

HOUSE BILL NO. 310
INTRODUCED BY SCHYE

IN THE HOUSE

JANUARY 19, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
JANUARY 20, 1989	FIRST READING.
FEBRUARY 13, 1989	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 14, 1989	PRINTING REPORT.
FEBRUARY 15, 1989	SECOND READING, DO PASS AS AMENDED.
FEBRUARY 16, 1989	ENGROSSING REPORT.
FEBRUARY 17, 1989	THIRD READING, PASSED. AYES, 95; NOES, 0.
	TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 18, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
MARCH 7, 1989	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
MARCH 8, 1989	SECOND READING, CONCURRED IN.
MARCH 10, 1989	THIRD READING, CONCURRED IN. AYES, 48; NOES, 0.
	RETURNED TO HOUSE.

MARCH 11, 1989

IN THE HOUSE

RECEIVED FROM SENATE.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 HOUSE BILL NO. 310
2 INTRODUCED BY Schye
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE MONTANA
5 YOUTH COURT ACT; CHANGING THE TIME IN WHICH A PETITION
6 CHARGING A YOUTH HELD IN DETENTION MUST BE FILED FROM 5
7 WORKING DAYS TO 7 WORKING DAYS; ALLOWING HEARINGS TO
8 DETERMINE PROBABLE CAUSE TO DETAIN A YOUTH FOR MORE THAN 24
9 HOURS TO BE HELD BY A JUSTICE OF THE PEACE, A MUNICIPAL OR
10 CITY JUDGE, OR A MAGISTRATE; PROVIDING THAT RECORDS OF
11 HEARINGS MUST BE MADE EITHER BY A COURT REPORTER OR BY A
12 TAPE RECORDING; AND AMENDING SECTIONS 41-5-301 AND 41-5-303,
13 MCA."
14
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
16 **Section 1.** Section 41-5-301, MCA, is amended to read:
17 **"41-5-301. Preliminary investigation and disposition.**
18 (1) Whenever the court receives information from any agency
19 or person, based upon reasonable grounds, that a youth is or
20 appears to be a delinquent youth or a youth in need of
21 supervision or, being subject to a court order or consent
22 order, has violated the terms thereof, a probation officer
23 shall make a preliminary inquiry into the matter.
24 (2) The probation officer may:
25 (a) require the presence of any person relevant to the

1 inquiry;
2 (b) request subpoenas from the judge to accomplish
3 this purpose;
4 (c) require investigation of the matter by any law
5 enforcement agency or any other appropriate state or local
6 agency.
7 (3) If the probation officer determines that the facts
8 indicate a youth in need of care, the matter shall be
9 immediately referred to the department.
10 (4) (a) The probation officer in the conduct of the
11 preliminary inquiry shall:
12 (i) advise the youth of the youth's rights under this
13 chapter and the constitutions of the state of Montana and
14 the United States;
15 (ii) determine whether the matter is within the
16 jurisdiction of the court;
17 (iii) determine, if the youth is in detention or
18 shelter care, whether such detention or shelter care should
19 be continued based upon criteria set forth in 41-5-305.
20 (b) Once relevant information is secured, the
21 probation officer shall:
22 (i) determine whether the interest of the public or
23 the youth requires that further action be taken;
24 (ii) terminate the inquiry upon the determination that
25 no further action be taken; and

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

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

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

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

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

(6) The county attorney may apply to the youth court for permission to file a petition charging a youth to be a delinquent youth or a youth in need of supervision. The application must be supported by such evidence as the youth court may require. If it appears that there is probable

cause to believe that the allegations of the petition are true, the youth court shall grant leave to file the petition.

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

(8) If no petition is filed under this section, the complainant and victim, if any, shall be informed by the probation officer of the action and the reasons therefor and shall be advised of the right to submit the matter to the county attorney for review. The county attorney, upon receiving a request for review, shall consider the facts, consult with the probation officer, and make the final decision as to whether a petition shall be filed."

Section 2. Section 41-5-303, MCA, is amended to read:

"41-5-303. (Temporary) Rights of youth taken into custody -- questioning -- hearing for probable cause -- detention. (1) When a youth is taken into custody for questioning upon a matter which could result in a petition alleging that the youth is either delinquent or in need of supervision, the following requirements must be met:

(a) The youth shall be advised of his right against self-incrimination and his right to counsel.

(b) The youth may waive such rights under the following situations:

(i) when the youth is 16 years of age or older, the youth may make an effective waiver;

(ii) when the youth is under the age of 16 years and the youth and a parent or guardian agree, they may make an effective waiver; and

(iii) when the youth is under the age of 16 years and the youth and his parent or guardian do not agree, the youth may make an effective waiver only with advice of counsel.

(c) The investigating officer, probation officer, or person assigned to give notice shall immediately notify the parents, guardian, or legal custodian of the youth that the youth has been taken into custody, the reasons for taking the youth into custody, and where the youth is being held. If the parents, guardian, or legal custodian cannot be found through diligent efforts, a close relative or friend chosen by the youth must be notified.

(2) A youth who has been taken into custody may not be held longer than 24 hours, excluding weekends and legal holidays, unless a hearing has been held by the court, a justice of the peace, a municipal or city judge, or a magistrate to determine whether there is probable cause to believe he is a delinquent youth or a youth in need of supervision. If a hearing under this subsection is held by

a justice of the peace, a municipal or city judge, or a magistrate, a record of the hearing shall be made by a court reporter or by a tape recording of the hearing.

(3) At the probable cause hearing, ~~the--court--shall~~ inform the youth shall be informed of his constitutional rights and his rights under this chapter.

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

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

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

(5) At the probable cause hearing, ~~the--court--may~~ appoint a guardian ad litem may be appointed as provided in 41-5-512.

(6) If ~~the--court--determines~~ it is determined that there is probable cause to believe the youth is delinquent or is a youth in need of supervision and if the youth meets the criteria in 41-5-305, the youth may be placed in a shelter care facility or detention facility as provided in 41-5-306. If ~~the--court--does--not--find~~ probable cause is not found, the youth must be immediately released.

41-5-303. (Effective July 1, 1989) Rights of youth taken into custody -- questioning -- hearing for probable cause -- detention. (1) When a youth is taken into custody

for questioning upon a matter which could result in a petition alleging that the youth is either delinquent or in need of supervision, the following requirements must be met:

(a) The youth shall be advised of his right against self-incrimination and his right to counsel.

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(ii) when the youth is under the age of 16 years and the youth and a parent or guardian agree, they may make an effective waiver; and

(iii) when the youth is under the age of 16 years and the youth and his parent or guardian do not agree, the youth may make an effective waiver only with advice of counsel.

(c) The investigating officer, probation officer, or person assigned to give notice shall immediately notify the parents, guardian, or legal custodian of the youth that the youth has been taken into custody, the reasons for taking the youth into custody, and where the youth is being held. If the parents, guardian, or legal custodian cannot be found through diligent efforts, a close relative or friend chosen by the youth must be notified.

(2) A youth who has been taken into custody may not be held longer than 24 hours, excluding weekends and legal

holidays, unless a hearing has been held by the court, a justice of the peace, a municipal or city judge, or a magistrate to determine whether there is probable cause to believe he is a delinquent youth or a youth in need of supervision. If a hearing under this subsection is held by a justice of the peace, a municipal or city judge, or a magistrate, a record of the hearing shall be made by a court reporter or by a tape recording of the hearing.

(3) At the probable cause hearing, the court shall inform the youth shall be informed of his constitutional rights and his rights under this chapter.

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

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

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

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

(6) If the court determines it is determined that there is probable cause to believe the youth is delinquent or is a youth in need of supervision and if the youth meets the criteria in 41-5-305, the youth may be placed in a shelter care facility or detention facility as provided in

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1 41-5-306 but may not be placed in a jail or other facility
2 for adults. If ~~the-court-does-not-find~~ probable cause is not
3 found, the youth must be immediately released."

-End-

APPROVED BY COMMITTEE
ON JUDICIARY

HOUSE BILL NO. 310

INTRODUCED BY SCHYE

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE MONTANA YOUTH COURT ACT; CHANGING THE TIME IN WHICH A PETITION CHARGING A YOUTH HELD IN DETENTION MUST BE FILED FROM 5 WORKING DAYS TO 7 WORKING DAYS; ALLOWING HEARINGS TO DETERMINE PROBABLE CAUSE TO DETAIN A YOUTH FOR MORE THAN 24 HOURS TO BE HELD BY A JUSTICE OF THE PEACE, A MUNICIPAL OR CITY JUDGE, OR A MAGISTRATE; PROVIDING THAT RECORDS OF HEARINGS MUST BE MADE EITHER BY A COURT REPORTER OR BY A TAPE RECORDING; AND AMENDING SECTIONS 41-5-301 AND 41-5-303, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

Section 1. Section 41-5-301, MCA, is amended to read:**"41-5-301. Preliminary investigation and disposition.**

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

(2) The probation officer may:

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

inquiry;

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

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

(3) If the probation officer determines that the facts indicate a youth in need of care, the matter shall be immediately referred to the department.

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

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

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

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

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

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

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

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

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

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

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

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

(6) The county attorney may apply to the youth court for permission to file a petition charging a youth to be a delinquent youth or a youth in need of supervision. The application must be supported by such evidence as the youth court may require. If it appears that there is probable

cause to believe that the allegations of the petition are true, the youth court shall grant leave to file the petition.

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

(8) If no petition is filed under this section, the complainant and victim, if any, shall be informed by the probation officer of the action and the reasons therefor and shall be advised of the right to submit the matter to the county attorney for review. The county attorney, upon receiving a request for review, shall consider the facts, consult with the probation officer, and make the final decision as to whether a petition shall be filed."

Section 2. Section 41-5-303, MCA, is amended to read:

"41-5-303. (Temporary) Rights of youth taken into custody -- questioning -- hearing for probable cause -- detention. (1) When a youth is taken into custody for questioning upon a matter which could result in a petition alleging that the youth is either delinquent or in need of supervision, the following requirements must be met:

(a) The youth shall be advised of his right against self-incrimination and his right to counsel.

(b) The youth may waive such rights under the following situations:

(i) when the youth is 16 years of age or older, the youth may make an effective waiver;

(ii) when the youth is under the age of 16 years and the youth and a parent or guardian agree, they may make an effective waiver; and

(iii) when the youth is under the age of 16 years and the youth and his parent or guardian do not agree, the youth may make an effective waiver only with advice of counsel.

(c) The investigating officer, probation officer, or person assigned to give notice shall immediately notify the parents, guardian, or legal custodian of the youth that the youth has been taken into custody, the reasons for taking the youth into custody, and where the youth is being held. If the parents, guardian, or legal custodian cannot be found through diligent efforts, a close relative or friend chosen by the youth must be notified.

(2) A youth who has been taken into custody may not be held longer than 24 hours, excluding weekends and legal holidays, unless a hearing has been held by the court, a justice of the peace, a municipal or city judge, or a magistrate to determine whether there is probable cause to believe he is a delinquent youth or a youth in need of supervision. If a hearing under this subsection is held by

a justice of the peace, a municipal or city judge, or a magistrate, a record of the hearing shall be made by a court reporter or by a tape recording of the hearing.

(3) At the probable cause hearing, ~~the--court--shall~~ inform the youth shall be informed of his constitutional rights and his rights under this chapter.

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

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

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

(5) At the probable cause hearing, ~~the--court--may~~ appoint a guardian ad litem may be appointed as provided in 41-5-512.

(6) If ~~the--court--determines~~ it is determined that there is probable cause to believe the youth is delinquent or is a youth in need of supervision and if the youth meets the criteria in 41-5-305, the youth may be placed in a shelter care facility or detention facility as provided in 41-5-306. If ~~the-court-does-not-find~~ probable cause is not found, the youth must be immediately released.

41-5-303. (Effective July 1, 1989) Rights of youth taken into custody -- questioning -- hearing for probable cause -- detention. (1) When a youth is taken into custody

for questioning upon a matter which could result in a petition alleging that the youth is either delinquent or in need of supervision, the following requirements must be met:

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(2) A youth who has been taken into custody may not be held longer than 24 hours, excluding weekends and legal

holidays, unless a hearing has been held by the court, a justice of the peace, a municipal or city judge, or a magistrate to determine whether there is probable cause to believe he is a delinquent youth or a youth in need of supervision. If a hearing under this subsection is held by a justice of the peace, a municipal or city judge, or a magistrate, a record of the hearing shall be made by a court reporter or by a tape recording of the hearing.

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

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(5) At the probable cause hearing, ~~the court may~~ appoint a guardian ad litem may be appointed as provided in 41-5-512.

(6) If ~~the court determines~~ it is determined that there is probable cause to believe the youth is delinquent or is a youth in need of supervision and if the youth meets the criteria in 41-5-305, the youth may be placed in a shelter care facility or detention facility as provided in

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1 41-5-306 but may not be placed in a jail or other facility
2 for adults. If ~~the court does not find~~ probable cause is not
3 found, the youth must be immediately released."

4 NEW SECTION. SECTION 3. EFFECTIVE DATE. THIS SECTION
5 IS EFFECTIVE JULY 1, 1989.

-End-

HOUSE BILL NO. 310

INTRODUCED BY SCHYE

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE MONTANA YOUTH COURT ACT; CHANGING THE TIME IN WHICH A PETITION CHARGING A YOUTH HELD IN DETENTION MUST BE FILED FROM 5 WORKING DAYS TO 7 WORKING DAYS; ALLOWING HEARINGS TO DETERMINE PROBABLE CAUSE TO DETAIN A YOUTH FOR MORE THAN 24 HOURS TO BE HELD BY A JUSTICE OF THE PEACE, A MUNICIPAL OR CITY JUDGE, OR A MAGISTRATE; PROVIDING THAT RECORDS OF HEARINGS MUST BE MADE EITHER BY A COURT REPORTER OR BY A TAPE RECORDING; AND AMENDING SECTIONS 41-5-301 AND 41-5-303, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

Section 1. Section 41-5-301, MCA, is amended to read:

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

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

(2) The probation officer may:

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

inquiry;

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

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

(3) If the probation officer determines that the facts indicate a youth in need of care, the matter shall be immediately referred to the department.

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

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

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

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

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

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

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

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

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

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

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

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(6) The county attorney may apply to the youth court for permission to file a petition charging a youth to be a delinquent youth or a youth in need of supervision. The application must be supported by such evidence as the youth court may require. If it appears that there is probable

cause to believe that the allegations of the petition are true, the youth court shall grant leave to file the petition.

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

(8) If no petition is filed under this section, the complainant and victim, if any, shall be informed by the probation officer of the action and the reasons therefor and shall be advised of the right to submit the matter to the county attorney for review. The county attorney, upon receiving a request for review, shall consider the facts, consult with the probation officer, and make the final decision as to whether a petition shall be filed."

Section 2. Section 41-5-303, MCA, is amended to read:

"41-5-303. (Temporary) Rights of youth taken into custody -- questioning -- hearing for probable cause -- detention. (1) When a youth is taken into custody for questioning upon a matter which could result in a petition alleging that the youth is either delinquent or in need of supervision, the following requirements must be met:

(a) The youth shall be advised of his right against self-incrimination and his right to counsel.

(b) The youth may waive such rights under the following situations:

(i) when the youth is 16 years of age or older, the youth may make an effective waiver;

(ii) when the youth is under the age of 16 years and the youth and a parent or guardian agree, they may make an effective waiver; and

(iii) when the youth is under the age of 16 years and the youth and his parent or guardian do not agree, the youth may make an effective waiver only with advice of counsel.

(c) The investigating officer, probation officer, or person assigned to give notice shall immediately notify the parents, guardian, or legal custodian of the youth that the youth has been taken into custody, the reasons for taking the youth into custody, and where the youth is being held. If the parents, guardian, or legal custodian cannot be found through diligent efforts, a close relative or friend chosen by the youth must be notified.

(2) A youth who has been taken into custody may not be held longer than 24 hours, excluding weekends and legal holidays, unless a hearing has been held by the court, a justice of the peace, a municipal or city judge, or a magistrate to determine whether there is probable cause to believe he is a delinquent youth or a youth in need of supervision. If a hearing under this subsection is held by

a justice of the peace, a municipal or city judge, or a magistrate, a record of the hearing shall be made by a court reporter or by a tape recording of the hearing.

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

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

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(5) At the probable cause hearing, ~~the--court--may~~ appoint a guardian ad litem may be appointed as provided in 41-5-512.

(6) If ~~the--court--determines~~ it is determined that there is probable cause to believe the youth is delinquent or is a youth in need of supervision and if the youth meets the criteria in 41-5-305, the youth may be placed in a shelter care facility or detention facility as provided in 41-5-306. ~~If the--court--does-not-find~~ probable cause is not found, the youth must be immediately released.

41-5-303. (Effective July 1, 1989) Rights of youth taken into custody -- questioning -- hearing for probable cause -- detention. (1) When a youth is taken into custody

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1 41-5-306 but may not be placed in a jail or other facility
2 for adults. If ~~the court does not find~~ probable cause is not
3 found, the youth must be immediately released."

4 NEW SECTION. SECTION 3. EFFECTIVE DATE. -THIS-SECTION
5 [THIS ACT] IS EFFECTIVE JULY 1, 1989.

-End-

1 HOUSE BILL NO. 310

2 INTRODUCED BY SCHYE

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE MONTANA
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1 inquiry;

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

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

7 (3) If the probation officer determines that the facts
8 indicate a youth in need of care, the matter shall be
9 immediately referred to the department.

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

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

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

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

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

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

24 (ii) terminate the inquiry upon the determination that
25 no further action be taken; and

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

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

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

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

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

(6) The county attorney may apply to the youth court for permission to file a petition charging a youth to be a delinquent youth or a youth in need of supervision. The application must be supported by such evidence as the youth court may require. If it appears that there is probable

cause to believe that the allegations of the petition are true, the youth court shall grant leave to file the petition.

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

(8) If no petition is filed under this section, the complainant and victim, if any, shall be informed by the probation officer of the action and the reasons therefor and shall be advised of the right to submit the matter to the county attorney for review. The county attorney, upon receiving a request for review, shall consider the facts, consult with the probation officer, and make the final decision as to whether a petition shall be filed."

Section 2. Section 41-5-303, MCA, is amended to read:

"41-5-303. (Temporary) Rights of youth taken into custody -- questioning -- hearing for probable cause -- detention. (1) When a youth is taken into custody for questioning upon a matter which could result in a petition alleging that the youth is either delinquent or in need of supervision, the following requirements must be met:

(a) The youth shall be advised of his right against self-incrimination and his right to counsel.

(b) The youth may waive such rights under the following situations:

(i) when the youth is 16 years of age or older, the youth may make an effective waiver;

(ii) when the youth is under the age of 16 years and the youth and a parent or guardian agree, they may make an effective waiver; and

(iii) when the youth is under the age of 16 years and the youth and his parent or guardian do not agree, the youth may make an effective waiver only with advice of counsel.

(c) The investigating officer, probation officer, or person assigned to give notice shall immediately notify the parents, guardian, or legal custodian of the youth that the youth has been taken into custody, the reasons for taking the youth into custody, and where the youth is being held. If the parents, guardian, or legal custodian cannot be found through diligent efforts, a close relative or friend chosen by the youth must be notified.

(2) A youth who has been taken into custody may not be held longer than 24 hours, excluding weekends and legal holidays, unless a hearing has been held by the court, a justice of the peace, a municipal or city judge, or a magistrate to determine whether there is probable cause to believe he is a delinquent youth or a youth in need of supervision. If a hearing under this subsection is held by

a justice of the peace, a municipal or city judge, or a magistrate, a record of the hearing shall be made by a court reporter or by a tape recording of the hearing.

(3) At the probable cause hearing, ~~the--court--shall~~ inform the youth shall be informed of his constitutional rights and his rights under this chapter.

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

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

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

(5) At the probable cause hearing, ~~the--court--may~~ appoint a guardian ad litem may be appointed as provided in 41-5-512.

(6) If ~~the--court--determines~~ it is determined that there is probable cause to believe the youth is delinquent or is a youth in need of supervision and if the youth meets the criteria in 41-5-305, the youth may be placed in a shelter care facility or detention facility as provided in 41-5-306. ~~If the--court--does--not--find~~ probable cause is not found, the youth must be immediately released.

41-5-303. (Effective July 1, 1989) Rights of youth taken into custody -- questioning -- hearing for probable cause -- detention. (1) When a youth is taken into custody

1 for questioning upon a matter which could result in a
2 petition alleging that the youth is either delinquent or in
3 need of supervision, the following requirements must be met:

4 (a) The youth shall be advised of his right against
5 self-incrimination and his right to counsel.

6 (b) The youth may waive such rights under the
7 following situations:

8 (i) when the youth is 16 years of age or older, the
9 youth may make an effective waiver;

10 (ii) when the youth is under the age of 16 years and
11 the youth and a parent or guardian agree, they may make an
12 effective waiver; and

13 (iii) when the youth is under the age of 16 years and
14 the youth and his parent or guardian do not agree, the youth
15 may make an effective waiver only with advice of counsel.

16 (c) The investigating officer, probation officer, or
17 person assigned to give notice shall immediately notify the
18 parents, guardian, or legal custodian of the youth that the
19 youth has been taken into custody, the reasons for taking
20 the youth into custody, and where the youth is being held.
21 If the parents, guardian, or legal custodian cannot be found
22 through diligent efforts, a close relative or friend chosen
23 by the youth must be notified.

24 (2) A youth who has been taken into custody may not be
25 held longer than 24 hours, excluding weekends and legal

1 holidays, unless a hearing has been held by the court, a
2 justice of the peace, a municipal or city judge, or a
3 magistrate to determine whether there is probable cause to
4 believe he is a delinquent youth or a youth in need of
5 supervision. If a hearing under this subsection is held by
6 a justice of the peace, a municipal or city judge, or a
7 magistrate, a record of the hearing shall be made by a court
8 reporter or by a tape recording of the hearing.

9 (3) At the probable cause hearing, ~~the court shall~~
10 inform the youth shall be informed of his constitutional
11 rights and his rights under this chapter.

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

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

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

18 (5) At the probable cause hearing, ~~the court may~~
19 appoint a guardian ad litem may be appointed as provided in
20 41-5-512.

21 (6) ~~If the court determines~~ it is determined that
22 there is probable cause to believe the youth is delinquent
23 or is a youth in need of supervision and if the youth meets
24 the criteria in 41-5-305, the youth may be placed in a
25 shelter care facility or detention facility as provided in

1 41-5-306 but may not be placed in a jail or other facility
2 for adults. If ~~the court does not find~~ probable cause is not
3 found, the youth must be immediately released."

4 NEW SECTION. SECTION 3. EFFECTIVE DATE. -THIS-SECTION
5 (THIS ACT) IS EFFECTIVE JULY 1, 1989.

-End-