

SENATE BILL NO. 226

INTRODUCED BY HALLIGAN

BY REQUEST OF THE JUVENILE JUSTICE COMMISSION

IN THE SENATE

JANUARY 27, 1987 INTRODUCED AND REFERRED TO COMMITTEE
ON JUDICIARY.

FEBRUARY 19, 1987 COMMITTEE RECOMMEND BILL
DO PASS AS AMENDED. REPORT ADOPTED.

FEBRUARY 20, 1987 PRINTING REPORT.

FEBRUARY 21, 1987 SECOND READING, DO PASS.

 STATEMENT OF INTENT ADOPTED.

FEBRUARY 23, 1987 ENGROSSING REPORT.

 THIRD READING, PASSED.
 AYES, 49; NOES, 0.

 TRANSMITTED TO HOUSE.

IN THE HOUSE

FEBRUARY 24, 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.

 ON MOTION, RECONSIDER THIRD READING
ACTION. BILL PLACED ON SECOND
READING THIS DAY.

 SECOND READING, CONCURRED IN AS
AMENDED.

MARCH 30, 1987

ON MOTION, BILL PLACED ON THIRD
READING THIS DAY.

THIRD READING, CONCURRED IN.
AYES, 96; NOES, 0.

RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

APRIL 3, 1987

RECEIVED FROM HOUSE.

SECOND READING, AMENDMENTS
CONCURRED IN.

APRIL 4, 1987

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

1 *Senate* BILL NO. *226*
 2 INTRODUCED BY *Hallyan*
 3 BY REQUEST OF THE JUVENILE JUSTICE COMMISSION
 4

5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING PROCEDURES FOR
 6 YOUTH DETENTION; REQUIRING A PROBABLE CAUSE HEARING AFTER A
 7 YOUTH HAS BEEN TAKEN INTO CUSTODY; PROVIDING DETENTION
 8 PROCEDURES FOR A YOUTH BEFORE A PROBABLE CAUSE HEARING;
 9 ALLOWING RELEASE OF A YOUTH ON BAIL; ALLOWING ESTABLISHMENT
 10 OF REGIONAL DETENTION FACILITIES; GRANTING THE DEPARTMENT OF
 11 INSTITUTIONS RULEMAKING AUTHORITY; AND AMENDING SECTIONS
 12 7-32-2221, 41-5-103, 41-5-303, 41-5-305, 41-5-306, 41-5-502,
 13 41-5-802, AND 53-30-229, MCA."
 14

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

16 NEW SECTION. Section 1. Hearing for probable cause --
 17 detention. (1) A youth who has been taken into custody may
 18 not be held longer than 24 hours, excluding weekends and
 19 legal holidays, unless a hearing has been held by the court
 20 to determine whether there is probable cause to believe he
 21 is a delinquent youth or a youth in need of supervision.

22 (2) At the probable cause hearing, the court shall
 23 inform the youth of his constitutional rights and his rights
 24 under this chapter.

25 (3) A parent, guardian, or legal custodian of the

1 youth may be held in contempt of court for failing to be
 2 present at the probable cause hearing, unless he:

3 (a) cannot be located through diligent efforts of the
 4 investigating peace officer or peace officers; or

5 (b) is excused by the court for good cause.

6 (4) At the probable cause hearing, the court may
 7 appoint a guardian ad litem as provided in 41-5-512.

8 (5) If the court determines that there is probable
 9 cause to believe the youth is delinquent or is a youth in
 10 need of supervision and if the youth meets the criteria in
 11 41-5-305, the youth may be placed in a shelter care facility
 12 or detention facility as provided in 41-5-306, but may not
 13 be placed in a jail or other facility for adults. If the
 14 court does not find probable cause, the youth must be
 15 immediately released.

16 NEW SECTION. Section 2. Placement of youth before
 17 probable cause hearing. (1) Before the probable cause
 18 hearing, a youth, except for a youth alleged to be a youth
 19 in need of care, may be held in a jail or other facility for
 20 adults only if:

21 (a) the facilities in 41-5-306 are not available or do
 22 not provide adequate security;

23 (b) the placement is in an area physically and
 24 visually separate from those of adults; and

25 (c) it appears that public safety and protection

1 reasonably require the youth to be held.

2 (2) The official in charge of a jail or other facility
3 for the detention of adult offenders or persons charged with
4 a crime shall inform the court immediately if a person who
5 is or appears to be under the age of 18 years is received at
6 the facility.

7 NEW SECTION. Section 3. Bail. A youth placed in a
8 detention or shelter care facility may be released on bail.
9 The court shall use the provisions of Title 46, chapter 9,
10 as guidance. In determining the amount of bail, the court
11 shall consider the financial ability of the parents or legal
12 custodian of the youth.

13 NEW SECTION. Section 4. Regional detention facility.
14 (1) A regional detention facility may be established and
15 maintained through cooperation or by cooperative agreement
16 of more than one county or city.

17 (2) Each regional detention facility must be licensed
18 by the department of institutions.

19 (3) The county determined by the court as the
20 residence of the youth is responsible for the cost of the
21 detention of the youth, including medical expenses incurred
22 during detention.

23 (4) Counties receiving detention services must be
24 billed monthly for services provided during the preceding
25 month and may be refused services if bills are not paid

1 within 60 days of receipt of a statement.

2 NEW SECTION. Section 5. Rules. The department of
3 institutions shall make rules governing the licensing
4 procedures for regional and county detention facilities.

5 Section 6. Section 41-5-103, MCA, is amended to read:
6 "41-5-103. Definitions. For the purposes of the
7 Montana Youth Court Act, unless otherwise stated the
8 following definitions apply:

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

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

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

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

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

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

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

24 (8) (a) "Legal custody" means the legal status created
25 by order of a court of competent jurisdiction that gives a

1 person the right and duty to:

- 2 (i) have physical custody of the youth;
 3 (ii) determine with whom the youth shall live and for
 4 what period;
 5 (iii) protect, train, and discipline the youth; and
 6 (iv) provide the youth with food, shelter, education,
 7 and ordinary medical care.

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

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

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

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

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

- 25 (a) who has committed an offense which, if committed

1 by an adult, would constitute a criminal offense;

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

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

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

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

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

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

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

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

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

1 (17) "State youth correctional facility" means a
2 residential facility for the rehabilitation of delinquent
3 youth such as Pine Hills school in Miles City, and Mountain
4 View school in Helena.

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

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

9 (20) "Detention facility" means a physically
10 restricting facility designed to prevent a youth from
11 departing at will.

12 ~~{20}~~(21) "Restitution" means payments in cash to the
13 victim or with services to the victim or the general
14 community when these payments are made under the
15 jurisdiction of a youth court proceeding.

16 ~~{21}~~(22) "Substitute care" means full-time care of
17 youth in a residential setting for the purpose of providing
18 food, shelter, security and safety, guidance, direction, and
19 if necessary, treatment to youth who are removed from or
20 without the care and supervision of their parents or
21 guardian. ~~Nothing-in-this-definition-is-intended-to-include~~
22 ~~juvenile--correctional--facilities,--evaluation--facilities,~~
23 ~~mental--health--facilities--and--services,--and--aftercare~~
24 ~~programs-operated-by-the-department-of-institutions."~~

25 Section 7. Section 41-5-303, MCA, is amended to read:

1 "41-5-303. Rights of youth ~~upon--apprehension taken~~
2 into custody. When a youth is ~~detained~~ taken into custody
3 for investigation or questioning upon a matter which could
4 result in a petition alleging that the youth ~~being--detained~~
5 is either delinquent or in need of supervision, the
6 following requirements must be met:

7 (1) The youth shall be immediately and effectively
8 advised of his constitutional rights and his rights under
9 this chapter.

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

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

14 (b) when the youth is over the age of 12 years and the
15 youth and his parents agree, they may make an effective
16 waiver; and

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

20 (3) The investigating officer, probation officer, or
21 person assigned to give notice shall immediately notify the
22 parents, guardian, or legal custodian of the youth that the
23 youth has been taken into custody, the reasons for taking
24 the youth into custody, and where the youth is being held.
25 If the parents, guardian, or legal custodian cannot be found

1 through diligent efforts, a close relative or friend chosen
 2 by the youth must be notified."

3 Section 8. Section 41-5-305, MCA, is amended to read:

4 "41-5-305. Detention and shelter care of youth. (1) A
 5 After a probable cause hearing provided for in [section 1],
 6 a youth taken-into-custody may not be detained-in-a-jail-or
 7 other-facility-for-detention-purposes placed in a detention
 8 facility unless:

9 (a) he has allegedly committed an--act one of the
 10 following acts which if committed by an adult would
 11 constitute a criminal offense--and:

12 ~~(a)--the-alleged-act-is-one-of-the-following--~~

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 (1)(a)(i) through (1)(a)(ix);

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

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

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

8 (e) there is good reason to believe the youth will not
 9 appear for court proceedings as ordered; or

10 ~~(d)(f)~~ (f) he meets the criteria for detention established
 11 by the youth court in the judicial district with
 12 jurisdiction over the youth.

13 (2) A youth ~~taken--into-custody~~ may not be sheltered
 14 ~~prior-to-the-hearing-on-the-petition-except-when~~ placed in a
 15 shelter care facility unless:

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

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

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

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

25 (e) shelter care is necessary to provide adequate time

1 for case planning and disposition; or
 2 (f) shelter care is necessary to intervene in a crisis
 3 situation and provide intensive services or attention that
 4 might alleviate the problem and reunite the family."
 5 Section 9. Section 41-5-306, MCA, is amended to read:
 6 "41-5-306. Place of shelter care or detention. (1) A
 7 After a probable cause hearing provided for in [section 1],
 8 a youth alleged to be a delinquent youth or youth in need of
 9 supervision may be sheltered placed only in:
 10 (a) a licensed youth foster home as defined in
 11 41-3-1102;
 12 (b) a facility operated by a licensed child welfare
 13 agency; or
 14 (c) a licensed youth group home as defined in
 15 41-3-1102.
 16 ~~(2) A youth alleged to be a delinquent youth may be~~
 17 ~~detained in a jail or other facility for the detention of~~
 18 ~~adults only if:~~
 19 ~~(a) the facilities in subsection (1) are not available~~
 20 ~~or do not provide adequate security;~~
 21 ~~(b) the detention is in an area physically and~~
 22 ~~visually separate and removed from those of adults;~~
 23 ~~(c) it appears to the satisfaction of the court that~~
 24 ~~public safety and protection reasonably require detention;~~
 25 and

1 ~~(d) the court so orders;~~
 2 ~~(3) The official in charge of a jail or other facility~~
 3 ~~for the detention of adult offenders or persons charged with~~
 4 ~~crime shall inform the court immediately if a person who is~~
 5 ~~or appears to be under the age of 18 years is received at~~
 6 ~~the facility. Such official shall bring the person before~~
 7 ~~the court upon request or deliver him to a detention~~
 8 ~~facility designated by the court;~~
 9 ~~(4)(2)~~ A youth alleged to be in need of care shall be
 10 placed only in the facilities stated in subsection (1) of
 11 this section and shall not be detained placed in a jail or
 12 other facility intended or used for the detention of adults
 13 charged with criminal offenses.
 14 (3) After a probable cause hearing provided for in
 15 [section 1], a youth alleged to be a delinquent youth may be
 16 placed only in the facilities described in subsection (1) or
 17 in a detention facility."
 18 Section 10. Section 41-5-502, MCA, is amended to read:
 19 "41-5-502. Summons. (1) After a petition has been
 20 filed, summons shall be served directly to:
 21 (a) the youth;
 22 (b) his parent or parents having actual custody of the
 23 youth or his guardian or custodian, as the case may be; and
 24 (c) such other persons as the court may direct.
 25 (2) The summons shall:

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

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

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

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

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

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

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

4 Section 11. Section 41-5-802, MCA, is amended to read:

5 "41-5-802. Shelter care and detention facilities.
6 (1) (a) In all counties the county commissioners may
7 provide, by purchase, lease, or otherwise, a place to be
8 known as the youth detention facility, which shall not be
9 used for the confinement of adult persons charged with
10 criminal offenses, where delinquent youths and youths in
11 need of supervision may be detained until final disposition,
12 which place shall be maintained by the county as in other
13 like cases.

14 (b) ~~The judge having jurisdiction~~ county commissioners
15 may appoint such personnel as required, who shall have
16 charge of said facility and of the youths detained therein.

17 (c) The compensation of such personnel shall be fixed
18 by the ~~court~~ county commissioners, and such compensation and
19 the maintaining of such facility shall be paid out of the
20 county treasury which may be supplemented by state
21 appropriation and federal funds.

22 (d) The county commissioners shall provide for
23 inspection of any county detention facility every 3 months.
24 Inspection must include but is not limited to health, fire
25 safety, security, rehabilitation programs, recreation,

1 treatment of youths, and personnel training.

2 (e) The judge of the district youth court for the
3 county shall inspect any detention facility at least once a
4 year.

5 (2) (a) ~~Youth---courts---and~~ Counties, cities, or
6 nonprofit corporations may provide by purchase, lease, or
7 otherwise, a place to be known as a shelter care facility.

8 (b) Such facility shall be physically unrestricting
9 and may be used to provide shelter care for youth alleged or
10 adjudicated delinquent, in need of supervision, or in need
11 of care.

12 (c) Such facility shall be separate and apart from any
13 facility housing adults charged with criminal offenses.

14 (d) State appropriations and federal funds may be
15 received by the ~~youth--court~~ county, cities, or private
16 nonprofit corporations for establishment, maintenance, or
17 operation of such facility.

18 (e) Such facility shall be furnished in a comfortable
19 manner and be as nearly as possible like a family home.

20 (f) Such facility may be operated in conjunction with
21 a youth detention facility."

22 Section 12. Section 7-32-2221, MCA, is amended to
23 read:

24 "7-32-2221. Segregation of prisoners -- confinement of
25 juveniles. (1) Each county jail must contain a sufficient

1 number of rooms to allow the sheriff, jail administrator, or
2 private party jailer to separately confine classes of
3 prisoners as may be necessary to the security and safety of
4 those prisoners and the jail.

5 (2) Persons who are violent, disturbed, or inebriated
6 must not be kept or put into the same room with other
7 prisoners, nor shall male and female prisoners (except
8 husband and wife) be kept or put into the same room.

9 (3) Juveniles may be confined only under conditions
10 that comply with ~~41-5-306(2)~~ [sections 1 and 2]."

11 Section 13. Section 53-30-229, MCA, is amended to
12 read:

13 "53-30-229. Hearing on alleged violation of aftercare
14 agreement -- right to appeal outcome. (1) When it is alleged
15 by an aftercare counselor that a youth has violated the
16 terms of his aftercare agreement, the youth shall be granted
17 a hearing at the site of the alleged violation or in the
18 county where the youth is residing or is found within 10
19 days after notice has been served on the youth or the youth
20 is detained, whichever is earlier. The purpose of the
21 hearing is to determine whether the youth committed the
22 violation and, if so, whether the violation is of such a
23 nature that he should be returned to the juvenile facility
24 from which he was released or a different plan for treatment
25 should be pursued by the department of institutions.

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

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

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

8 (b) disclosure of the evidence against him and the
9 facts constituting the alleged violation;

10 (c) opportunity to be heard in person and to present
11 witnesses and documentary evidence to controvert the
12 evidence against him and to show that there are compelling
13 reasons which justify or mitigate the violation;

14 (d) opportunity to have the referee subpoena
15 witnesses;

16 (e) the right to confront and cross-examine adverse
17 witnesses;

18 (f) the right to be represented by an attorney;

19 (g) a record of the hearing; and

20 (h) notice that a written statement as to the evidence
21 relied upon in reaching the final decision and the reasons
22 for the final decision will be provided by the referee.

23 (4) The department shall appoint a referee, who shall
24 not be an employee of the department, to conduct the
25 hearing. In the conduct of the hearing, the department may

1 request the county attorney's assistance as necessary. The
2 department shall adopt rules necessary to effect a prompt
3 and full review.

4 (5) If the referee finds, by a preponderance of the
5 evidence, that the youth did in fact commit the violation,
6 he shall make a recommendation to the department for the
7 placement of the youth. In making this recommendation, the
8 referee may consider mitigating circumstances. Final
9 approval rests with the department and must be made within
10 10 days of the referee's recommendation.

11 (6) The youth may appeal from the decision at the
12 hearing to the district court of the county in which the
13 hearing was held by serving and filing a notice of appeal
14 with the court within 10 days of the department's decision.
15 The youth may obtain a written transcript of the hearing
16 from the department by giving written notice of appeal. The
17 district court, upon receipt of a notice of appeal, shall
18 order the department to promptly certify to the court a
19 record of all proceedings before the department and shall
20 proceed to a prompt hearing on the appeal based upon the
21 record on appeal. The decision of the department shall not
22 be altered except for abuse of discretion or manifest
23 injustice.

24 (7) Pending the hearing on a violation and pending the
25 department's decision, a youth may not be detained except

1 when his detention or care is required to protect the person
2 or property of the youth or of others or he may abscond or
3 be removed from the community. Procedures for taking into
4 custody and detention of a youth charged with violation of
5 his aftercare agreement shall be as provided in 41-3-1111,
6 [section 1], [section 2], and 41-5-306.

7 (8) If the decision is made to return the youth to the
8 institution from which he was released and the youth appeals
9 that decision, he shall await the outcome of the appeal at
10 such institution."

11 NEW SECTION. Section 14. Codification instructions.
12 (1) Sections 1 through 3 are intended to be codified as an
13 integral part of Title 41, chapter 5, part 3, and the
14 provisions of Title 41, chapter 5, part 3, apply to sections
15 1 through 3.

16 (2) Sections 4 and 5 are intended to be codified as an
17 integral part of Title 41, chapter 5, part 8, and the
18 provisions of Title 41, chapter 5, part 8, apply to sections
19 4 and 5.

20 NEW SECTION. Section 15. Coordination instruction. If
21 both this act and ___ Bill No. ___ [LC 38] are passed and
22 approved, then the rulemaking authority delegated to the
23 department of institutions in [section 5] is transferred to
24 the department of family services.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB226, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act revising procedures for youth detention; requiring a probable cause hearing after a youth has been taken into custody; providing detention procedures for a youth before a probable cause hearing; allowing establishment of regional detention facilities; granting the Department of Institutions rulemaking authority; and amending sections 7-32-221, 41-5-303, 41-5-305, 41-5-306, 41-5-502, 41-5-802 and 53-30-229, MCA.

ASSUMPTIONS:

1. The Department of Institutions will require an additional .5 FTE to license juvenile detention facilities. It is likely that no more than four detention facilities will be developed within the biennium. It is possible that 1.0 FTE could manage a statewide inspection program, even if every county were to develop detention facilities.
2. The Department of Social and Rehabilitation Services will experience increased payments for shelter care at the current rate of \$24.62 per day; the Department does not pay for detention facilities.
3. During FY86, there were about 200 children held in detention for a maximum of 5 days each, totalling 800 days possible for shelter care as each youth would remain in detention 1 day for the probable cause hearing. It is assumed that the department would have to pay shelter care costs equal to 1/2 of the FY86 total or 400 days of shelter care.
4. A maximum of half of the children will be placed in shelter care instead of being released or going to other programs or facilities.
5. There will be no fiscal impact on the Judiciary.

FISCAL IMPACT:Expenditures:

	Current Law	FY88/FY89 Proposed Law	Difference
Personal Services	\$ 0	\$ 13,773	\$ 13,773
Operating Expenses	0	3,115	3,115
Benefits	0	9,848	9,848
TOTAL	\$ 0	\$ 26,736	\$ 26,736

Funding:

General Fund	\$ 0	\$ 26,736	\$ 26,736
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EFFECT ON COUNTY OR OTHER LOCAL REVENUE OR EXPENDITURES:

The proposed law could increase county expenditures for inspection of youth detention facilities.

David L. Hunter DATE 2/2/87
DAVID L. HUNTER, BUDGET DIRECTOR
Office of Budget and Program Planning

Mike Halligan
MIKE HALLIGAN, PRIMARY SPONSOR

DATE 2-2-87Fiscal Note for SB226, as introduced.SB 226

APPROVED BY COMMITTEE
ON JUDICIARY

1 SENATE BILL NO. 226

2 INTRODUCED BY HALLIGAN

3 BY REQUEST OF THE JUVENILE JUSTICE COMMISSION

4
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15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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18 detention. (1) A youth who has been taken into custody may
19 not be held longer than 24 hours, excluding weekends and
20 legal holidays, unless a hearing has been held by the court
21 to determine whether there is probable cause to believe he
22 is a delinquent youth or a youth in need of supervision.

23 (2) At the probable cause hearing, the court shall
24 inform the youth of his constitutional rights and his rights
25 under this chapter.

1 (3) A parent, guardian, or legal custodian of the
2 youth may be held in contempt of court for failing to be
3 present at the probable cause hearing, unless he:

4 (a) cannot be located through diligent efforts of the
5 investigating peace officer or peace officers; or

6 (b) is excused by the court for good cause.

7 (4) At the probable cause hearing, the court may
8 appoint a guardian ad litem as provided in 41-5-512.

9 (5) If the court determines that there is probable
10 cause to believe the youth is delinquent or is a youth in
11 need of supervision and if the youth meets the criteria in
12 41-5-305, the youth may be placed in a shelter care facility
13 or detention facility as provided in 41-5-306, [but may not
14 be placed in a jail or other facility for adults]. If the
15 court does not find probable cause, the youth must be
16 immediately released.

17 NEW SECTION. Section 2. Placement of youth before
18 probable cause hearing. (1) Before the probable cause
19 hearing, a youth, except for a youth alleged to be a youth
20 in need of care, may be held in a jail or other facility for
21 adults only if:

22 (a) the facilities in 41-5-306 are not available or do
23 not provide adequate security;

24 (b) the placement is in an area physically and
25 visually separate from those of adults; and

1 (c) it appears that public safety and protection
2 reasonably require the youth to be held.

3 (2) The official in charge of a jail or other facility
4 for the detention of adult offenders or persons charged with
5 a crime shall inform the court immediately if a person who
6 is or appears to be under the age of 18 years is received at
7 the facility.

8 NEW SECTION. Section 3. Bail. A youth placed in a
9 detention or shelter care facility may be released on bail.
10 The court shall use the provisions of Title 46, chapter 9,
11 as guidance. In determining the amount of bail, the court
12 shall consider the financial ability of the parents or legal
13 custodian of the youth.

14 NEW SECTION. Section 4. Regional detention facility.
15 (1) A regional detention facility may be established and
16 maintained through cooperation or by cooperative agreement
17 of more than one county or city.

18 (2) Each regional detention facility must be licensed
19 by the department of institutions.

20 (3) The county determined by the court as the
21 residence of the youth is responsible for the cost of the
22 detention of the youth, including medical expenses incurred
23 during detention.

24 (4) Counties receiving detention services must be
25 billed monthly for services provided during the preceding

1 month and may be refused services if bills are not paid
2 within 60 days of receipt of a statement.

3 NEW SECTION. Section 5. Rules. The department of
4 institutions shall make rules governing the licensing
5 procedures for regional and county detention facilities.

6 Section 6. Section 41-5-103, MCA, is amended to read:
7 "41-5-103. Definitions. For the purposes of the
8 Montana Youth Court Act, unless otherwise stated the
9 following definitions apply:

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

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

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

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

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

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

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

25 (8) (a) "Legal custody" means the legal status created

1 by order of a court of competent jurisdiction that gives a
2 person the right and duty to:

- 3 (i) have physical custody of the youth;
4 (ii) determine with whom the youth shall live and for
5 what period;
6 (iii) protect, train, and discipline the youth; and
7 (iv) provide the youth with food, shelter, education,
8 and ordinary medical care.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 (16) "Necessary parties" include the youth, his

1 parents, guardian, custodian, or spouse.

2 (17) "State youth correctional facility" means a
3 residential facility for the rehabilitation of delinquent
4 youth such as Pine Hills school in Miles City, and Mountain
5 View school in Helena.

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

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

10 (20) "Detention facility" means a physically
11 restricting facility designed to prevent a youth from
12 departing at will.

13 ~~(20)~~(21) "Restitution" means payments in cash to the
14 victim or with services to the victim or the general
15 community when these payments are made under the
16 jurisdiction of a youth court proceeding.

17 ~~(21)~~(22) "Substitute care" means full-time care of
18 youth in a residential setting for the purpose of providing
19 food, shelter, security and safety, guidance, direction, and
20 if necessary, treatment to youth who are removed from or
21 without the care and supervision of their parents or
22 guardian. ~~Nothing in this definition is intended to include~~
23 ~~juvenile--correctional--facilities,--evaluation--facilities,~~
24 ~~mental--health--facilities--and--services,--and--aftercare~~
25 ~~programs--operated--by--the--department--of--institutions.~~ NOTHING

1 IN THIS DEFINITION IS INTENDED TO INCLUDE JUVENILE
2 CORRECTIONAL FACILITIES, EVALUATION FACILITIES, MENTAL
3 HEALTH FACILITIES AND SERVICES, AND AFTERCARE PROGRAMS
4 OPERATED BY THE DEPARTMENT OF INSTITUTIONS."

5 Section 7. Section 41-5-303, MCA, is amended to read:
6 "41-5-303. Rights of youth ~~upon--apprehension taken~~
7 into custody. When a youth is ~~detained~~ taken into custody
8 for investigation or questioning upon a matter which could
9 result in a petition alleging that the youth ~~being--detained~~
10 is either delinquent or in need of supervision, the
11 following requirements must be met:

12 (1) The youth shall be immediately and effectively
13 advised of his constitutional rights and his rights under
14 this chapter.

15 (2) The youth may waive such rights under the
16 following situations:

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

19 (b) when the youth is over the age of 12 years and the
20 youth and his parents agree, they may make an effective
21 waiver; and

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

25 (3) The investigating officer, probation officer, or

1 person assigned to give notice shall immediately notify the
 2 parents, guardian, or legal custodian of the youth that the
 3 youth has been taken into custody, the reasons for taking
 4 the youth into custody, and where the youth is being held.
 5 If the parents, guardian, or legal custodian cannot be found
 6 through diligent efforts, a close relative or friend chosen
 7 by the youth must be notified."

8 Section 8. Section 41-5-305, MCA, is amended to read:

9 "41-5-305. Detention and shelter care of youth. (1) A
 10 After a probable cause hearing provided for in [section 1],
 11 a youth taken-into-custody may not be detained-in-a-jail-or
 12 other-facility-for-detention-purposes placed in a detention
 13 facility unless:

14 (a) he has allegedly committed ~~an--act~~ one of the
 15 following acts which if committed by an adult would
 16 constitute a criminal offense ~~and:~~

17 ~~{a)--the-alleged-act-is-one-of-the-following:~~

- 18 (i) criminal homicide as defined in 45-5-101;
 19 (ii) arson as defined in 45-6-103;
 20 (iii) aggravated or felony assault as defined in
 21 45-5-202;
 22 (iv) robbery as defined in 45-5-401;
 23 (v) burglary or aggravated burglary as defined in
 24 45-6-204;
 25 (vi) sexual intercourse without consent as defined in

1 45-5-503;

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

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

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

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

8 (b) he has escaped from a correctional facility;

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

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

13 (e) there is good reason to believe the youth will not
 14 appear for court proceedings as ordered; or

15 ~~{d}{f}~~ he meets the criteria for detention established
 16 by the youth court in the judicial district with
 17 jurisdiction over the youth.

18 (2) A youth ~~taken--into-custody~~ may not be ~~sheltered~~
 19 ~~prior-to-the-hearing-on-the-petition-except-when~~ placed in a
 20 shelter care facility unless:

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

24 (b) the youth needs to be protected from physical or
 25 emotional harm;

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

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

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

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

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

11 "41-5-306. Place of shelter care or detention. (1) A
12 After a probable cause hearing provided for in [section 1],
13 a youth alleged to be a delinquent-youth-or youth in need of
14 supervision may be sheltered placed only in:

15 (a) a licensed youth foster home as defined in
16 41-3-1102;

17 (b) a facility operated by a licensed child welfare
18 agency; or

19 (c) a licensed youth group home as defined in
20 41-3-1102.

21 ~~{2}-A-youth-alleged-to-be-a-delinquent-youth-may-be~~
22 ~~detained-in-a-jail-or-other-facility-for-the-detention-of~~
23 ~~adults-only-if:~~

24 ~~{a}-the-facilities-in-subsection-{i}-are-not-available~~
25 ~~or-do-not-provide-adequate-security;~~

1 ~~{b}-the-detention-is-in-an-area-physically--and~~
2 ~~visually-separate-and-removed-from-those-of-adults;~~

3 ~~{c}-it--appears--to-the-satisfaction-of-the-court-that~~
4 ~~public-safety-and-protection-reasonably--require--detention;~~
5 ~~and~~

6 ~~{d}-the-court-so-orders:~~

7 ~~{3}-The-official-in-charge-of-a-jail-or-other-facility~~
8 ~~for-the-detention-of-adult-offenders-or-persons-charged-with~~
9 ~~crime--shall-inform-the-court-immediately-if-a-person-who-is~~
10 ~~or-appears-to-be-under-the-age-of-18-years--is--received--at~~
11 ~~the--facility.--Such--official-shall-bring-the-person-before~~
12 ~~the-court--upon--request--or--deliver--him--to--a--detention~~
13 ~~facility-designated-by-the-court;~~

14 ~~{4}{2} A youth alleged to be in need of care shall be~~
15 ~~placed only in the facilities stated in subsection (1) of~~
16 ~~this section and shall not be detained placed in a jail or~~
17 ~~other facility intended or used for the detention of adults~~
18 ~~charged with criminal offenses.~~

19 ~~{3} After a probable cause hearing provided for in~~
20 ~~[section 1], a youth alleged to be a delinquent youth may be~~
21 ~~placed only in the facilities described in subsection (1) or~~
22 ~~in a detention facility."~~

23 Section 10. Section 41-5-502, MCA, is amended to read:

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

1 (a) the youth;

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

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

5 (2) The summons shall:

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

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

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

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

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

25 (5) If any youth is in shelter care or detained under

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

9 Section 11. Section 41-5-802, MCA, is amended to read:

10 "41-5-802. Shelter care and detention facilities.

11 (1) (a) In all counties the county commissioners may
12 provide, by purchase, lease, or otherwise, a place to be
13 known as the youth detention facility, which shall not be
14 used for the confinement of adult persons charged with
15 criminal offenses, where delinquent youths and youths in
16 need of supervision may be detained until final disposition,
17 which place shall be maintained by the county as in other
18 like cases.

19 (b) The judge-having-jurisdiction county commissioners
20 may appoint such personnel as required, who shall have
21 charge of said facility and of the youths detained therein.

22 (c) The compensation of such personnel shall be fixed
23 by the court county commissioners, and such compensation and
24 the maintaining of such facility shall be paid out of the
25 county treasury which may be supplemented by state

1 appropriation and federal funds.

2 (d) The county commissioners shall provide for
3 inspection of any county detention facility every 3 months.
4 Inspection must include but is not limited to health, fire
5 safety, security, rehabilitation programs, recreation,
6 treatment of youths, and personnel training.

7 (e) The judge of the district youth court for the
8 county shall inspect any detention facility at least once a
9 year.

10 (2) (a) ~~Youth---courts---and~~ Counties, cities, or
11 nonprofit corporations may provide by purchase, lease, or
12 otherwise, a place to be known as a shelter care facility.

13 (b) Such facility shall be physically unrestricting
14 and may be used to provide shelter care for youth alleged or
15 adjudicated delinquent, in need of supervision, or in need
16 of care.

17 (c) Such facility shall be separate and apart from any
18 facility housing adults charged with criminal offenses.

19 (d) State appropriations and federal funds may be
20 received by the ~~youth--court~~ county, cities, or private
21 nonprofit corporations for establishment, maintenance, or
22 operation of such facility.

23 (e) Such facility shall be furnished in a comfortable
24 manner and be as nearly as possible like a family home.

25 (f) Such facility may be operated in conjunction with

1 a youth detention facility."

2 Section 12. Section 7-32-2221, MCA, is amended to
3 read:

4 "7-32-2221. Segregation of prisoners -- confinement of
5 juveniles. (1) Each county jail must contain a sufficient
6 number of rooms to allow the sheriff, jail administrator, or
7 private party jailer to separately confine classes of
8 prisoners as may be necessary to the security and safety of
9 those prisoners and the jail.

10 (2) Persons who are violent, disturbed, or inebriated
11 must not be kept or put into the same room with other
12 prisoners, nor shall male and female prisoners (except
13 husband and wife) be kept or put into the same room.

14 (3) Juveniles may be confined only under conditions
15 that comply with ~~41-5-306(2)~~ [sections 1 and 2]."

16 Section 13. Section 53-30-229, MCA, is amended to
17 read:

18 "53-30-229. Hearing on alleged violation of aftercare
19 agreement -- right to appeal outcome. (1) When it is alleged
20 by an aftercare counselor that a youth has violated the
21 terms of his aftercare agreement, the youth shall be granted
22 a hearing at the site of the alleged violation or in the
23 county where the youth is residing or is found within 10
24 days after notice has been served on the youth or the youth
25 is detained, whichever is earlier. The purpose of the

1 hearing is to determine whether the youth committed the
 2 violation and, if so, whether the violation is of such a
 3 nature that he should be returned to the juvenile facility
 4 from which he was released or a different plan for treatment
 5 should be pursued by the department of institutions.

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

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

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

13 (b) disclosure of the evidence against him and the
 14 facts constituting the alleged violation;

15 (c) opportunity to be heard in person and to present
 16 witnesses and documentary evidence to controvert the
 17 evidence against him and to show that there are compelling
 18 reasons which justify or mitigate the violation;

19 (d) opportunity to have the referee subpoena
 20 witnesses;

21 (e) the right to confront and cross-examine adverse
 22 witnesses;

23 (f) the right to be represented by an attorney;

24 (g) a record of the hearing; and

25 (h) notice that a written statement as to the evidence

1 relied upon in reaching the final decision and the reasons
 2 for the final decision will be provided by the referee.

3 (4) The department shall appoint a referee, who shall
 4 not be an employee of the department, to conduct the
 5 hearing. In the conduct of the hearing, the department may
 6 request the county attorney's assistance as necessary. The
 7 department shall adopt rules necessary to effect a prompt
 8 and full review.

9 (5) If the referee finds, by a preponderance of the
 10 evidence, that the youth did in fact commit the violation,
 11 he shall make a recommendation to the department for the
 12 placement of the youth. In making this recommendation, the
 13 referee may consider mitigating circumstances. Final
 14 approval rests with the department and must be made within
 15 10 days of the referee's recommendation.

16 (6) The youth may appeal from the decision at the
 17 hearing to the district court of the county in which the
 18 hearing was held by serving and filing a notice of appeal
 19 with the court within 10 days of the department's decision.
 20 The youth may obtain a written transcript of the hearing
 21 from the department by giving written notice of appeal. The
 22 district court, upon receipt of a notice of appeal, shall
 23 order the department to promptly certify to the court a
 24 record of all proceedings before the department and shall
 25 proceed to a prompt hearing on the appeal based upon the

1 record on appeal. The decision of the department shall not
2 be altered except for abuse of discretion or manifest
3 injustice.

4 (7) Pending the hearing on a violation and pending the
5 department's decision, a youth may not be detained except
6 when his detention or care is required to protect the person
7 or property of the youth or of others or he may abscond or
8 be removed from the community. Procedures for taking into
9 custody and detention of a youth charged with violation of
10 his aftercare agreement shall be as provided in 41-3-1111,
11 [section 1], [section 2], and 41-5-306.

12 (8) If the decision is made to return the youth to the
13 institution from which he was released and the youth appeals
14 that decision, he shall await the outcome of the appeal at
15 such institution."

16 NEW SECTION. Section 14. Codification instructions.
17 (1) Sections 1 through 3 are intended to be codified as an
18 integral part of Title 41, chapter 5, part 3, and the
19 provisions of Title 41, chapter 5, part 3, apply to sections
20 1 through 3.

21 (2) Sections 4 and 5 are intended to be codified as an
22 integral part of Title 41, chapter 5, part 8, and the
23 provisions of Title 41, chapter 5, part 8, apply to sections
24 4 and 5.

25 NEW SECTION. Section 15. Coordination instruction. IF

1 both this act and __ Bill No. __ [LC 38] are passed and
2 approved, then the rulemaking authority delegated to the
3 department of institutions in [section 5] is transferred to
4 the department of family services.

5 NEW SECTION. SECTION 16. EFFECTIVE DATES. (1) EXCEPT
6 AS PROVIDED IN SUBSECTION (2), SECTIONS 1 THROUGH 13 ARE
7 EFFECTIVE OCTOBER 1, 1987.

8 (2) THE BRACKETED LANGUAGE IN SUBSECTION (5) OF
9 SECTION (1) IS EFFECTIVE JULY 1, 1989.

-End-

1 STATEMENT OF INTENT

2 SENATE BILL 226

3
4 A statement of intent is required for this bill because
5 section 5 allows the department of institutions to adopt
6 rules for the licensing of detention facilities.

7 Currently, Montana statutes make no provision for the
8 licensing of juvenile detention facilities. There are
9 presently two counties in the process of establishing
10 detention facilities who need assurance that their
11 facilities will meet minimum established standards on
12 program operations and environmental conditions.

13 It is anticipated that the rules developed under this
14 act will establish minimum standards for juvenile detention
15 facilities. These standards should govern such matters as
16 the capacity of the facility, its location, design,
17 construction, equipment and operation, fire and safety
18 precautions, medical services, qualifications and number of
19 personnel, and the quality of services provided to the
20 juveniles.

21 The rules should contain a procedure for notifying the
22 appropriate officials of compliance or deficiencies. If the
23 facility is found deficient, a procedure for remedying those
24 deficiencies should be included with specific time
25 limitations.

1 It is anticipated the state will conduct annual
2 inspections of each facility and may require written reports
3 containing such information as the agency may need to set
4 and enforce its standards.

1 SENATE BILL NO. 226

2 INTRODUCED BY HALLIGAN

3 BY REQUEST OF THE JUVENILE JUSTICE COMMISSION

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING PROCEDURES FOR
6 YOUTH DETENTION; REQUIRING A PROBABLE CAUSE HEARING AFTER A
7 YOUTH HAS BEEN TAKEN INTO CUSTODY; PROVIDING DETENTION
8 PROCEDURES FOR A YOUTH BEFORE A PROBABLE CAUSE HEARING;
9 ALLOWING RELEASE OF A YOUTH ON BAIL; ALLOWING ESTABLISHMENT
10 OF REGIONAL DETENTION FACILITIES; GRANTING THE DEPARTMENT OF
11 INSTITUTIONS RULEMAKING AUTHORITY; AND AMENDING SECTIONS
12 7-32-2221, 41-5-103, 41-5-303, 41-5-305, 41-5-306, 41-5-502,
13 41-5-802, AND 53-30-229, MCA; AND PROVIDING EFFECTIVE
14 DATES."

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

17 NEW SECTION. Section 1. Hearing for probable cause --
18 detention. (1) A youth who has been taken into custody may
19 not be held longer than 24 hours, excluding weekends and
20 legal holidays, unless a hearing has been held by the court
21 to determine whether there is probable cause to believe he
22 is a delinquent youth or a youth in need of supervision.

23 (2) At the probable cause hearing, the court shall
24 inform the youth of his constitutional rights and his rights
25 under this chapter.

1 (3) A parent, guardian, or legal custodian of the
2 youth may be held in contempt of court for failing to be
3 present at the probable cause hearing, unless he:

4 (a) cannot be located through diligent efforts of the
5 investigating peace officer or peace officers; or

6 (b) is excused by the court for good cause.

7 (4) At the probable cause hearing, the court may
8 appoint a guardian ad litem as provided in 41-5-512.

9 (5) If the court determines that there is probable
10 cause to believe the youth is delinquent or is a youth in
11 need of supervision and if the youth meets the criteria in
12 41-5-305, the youth may be placed in a shelter care facility
13 or detention facility as provided in 41-5-306 [but may not
14 be placed in a jail or other facility for adults]. If the
15 court does not find probable cause, the youth must be
16 immediately released.

17 NEW SECTION. Section 2. Placement of youth before
18 probable cause hearing. (1) Before the probable cause
19 hearing, a youth, except for a youth alleged to be a youth
20 in need of care, may be held in a jail or other facility for
21 adults only if:

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23 not provide adequate security;

24 (b) the placement is in an area physically and
25 visually separate from those of adults; and

1 (c) it appears that public safety and protection
2 reasonably require the youth to be held.

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4 for the detention of adult offenders or persons charged with
5 a crime shall inform the court immediately if a person who
6 is or appears to be under the age of 18 years is received at
7 the facility.

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13 custodian of the youth.

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17 of more than one county or city.

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19 by the department of institutions.

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21 residence of the youth is responsible for the cost of the
22 detention of the youth, including medical expenses incurred
23 during detention.

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25 billed monthly for services provided during the preceding

1 month and may be refused services if bills are not paid
2 within 60 days of receipt of a statement.

3 NEW SECTION. Section 5. Rules. The department of
4 institutions shall make rules governing the licensing
5 procedures for regional and county detention facilities.

6 Section 6. Section 41-5-103, MCA, is amended to read:

7 "41-5-103. Definitions. For the purposes of the
8 Montana Youth Court Act, unless otherwise stated the
9 following definitions apply:

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

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

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

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

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

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

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

25 (8) (a) "Legal custody" means the legal status created

1 by order of a court of competent jurisdiction that gives a
2 person the right and duty to:

- 3 (i) have physical custody of the youth;
4 (ii) determine with whom the youth shall live and for
5 what period;
6 (iii) protect, train, and discipline the youth; and
7 (iv) provide the youth with food, shelter, education,
8 and ordinary medical care.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 (16) "Necessary parties" include the youth, his

1 parents, guardian, custodian, or spouse.

2 (17) "State youth correctional facility" means a
3 residential facility for the rehabilitation of delinquent
4 youth such as Pine Hills school in Miles City, and Mountain
5 View school in Helena.

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

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

10 (20) "Detention facility" means a physically
11 restricting facility designed to prevent a youth from
12 departing at will.

13 (20)(21) "Restitution" means payments in cash to the
14 victim or with services to the victim or the general
15 community when these payments are made under the
16 jurisdiction of a youth court proceeding.

17 (21)(22) "Substitute care" means full-time care of
18 youth in a residential setting for the purpose of providing
19 food, shelter, security and safety, guidance, direction, and
20 if necessary, treatment to youth who are removed from or
21 without the care and supervision of their parents or
22 guardian. ~~Nothing in this definition is intended to include~~
23 ~~juvenile correctional facilities, evaluation facilities,~~
24 ~~mental health facilities and services, and aftercare~~
25 ~~programs operated by the department of institutions. NOTHING~~

1 IN THIS DEFINITION IS INTENDED TO INCLUDE JUVENILE
2 CORRECTIONAL FACILITIES, EVALUATION FACILITIES, MENTAL
3 HEALTH FACILITIES AND SERVICES, AND AFTERCARE PROGRAMS
4 OPERATED BY THE DEPARTMENT OF INSTITUTIONS."

5 Section 7. Section 41-5-303, MCA, is amended to read:
6 "41-5-303. Rights of youth ~~upon apprehension taken~~
7 into custody. When a youth is detained taken into custody
8 for investigation or questioning upon a matter which could
9 result in a petition alleging that the youth ~~being detained~~
10 is either delinquent or in need of supervision, the
11 following requirements must be met:

12 (1) The youth shall be immediately and effectively
13 advised of his constitutional rights and his rights under
14 this chapter.

15 (2) The youth may waive such rights under the
16 following situations:

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

19 (b) when the youth is over the age of 12 years and the
20 youth and his parents agree, they may make an effective
21 waiver; and

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

25 (3) The investigating officer, probation officer, or

1 person assigned to give notice shall immediately notify the
 2 parents, guardian, or legal custodian of the youth that the
 3 youth has been taken into custody, the reasons for taking
 4 the youth into custody, and where the youth is being held.
 5 If the parents, guardian, or legal custodian cannot be found
 6 through diligent efforts, a close relative or friend chosen
 7 by the youth must be notified."

8 Section 8. Section 41-5-305, MCA, is amended to read:

9 "41-5-305. Detention and shelter care of youth. (1) A
 10 After a probable cause hearing provided for in [section 1],
 11 a youth taken-into-custody may not be detained-in-a-jail-or
 12 other-facility-for-detention-purposes placed in a detention
 13 facility unless:

14 (a) he has allegedly committed ~~an--act~~ one of the
 15 following acts which if committed by an adult would
 16 constitute a criminal offense, ~~and:~~

17 ~~(a)--the-alleged-act-is-one-of-the-following:~~

- 18 (i) criminal homicide as defined in 45-5-101;
- 19 (ii) arson as defined in 45-6-103;
- 20 (iii) aggravated or felony assault as defined in
 21 45-5-202;
- 22 (iv) robbery as defined in 45-5-401;
- 23 (v) burglary or aggravated burglary as defined in
 24 45-6-204;
- 25 (vi) sexual intercourse without consent as defined in

1 45-5-503;

- 2 (vii) aggravated kidnapping as defined in 45-5-303;
- 3 (viii) possession of explosives as defined in 45-8-335;
- 4 (ix) criminal sale of dangerous drugs for profit as
 5 included in 45-9-101; or

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

- 8 (b) he has escaped from a correctional facility;
- 9 (c) he has violated a valid court order or an
 10 aftercare agreement; or

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

13 (e) there is good reason to believe the youth will not
 14 appear for court proceedings as ordered; or

15 ~~(d)(f)~~ he meets the criteria for detention established
 16 by the youth court in the judicial district with
 17 jurisdiction over the youth.

18 (2) A youth ~~taken--into-custody~~ may not be sheltered
 19 ~~prior-to-the-hearing-on-the-petition-except-when~~ placed in a
 20 shelter care facility unless:

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

24 (b) the youth needs to be protected from physical or
 25 emotional harm;

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

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

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

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

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

11 "41-5-306. Place of shelter care or detention. (1) A
12 After a probable cause hearing provided for in [section 1],
13 a youth alleged to be a delinquent youth or youth in need of
14 supervision may be sheltered placed only in:

15 (a) a licensed youth foster home as defined in
16 41-3-1102;

17 (b) a facility operated by a licensed child welfare
18 agency; or

19 (c) a licensed youth group home as defined in
20 41-3-1102.

21 ~~{2}--A youth alleged to be a delinquent youth may be~~
22 ~~detained in a jail or other facility for the detention of~~
23 ~~adults only if:~~

24 ~~{a}--the facilities in subsection (1) are not available~~
25 ~~or do not provide adequate security;~~

1 ~~{b}--the detention is in an area physically and~~
2 ~~visually separate and removed from those of adults;~~

3 ~~{c}--it appears to the satisfaction of the court that~~
4 ~~public safety and protection reasonably require detention;~~
5 ~~and~~

6 ~~{d}--the court so orders;~~

7 ~~{3}--The official in charge of a jail or other facility~~
8 ~~for the detention of adult offenders or persons charged with~~
9 ~~crime shall inform the court immediately if a person who is~~
10 ~~or appears to be under the age of 18 years is received at~~
11 ~~the facility. Such official shall bring the person before~~
12 ~~the court upon request or deliver him to a detention~~
13 ~~facility designated by the court.~~

14 ~~{4}{2}~~ A youth alleged to be in need of care shall be
15 placed only in the facilities stated in subsection (1) of
16 this section and shall not be detained placed in a jail or
17 other facility intended or used for the detention of adults
18 charged with criminal offenses.

19 {3} After a probable cause hearing provided for in
20 [section 1], a youth alleged to be a delinquent youth may be
21 placed only in the facilities described in subsection (1) or
22 in a detention facility."

23 Section 10. Section 41-5-502, MCA, is amended to read:

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

- 1 (a) the youth;
- 2 (b) his parent or parents having actual custody of the
3 youth or his guardian or custodian, as the case may be; and
- 4 (c) such other persons as the court may direct.
- 5 (2) The summons shall:
- 6 (a) require the parties to whom directed to appear
7 personally before the court at the time fixed by the summons
8 to answer the allegations of the petition;
- 9 (b) advise the parties of their right to counsel under
10 the Montana Youth Court Act; and
- 11 (c) have attached to it a copy of the petition.
- 12 (3) The court may endorse upon the summons an order
13 directing the person or persons having the physical custody
14 or control of the youth to bring the youth to the hearing.
- 15 (4) If it appears from any sworn statement presented
16 to the court that the youth needs to be placed in detention
17 or shelter care, the judge may endorse on the summons an
18 order directing the officer serving the summons to at once
19 take the youth into custody and to take him to the place of
20 detention or shelter care designated by the court, subject
21 to the rights of the youth and parent or person having legal
22 custody of the youth as set forth in the provisions of the
23 Montana Youth Court Act relating to detention and shelter
24 care criteria and postdetention proceedings.
- 25 (5) If any youth is in shelter care or detained under

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

9 Section 11. Section 41-5-802, MCA, is amended to read:

10 "41-5-802. Shelter care and detention facilities.
11 (1) (a) In all counties the county commissioners may
12 provide, by purchase, lease, or otherwise, a place to be
13 known as the youth detention facility, which shall not be
14 used for the confinement of adult persons charged with
15 criminal offenses, where delinquent youths and youths in
16 need of supervision may be detained until final disposition,
17 which place shall be maintained by the county as in other
18 like cases.

19 (b) ~~The judge-having-jurisdiction~~ county commissioners
20 may appoint such personnel as required, who shall have
21 charge of said facility and of the youths detained therein.

22 (c) The compensation of such personnel shall be fixed
23 by the ~~court~~ county commissioners, and such compensation and
24 the maintaining of such facility shall be paid out of the
25 county treasury which may be supplemented by state

1 appropriation and federal funds.

2 (d) The county commissioners shall provide for
3 inspection of any county detention facility every 3 months.
4 Inspection must include but is not limited to health, fire
5 safety, security, rehabilitation programs, recreation,
6 treatment of youths, and personnel training.

7 (e) The judge of the district youth court for the
8 county shall inspect any detention facility at least once a
9 year.

10 (2) (a) Youth---courts---and Counties, cities, or
11 nonprofit corporations may provide by purchase, lease, or
12 otherwise, a place to be known as a shelter care facility.

13 (b) Such facility shall be physically unrestricting
14 and may be used to provide shelter care for youth alleged or
15 adjudicated delinquent, in need of supervision, or in need
16 of care.

17 (c) Such facility shall be separate and apart from any
18 facility housing adults charged with criminal offenses.

19 (d) State appropriations and federal funds may be
20 received by the youth--court county, cities, or private
21 nonprofit corporations for establishment, maintenance, or
22 operation of such facility.

23 (e) Such facility shall be furnished in a comfortable
24 manner and be as nearly as possible like a family home.

25 (f) Such facility may be operated in conjunction with

1 a youth detention facility."

2 Section 12. Section 7-32-2221, MCA, is amended to
3 read:

4 "7-32-2221. Segregation of prisoners -- confinement of
5 juveniles. (1) Each county jail must contain a sufficient
6 number of rooms to allow the sheriff, jail administrator, or
7 private party jailer to separately confine classes of
8 prisoners as may be necessary to the security and safety of
9 those prisoners and the jail.

10 (2) Persons who are violent, disturbed, or inebriated
11 must not be kept or put into the same room with other
12 prisoners, nor shall male and female prisoners (except
13 husband and wife) be kept or put into the same room.

14 (3) Juveniles may be confined only under conditions
15 that comply with ~~41-5-306(2)~~ [sections 1 and 2]."

16 Section 13. Section 53-30-229, MCA, is amended to
17 read:

18 "53-30-229. Hearing on alleged violation of aftercare
19 agreement -- right to appeal outcome. (1) When it is alleged
20 by an aftercare counselor that a youth has violated the
21 terms of his aftercare agreement, the youth shall be granted
22 a hearing at the site of the alleged violation or in the
23 county where the youth is residing or is found within 10
24 days after notice has been served on the youth or the youth
25 is detained, whichever is earlier. The purpose of the

1 hearing is to determine whether the youth committed the
 2 violation and, if so, whether the violation is of such a
 3 nature that he should be returned to the juvenile facility
 4 from which he was released or a different plan for treatment
 5 should be pursued by the department of institutions.

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

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

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

13 (b) disclosure of the evidence against him and the
 14 facts constituting the alleged violation;

15 (c) opportunity to be heard in person and to present
 16 witnesses and documentary evidence to controvert the
 17 evidence against him and to show that there are compelling
 18 reasons which justify or mitigate the violation;

19 (d) opportunity to have the referee subpoena
 20 witnesses;

21 (e) the right to confront and cross-examine adverse
 22 witnesses;

23 (f) the right to be represented by an attorney;

24 (g) a record of the hearing; and

25 (h) notice that a written statement as to the evidence

1 relied upon in reaching the final decision and the reasons
 2 for the final decision will be provided by the referee.

3 (4) The department shall appoint a referee, who shall
 4 not be an employee of the department, to conduct the
 5 hearing. In the conduct of the hearing, the department may
 6 request the county attorney's assistance as necessary. The
 7 department shall adopt rules necessary to effect a prompt
 8 and full review.

9 (5) If the referee finds, by a preponderance of the
 10 evidence, that the youth did in fact commit the violation,
 11 he shall make a recommendation to the department for the
 12 placement of the youth. In making this recommendation, the
 13 referee may consider mitigating circumstances. Final
 14 approval rests with the department and must be made within
 15 10 days of the referee's recommendation.

16 (6) The youth may appeal from the decision at the
 17 hearing to the district court of the county in which the
 18 hearing was held by serving and filing a notice of appeal
 19 with the court within 10 days of the department's decision.
 20 The youth may obtain a written transcript of the hearing
 21 from the department by giving written notice of appeal. The
 22 district court, upon receipt of a notice of appeal, shall
 23 order the department to promptly certify to the court a
 24 record of all proceedings before the department and shall
 25 proceed to a prompt hearing on the appeal based upon the

1 record on appeal. The decision of the department shall not
2 be altered except for abuse of discretion or manifest
3 injustice.

4 (7) Pending the hearing on a violation and pending the
5 department's decision, a youth may not be detained except
6 when his detention or care is required to protect the person
7 or property of the youth or of others or he may abscond or
8 be removed from the community. Procedures for taking into
9 custody and detention of a youth charged with violation of
10 his aftercare agreement shall be as provided in 41-3-1111,
11 [section 1], [section 2], and 41-5-306.

12 (8) If the decision is made to return the youth to the
13 institution from which he was released and the youth appeals
14 that decision, he shall await the outcome of the appeal at
15 such institution."

16 NEW SECTION. Section 14. Codification instructions.
17 (1) Sections 1 through 3 are intended to be codified as an
18 integral part of Title 41, chapter 5, part 3, and the
19 provisions of Title 41, chapter 5, part 3, apply to sections
20 1 through 3.

21 (2) Sections 4 and 5 are intended to be codified as an
22 integral part of Title 41, chapter 5, part 8, and the
23 provisions of Title 41, chapter 5, part 8, apply to sections
24 4 and 5.

25 NEW SECTION. Section 15. Coordination instruction. If

1 both this act and __ Bill No. __ [LC 38] are passed and
2 approved, then the rulemaking authority delegated to the
3 department of institutions in [section 5] is transferred to
4 the department of family services.

5 NEW SECTION. SECTION 16. EFFECTIVE DATES. (1) EXCEPT
6 AS PROVIDED IN SUBSECTION (2), SECTIONS 1 THROUGH 13 ARE
7 EFFECTIVE OCTOBER 1, 1987.

8 (2) THE BRACKETED LANGUAGE IN SUBSECTION (5) OF
9 SECTION (1) IS EFFECTIVE JULY 1, 1989.

-End-

1 STATEMENT OF INTENT
2 SENATE BILL 226
3

4 A statement of intent is required for this bill because
5 section 5 allows the department of institutions to adopt
6 rules for the licensing of detention facilities.

7 Currently, Montana statutes make no provision for the
8 licensing of juvenile detention facilities. There are
9 presently two counties in the process of establishing
10 detention facilities who need assurance that their
11 facilities will meet minimum established standards on
12 program operations and environmental conditions.

13 It is anticipated that the rules developed under this
14 act will establish minimum standards for juvenile detention
15 facilities. These standards should govern such matters as
16 the capacity of the facility, its location, design,
17 construction, equipment and operation, fire and safety
18 precautions, medical services, qualifications and number of
19 personnel, and the quality of services provided to the
20 juveniles.

21 The rules should contain a procedure for notifying the
22 appropriate officials of compliance or deficiencies. If the
23 facility is found deficient, a procedure for remedying those
24 deficiencies should be included with specific time
25 limitations.

1 It is anticipated the state will conduct annual
2 inspections of each facility and may require written reports
3 containing such information as the agency may need to set
4 and enforce its standards.



1 SENATE BILL NO. 226
 2 INTRODUCED BY HALLIGAN
 3 BY REQUEST OF THE JUVENILE JUSTICE COMMISSION
 4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING PROCEDURES FOR
 6 YOUTH DETENTION; REQUIRING A PROBABLE CAUSE HEARING AFTER A
 7 YOUTH HAS BEEN TAKEN INTO CUSTODY; PROVIDING DETENTION
 8 PROCEDURES FOR A YOUTH BEFORE A PROBABLE CAUSE HEARING;
 9 ALLOWING RELEASE OF A YOUTH ON BAIL; ALLOWING ESTABLISHMENT
 10 OF REGIONAL DETENTION FACILITIES; GRANTING THE DEPARTMENT OF
 11 INSTITUTIONS RULEMAKING AUTHORITY; AND AMENDING SECTIONS
 12 7-32-2221, 41-5-103, 41-5-303, 41-5-305, 41-5-306, 41-5-502,
 13 41-5-802, AND 53-30-229, MCA; AND PROVIDING EFFECTIVE DATES
 14 AND A TERMINATION DATE FOR A PORTION OF THE ACT."

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

17 NEW SECTION. Section 1. Hearing for probable cause --
 18 detention. (1) A youth who has been taken into custody may
 19 not be held longer than 24 hours, excluding weekends and
 20 legal holidays, unless a hearing has been held by the court
 21 to determine whether there is probable cause to believe he
 22 is a delinquent youth or a youth in need of supervision.

23 (2) At the probable cause hearing, the court shall
 24 inform the youth of his constitutional rights and his rights
 25 under this chapter.

1 (3) A parent, guardian, or legal custodian of the
 2 youth may be held in contempt of court for failing to be
 3 present at the probable cause hearing, unless he:

4 (a) cannot be located through diligent efforts of the
 5 investigating peace officer or peace officers; or

6 (b) is excused by the court for good cause.

7 (4) At the probable cause hearing, the court may
 8 appoint a guardian ad litem as provided in 41-5-512.

9 (5) If the court determines that there is probable
 10 cause to believe the youth is delinquent or is a youth in
 11 need of supervision and if the youth meets the criteria in
 12 41-5-305, the youth may be placed in a shelter care facility
 13 or detention facility as provided in 41-5-306, [but may not
 14 be placed in a jail or other facility for adults]. If the
 15 court does not find probable cause, the youth must be
 16 immediately released.

17 NEW SECTION. Section 2. Placement of youth before
 18 probable cause hearing. (1) Before the probable cause
 19 hearing, a youth, except for a youth alleged to be a youth
 20 in need of care, may be held in a jail or other facility for
 21 adults only if:

22 (a) the facilities in 41-5-306 are not available or do
 23 not provide adequate security;

24 (b) the placement is in an area physically and
 25 visually separate from those of adults; and

1 (c) it appears that public safety and protection
2 reasonably require the youth to be held.

3 (2) The official in charge of a jail or other facility
4 for the detention of adult offenders or persons charged with
5 a crime shall inform the court immediately if a person who
6 is or appears to be under the age of 18 years is received at
7 the facility.

8 NEW SECTION. Section 3. Bail. A youth placed in a
9 detention or shelter care facility may be released on bail.
10 The court shall use the provisions of Title 46, chapter 9,
11 as guidance. In determining the amount of bail, the court
12 shall consider the financial ability of the YOUTH AND THE
13 parents or legal custodian of the youth.

14 NEW SECTION. Section 4. Regional detention facility.

15 (1) A regional detention facility may be established and
16 maintained through cooperation or by cooperative agreement
17 of more than one county or city.

18 (2) Each regional detention facility must be licensed
19 by the department of institutions.

20 (3) The county determined by the court as the
21 residence of the youth is responsible for the cost of the
22 detention of the youth, including medical expenses incurred
23 during detention.

24 (4) Counties receiving detention services must be
25 billed monthly for services provided during the preceding

1 month and may be refused services if bills are not paid
2 within 60 days of receipt of a statement.

3 NEW SECTION. Section 5. Rules. The department of
4 institutions shall make rules governing the licensing
5 procedures for regional and county detention facilities.

6 Section 6. Section 41-5-103, MCA, is amended to read:

7 "41-5-103. Definitions. For the purposes of the
8 Montana Youth Court Act, unless otherwise stated the
9 following definitions apply:

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

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

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

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

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

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

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

25 (8) (a) "Legal custody" means the legal status created

1 by order of a court of competent jurisdiction that gives a
2 person the right and duty to:

- 3 (i) have physical custody of the youth;
4 (ii) determine with whom the youth shall live and for
5 what period;
6 (iii) protect, train, and discipline the youth; and
7 (iv) provide the youth with food, shelter, education,
8 and ordinary medical care.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 (16) "Necessary parties" include the youth, his

1 parents, guardian, custodian, or spouse.

2 (17) "State youth correctional facility" means a
3 residential facility for the rehabilitation of delinquent
4 youth such as Pine Hills school in Miles City, and Mountain
5 View school in Helena.

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

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

10 (20) "Detention facility" means a physically
11 restricting facility designed to prevent a youth from
12 departing at will.

13 ~~{20}~~(21) "Restitution" means payments in cash to the
14 victim or with services to the victim or the general
15 community when these payments are made under the
16 jurisdiction of a youth court proceeding.

17 ~~{21}~~(22) "Substitute care" means full-time care of
18 youth in a residential setting for the purpose of providing
19 food, shelter, security and safety, guidance, direction, and
20 if necessary, treatment to youth who are removed from or
21 without the care and supervision of their parents or
22 guardian. ~~Nothing in this definition is intended to include~~
23 ~~juvenile--correctional--facilities,--evaluation--facilities,~~
24 ~~mental---health---facilities--and--services,--and--aftercare~~
25 ~~programs--operated--by--the--department--of--institutions.~~ NOTHING

1 IN THIS DEFINITION IS INTENDED TO INCLUDE JUVENILE
2 CORRECTIONAL FACILITIES, EVALUATION FACILITIES, MENTAL
3 HEALTH FACILITIES AND SERVICES, AND AFTERCARE PROGRAMS
4 OPERATED BY THE DEPARTMENT OF INSTITUTIONS."

5 Section 7. Section 41-5-303, MCA, is amended to read:
6 "41-5-303. Rights of youth ~~upon--apprehension taken~~
7 into custody. When a youth is detained taken into custody
8 for investigation or questioning upon a matter which could
9 result in a petition alleging that the youth being-detained
10 is either delinquent or in need of supervision, the
11 following requirements must be met:

12 (1) The youth shall be immediately and effectively
13 advised of his constitutional rights and his rights under
14 this chapter.

15 (2) The youth may waive such rights under the
16 following situations:

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

19 (b) when the youth is over the age of 12 years and the
20 youth and his parents agree, they may make an effective
21 waiver; and

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

25 (3) The investigating officer, probation officer, or

1 person assigned to give notice shall immediately notify the
 2 parents, guardian, or legal custodian of the youth that the
 3 youth has been taken into custody, the reasons for taking
 4 the youth into custody, and where the youth is being held.
 5 If the parents, guardian, or legal custodian cannot be found
 6 through diligent efforts, a close relative or friend chosen
 7 by the youth must be notified."

8 Section 8. Section 41-5-305, MCA, is amended to read:

9 "41-5-305. Detention and shelter care of youth. (1) A
 10 After a probable cause hearing provided for in [section 1],
 11 a youth taken-into-custody may not be detained-in-a-jail--or
 12 other--facility-for-detention-purposes placed in a detention
 13 facility unless:

14 (a) he has allegedly committed ~~an--act~~ one of the
 15 following acts which if committed by an adult would
 16 constitute a criminal offense; ~~and:~~

17 ~~{a}--the-alleged-act-is-one-of-the-following:~~

- 18 (i) criminal homicide as defined in 45-5-101;
- 19 (ii) arson as defined in 45-6-103;
- 20 (iii) aggravated or felony assault as defined in
 21 45-5-202;
- 22 (iv) robbery as defined in 45-5-401;
- 23 (v) burglary or aggravated burglary as defined in
 24 45-6-204;
- 25 (vi) sexual intercourse without consent as defined in

1 45-5-503;

- 2 (vii) aggravated kidnapping as defined in 45-5-303;
- 3 (viii) possession of explosives as defined in 45-8-335;
- 4 (ix) criminal sale of dangerous drugs for profit as
 5 included in 45-9-101; or
- 6 (x) attempt as defined in 45-4-103 of any of the acts
 7 enumerated in subsections (1)(a)(i) through (1)(a)(ix);
- 8 (b) he has escaped from a correctional facility;
- 9 (c) he has violated a valid court order or an
 10 aftercare agreement; ~~or~~
- 11 (d) his detention is required to protect persons or
 12 property;
- 13 (e) there is good reason to believe the youth will not
 14 appear for court proceedings as ordered; or
- 15 ~~{d}{f}~~ (f) he meets the criteria for detention established
 16 by the youth court in the judicial district with
 17 jurisdiction over the youth.
- 18 (2) A youth ~~taken-into-custody~~ may not be ~~sheltered~~
 19 ~~prior-to-the-hearing-on-the-petition-except-when~~ placed in a
 20 shelter care facility unless:
- 21 (a) the youth and his family need shelter care to
 22 address their problematic situation when it is not possible
 23 for the youth to remain at home;
- 24 (b) the youth needs to be protected from physical or
 25 emotional harm;

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

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

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

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

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

11 "41-5-306. Place of shelter care or detention. (1) A
12 After a probable cause hearing provided for in [section 1],
13 a youth alleged to be a delinquent youth or youth in need of
14 supervision may be sheltered placed only in:

15 (a) a licensed youth foster home as defined in
16 41-3-1102;

17 (b) a facility operated by a licensed child welfare
18 agency; or

19 (c) a licensed youth group home as defined in
20 41-3-1102.

21 ~~{2}--A youth alleged to be a delinquent youth may be~~
22 ~~detained in a jail or other facility for the detention of~~
23 ~~adults only if:~~

24 ~~{a}--the facilities in subsection (1) are not available~~
25 ~~or do not provide adequate security;~~

1 ~~{b}--the detention is in an area physically and~~
2 ~~visually separate and removed from those of adults;~~

3 ~~{c}--it appears to the satisfaction of the court that~~
4 ~~public safety and protection reasonably require detention;~~
5 ~~and~~

6 ~~{d}--the court so orders;~~

7 ~~{3}--The official in charge of a jail or other facility~~
8 ~~for the detention of adult offenders or persons charged with~~
9 ~~crime shall inform the court immediately if a person who is~~
10 ~~or appears to be under the age of 18 years is received at~~
11 ~~the facility. Such official shall bring the person before~~
12 ~~the court upon request or deliver him to a detention~~
13 ~~facility designated by the court.~~

14 ~~{4}{2} A youth alleged to be in need of care shall be~~
15 ~~placed only in the facilities stated in subsection (1) of~~
16 ~~this section and shall not be detained placed in a jail or~~
17 ~~other facility intended or used for the detention of adults~~
18 ~~charged with criminal offenses.~~

19 ~~(3) After a probable cause hearing provided for in~~
20 ~~[section 1], a youth alleged to be a delinquent youth may be~~
21 ~~placed only in the facilities described in subsection (1)~~
22 ~~or[,] in a detention facility[, OR IN A JAIL OR OTHER~~
23 ~~FACILITY FOR THE DETENTION OF ADULTS ONLY IF THE FACILITIES~~
24 ~~IN SUBSECTION (1) ARE NOT AVAILABLE OR DO NOT PROVIDE~~
25 ~~ADEQUATE SECURITY AND THE DETENTION IS IN AN AREA PHYSICALLY~~

1 AND VISUALLY SEPARATE AND REMOVED FROM THAT OF ADULTS]."

2 Section 10. Section 41-5-502, MCA, is amended to read:

3 "41-5-502. Summons. (1) After a petition has been
4 filed, summons shall be served directly to:

- 5 (a) the youth;
- 6 (b) his parent or parents having actual custody of the
7 youth or his guardian or custodian, as the case may be; and
8 (c) such other persons as the court may direct.

9 (2) The summons shall:

10 (a) require the parties to whom directed to appear
11 personally before the court at the time fixed by the summons
12 to answer the allegations of the petition;

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

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

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

19 (4) If it appears from any sworn statement presented
20 to the court that the youth needs to be placed in detention
21 or shelter care, the judge may endorse on the summons an
22 order directing the officer serving the summons to at once
23 take the youth into custody and to take him to the place of
24 detention or shelter care designated by the court, subject
25 to the rights of the youth and parent or person having legal

1 custody of the youth as set forth in the provisions of the
2 Montana Youth Court Act relating to detention and shelter
3 care criteria and postdetention proceedings.

4 (5) If any youth is in shelter care or detained under
5 any provision of this chapter pending an adjudication, the
6 court, upon petition of the youth, his parents or guardian,
7 or his counsel, shall, as soon as practicable, conduct a
8 hearing in order to determine whether the circumstances of
9 the case require such detention or shelter care and the form
10 the detention or shelter care should take. All mentioned
11 parties shall be notified of such petition process at the
12 time of initial detention or shelter care."

13 Section 11. Section 41-5-802, MCA, is amended to read:

14 "41-5-802. Shelter care and detention facilities.

15 (1) (a) In all counties the county commissioners may
16 provide, by purchase, lease, or otherwise, a place to be
17 known as the youth detention facility, which shall not be
18 used for the confinement of adult persons charged with
19 criminal offenses, where delinquent youths and youths in
20 need of supervision may be detained until final disposition,
21 which place shall be maintained by the county as in other
22 like cases.

23 (b) ~~The judge-having-jurisdiction~~ county commissioners
24 may appoint such personnel as required, who shall have
25 charge of said facility and of the youths detained therein.

1 (c) The compensation of such personnel shall be fixed
2 by the court county commissioners, and such compensation and
3 the maintaining of such facility shall be paid out of the
4 county treasury which may be supplemented by state
5 appropriation and federal funds.

6 (d) The county commissioners shall provide for
7 inspection of any county detention facility every 3 months.
8 Inspection must include but is not limited to health, fire
9 safety, security, rehabilitation programs, recreation,
10 treatment of youths, and personnel training.

11 (e) The judge of the district youth court for the
12 county shall inspect any detention facility at least once a
13 year.

14 (2) (a) ~~Youth---courts---and~~ Counties, cities, or
15 nonprofit corporations may provide by purchase, lease, or
16 otherwise, a place to be known as a shelter care facility.

17 (b) Such facility shall be physically unrestricting
18 and may be used to provide shelter care for youth alleged or
19 adjudicated delinquent, in need of supervision, or in need
20 of care.

21 (c) Such facility shall be separate and apart from any
22 facility housing adults charged with criminal offenses.

23 (d) State appropriations and federal funds may be
24 received by the youth--court county, cities, or private
25 nonprofit corporations for establishment, maintenance, or

1 operation of such facility.

2 (e) Such facility shall be furnished in a comfortable
3 manner and be as nearly as possible like a family home.

4 (f) Such facility may be operated in conjunction with
5 a youth detention facility."

6 Section 12. Section 7-32-2221, MCA. is amended to
7 read:

8 "7-32-2221. Segregation of prisoners -- confinement of
9 juveniles. (1) Each county jail must contain a sufficient
10 number of rooms to allow the sheriff, jail administrator, or
11 private party jailer to separately confine classes of
12 prisoners as may be necessary to the security and safety of
13 those prisoners and the jail.

14 (2) Persons who are violent, disturbed, or inebriated
15 must not be kept or put into the same room with other
16 prisoners, nor shall male and female prisoners (except
17 husband and wife) be kept or put into the same room.

18 (3) Juveniles may be confined only under conditions
19 that comply with ~~41-5-306(2)~~ [sections 1 and 2]."

20 Section 13. Section 53-30-229, MCA, is amended to
21 read:

22 "53-30-229. Hearing on alleged violation of aftercare
23 agreement -- right to appeal outcome. (1) When it is alleged
24 by an aftercare counselor that a youth has violated the
25 terms of his aftercare agreement, the youth shall be granted

1 a hearing at the site of the alleged violation or in the
 2 county where the youth is residing or is found within 10
 3 days after notice has been served on the youth or the youth
 4 is detained, whichever is earlier. The purpose of the
 5 hearing is to determine whether the youth committed the
 6 violation and, if so, whether the violation is of such a
 7 nature that he should be returned to the juvenile facility
 8 from which he was released or a different plan for treatment
 9 should be pursued by the department of institutions.

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

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

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

17 (b) disclosure of the evidence against him and the
 18 facts constituting the alleged violation;

19 (c) opportunity to be heard in person and to present
 20 witnesses and documentary evidence to controvert the
 21 evidence against him and to show that there are compelling
 22 reasons which justify or mitigate the violation;

23 (d) opportunity to have the referee subpoena
 24 witnesses;

25 (e) the right to confront and cross-examine adverse

1 witnesses;

2 (f) the right to be represented by an attorney;

3 (g) a record of the hearing; and

4 (h) notice that a written statement as to the evidence
 5 relied upon in reaching the final decision and the reasons
 6 for the final decision will be provided by the referee.

7 (4) The department shall appoint a referee, who shall
 8 not be an employee of the department, to conduct the
 9 hearing. In the conduct of the hearing, the department may
 10 request the county attorney's assistance as necessary. The
 11 department shall adopt rules necessary to effect a prompt
 12 and full review.

13 (5) If the referee finds, by a preponderance of the
 14 evidence, that the youth did in fact commit the violation,
 15 he shall make a recommendation to the department for the
 16 placement of the youth. In making this recommendation, the
 17 referee may consider mitigating circumstances. Final
 18 approval rests with the department and must be made within
 19 10 days of the referee's recommendation.

20 (6) The youth may appeal from the decision at the
 21 hearing to the district court of the county in which the
 22 hearing was held by serving and filing a notice of appeal
 23 with the court within 10 days of the department's decision.
 24 The youth may obtain a written transcript of the hearing
 25 from the department by giving written notice of appeal. The

1 district court, upon receipt of a notice of appeal, shall
 2 order the department to promptly certify to the court a
 3 record of all proceedings before the department and shall
 4 proceed to a prompt hearing on the appeal based upon the
 5 record on appeal. The decision of the department shall not
 6 be altered except for abuse of discretion or manifest
 7 injustice.

8 (7) Pending the hearing on a violation and pending the
 9 department's decision, a youth may not be detained except
 10 when his detention or care is required to protect the person
 11 or property of the youth or of others or he may abscond or
 12 be removed from the community. Procedures for taking into
 13 custody and detention of a youth charged with violation of
 14 his aftercare agreement shall be as provided in 41-3-1111,
 15 [section 1], [section 2], and 41-5-306.

16 (8) If the decision is made to return the youth to the
 17 institution from which he was released and the youth appeals
 18 that decision, he shall await the outcome of the appeal at
 19 such institution."

20 NEW SECTION. Section 14. Codification instructions.
 21 (1) Sections 1 through 3 are intended to be codified as an
 22 integral part of Title 41, chapter 5, part 3, and the
 23 provisions of Title 41, chapter 5, part 3, apply to sections
 24 1 through 3.

25 (2) Sections 4 and 5 are intended to be codified as an

1 integral part of Title 41, chapter 5, part 8, and the
 2 provisions of Title 41, chapter 5, part 8, apply to sections
 3 4 and 5.

4 NEW SECTION. Section 15. Coordination instruction. If
 5 both this act and ___ Bill No. ___ [LC 38] are passed and
 6 approved, then the rulemaking authority delegated to the
 7 department of institutions in [section 5] is transferred to
 8 the department of family services.

9 NEW SECTION. SECTION 16. EFFECTIVE DATES --
 10 TERMINATION DATE. (1) EXCEPT AS PROVIDED IN SUBSECTION
 11 SUBSECTIONS (2) AND (3), SECTIONS 1 THROUGH 13 ARE EFFECTIVE
 12 OCTOBER 1, 1987.

13 (2) THE BRACKETED LANGUAGE IN SUBSECTION (5) OF
 14 SECTION (1) IS EFFECTIVE JULY 1, 1989.

15 (3) THE BRACKETED LANGUAGE IN SUBSECTION (3) OF
 16 SECTION 9 TERMINATES JULY 1, 1989.

-End-

STANDING COMMITTEE REPORT

82

HOUSE

MARCH 23, 19 87

Mr. Speaker: We, the committee on JUDICIARY

report SENATE BILL NO. 226

- do pass
- be concurred in
- as amended
- do not pass
- be not concurred in
- statement of intent attached

Earl Long
Chairman

Page 3, line 12.
Following: "ability of the"
Insert: "youth and the"

~~CONFIDENTIAL~~

AA

TG

THIRD reading copy (BLUE color)

WINSLOW