

HOUSE BILL NO. 568

INTRODUCED BY MERCER, HALLIGAN, STRIZICH, FARRELL

BY REQUEST OF THE BOARD OF CRIME CONTROL

IN THE HOUSE

FEBRUARY 3, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
FEBRUARY 4, 1989	FIRST READING.
FEBRUARY 15, 1989	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 16, 1989	PRINTING REPORT.
FEBRUARY 18, 1989	SECOND READING, DO PASS.
FEBRUARY 20, 1989	ENGROSSING REPORT.
FEBRUARY 21, 1989	THIRD READING, PASSED. AYES, 94; NOES, 2.
	TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 28, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
MARCH 20, 1989	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
MARCH 21, 1989	SECOND READING, CONCURRED IN.
MARCH 23, 1989	THIRD READING, CONCURRED IN. AYES, 49; NOES, 0.
	RETURNED TO HOUSE.

MARCH 23, 1989

IN THE HOUSE

RECEIVED FROM SENATE.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 *HOUSE* BILL NO. *568*
2 INTRODUCED BY *Marcus Ballinger* *St. Farrell*
3 BY REQUEST OF THE BOARD OF CRIME CONTROL
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS
6 REGARDING DETENTION OF CERTAIN YOUTHS; PROHIBITING THE
7 DETENTION OF AN ALLEGED DELINQUENT YOUTH IN AN ADULT
8 DETENTION FACILITY EXCEPT UNDER CERTAIN CIRCUMSTANCES;
9 REQUIRING A COUNTY TO PAY THE COST OF A COURT-ORDERED
10 EVALUATION OF A YOUTH; REVISING PROVISIONS REGARDING
11 AVAILABILITY OF YOUTH DETENTION FACILITIES; AUTHORIZING THE
12 APPROPRIATION OF FUNDS TO ASSIST COUNTIES IN PROVIDING YOUTH
13 DETENTION FACILITIES AND SERVICES; PERMITTING COUNTIES TO
14 APPLY FOR THESE FUNDS; REQUIRING THE DEPARTMENT OF FAMILY
15 SERVICES TO ADOPT RULES; AND AMENDING SECTIONS 7-32-2221,
16 41-3-1101, 41-3-1103, 41-5-206, 41-5-306, 41-5-308,
17 41-5-523, 41-5-802, 41-5-808, 41-5-809, AND 53-30-229, MCA."

18
19 STATEMENT OF INTENT

20 A statement of intent is required for this bill because
21 [sections 12 and 13] require the department of family
22 services to adopt rules governing procedures for
23 distributing funds to counties for juvenile detention
24 facilities and services. The rules must require a county
25 applying for funds to provide necessary information to

1 enable the department to determine the financial and
2 administrative feasibility of establishing or acquiring the
3 desired detention facility or services. In addition, the
4 rules must require a county to submit information regarding
5 the safety and habitability of the facility and its
6 compliance with state and federal requirements, such as
7 availability of medical and educational services and
8 physical recreation.
9

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

11 **Section 1.** Section 7-32-2221, MCA, is amended to read:

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

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

22 (3) Juveniles may be confined only under conditions
23 that comply with ~~41-5-303(2) through (6)~~ and 41-5-308."

24 **Section 2.** Section 41-3-1101, MCA, is amended to read:

25 "41-3-1101. Establishment of substitute care for

1 youth. The legislature, in recognition of the wide and
 2 varied needs of youth in need of care, delinquent youth, and
 3 youth in need of supervision of this state and of the
 4 desirability of meeting these needs on a community level to
 5 the fullest extent possible, establishes by this part a
 6 system of substitute care to provide facilities and services
 7 for youth placed out of their homes and establishes a
 8 program to provide such facilities and services through
 9 local nonprofit corporations, counties, and the department
 10 of family services."

11 **Section 3.** Section 41-3-1103, MCA, is amended to read:

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

14 (a) administer all state and federal funds allocated
 15 to the department for youth foster homes, youth group homes,
 16 and child-care agencies, and detention facilities and
 17 services for youth in need of care, youth in need of
 18 supervision, and delinquent youth, as defined in 41-5-103;

19 (b) exercise licensing authority over all detention
 20 facilities as defined in 41-5-103, youth foster homes, youth
 21 group homes, and child-care agencies;

22 (c) collect and disseminate information relating to
 23 youth in need of care, youth in need of supervision, and
 24 delinquent youth;

25 (d) provide for training of program personnel

1 delivering services;

2 (e) in cooperation with youth care facility providers,
 3 develop and implement standards for youth care facilities;

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

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

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

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

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

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

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

21 (2) The department may:

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

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

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

(3) The department shall pay for room, board, clothing, personal needs, transportation, and treatment in youth foster care homes and youth group homes for youths committed to the department who need to be placed in such facilities."

Section 4. Section 41-5-206, MCA, is amended to read:

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

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

(ii) the youth charged was 16 years of age or more at

the time of the conduct alleged to be unlawful and the unlawful act is one or more of the following:

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

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

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

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

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

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

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

(H) criminal sale of dangerous drugs as included in 45-9-101;

(I) attempt as defined in 45-4-103 of any of the acts enumerated in subsections (1)(a)(ii)(A) through (1)(a)(ii)(H);

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

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

(d) the court finds upon the hearing of all relevant

evidence that there is probable cause to believe that:

(i) the youth committed the delinquent act alleged;

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

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

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

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

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

(3) The court shall grant the motion to transfer if the youth was 16 years old or older at the time of the conduct alleged to be unlawful and the unlawful act would constitute deliberate homicide as defined in 45-5-102, mitigated deliberate homicide as defined in 45-5-103, or the

attempt, as defined in 45-4-103, of either deliberate or mitigated deliberate homicide if the act had been committed by an adult.

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

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

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

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

(a) tried in youth court;

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

(8) If a youth is found guilty in district court of

any of the offenses transferred by the youth court and is sentenced to the state prison, his commitment shall be to the department of institutions which shall confine the youth in whatever institution it considers proper, including a state youth correctional facility under the procedures of 53-30-212; however, no youth under 16 years of age may be confined in the state prison.

(9) A youth whose case is transferred to district court may not be detained in an adult detention facility before final disposition of the case unless the youth court judge determines that:

(a) the youth facilities do not provide adequate security; and

(b) detention in the adult facility is in an area physically, aurally, and visually separate from that of adults."

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

"41-5-306. (Temporary) Place of shelter care or detention. (1) After a probable cause hearing provided for in 41-5-303, a youth alleged to be a youth in need of supervision may be placed only in:

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

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

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

(2) A youth alleged to be in need of care shall be placed only in the facilities stated in subsection (1) of this section and shall not be placed in a jail or other facility intended or used for the detention of adults charged with criminal offenses.

(3) After a probable cause hearing provided for in 41-5-303, a youth alleged to be a delinquent youth may be placed only in the facilities described in subsection (1), in a detention facility as defined in 41-5-103, or in a jail or other facility for the detention of adults only if the facilities in subsection (1) are not available or do not provide adequate security and the detention is in an area physically, aurally, and visually separate and removed from that of adults.

41-5-306. (Effective July 1, 1989) Place of shelter care or detention. (1) After a probable cause hearing provided for in 41-5-303, a youth alleged to be a youth in need of supervision may be placed only in:

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

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

(c) a licensed youth group home as defined in

1 41-3-1102.

2 (2) A youth alleged to be in need of care shall be
3 placed only in the facilities stated in subsection (1) of
4 this section and shall not be placed in a jail or other
5 facility intended or used for the detention of adults
6 charged with criminal offenses.

7 (3) After a probable cause hearing provided for in
8 41-5-303, a youth alleged to be a delinquent youth may be
9 placed only in the facilities described in subsection (1) or
10 in a detention facility as defined in 41-5-103."

11 **Section 6.** Section 41-5-308, MCA, is amended to read:

12 "41-5-308. Placement of youth before probable cause
13 hearing. (1) Before the probable cause hearing, ~~a--youth,~~
14 ~~except--for~~ a youth alleged to be a delinquent youth ~~in-need~~
15 ~~of-care,~~ may be held in a jail or other facility for adults
16 only if:

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

19 (b) the placement is in an area physically, aurally,
20 and visually separate from those of adults; and

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

23 (2) The official in charge of a jail or other facility
24 for the detention of adult offenders or persons charged with
25 a crime shall inform the court immediately if a person who

1 is or appears to be under the age of 18 years is received at
2 the facility."

3 **Section 7.** Section 41-5-523, MCA, is amended to read:

4 "41-5-523. Disposition of delinquent youth and youth
5 in need of supervision. (1) If a youth is found to be
6 delinquent or in need of supervision, the youth court may
7 enter its judgment making any of the following dispositions:

8 (a) place the youth on probation;

9 (b) commit the youth to the department. The department
10 shall thereafter determine the appropriate placement,
11 supervision, and rehabilitation program for the youth after
12 considering the recommendation of the youth placement
13 committee as provided in 41-5-527; provided, however, that:

14 (i) in the case of a youth in need of supervision,
15 such commitment does not authorize the department to place
16 the youth in a state youth correctional facility. The court
17 shall determine whether continuation in the home would be
18 contrary to the welfare of the child and whether reasonable
19 efforts have been made to prevent or eliminate the need for
20 removal of the child from his home. The court shall include
21 such determination in the order committing the youth to the
22 department.

23 (ii) in the case of a delinquent youth who is a serious
24 juvenile offender, the judge may specify that the youth be
25 placed in physical confinement in an appropriate facility

1 only if the judge finds that such confinement is necessary
2 for the protection of the public;

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

10 (iv) a youth is under the supervision of a youth
11 probation officer, except that a youth placed in a youth
12 correctional facility is supervised by the department;

13 (c) order such further care and treatment or
14 evaluation that does not obligate funding from the
15 department without the department's approval;

16 (d) order restitution by the youth or his parents;

17 (e) impose a fine as authorized by law if the
18 violation alleged would constitute a criminal offense if
19 committed by an adult;

20 (f) require the performance of community service;

21 (g) require the youth, his parents, his guardians, or
22 the persons having legal custody of the youth to receive
23 counseling services;

24 (h) require the medical and psychological evaluation
25 of the youth, his parents, his guardians, or the persons

1 having legal custody of the youth;

2 (i) require the parents, guardians, or other persons
3 having legal custody of the youth to furnish such services
4 as the court may designate; or

5 (j) such further care, treatment, evaluation, or
6 relief that the court considers beneficial to the youth and
7 the community.

8 (2) At any time after the youth has been taken into
9 custody and before final disposition, the court may, with
10 the consent of the youth in the manner provided in 41-5-303
11 for consent by a youth to a waiver of his constitutional
12 rights or after the youth has been adjudicated delinquent or
13 in need of supervision, order the youth to be evaluated by
14 ~~the department~~ for a period not to exceed 45 days. The
15 ~~department~~ shall determine county commissioners are
16 responsible for the place-and-manner cost of the evaluation
17 and may contract with the department or other public or
18 private agencies to obtain evaluation services.

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

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

25 (5) Any order of the court may be modified at any

time. In the case of a youth committed to the department, an order pertaining to the youth may be modified only upon notice to the department and subsequent hearing.

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

(7) The order of commitment to the department shall read as follows:

ORDER OF COMMITMENT

State of Montana)

) ss.

County of)

In the district court for the Judicial District.

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

It is ordered that be committed to the department of family services until

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

Name	Address	Occupation
------	---------	------------

The names and addresses of their nearest relatives are:

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

Judge"

Section 8. Section 41-5-802, MCA, is amended to read:

"41-5-802. Shelter care and detention facilities. (1)

The county commissioners in each county shall provide for the availability of detention facilities for youths.

~~(1)(2)~~ (a) ~~In---all---counties---~~the The county commissioners may provide maintain, by purchase, lease, or otherwise, a ~~place--to--be--known--as--the--youth~~ detention facility, which ~~shall~~ may not be used for the confinement of adult persons charged with criminal offenses, where delinquent youths ~~and-youths-in-need-of-supervision~~ may be detained until final disposition, ~~which--place--shall--be maintained-by-the-county-as-in-other-like-cases.~~

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

(c) The compensation of such the personnel ~~shall~~ must be fixed by the county commissioners, and such the

1 compensation and the maintaining maintenance of such the
 2 facility shall must be paid out of the county treasury
 3 which. These funds may be supplemented by state
 4 appropriation and federal funds.

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

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

13 (3) The county commissioners may contract with the
 14 department or public or private agencies to purchase
 15 detention services.

16 ~~†2†~~(4) (a) Counties, cities, or nonprofit corporations
 17 may provide by purchase, lease, or otherwise, ~~a place to--be~~
 18 ~~known-as~~ a shelter care facility.

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

23 (c) Such The facility shall must be separate and apart
 24 from any facility housing adults charged with criminal
 25 offenses.

1 (d) State appropriations and federal funds may be
 2 received by the counties, cities, or nonprofit corporations
 3 for establishment, maintenance, or operation of such the
 4 facility.

5 (e) Such The facility shall must be furnished in a
 6 comfortable manner and be as nearly as possible like a
 7 family home.

8 (f) Such The facility may be operated in conjunction
 9 with a youth detention facility."

10 **Section 9.** Section 41-5-808, MCA, is amended to read:

11 "41-5-808. Regional-detention Detention facility for
 12 more than one county or city. (1) A To satisfy the
 13 requirements of 41-5-802(1), a regional detention facility
 14 may be established and maintained through cooperation or by
 15 cooperative agreement of more than one county or city.

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

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

22 (4) Counties receiving detention services must be
 23 billed monthly for services provided during the preceding
 24 month and may be refused services if bills are not paid
 25 within 60 days of receipt of a statement."

Section 10. Section 41-5-809, MCA, is amended to read:

"41-5-809. Rules. The department of-family-services shall make adopt rules governing the:

(1) licensing procedures for regional and county detention facilities; and

(2) procedures for distributing funds for detention facilities and services as provided in [sections 12 and 13]."

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

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

(2) The youth, upon advice of an attorney, may waive

his right to a hearing.

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

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

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

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

(d) opportunity to have the referee subpoena witnesses;

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

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

(g) a record of the hearing; and

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

(4) The department shall appoint a referee, who ~~shall~~ may not be an employee of the department, to conduct the hearing. In the conduct of the hearing, the department may request the county attorney's assistance as necessary. The

1 department shall adopt rules necessary to effect a prompt
2 and full review.

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

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

23 (7) Pending the hearing on a violation and pending the
24 department's decision, a youth may not be detained except
25 when his detention or care is required to protect the person

1 or property of the youth or of others or he may abscond or
2 be removed from the community. The department shall
3 determine the place and manner of detention and is
4 responsible for the cost of the detention. Procedures for
5 taking into custody and detention of a youth charged with
6 violation of his aftercare agreement ~~shall--be~~ are as
7 provided in 41-3-1111, 41-5-303(2) through (6), 41-5-306,
8 and 41-5-308.

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

13 **NEW SECTION. Section 12. State funding for detention**
14 **facilities or services.** (1) To the extent that funds are
15 appropriated under [section 13], a county may apply to the
16 department for funds to assist in the purchase,
17 construction, maintenance, or operation of detention
18 facilities or services.

19 (2) A county requesting funds shall submit to the
20 department a written plan describing the facilities or
21 services to be funded.

22 (3) The department shall evaluate the plan to
23 determine if funding is appropriate. In evaluating the plan,
24 the department shall consider:

25 (a) whether each facility is licensed or otherwise

1 approved by the department;

2 (b) the estimated number of youths expected to use
3 each facility or service;

4 (c) the cost of operating each facility or providing
5 the service;

6 (d) the review of the plan by the county's local youth
7 services advisory council provided for in 52-1-203; and

8 (e) any other standards adopted by rule by the
9 department.

10 NEW SECTION. Section 13. Detention facility, and
11 service fund. (1) The legislature may appropriate funds to
12 the department to implement [section 12].

13 (2) The department shall maintain a detention facility
14 and service fund containing funds appropriated under
15 subsection (1).

16 (3) Each fiscal year, the department shall reserve an
17 amount equal to 10% of the previous year's appropriation
18 under subsection (1) for distribution to counties
19 experiencing financial emergencies in providing detention
20 facilities and services. A county shall apply for emergency
21 funding under this subsection in accordance with rules
22 adopted by the department.

23 NEW SECTION. Section 14. Extension of authority. Any
24 existing authority to make rules on the subject of the
25 provisions of [this act] is extended to the provisions of

1 [this act].

2 NEW SECTION. Section 15. Codification instruction.

3 [Sections 12 and 13] are intended to be codified as an
4 integral part of Title 41, chapter 5, part 3, and the
5 provisions of Title 41, chapter 5, part 3, apply to
6 [sections 12 and 13].

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB568, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act generally revising laws regarding detention of certain youths; prohibiting the detention of an alleged delinquent youth in an adult detention facility except under certain circumstances; requiring a county to pay the cost of a court-ordered evaluation of a youth; revising provisions regarding availability of youth detention facilities; authorizing the appropriation of funds to assist counties in providing youth detention facilities and services; permitting counties to apply for these funds; requiring the Department of Family Services to adopt rules; and amending various sections, MCA.

ASSUMPTIONS:

- Counties would contract with existing state programs (Mountain View and Pine Hills schools) and other providers for 45 day evaluations of delinquent youth and youth in need of care.
- Youth evaluations provided at Mountain View (MVS) and Pine Hills (PH) schools would be reduced from an average of 29 to 15 youth per day, with the remaining youth served in alternate programs.
- Cost savings to MVS and PS would be a reduction in variable costs of \$5.70 per client per day or \$29,127 per year for youth evaluations.

FISCAL IMPACT:Expenditures:

	Current Law	FY90 Proposed Law	Difference	Current Law	FY91 Proposed Law	Difference
DFS						
Operations	\$ 60,334	\$ 31,207	(\$29,127)	\$ 60,334	\$ 31,207	(\$29,127)
<u>Funding:</u>						
General fund	\$ 60,334	\$ 31,207	(\$29,127)	\$ 60,334	\$ 31,207	(\$29,127)

NOTE: As the bill is currently written, there is no fiscal impact to the state.

Section 12 of HB568 establishes a detention facility and service fund to be managed by the Department of Family Services. Local governments can make application for grants from the fund to offset youth detention costs if there is an appropriation made to the fund. There is no identified source of funding for the detention facility and service fund in the bill.

If there were funds appropriated to the detention facility and service fund:

- There will be an estimated annual fiscal impact of \$28,105 to DFS. The department will need an FTE (grade 15) to develop and implement administrative rules and program policies and to monitor and evaluate the distribution of monies from the fund.
- State funding of at least \$1,089,922 would be needed to offset estimated youth detention costs incurred by local governments under current law effective July 1, 1989.

Ray Shackelford 2/11/89
RAY SHACKLEFORD, BUDGET DIRECTOR DATE
OFFICE OF BUDGET AND PROGRAM PLANNING

John A. Mercer 2/13/89
JOHN A. MERCER, PRIMARY SPONSOR DATE

Fiscal Note for HB568, as introduced

HB 568

Fiscal Note Request HB568 as introduced

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EFFECT ON COUNTY OR OTHER LOCAL REVENUE OR EXPENDITURES:

Effective July 1, 1989, current law (41-5-306, MCA) prohibits detention of youth in a jail or other facility intended or used for the detention of adults charged with criminal offenses. Current law will cause an estimated fiscal impact to local governments of \$1,089,922 per year. It is estimated that the statewide average daily population of youth requiring detention is 22.41.

HB 568

APPROVED BY COMMITTEE
ON JUDICIARY

HOUSE BILL NO. 568

INTRODUCED BY MERCER, HALLIGAN, STRIZICH, FARRELL

BY REQUEST OF THE BOARD OF CRIME CONTROL

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS REGARDING DETENTION OF CERTAIN YOUTHS; PROHIBITING THE DETENTION OF AN ALLEGED DELINQUENT YOUTH IN AN ADULT DETENTION FACILITY EXCEPT UNDER CERTAIN CIRCUMSTANCES; REQUIRING A COUNTY TO PAY THE COST OF A COURT-ORDERED EVALUATION OF A YOUTH; REVISING PROVISIONS REGARDING AVAILABILITY OF YOUTH DETENTION FACILITIES; AUTHORIZING THE APPROPRIATION OF FUNDS TO ASSIST COUNTIES IN PROVIDING YOUTH DETENTION FACILITIES AND SERVICES; PERMITTING COUNTIES TO APPLY FOR THESE FUNDS; REQUIRING THE DEPARTMENT OF FAMILY SERVICES TO ADOPT RULES; AND AMENDING SECTIONS 7-32-2221, 41-3-1101, 41-3-1103, 41-5-206, 41-5-306, 41-5-308, 41-5-523, 41-5-802, 41-5-808, 41-5-809, AND 53-30-229, MCA; AMENDING SECTION 16, CHAPTER 475, LAWS OF 1987; AND PROVIDING AN EFFECTIVE DATE."

STATEMENT OF INTENT

A statement of intent is required for this bill because [sections 12 and 13] require the department of family services to adopt rules governing procedures for distributing funds to counties for juvenile detention

facilities and services. The rules must require a county applying for funds to provide necessary information to enable the department to determine the financial and administrative feasibility of establishing or acquiring the desired detention facility or services. In addition, the rules must require a county to submit information regarding the safety and habitability of the facility and its compliance with state and federal requirements, such as availability of medical and educational services and physical recreation.

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

Section 1. Section 7-32-2221, MCA, is amended to read:

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

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

(3) Juveniles may be confined only under conditions that comply with ~~41-5-303(2)-through-(6)-and~~ 41-5-308."

Section 2. Section 41-3-1101, MCA, is amended to read:

"41-3-1101. Establishment of substitute care for youth. The legislature, in recognition of the wide and varied needs of youth in need of care, delinquent youth, and youth in need of supervision of this state and of the desirability of meeting these needs on a community level to the fullest extent possible, establishes by this part a system of substitute care to provide facilities and services for youth placed out of their homes and establishes a program to provide such facilities and services through local nonprofit corporations, counties, and the department of family services."

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

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

(a) administer all state and federal funds allocated to the department for youth foster homes, youth group homes, and child-care agencies, and detention facilities and services for youth in need of care, youth in need of supervision, and delinquent youth, as defined in 41-5-103;

(b) exercise licensing authority over all detention facilities as defined in 41-5-103, youth foster homes, youth group homes, and child-care agencies;

(c) collect and disseminate information relating to youth in need of care, youth in need of supervision, and

delinquent youth;

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

(e) in cooperation with youth care facility providers, develop and implement standards for youth care facilities;

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

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

(ii) the cost per facility for services rendered;

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

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

(v) a profile of public institutional placements; and

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

(2) The department may:

(a) enter into contracts with nonprofit corporations or associations or private organizations to provide

1 facilities and services for youth in need of care, youth in
2 need of supervision, and delinquent youth;

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

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

8 (3) The department shall pay for room, board,
9 clothing, personal needs, transportation, and treatment in
10 youth foster care homes and youth group homes for youths
11 committed to the department who need to be placed in such
12 facilities."

13 **Section 4.** Section 41-5-206, MCA, is amended to read:

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

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

1 act had been committed by an adult; or

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

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

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

7 (C) aggravated or felony assault as defined in
8 45-5-202;

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

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

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

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

14 (H) criminal sale of dangerous drugs as included in
15 45-9-101;

16 (I) attempt as defined in 45-4-103 of any of the acts
17 enumerated in subsections (1)(a)(ii)(A) through
18 (1)(a)(ii)(H);

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

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

1 hearing; and

2 (d) the court finds upon the hearing of all relevant
3 evidence that there is probable cause to believe that:

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

5 (ii) the seriousness of the offense and the protection
6 of the community require treatment of the youth beyond that
7 afforded by juvenile facilities; and

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

10 (2) In transferring the matter of prosecution to the
11 district court, the court may also consider the following
12 factors:

13 (a) the sophistication and maturity of the youth,
14 determined by consideration of his home, environmental
15 situation, and emotional attitude and pattern of living;

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

23 (3) The court shall grant the motion to transfer if
24 the youth was 16 years old or older at the time of the
25 conduct alleged to be unlawful and the unlawful act would

1 constitute deliberate homicide as defined in 45-5-102,
2 mitigated deliberate homicide as defined in 45-5-103, or the
3 attempt, as defined in 45-4-103, of either deliberate or
4 mitigated deliberate homicide if the act had been committed
5 by an adult.

6 (4) Upon transfer to district court, the judge shall
7 make written findings of the reasons why the jurisdiction of
8 the youth court was waived and the case transferred to
9 district court.

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

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

20 (7) Any offense not enumerated in subsection (1) that
21 arises during the commission of a crime enumerated in
22 subsection (1) may be:

23 (a) tried in youth court;

24 (b) transferred to district court with an offense
25 enumerated in subsection (1), upon motion of the county

attorney and order of the youth court judge.

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

(9) A youth whose case is transferred to district court may not be detained in an adult detention facility before final disposition of the case unless the youth court judge determines that:

(a) the youth facilities do not provide adequate security; and

(b) detention in the adult facility is in an area physically, aurally, and visually separate from that of adults."

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

"41-5-306. (Temporary) Place of shelter care or detention. (1) After a probable cause hearing provided for in 41-5-303, a youth, alleged to be a youth in need of supervision may be placed only in:

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

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

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

(2) A youth alleged to be in need of care shall be placed only in the facilities stated in subsection (1) of this section and shall not be placed in a jail or other facility intended or used for the detention of adults charged with criminal offenses.

(3) After a probable cause hearing provided for in 41-5-303, a youth alleged to be a delinquent youth may be placed only in the facilities described in subsection (1), in a detention facility as defined in 41-5-103, or in a jail or other facility for the detention of adults only if the facilities in subsection (1) are not available or do not provide adequate security and the detention is in an area physically, aurally, and visually separate and removed from that of adults.

41-5-306. (Effective July 1, 1989) Place of shelter care or detention. (1) After a probable cause hearing provided for in 41-5-303, a youth alleged to be a youth in need of supervision may be placed only in:

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

(b) a facility operated by a licensed child welfare

1 agency; or

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

4 (2) A youth alleged to be in need of care shall be
5 placed only in the facilities stated in subsection (1) of
6 this section and shall not be placed in a jail or other
7 facility intended or used for the detention of adults
8 charged with criminal offenses.

9 (3) After a probable cause hearing provided for in
10 41-5-303, a youth alleged to be a delinquent youth may be
11 placed only in the facilities described in subsection (1) or
12 in a detention facility as defined in 41-5-103."

13 **Section 6.** Section 41-5-308, MCA, is amended to read:

14 "41-5-308. Placement of youth before probable cause
15 hearing. (1) Before the probable cause hearing, ~~a youth,~~
16 ~~except--for~~ a youth alleged to be a delinquent youth ~~in need~~
17 ~~of care,~~ may be held in a jail or other facility for adults
18 only if:

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

21 (b) the placement is in an area physically, aurally,
22 and visually separate from those of adults; and

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

25 (2) The official in charge of a jail or other facility

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

5 **Section 7.** Section 41-5-523, MCA, is amended to read:

6 "41-5-523. Disposition of delinquent youth and youth
7 in need of supervision. (1) If a youth is found to be
8 delinquent or in need of supervision, the youth court may
9 enter its judgment making any of the following dispositions:

10 (a) place the youth on probation;

11 (b) commit the youth to the department. The department
12 shall thereafter determine the appropriate placement,
13 supervision, and rehabilitation program for the youth after
14 considering the recommendation of the youth placement
15 committee as provided in 41-5-527; provided, however, that:

16 (i) in the case of a youth in need of supervision,
17 such commitment does not authorize the department to place
18 the youth in a state youth correctional facility. The court
19 shall determine whether continuation in the home would be
20 contrary to the welfare of the child and whether reasonable
21 efforts have been made to prevent or eliminate the need for
22 removal of the child from his home. The court shall include
23 such determination in the order committing the youth to the
24 department.

25 (ii) in the case of a delinquent youth who is a serious

1 juvenile offender, the judge may specify that the youth be
2 placed in physical confinement in an appropriate facility
3 only if the judge finds that such confinement is necessary
4 for the protection of the public;

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

12 (iv) a youth is under the supervision of a youth
13 probation officer, except that a youth placed in a youth
14 correctional facility is supervised by the department;

15 (c) order such further care and treatment or
16 evaluation that does not obligate funding from the
17 department without the department's approval;

18 (d) order restitution by the youth or his parents;

19 (e) impose a fine as authorized by law if the
20 violation alleged would constitute a criminal offense if
21 committed by an adult;

22 (f) require the performance of community service;

23 (g) require the youth, his parents, his guardians, or
24 the persons having legal custody of the youth to receive
25 counseling services;

1 (h) require the medical and psychological evaluation
2 of the youth, his parents, his guardians, or the persons
3 having legal custody of the youth;

4 (i) require the parents, guardians, or other persons
5 having legal custody of the youth to furnish such services
6 as the court may designate; or

7 (j) such further care, treatment, evaluation, or
8 relief that the court considers beneficial to the youth and
9 the community.

10 (2) At any time after the youth has been taken into
11 custody and before final disposition, the court may, with
12 the consent of the youth in the manner provided in 41-5-303
13 for consent by a youth to a waiver of his constitutional
14 rights or after the youth has been adjudicated delinquent or
15 in need of supervision, order the youth to be evaluated by
16 ~~the department~~ for a period not to exceed 45 days. The
17 ~~department---shall---determine~~ county commissioners are
18 responsible for the place-and-manner cost of the evaluation
19 and may contract with the department or other public or
20 private agencies to obtain evaluation services.

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

24 (4) No youth may be committed or transferred to a
25 penal institution or other facility used for the execution

of sentence of adult persons convicted of crimes.

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

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

(7) The order of commitment to the department shall read as follows:

ORDER OF COMMITMENT

State of Montana)

) ss.

County of)

In the district court for the Judicial District.

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

It is ordered that be committed to the department of family services until

The names, addresses, and occupations of the parents

are:

Name	Address	Occupation
.....
.....

The names and addresses of their nearest relatives are:

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

Judge"

Section 8. Section 41-5-802, MCA, is amended to read:

"41-5-802. Shelter care and detention facilities. (1)

The county commissioners in each county shall provide for the availability of detention facilities for youths.

~~(1)(2)~~ (a) ~~in all counties~~ the The county commissioners may ~~provide~~ maintain, by purchase, lease, or otherwise, a ~~place to be known as the youth detention facility~~, which ~~shall~~ may not be used for the confinement of adult persons charged with criminal offenses, where delinquent youths ~~and youths in need of supervision~~ may be detained until final disposition, ~~which place shall be maintained by the county as in other like cases.~~

(b) The county commissioners may appoint such necessary personnel ~~as required~~, who ~~shall~~ have charge of ~~said the~~ facility and of the youths detained therein.

(c) The compensation of ~~such the~~ personnel ~~shall must~~ be fixed by the county commissioners, and ~~such the~~ compensation and the ~~maintaining~~ maintenance of ~~such the~~ facility ~~shall must~~ be paid out of the county treasury ~~which, These funds~~ may be supplemented by state appropriation and federal funds.

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

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

~~(3) The county commissioners may contract with the department or public or private agencies to purchase detention services.~~

~~†2†(4)~~ (a) Counties, cities, or nonprofit corporations may provide by purchase, lease, or otherwise, ~~a place to--be known-as~~ a shelter care facility.

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

(c) ~~Such The~~ facility ~~shall must~~ be separate and apart

from any facility housing adults charged with criminal offenses.

(d) State appropriations and federal funds may be received by the counties, cities, or nonprofit corporations for establishment, maintenance, or operation of ~~such the~~ facility.

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

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

Section 9. Section 41-5-808, MCA, is amended to read:

"41-5-808. ~~Regional-detention~~ Detention facility for more than one county or city. (1) ~~A~~ To satisfy the requirements of 41-5-802(1), a ~~regional~~ detention facility may be established and maintained through cooperation or by cooperative agreement of more than one county or city.

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

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

(4) Counties receiving detention services must be 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 **Section 10.** Section 41-5-809, MCA, is amended to read:

4 "41-5-809. Rules. The department of ~~family-services~~
5 shall make adopt rules governing the:

6 (1) licensing procedures for regional and county
7 detention facilities; and

8 (2) procedures for distributing funds for detention
9 facilities and services as provided in [sections 12 and
10 13]."

11 **Section 11.** 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 youth correctional
24 facility from which he was released or a different plan for
25 treatment should be pursued by the department of family

1 services.

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

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

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

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

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

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

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

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

20 (g) a record of the hearing; and

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

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

1 hearing. In the conduct of the hearing, the department may
2 request the county attorney's assistance as necessary. The
3 department shall adopt rules necessary to effect a prompt
4 and full review.

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

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

25 (7) Pending the hearing on a violation and pending the

1 department's decision, a youth may not be detained except
2 when his detention or care is required to protect the person
3 or property of the youth or of others or he may abscond or
4 be removed from the community. The department shall
5 determine the place and manner of detention and is
6 responsible for the cost of the detention. Procedures for
7 taking into custody and detention of a youth charged with
8 violation of his aftercare agreement ~~shall--be~~ are as
9 provided in 41-3-1111, 41-5-303(2) through (6), 41-5-306,
10 and 41-5-308.

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

15 NEW SECTION. Section 12. State funding for detention
16 facilities or services. (1) To the extent that funds are
17 appropriated under [section 13], a county may apply to the
18 department for funds to assist in the purchase,
19 construction, maintenance, or operation of detention
20 facilities or services.

21 (2) A county requesting funds shall submit to the
22 department a written plan describing the facilities or
23 services to be funded.

24 (3) The department shall evaluate the plan to
25 determine if funding is appropriate. In evaluating the plan,

the department shall consider:

(a) whether each facility is licensed or otherwise approved by the department;

(b) the estimated number of youths expected to use each facility or service;

(c) the cost of operating each facility or providing the service;

(d) the review of the A WRITTEN plan by the county's local youth services advisory council provided for in 52-1-203; and

(e) any other standards adopted by rule by the department.

NEW SECTION. Section 13. Detention facility, and service fund. (1) The legislature may appropriate funds to the department to implement [section 12].

(2) The department shall maintain a detention facility and service fund containing funds appropriated under subsection (1).

(3) Each fiscal year, the department shall reserve an amount equal to 10% of the previous year's appropriation under subsection (1) for distribution to counties experiencing financial emergencies in providing detention facilities and services. A county shall apply for emergency funding under this subsection in accordance with rules adopted by the department.

SECTION 14. SECTION 16, CHAPTER 475, LAWS OF 1987, IS AMENDED TO READ:

"Section 16. Effective dates -- termination date. (1) Except as provided in subsections (2) and (3), sections 1 through 13 are effective October 1, 1987.

(2) The bracketed language in subsection (5) of section {1} is effective July 1, ~~1989~~ 1991.

(3) The bracketed language in subsection (3) of section 9 terminates July 1, ~~1989~~ 1991."

NEW SECTION. Section 15. Extension of authority. Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

NEW SECTION. Section 16. Codification instruction. [Sections 12 and 13] are intended to be codified as an integral part of Title 41, chapter 5, part 3, and the provisions of Title 41, chapter 5, part 3, apply to [sections 12 and 13].

NEW SECTION. SECTION 17. EFFECTIVE DATE. [SECTIONS 5 AND 7 OF THIS ACT] ARE EFFECTIVE JULY 1, 1991.

-End-

1 HOUSE BILL NO. 568

2 INTRODUCED BY MERCER, HALLIGAN, STRIZICH, FARRELL

3 BY REQUEST OF THE BOARD OF CRIME CONTROL

4

5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS
6 REGARDING DETENTION OF CERTAIN YOUTHS; PROHIBITING THE
7 DETENTION OF AN ALLEGED DELINQUENT YOUTH IN AN ADULT
8 DETENTION FACILITY EXCEPT UNDER CERTAIN CIRCUMSTANCES;
9 REQUIRING A COUNTY TO PAY THE COST OF A COURT-ORDERED
10 EVALUATION OF A YOUTH; REVISING PROVISIONS REGARDING
11 AVAILABILITY OF YOUTH DETENTION FACILITIES; AUTHORIZING THE
12 APPROPRIATION OF FUNDS TO ASSIST COUNTIES IN PROVIDING YOUTH
13 DETENTION FACILITIES AND SERVICES; PERMITTING COUNTIES TO
14 APPLY FOR THESE FUNDS; REQUIRING THE DEPARTMENT OF FAMILY
15 SERVICES TO ADOPT RULES; AND AMENDING SECTIONS 7-32-2221,
16 41-3-1101, 41-3-1103, 41-5-206, 41-5-306, 41-5-308,
17 41-5-523, 41-5-802, 41-5-808, 41-5-809, AND 53-30-229, MCA;
18 AMENDING SECTION 16, CHAPTER 475, LAWS OF 1987; AND
19 PROVIDING AN EFFECTIVE DATE."

20

21 STATEMENT OF INTENT

22 A statement of intent is required for this bill because
23 [sections 12 and 13] require the department of family
24 services to adopt rules governing procedures for
25 distributing funds to counties for juvenile detention

There is no change on HB 568 and will not
be reprinted. Please refer to second
reading (yellow) for complete text.



1 HOUSE BILL NO. 568

2 INTRODUCED BY MERCER, HALLIGAN, STRIZICH, FARRELL

3 BY REQUEST OF THE BOARD OF CRIME CONTROL

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS
6 REGARDING DETENTION OF CERTAIN YOUTHS; PROHIBITING THE
7 DETENTION OF AN ALLEGED DELINQUENT YOUTH IN AN ADULT
8 DETENTION FACILITY EXCEPT UNDER CERTAIN CIRCUMSTANCES;
9 REQUIRING A COUNTY TO PAY THE COST OF A COURT-ORDERED
10 EVALUATION OF A YOUTH; REVISING PROVISIONS REGARDING
11 AVAILABILITY OF YOUTH DETENTION FACILITIES; AUTHORIZING THE
12 APPROPRIATION OF FUNDS TO ASSIST COUNTIES IN PROVIDING YOUTH
13 DETENTION FACILITIES AND SERVICES; PERMITTING COUNTIES TO
14 APPLY FOR THESE FUNDS; REQUIRING THE DEPARTMENT OF FAMILY
15 SERVICES TO ADOPT RULES; AND AMENDING SECTIONS 7-32-2221,
16 41-3-1101, 41-3-1103, 41-5-206, 41-5-306, 41-5-308,
17 41-5-523, 41-5-802, 41-5-808, 41-5-809, AND 53-30-229, MCA;
18 AMENDING SECTION 16, CHAPTER 475, LAWS OF 1987; AND
19 PROVIDING AN EFFECTIVE DATE."

20
21 STATEMENT OF INTENT

22 A statement of intent is required for this bill because
23 [sections 12 and 13] require the department of family
24 services to adopt rules governing procedures for
25 distributing funds to counties for juvenile detention

1 facilities and services. The rules must require a county
2 applying for funds to provide necessary information to
3 enable the department to determine the financial and
4 administrative feasibility of establishing or acquiring the
5 desired detention facility or services. In addition, the
6 rules must require a county to submit information regarding
7 the safety and habitability of the facility and its
8 compliance with state and federal requirements, such as
9 availability of medical and educational services and
10 physical recreation.

11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13 Section 1. Section 7-32-2221, MCA, is amended to read:

14 "7-32-2221. Segregation of prisoners -- confinement of
15 juveniles. (1) Each county jail must contain a sufficient
16 number of rooms to allow the sheriff, jail administrator, or
17 private party jailer to separately confine classes of
18 prisoners as may be necessary to the security and safety of
19 those prisoners and the jail.

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

24 (3) Juveniles may be confined only under conditions
25 that comply with 41-5-303(2)-through-(6)-and 41-5-308."

Section 2. Section 41-3-1101, MCA, is amended to read:

"41-3-1101. Establishment of substitute care for youth. The legislature, in recognition of the wide and varied needs of youth in need of care, delinquent youth, and youth in need of supervision of this state and of the desirability of meeting these needs on a community level to the fullest extent possible, establishes by this part a system of substitute care to provide facilities and services for youth placed out of their homes and establishes a program to provide such facilities and services through local nonprofit corporations, counties, and the department of family services."

Section 3. Section 41-3-1101, MCA, is amended to read:

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

(a) administer all state and federal funds allocated to the department for youth foster homes, youth group homes, and child-care agencies, and detention facilities and services for youth in need of care, youth in need of supervision, and delinquent youth, as defined in 41-5-103;

(b) exercise licensing authority over all detention facilities as defined in 41-5-103, youth foster homes, youth group homes, and child-care agencies;

(c) collect and disseminate information relating to youth in need of care, youth in need of supervision, and

delinquent youth;

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

(e) in cooperation with youth care facility providers, develop and implement standards for youth care facilities;

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

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

(ii) the cost per facility for services rendered;

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

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

(v) a profile of public institutional placements; and

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

(2) The department may:

(a) enter into contracts with nonprofit corporations or associations or private organizations to provide

1 facilities and services for youth in need of care, youth in
2 need of supervision, and delinquent youth;

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

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

8 (3) The department shall pay for room, board,
9 clothing, personal needs, transportation, and treatment in
10 youth foster care homes and youth group homes for youths
11 committed to the department who need to be placed in such
12 facilities."

13 **Section 4.** Section 41-5-206, MCA, is amended to read:

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

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

1 act had been committed by an adult; or

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

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

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

7 (C) aggravated or felony assault as defined in
8 45-5-202;

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

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

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

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

14 (H) criminal sale of dangerous drugs as included in
15 45-9-101;

16 (I) attempt as defined in 45-4-103 of any of the acts
17 enumerated in subsections (1)(a)(ii)(A) through
18 (1)(a)(ii)(H);

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

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

1 hearing; and

2 (d) the court finds upon the hearing of all relevant
3 evidence that there is probable cause to believe that:

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

5 (ii) the seriousness of the offense and the protection
6 of the community require treatment of the youth beyond that
7 afforded by juvenile facilities; and

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

10 (2) In transferring the matter of prosecution to the
11 district court, the court may also consider the following
12 factors:

13 (a) the sophistication and maturity of the youth,
14 determined by consideration of his home, environmental
15 situation, and emotional attitude and pattern of living;

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

23 (3) The court shall grant the motion to transfer if
24 the youth was 16 years old or older at the time of the
25 conduct alleged to be unlawful and the unlawful act would

1 constitute deliberate homicide as defined in 45-5-102,
2 mitigated deliberate homicide as defined in 45-5-103, or the
3 attempt, as defined in 45-4-103, of either deliberate or
4 mitigated deliberate homicide if the act had been committed
5 by an adult.

6 (4) Upon transfer to district court, the judge shall
7 make written findings of the reasons why the jurisdiction of
8 the youth court was waived and the case transferred to
9 district court.

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

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

20 (7) Any offense not enumerated in subsection (1) that
21 arises during the commission of a crime enumerated in
22 subsection (1) may be:

23 (a) tried in youth court;

24 (b) transferred to district court with an offense
25 enumerated in subsection (1), upon motion of the county

1 attorney and order of the youth court judge.

2 (8) If a youth is found guilty in district court of
3 any of the offenses transferred by the youth court and is
4 sentenced to the state prison, his commitment shall be to
5 the department of institutions which shall confine the youth
6 in whatever institution it considers proper, including a
7 state youth correctional facility under the procedures of
8 53-30-212; however, no youth under 16 years of age may be
9 confined in the state prison.

10 (9) A youth whose case is transferred to district
11 court may not be detained in an adult detention facility
12 before final disposition of the case unless the youth court
13 judge determines that:

14 (a) the youth facilities do not provide adequate
15 security; and

16 (b) detention in the adult facility is in an area
17 physically, aurally, and visually separate from that of
18 adults."

19 **Section 5.** Section 41-5-306, MCA, is amended to read:

20 **"41-5-306. (Temporary) Place of shelter care or**
21 **detention. (1) After a probable cause hearing provided for**
22 **in 41-5-303, a youth alleged to be a youth in need of**
23 **supervision may be placed only in:**

24 (a) a licensed youth foster home as defined in
25 41-3-1102;

1 (b) a facility operated by a licensed child welfare
2 agency; or

3 (c) a licensed youth group home as defined in
4 41-3-1102.

5 (2) A youth alleged to be in need of care shall be
6 placed only in the facilities stated in subsection (1) of
7 this section and shall not be placed in a jail or other
8 facility intended or used for the detention of adults
9 charged with criminal offenses.

10 (3) After a probable cause hearing provided for in
11 41-5-303, a youth alleged to be a delinquent youth may be
12 placed only in the facilities described in subsection (1),
13 in a detention facility as defined in 41-5-103, or in a jail
14 or other facility for the detention of adults only if the
15 facilities in subsection (1) are not available or do not
16 provide adequate security and the detention is in an area
17 physically, aurally, and visually separate and removed from
18 that of adults.

19 **41-5-306. (Effective July 1, 1989) Place of shelter**
20 **care or detention. (1) After a probable cause hearing**
21 **provided for in 41-5-303, a youth alleged to be a youth in**
22 **need of supervision may be placed only in:**

23 (a) a licensed youth foster home as defined in
24 41-3-1102;

25 (b) a facility operated by a licensed child welfare

1 agency; or

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

4 (2) A youth alleged to be in need of care shall be
5 placed only in the facilities stated in subsection (1) of
6 this section and shall not be placed in a jail or other
7 facility intended or used for the detention of adults
8 charged with criminal offenses.

9 (3) After a probable cause hearing provided for in
10 41-5-303, a youth alleged to be a delinquent youth may be
11 placed only in the facilities described in subsection (1) or
12 in a detention facility as defined in 41-5-103."

13 **Section 6.** Section 41-5-308, MCA, is amended to read:

14 "41-5-308. Placement of youth before probable cause
15 hearing. (1) Before the probable cause hearing, a--youth;
16 except--for a youth alleged to be a delinquent youth in-need
17 of-care; may be held in a jail or other facility for adults
18 only if:

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

21 (b) the placement is in an area physically, aurally,
22 and visually separate from those of adults; and

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

25 (2) The official in charge of a jail or other facility

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

5 **Section 7.** Section 41-5-523, MCA, is amended to read:

6 "41-5-523. Disposition of delinquent youth and youth
7 in need of supervision. (1) If a youth is found to be
8 delinquent or in need of supervision, the youth court may
9 enter its judgment making any of the following dispositions:

10 (a) place the youth on probation;

11 (b) commit the youth to the department. The department
12 shall thereafter determine the appropriate placement,
13 supervision, and rehabilitation program for the youth after
14 considering the recommendation of the youth placement
15 committee as provided in 41-5-527; provided, however, that:

16 (i) in the case of a youth in need of supervision,
17 such commitment does not authorize the department to place
18 the youth in a state youth correctional facility. The court
19 shall determine whether continuation in the home would be
20 contrary to the welfare of the child and whether reasonable
21 efforts have been made to prevent or eliminate the need for
22 removal of the child from his home. The court shall include
23 such determination in the order committing the youth to the
24 department.

25 (ii) in the case of a delinquent youth who is a serious

1 juvenile offender, the judge may specify that the youth be
2 placed in physical confinement in an appropriate facility
3 only if the judge finds that such confinement is necessary
4 for the protection of the public;

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

12 (iv) a youth is under the supervision of a youth
13 probation officer, except that a youth placed in a youth
14 correctional facility is supervised by the department;

15 (c) order such further care and treatment or
16 evaluation that does not obligate funding from the
17 department without the department's approval;

18 (d) order restitution by the youth or his parents;

19 (e) impose a fine as authorized by law if the
20 violation alleged would constitute a criminal offense if
21 committed by an adult;

22 (f) require the performance of community service;

23 (g) require the youth, his parents, his guardians, or
24 the persons having legal custody of the youth to receive
25 counseling services;

1 (h) require the medical and psychological evaluation
2 of the youth, his parents, his guardians, or the persons
3 having legal custody of the youth;

4 (i) require the parents, guardians, or other persons
5 having legal custody of the youth to furnish such services
6 as the court may designate; or

7 (j) such further care, treatment, evaluation, or
8 relief that the court considers beneficial to the youth and
9 the community.

10 (2) At any time after the youth has been taken into
11 custody and before final disposition, the court may, with
12 the consent of the youth in the manner provided in 41-5-303
13 for consent by a youth to a waiver of his constitutional
14 rights or after the youth has been adjudicated delinquent or
15 in need of supervision, order the youth to be evaluated by
16 ~~the department~~ for a period not to exceed 45 days. The
17 ~~department---shall---determine~~ county commissioners are
18 responsible for the place-and-manner cost of the evaluation
19 and may contract with the department or other public or
20 private agencies to obtain evaluation services.

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

24 (4) No youth may be committed or transferred to a
25 penal institution or other facility used for the execution

1 of sentence of adult persons convicted of crimes.

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

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

12 (7) The order of commitment to the department shall
13 read as follows:

14 ORDER OF COMMITMENT

15 State of Montana)

16) ss.

17 County of)

18 In the district court for the Judicial District.

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

23 It is ordered that be committed to the department
24 of family services until

25 The names, addresses, and occupations of the parents

1 are:

2 Name	Address	Occupation
3		
4		

5 The names and addresses of their nearest relatives are:
6
7

8 Witness my hand this day of, A.D. 19...
9
10 Judge"

11 Section 8. Section 41-5-802, MCA, is amended to read:

12 "41-5-802. Shelter care and detention facilities. (1)
13 The county commissioners in each county shall provide for
14 the availability of detention facilities for youths.

15 (1)(2) (a) ~~In---all---counties---the~~ The county
16 commissioners may provide maintain, by purchase, lease, or
17 otherwise, a ~~place--to--be--known--as--the~~ youth detention
18 facility, which ~~shall~~ may not be used for the confinement of
19 adult persons charged with criminal offenses, where
20 delinquent youths ~~and-youths-in-need-of-supervision~~ may be
21 detained until final disposition, ~~which--place--shall--be~~
22 ~~maintained-by-the-county-as-in-other-like-cases.~~

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

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

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

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

15 (3) The county commissioners may contract with the
 16 department or public or private agencies to purchase
 17 detention services.

18 ~~(2)~~(4) (a) Counties, cities, or nonprofit corporations
 19 may provide by purchase, lease, or otherwise, ~~a place to be~~
 20 ~~known as~~ a shelter care facility.

21 (b) Such The facility shall must be physically
 22 unrestricting and may be used to provide shelter care for
 23 youth alleged or adjudicated delinquent, in need of
 24 supervision, or in need of care.

25 (c) Such The facility shall must be separate and apart

1 from any facility housing adults charged with criminal
 2 offenses.

3 (d) State appropriations and federal funds may be
 4 received by the counties, cities, or nonprofit corporations
 5 for establishment, maintenance, or operation of such the
 6 facility.

7 (e) Such The facility shall must be furnished in a
 8 comfortable manner and be as nearly as possible like a
 9 family home.

10 (f) Such The facility may be operated in conjunction
 11 with a youth detention facility."

12 **Section 9.** Section 41-5-808, MCA, is amended to read:

13 **"41-5-808. Regional detention Detention facility for**
 14 **more than one county or city. (1) A To satisfy the**
 15 **requirements of 41-5-802(1), a regional detention facility**
 16 **may be established and maintained through cooperation or by**
 17 **cooperative agreement 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 **Section 10.** Section 41-5-809, MCA, is amended to read:

4 "41-5-809. Rules. The department of-family-services
5 shall make adopt rules governing the:

6 (1) licensing procedures for regional and county
7 detention facilities; and

8 (2) procedures for distributing funds for detention
9 facilities and services as provided in [sections 12 and
10 13]."

11 **Section 11.** 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 youth correctional
24 facility from which he was released or a different plan for
25 treatment should be pursued by the department of family

1 services.

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

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

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

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

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

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

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

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

20 (g) a record of the hearing; and

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

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

1 hearing. In the conduct of the hearing, the department may
2 request the county attorney's assistance as necessary. The
3 department shall adopt rules necessary to effect a prompt
4 and full review.

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

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

25 (7) Pending the hearing on a violation and pending the

1 department's decision, a youth may not be detained except
2 when his detention or care is required to protect the person
3 or property of the youth or of others or he may abscond or
4 be removed from the community. The department shall
5 determine the place and manner of detention and is
6 responsible for the cost of the detention. Procedures for
7 taking into custody and detention of a youth charged with
8 violation of his aftercare agreement ~~shall--be~~ are as
9 provided in 41-3-1111, 41-5-303(2) through (6), 41-5-306,
10 and 41-5-308.

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

15 NEW SECTION. Section 12. State funding for detention
16 facilities or services. (1) To the extent that funds are
17 appropriated under [section 13], a county may apply to the
18 department for funds to assist in the purchase,
19 construction, maintenance, or operation of detention
20 facilities or services.

21 (2) A county requesting funds shall submit to the
22 department a written plan describing the facilities or
23 services to be funded.

24 (3) The department shall evaluate the plan to
25 determine if funding is appropriate. In evaluating the plan,

1 the department shall consider:

2 (a) whether each facility is licensed or otherwise
3 approved by the department;

4 (b) the estimated number of youths expected to use
5 each facility or service;

6 (c) the cost of operating each facility or providing
7 the service;

8 (d) the review of the A WRITTEN plan by the county's
9 local youth services advisory council provided for in
10 52-1-203; and

11 (e) any other standards adopted by rule by the
12 department.

13 NEW SECTION. Section 13. Detention facility, and
14 service fund. (1) The legislature may appropriate funds to
15 the department to implement [section 12].

16 (2) The department shall maintain a detention facility
17 and service fund containing funds appropriated under
18 subsection (1).

19 (3) Each fiscal year, the department shall reserve an
20 amount equal to 10% of the previous year's appropriation
21 under subsection (1) for distribution to counties
22 experiencing financial emergencies in providing detention
23 facilities and services. A county shall apply for emergency
24 funding under this subsection in accordance with rules
25 adopted by the department.

1 SECTION 14. SECTION 16, CHAPTER 475, LAWS OF 1987, IS

2 AMENDED TO READ:

3 "Section 16. Effective dates -- termination date. (1)
4 Except as provided in subsections (2) and (3), sections 1
5 through 13 are effective October 1, 1987.

6 (2) The bracketed language in subsection (5) of
7 section {1} is effective July 1, 1989 1991.

8 (3) The bracketed language in subsection (3) of
9 section 9 terminates July 1, 1989 1991."

10 NEW SECTION. Section 15. Extension of authority. Any
11 existing authority to make rules on the subject of the
12 provisions of [this act] is extended to the provisions of
13 [this act].

14 NEW SECTION. Section 16. Codification instruction.
15 [Sections 12 and 13] are intended to be codified as an
16 integral part of Title 41, chapter 5, part 3, and the
17 provisions of Title 41, chapter 5, part 3, apply to
18 [sections 12 and 13].

19 NEW SECTION. SECTION 17. EFFECTIVE DATE. [SECTIONS 5
20 AND 7 OF THIS ACT] ARE EFFECTIVE JULY 1, 1991.

-End-