at the time of the conduct alleged to be unlawful and the
 21 unlawful act would constitute sexual intercourse without
 22 consent as defined in 45-5-503, deliberate homicide as
 23 defined in 45-5-102, or mitigated deliberate homicide as
 24 defined in 45-5-103, or the attempt, as defined in 45-4-103,
 25 of either deliberate or mitigated deliberate homicide if the

1 act had been committed by an adult; or
 2 (ii) the youth charged was 16 years of age or more at
 3 the time of the conduct alleged to be unlawful and the
 4 unlawful act is one or more of the following:

5 (A) negligent homicide as defined in 45-5-104;
 6 (B) arson as defined in 45-6-103;
 7 (C) aggravated or felony assault as defined in
 8 45-5-202;

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

10 (E) burglary or aggravated burglary as defined in
 11 45-6-204;

12 ~~{F}--sexual--intercourse--without-consent-as-defined-in~~
 13 ~~45-5-503;~~

14 ~~{G}~~{F} aggravated kidnapping as defined in 45-5-303;

15 ~~{H}~~{G} possession of explosives as defined in
 16 45-8-335;

17 ~~{I}~~{H} criminal sale of dangerous drugs ~~for-profit~~ as
 18 included in 45-9-101;

19 ~~{J}~~{I} attempt as defined in 45-4-103 of any of the
 20 acts enumerated in subsections (1)(a)(ii)(A) through
 21 (1)(a)(ii)~~{J}~~{H};

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

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

5 (d) the court finds upon the hearing of all relevant
 6 evidence that there ~~are reasonable grounds~~ is probable cause
 7 to believe that:

8 (i) the youth committed the delinquent act alleged;
 9 (ii) the seriousness of the offense and the protection
 10 of the community require treatment of the youth beyond that
 11 afforded by juvenile facilities; and

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

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

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

20 (b) the record and previous history of the youth,
 21 including previous contacts with the youth court, law
 22 enforcement agencies, youth courts in other jurisdictions,
 23 prior periods of probation, and prior commitments to
 24 juvenile institutions. However, lack of a prior juvenile
 25 history with youth courts will not of itself be grounds for

1 denying the transfer.

2 ~~{c}--the-severity-of-the-offense;~~
 3 ~~{d}--the--prospects--for--adequate--protection--of--the~~
 4 ~~public-and-the-likelihood-of--reasonable--rehabilitation--of~~
 5 ~~the-youth-by-the-use-of-procedures,-services,-and-facilities~~
 6 ~~currently-available-to-the-youth-court;~~

7 {3} The court shall grant the motion to transfer if
 8 the youth was 16 years old or older at the time of the
 9 conduct alleged to be unlawful and the unlawful act would
 10 constitute deliberate homicide as defined in 45-5-102,
 11 mitigated deliberate homicide as defined in 45-5-103, or the
 12 attempt, as defined in 45-4-103, of either deliberate or
 13 mitigated deliberate homicide if the act had been committed
 14 by an adult.

15 ~~{3}{4}~~ Upon transfer to district court, the judge
 16 shall make written findings of the reasons why the
 17 jurisdiction of the youth court was waived and the case
 18 transferred to district court.

19 ~~{4}{5}~~ The transfer terminates the jurisdiction of the
 20 youth court over the youth with respect to the acts alleged
 21 in the petition. No youth may be prosecuted in the district
 22 court for a criminal offense originally subject to the
 23 jurisdiction of the youth court unless the case has been
 24 transferred as provided in this section.

25 ~~{5}{6}~~ Upon order of the youth court transferring the

1 case to the district court, the county attorney shall file
2 the information against the youth without unreasonable
3 delay.

4 ~~6~~(7) Any offense not enumerated in subsection (1)
5 that arises during the commission of a crime enumerated in
6 subsection (1) may be:

7 (a) tried in youth court;

8 (b) transferred to district court with an offense
9 enumerated in subsection (1), upon motion of the county
10 attorney and acceptance-by order of the district youth court
11 judge.

12 ~~7~~(8) If a youth is found guilty in district court of
13 any of the offenses ~~enumerated in subsection (1) of this~~
14 section transferred by the youth court and is sentenced to
15 the state prison, his commitment shall be to the department
16 of institutions which shall confine the youth in whatever
17 institution it considers proper; however, no youth under 16
18 years of age may be confined in the state prison."

19 Section 4. Section 41-5-301, MCA, is amended to read:

20 "41-5-301. Preliminary investigation and disposition.

21 (1) Whenever the court receives information from any agency
22 or person, based upon reasonable grounds, that a youth is or
23 appears to be a delinquent youth or a youth in need of
24 supervision or, being subject to a court order or consent
25 order, has violated the terms thereof, the probation officer

1 shall make a preliminary inquiry into the matter.

2 (2) The probation officer may:

3 (a) require the presence of any person relevant to the
4 inquiry;

5 (b) request subpoenas from the judge to accomplish
6 this purpose;

7 (c) require investigation of the matter by any law
8 enforcement agency or any other appropriate state or local
9 agency.

10 (3) If the probation officer determines that the facts
11 indicate a youth in need of care, the matter shall be
12 immediately referred to the department of social and
13 rehabilitation services.

14 (4) (a) The probation officer in the conduct of the
15 preliminary inquiry shall:

16 (i) advise the youth of the youth's rights under this
17 chapter and the constitutions of the state of Montana and
18 the United States;

19 (ii) determine whether the matter is within the
20 jurisdiction of the court;

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

24 (b) Once relevant information is secured, the
25 probation officer shall:

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

1 for permission to file a petition charging a youth to be a
 2 delinquent youth or a youth in need of supervision. The
 3 application must be supported by such evidence as the youth
 4 court may require. If it appears that there is probable
 5 cause to believe that the allegations of the petition are
 6 true, the youth court shall grant leave to file the
 7 petition.

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

13 ~~(7)~~(8) If no petition is filed under this section, the
 14 complainant and victim, if any, shall be informed by the
 15 probation officer of the action and the reasons therefor and
 16 shall be advised of the right to submit the matter to the
 17 county attorney for review. The county attorney, upon
 18 receiving a request for review, shall consider the facts,
 19 consult with the probation officer, and make the final
 20 decision as to whether a petition shall or shall not be
 21 filed."

22 Section 5. Section 41-5-303, MCA, is amended to read:
 23 "41-5-303. Rights of youth upon apprehension
 24 questioning. When a youth is detained for investigation--or
 25 questioning upon a matter which could result in a petition

1 alleging that the youth being-detained is either delinquent
2 or in need of supervision, the following requirements must
3 be met:

4 (1) The youth shall be ~~immediately--and--effectively~~
5 ~~IMMEDIATELY--AND--EFFECTIVELY~~ advised of his constitutional
6 ~~rights-and-his--rights--under--this--chapter~~ right--against
7 ~~self-incrimination--and--his-right-to-counsel~~ CONSTITUTIONAL
8 ~~RIGHTS-AND-HIS-RIGHTS-UNDER-THIS-CHAPTER~~ RIGHT AGAINST
9 SELF-INCRIMINATION AND HIS RIGHT TO COUNSEL.

10 (2) The youth may waive such rights under the
11 following situations:

12 (a) when the youth is ~~under-the-age-of-12~~ 16 UNDER-THE
13 ~~AGE-OF-12~~ 16 years ~~of-age-or-older~~ OF AGE OR OLDER, the
14 ~~parents-of~~ THE--PARENTS-OF the youth may make an effective
15 waiver;

16 (b) when the youth is ~~over~~ under ~~OVER~~ UNDER the age of
17 ~~12~~ 16 ~~12~~ 16 years and the youth and his-parents ~~a-parent--or~~
18 guardian ~~HIS--PARENTS~~ A PARENT OR GUARDIAN agree, they may
19 make an effective waiver; ~~and or~~ AND

20 (c) when the youth is ~~over~~ under ~~OVER~~ UNDER the age of
21 ~~12~~ 16 ~~12~~ 16 years and the youth and his ~~parents~~ parent--or
22 guardian ~~PARENTS~~ PARENT OR GUARDIAN do not agree, the youth
23 may make an effective waiver only with advice of counsel."

24 Section 6. Section 41-5-304, MCA, is amended to read:

25 "41-5-304. Fingerprints Investigation, fingerprints,

1 and photographs. (1) ~~Title--46-shall-apply-to-all~~ All law
2 enforcement investigations relating to ~~a-complaint--alleging~~
3 a delinquent youth or youth in need of supervision, ~~except~~
4 ~~that; must be conducted in accordance with this chapter and~~
5 Title 46.

6 (a)(2) no A youth may be fingerprinted or photographed
7 for criminal identification purposes; ~~except-by-order-of-the~~
8 ~~youth-court-judge;~~

9 (a) if arrested for conduct alleged to be unlawful
10 that would be a felony if committed by an adult;

11 (b) pursuant to a search warrant, supported by
12 probable cause, issued by a judge, justice of the peace, or
13 magistrate; or

14 (c) upon the order of the youth court judge, after a
15 petition alleging delinquency has been filed in which the
16 unlawful act alleged would constitute a felony if the act
17 had been committed by an adult.

18 (b)--~~no-fingerprint-records-or-photographs-may-be-filed~~
19 ~~with--the--federal--bureau--of--investigation;--the--Montana~~
20 ~~department-of-justice;--or-any-other--than--the--originating~~
21 ~~agency;--except--for-sending-the-fingerprints-or-photographs~~
22 ~~to-any-law-enforcement-agency-for-comparison-purposes-in-the~~
23 ~~original-investigation;~~

24 (2)(3) Fingerprint records and photographs ~~shall--be~~
25 ~~retained--by--the--originating--agency--only-until-the-youth~~

reaches the age of majority unless the judge orders the records destroyed at an earlier date. Any such record may be used by the originating agency for comparison and identification purposes in any other investigation only when probable cause is established before the youth court judge that the youth is a principal suspect."

Section 7. Section 41-5-305, MCA, is amended to read:

"41-5-305. Detention and shelter care of youth. (1) A youth taken into custody may not be detained in a jail or other facility for detention purposes unless:

(a) he has allegedly committed an act which if committed by an adult would constitute a criminal offense; and

(a) the alleged act offense is one of the following: specified in 41-5-206;

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

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

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

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

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

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

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

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

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

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

(b) he has escaped from a correctional or detention facility;

(c) he has violated a valid court order or an aftercare agreement; or

(d) his detention is required to protect persons or property;

(e) he has pending court or administrative action or is awaiting a transfer to another jurisdiction and may abscond or be removed from the jurisdiction of the court;

(f) there are not adequate assurances that he will appear for court when required; or

(d)(g) he meets the additional criteria for detention established by the youth court in the judicial district that has current jurisdiction over him.

(2) A youth taken into custody may not be sheltered prior to the hearing on the petition except when:

(a) the youth and his family need shelter care to address their problematic situation when it is not possible for the youth to remain at home;

(b) the youth needs to be protected from physical or

1 emotional harm;

2 (c) the youth needs to be deterred or prevented from
3 immediate repetition of his troubling behavior;

4 (d) shelter care is necessary to assess the youth and
5 his environment;

6 (e) shelter care is necessary to provide adequate time
7 for case planning and disposition; or

8 (f) shelter care is necessary to intervene in a crisis
9 situation and provide intensive services or attention that
10 might alleviate the problem and reunite the family."

11 Section 8. Section 41-5-402, MCA, is amended to read:

12 "41-5-402. Communications privileged. An incriminating
13 statement relating to any act or omission constituting
14 delinquency or need of supervision made by the participant
15 to the person giving counsel or advice in the discussions or
16 conferences incident thereto may not be used against the
17 declarant in any proceeding under this chapter, nor may the
18 incriminating statement be admissible in any criminal
19 proceeding against the declarant. This section does not
20 apply to the use of voluntary and reliable statements that
21 are offered for impeachment purposes."

22 Section 9. Section 41-5-502, MCA, is amended to read:

23 "41-5-502. Summons. (1) After a petition has been
24 filed, summons shall be served directly to:

25 (a) the youth;

1 (b) his parent or parents having actual custody of the
2 youth or his guardian or custodian, as the case may be; and

3 (c) such other persons as the court may direct.

4 (2) The summons shall:

5 (a) require the parties to whom directed to appear
6 personally before the court at the time fixed by the summons
7 to answer the allegations of the petition;

8 (b) advise the parties of their right to counsel under
9 the Montana Youth Court Act; and

10 (c) have attached to it a copy of the petition.

11 (3) The court may endorse upon the summons an order
12 directing the person or persons having the physical custody
13 or control of the youth to bring the youth to the hearing.

14 (4) If it appears ~~from any sworn statement presented~~
15 to the court that the youth needs to be placed in detention
16 or shelter care, the judge may endorse on the summons an
17 order directing the officer serving the summons to at once
18 take the youth into custody and to take him to the place of
19 detention or shelter care designated by the court, subject
20 to the rights of the youth and parent or person having
21 custody of the youth as set forth in the provisions of the
22 Montana Youth Court Act relating to detention and shelter
23 care criteria and postdetention proceedings.

24 (5) If any youth is in shelter care or detained under
25 any provision of this chapter pending an adjudication, the

1 court, upon petition of the youth, his parents or guardian,
 2 or his counsel, shall, as soon as practicable, conduct a
 3 hearing in order to determine whether the circumstances of
 4 the case require such detention or shelter care and the form
 5 the detention or shelter care should take. All mentioned
 6 parties shall be notified of such petition process at the
 7 time of initial detention or shelter care.

8 (6) The youth court judge may also admit the youth to
 9 bail in accordance with Title 46, chapter 9."

10 Section 10. Section 41-5-522, MCA, is amended to read:

11 "41-5-522. Dispositional hearing. (1) As soon as
 12 practicable after a youth is found to be a delinquent youth
 13 or a youth in need of supervision, the court shall conduct a
 14 dispositional hearing. The dispositional hearing may involve
 15 a determination of financial liability as provided in
 16 41-3-1123 and 41-3-1124.

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

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

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

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

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

25 (6) In determining whether restitution, as authorized

1 by 41-5-523~~(f)~~, is appropriate in a particular case, the
 2 following factors may be considered in addition to any other
 3 evidence:

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

11 Section 11. Section 41-5-523, MCA, is amended to read:

12 "41-5-523. Disposition of delinquent youth and youth
 13 in need of supervision. (1) If a youth is found to be
 14 delinquent or in need of supervision, the youth court may
 15 enter its judgment making the following disposition:

- 16 (a) place the youth on probation;
- 17 (b) place the youth for substitute care into a youth
 18 care facility as defined in 41-3-1102 or a home approved by
 19 the court;
- 20 (c) place the youth in a private agency responsible
 21 for the care and rehabilitation of such a youth;
- 22 (d) transfer legal custody to the department of
 23 institutions; provided, however, that in the case of a youth
 24 in need of supervision, such transfer of custody does not
 25 authorize the department of institutions to place the youth

1 in a state youth correctional facility and such custody may
 2 not continue for a period of more than 6 months without a
 3 subsequent court order after notice and hearing;

4 ~~(f)--such-further-care-and-treatment-or-evaluation-that~~
 5 ~~the-court-considers-beneficial-to-the-youth;-or~~

6 (f)(e) order restitution by the youth; or his parents;
 7 (f) impose a fine as authorized by law if the
 8 violation alleged would constitute a criminal offense if
 9 committed by an adult;

10 (g) require the performance of community service;

11 (h) require the youth, his parents, his guardians, or
 12 the persons having legal custody of the youth to receive
 13 counseling services;

14 (i) require the medical and psychological evaluation
 15 of the youth, his parents, his guardians, or the persons
 16 having legal custody of the youth;

17 (j) require the parents, guardians, or other persons
 18 having legal custody of the youth to furnish such services
 19 as the court may designate; or

20 (k) such further care, treatment, evaluation, or
 21 relief that the court considers beneficial to the youth and
 22 the community.

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

1 of his constitutional rights or after the youth has been
2 adjudicated delinquent or in need of supervision, order the
3 youth to be evaluated by the department of institutions for
4 a period not to exceed 45 days of evaluation at a reception
5 and evaluation center for youths.

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

9 (4) 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

1 services is ordered to pay the costs of caring for the child
2 in a youth care facility other than a youth foster home or
3 youth group home, the court shall provide the department at
4 least 5 days' written notice and opportunity to be heard
5 before ordering the placement of the youth.

6 (5) No youth may be committed or transferred to a
7 penal institution or other facility used for the execution
8 of sentence of adult persons convicted of crimes.

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

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

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

22 ORDER OF COMMITMENT
23 State of Montana)
24) ss.
25 County of)

1 In the district court for the Judicial District.

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

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

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

10 Name	Address	Occupation
11		
12		

13 The names and addresses of their nearest relatives are:
14
15

16 Witness my hand this day of, A.D. 19...
17
18 Judge"

19 Section 12. Section 41-5-601, MCA, is amended to read:
20 "41-5-601. Publicity Confidentiality. (1) No publicity
21 information shall be given to the identity of an arrested
22 concerning a youth or to any matter or proceeding in the
23 youth court involving a youth proceeded against as, or found
24 to be, a delinquent youth or youth in need of supervision
25 except as provided in subsection (2).

1 (2) When a petition is filed under 41-5-501, publicity
2 may not be withheld as to the identity of regarding any
3 youth formally charged with or proceeded against as or found
4 to be a delinquent youth as a result of the commission of
5 any offense that would be punishable as a felony if the
6 youth were an adult. All court proceedings must be open to
7 the public with the exception of the transfer hearing
8 specified in 41-5-206 if the youth court finds that a
9 failure to close the hearing would jeopardize the right of
10 the youth to a fair trial.

11 (3) In all cases the victim is entitled to all
12 information concerning the identity and disposition of the
13 youth."

14 ~~Section 13. Section 41-5-602, MCA, is amended to read:~~
15 ~~"41-5-602. Law enforcement records; (1) No law~~
16 ~~enforcement records concerning a youth, except traffic~~
17 ~~records, EXCEPT TRAFFIC RECORDS, may be open to public~~
18 ~~inspection or their contents disclosed to the public unless~~
19 ~~the records are directly related to an offense to which~~
20 ~~publicity must be allowed under subsection (2) of 41-5-601~~
21 ~~or unless inspection is ordered by the court;~~

22 (2) ~~Inspection of law enforcement records concerning a~~
23 ~~youth, which records are not open to public inspection under~~
24 ~~subsection (1), is permitted prior to the sealing of the~~
25 ~~records by;~~

1 (a) ~~a youth court having the youth currently before it~~
2 ~~in any proceeding;~~

3 (b) ~~the officers of agencies having legal custody of~~
4 ~~the youth and those responsible for his supervision after~~
5 ~~release;~~

6 (c) ~~any other person, by order of the court, having a~~
7 ~~legitimate interest in the case or in the work of the law~~
8 ~~enforcement agency;~~

9 (d) ~~law enforcement officers of Montana, when~~
10 ~~necessary for the discharge of their immediate duties;~~

11 (e) ~~a district court in which the youth is convicted~~
12 ~~of a criminal offense, for the purpose of a presentence~~
13 ~~investigation;~~

14 (f) ~~the county attorney; or~~

15 (g) ~~the youth, his parent, guardian, or counsel;"~~

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

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

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

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

3 (d) any court and its probation and other professional
4 staff or the attorney for a convicted party who had been a
5 party to proceedings in the youth court when considering the
6 sentence to be imposed upon such party;

7 (e) the county attorney;

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

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

16 (3) ~~All other court records, including docket,~~
17 ~~petitions, Petitions, motions, and other papers, pleadings~~
18 ~~filed in a case, transcripts of testimony, including~~
19 ~~findings, verdicts, orders, and decrees, shall be open to~~
20 ~~public inspection by those persons and agencies listed in~~
21 ~~subsection (1) of this section and the parties to the~~
22 ~~proceedings and their counsel only when related to an~~
23 ~~offense for which access must be allowed under 41-5-601.~~

24 (4) All information obtained in discharge of an
25 official duty by any officer or other employee of the youth

1 court shall be privileged and shall not be disclosed to
 2 anyone other than the judge and others entitled under this
 3 chapter to receive such information, unless otherwise
 4 ordered by the judge.

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

9 (a) those persons and agencies listed in subsection
 10 (1); and

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

14 Section 14. Section 41-5-604, MCA, is amended to read:

15 "41-5-604. Disposition of records. (1) All youth court
 16 ~~findings, orders, judgments, and the legal and social files~~
 17 ~~and records of the court, probation services,~~ and law
 18 enforcement agencies records except fingerprints and
 19 photographs pertaining to a youth coming under this chapter
 20 shall be physically sealed when the youth reaches the age of
 21 18 years.

22 (2) In those cases in which jurisdiction of the court
 23 or any agency is extended beyond the youth's 18th birthday,
 24 the above records and files shall be physically sealed upon
 25 termination of the extended jurisdiction.

1 (3) Upon the physical sealing of the records
 2 pertaining to a youth pursuant to this section, any agency
 3 or department that has in its possession copies of the
 4 records so sealed shall also seal or destroy such copies of
 5 records. Anyone violating the provisions of this subsection
 6 shall be subject to contempt of court.

7 (4) Nothing herein contained shall prohibit the
 8 destruction of such records with the consent of the youth
 9 court judge or county attorney after 10 years from the date
 10 of sealing. ~~The records of youths who were 28 years old or~~
 11 ~~older on July 1, 1974, may be destroyed with the consent of~~
 12 ~~the youth court judge or county attorney.~~

13 (5) This ~~The~~ requirements for sealed records in this
 14 section shall not apply to youth traffic records or to
 15 records directly related to an offense to which publicity
 16 access must be allowed under ~~subsection (2) of~~ 41-5-601."

17 NEW SECTION. Section 15. Youth court hearings --
 18 priority. All hearings and other court appearances required
 19 under Title 41, chapter 5, must be given priority by the
 20 court and must be scheduled to be heard as expeditiously as
 21 possible.

22 NEW SECTION. Section 16. Repealer. Section 41-5-516,
 23 MCA, is repealed.

24 NEW SECTION. Section 17. Codification instruction.
 25 Section ~~16~~ 15 is intended to be codified as an integral part

HB 0470/03

1 of Title 41, chapter 5, and the provisions of Title 41,
2 chapter 5, apply to section ~~16~~ 15.

-End-

