

House BILL NO. 380

*Over*  
*Clad*

INTRODUCED BY *Quintin McKee* *Garrett* *Bob Brown* *Mark* *John*  
*Brainard* *Wiseman* *Anderson* *Denny* *Richard* *Kelly* *Abner*

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING THE EXTENDED JURISDICTION PROSECUTION ACT; PROVIDING THAT A YOUTH COURT MAY IMPOSE AN ADULT CRIMINAL SENTENCE THAT IS STATED ON CERTAIN CONDITIONS; PROVIDING THAT A YOUTH COURT JUDGE MAY SENTENCE A YOUTH TO A STATE YOUTH CORRECTIONAL FACILITY; PROVIDING THAT A YOUTH COURT JUDGE MAY RETAIN JURISDICTION IN CERTAIN DISPOSITIONS; PROVIDING FOR THE TRANSFER OF A YOUTH COURT CASE TO DISTRICT COURT AFTER DISPOSITION IN YOUTH COURT; AMENDING SECTIONS 41-5-206 AND 41-5-523, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

*Michelle* *Stevenson* *Don* *Harbin* *Carl* *Walters*  
*Angie* *V. Valterberg* *Eck* *Harding* *Sarah*  
BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: *GRINZ*  
*MERCER* *Ream*

NEW SECTION. Section 1. Short title. [Sections 1 through 5] may be cited as the "Extended Jurisdiction Prosecution Act".

NEW SECTION. Section 2. Extended jurisdiction prosecution defined -- jurisdiction extended. (1) A youth court case involving a youth alleged to have committed an offense that would be a felony if committed by an adult is an extended jurisdiction prosecution if:

(a) the youth was at least 14 years of age at the time of the alleged offense, the prosecutor requests that the case be designated an extended jurisdiction prosecution, a hearing is held under [section 3], and the court designates the case as an extended jurisdiction prosecution; or

(b) the alleged offense is transferable under 41-5-206 or the youth was at least 12 years of age at the time of the alleged offense and allegedly used a weapon.

(2) To enforce the court's disposition in an extended jurisdiction prosecution, the court shall retain jurisdiction until the case is transferred to district court under [sections 1 through 5] or jurisdiction is terminated under the provisions of 41-5-205.

NEW SECTION. Section 3. Hearing -- court designation. (1) When a prosecutor requests that a case be designated as an extended jurisdiction prosecution under [section 2(1)(a)], the court shall hold a

1 hearing to consider the request.

2 (2) The hearing must be held within 30 days of the filing of the request unless good cause is  
3 shown by the prosecutor or the youth that the hearing should be held later, in which case the hearing must  
4 be held within 90 days of the request.

5 (3) If the prosecutor shows by clear and convincing evidence that designating the case as an  
6 extended jurisdiction prosecution serves public safety, the court may, within 15 days after the hearing,  
7 designate the case as an extended jurisdiction prosecution.

8 (4) An order designating a case as an extended jurisdiction prosecution is not appealable until after  
9 disposition under [section 4].

10

11 **NEW SECTION. Section 4. Disposition in extended jurisdiction prosecutions.** (1) If a youth in an  
12 extended jurisdiction prosecution pleads guilty to or is found guilty of an offense described in [section  
13 2(1)(b)], the court shall:

14 (a) impose one or more juvenile dispositions under 41-5-523; and

15 (b) impose an adult criminal sentence, the execution of which must be stayed on the condition that  
16 the youth not violate the provisions of the disposition order and not commit a new offense. If the youth  
17 violates the conditions of the stay or commits a new offense, the adult criminal sentence must be executed  
18 as provided in [section 5].

19 (2) Except as provided in subsection (3), if a youth in an extended jurisdiction prosecution is  
20 convicted of an offense not described in [section 2(1)(b)], the court shall adjudicate the youth delinquent  
21 and order a disposition under 41-5-523.

22 (3) If a youth in an extended jurisdiction prosecution pleads guilty to an offense not described in  
23 [section 2(1)(b)], the court may impose, with the youth's consent, a disposition provided under subsection  
24 (1)(b). If the youth does not consent to disposition under subsection (1)(b), the court shall impose a  
25 disposition as provided under subsection (2).

26

27 **NEW SECTION. Section 5. Execution of adult sentence -- exception -- transfer to district court.** (1)  
28 If a court has imposed on a youth an adult criminal sentence stayed under [section 4(1)(b)] and the youth  
29 violates the conditions of the stay or is alleged to have committed a new offense, the court may, without  
30 notice, direct that the youth be taken into immediate custody and revoke the stay. The court shall notify

1 the youth in writing of the reasons for the revocation.

2 (2) (a) If the youth challenges the reasons for the revocation, the court shall hold a summary hearing  
3 at which the youth is entitled to be heard and represented by counsel.

4 (b) After the hearing, if the court finds by a preponderance of the evidence presented that the  
5 conditions of the stay have been violated, the court shall:

6 (i) order execution of the sentence imposed under [section 4(1)(b)]; or

7 (ii) continue the stay and make written findings regarding the mitigating factors that justify  
8 continuing the stay.

9 (3) If the stay of an adult sentence is revoked under this section, jurisdiction must be transferred  
10 to district court for execution of the sentence, subject to 41-5-206(8) and (9).

11

12 **NEW SECTION. Section 6. Transfer to district court after prosecution -- disposition in district court**

13 **-- limitation on jurisdiction.** (1) To ensure continued compliance with the court's disposition under  
14 41-5-523, at any time after a youth reaches 18 years of age but before the youth reaches 21 years of age,  
15 the youth court judge may transfer jurisdiction to district court and order the department to transfer  
16 supervisory responsibility and the youth's case files to the department of corrections and human services.

17 (2) If a youth whose case has been transferred to district court under this section violates a  
18 disposition imposed under 41-5-523, the district court may impose conditions as provided under 46-18-201  
19 through 46-18-203.

20 (3) If, at the time of transfer, the youth is incarcerated in a state youth correctional facility, the  
21 district court may order that the youth, after reaching 18 years of age:

22 (a) be incarcerated in a state adult correctional facility, boot camp, or prerelease center; or

23 (b) be supervised by the department of corrections and human services.

24 (4) The district court's jurisdiction over a case transferred under this section terminates when the  
25 youth reaches age 25 years of age.

26

27 **Section 7.** Section 41-5-206, MCA, is amended to read:

28 **"41-5-206. Transfer to criminal court prior to prosecution.** (1) After a petition has been filed  
29 alleging delinquency, the court may, upon motion of the county attorney, before hearing the petition on its  
30 merits, transfer the matter of prosecution to the district court if:

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

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

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

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

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

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

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

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

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

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

16 (I) criminal production or manufacture of dangerous drugs as defined in 45-9-110;

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

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

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

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

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

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

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

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

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

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

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

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

15 (5) The transfer terminates the jurisdiction of the youth court over the youth with respect to the  
16 acts alleged in the petition. A youth may not be prosecuted in the district court for a criminal offense  
17 originally subject to the jurisdiction of the youth court unless the case has been transferred as provided in  
18 this section. A case may be transferred to district court after prosecution as provided in [section 5] or  
19 [section 6].

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

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

24 (a) tried in youth court;

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

27 (8) If a youth is found guilty in district court of any of the offenses transferred by the youth court  
28 and is sentenced to the state prison, the commitment must be to the department of corrections and human  
29 services. The department shall confine the youth in whatever institution it considers proper, including a  
30 state youth correctional facility under the procedures of 52-5-111~~7~~; ~~however~~ However, ~~no~~ a youth under

1 16 years of age may not be confined in the state prison.

2 (9) A youth whose case is transferred to district court may not be detained or otherwise placed  
3 in a jail or other adult detention facility before final disposition of ~~his~~ the case unless:

4 (a) alternative facilities do not provide adequate security; and

5 (b) the youth is kept in an area that provides physical, as well as sight and sound, separation from  
6 adults accused or convicted of criminal offenses."

7

8 **Section 8.** Section 41-5-523, MCA, is amended to read:

9 "**41-5-523. Disposition -- sentence to correctional facility -- commitment to department --**  
10 **placement and evaluation of youth -- restrictions.** (1) If a youth is found to be a delinquent youth or a youth  
11 in need of supervision, the youth court may enter its judgment making ~~any~~ one or more of the following  
12 dispositions:

13 (a) retain jurisdiction in a disposition provided under subsection (1)(b) or (1)(d);

14 (b) place the youth on probation;

15 ~~(c)~~ subject to subsections (1)(n)(i), (2)(a), (2)(b), and (6), sentence a youth to one of the state  
16 youth correctional facilities established under 52-5-101 and, as part of the sentence, deny the youth  
17 eligibility for release without the express approval of the sentencing judge until the youth reaches 18 years  
18 of age;

19 (d) require the youth to register as a sex offender pursuant to 46-18-254 and 46-23-506;

20 (e) place the youth in an in-state residence that ensures that the youth is accountable, provides  
21 for rehabilitation, and protects the public;

22 (f) commit the youth to the department, if the court determines that the youth is in need of  
23 placement in other than the youth's own home, provided that In an order committing a youth to the  
24 department:

25 (i) the court shall determine whether continuation in the home would be contrary to the welfare  
26 of the youth and whether reasonable efforts have been made to prevent or eliminate the need for removal  
27 of the youth from the youth's home; ~~The court shall include a determination in the order committing the~~  
28 ~~youth to the department.~~

29 (ii) in the case of a delinquent youth who is determined by the court to be a serious juvenile  
30 offender, the judge may specify that the youth be placed in a state youth correctional facility if the judge

1 finds that the placement is necessary for the protection of the public. The court may order the department  
 2 to notify the court within 5 working days before the proposed release of a youth from a youth correctional  
 3 facility. Once a youth is committed to the department for placement in a state youth correctional facility,  
 4 the department is responsible for determining an appropriate date of release into an appropriate placement.

5 ~~(e)~~(g) order restitution by the youth or the youth's parents;

6 ~~(f)~~(h) impose a fine as authorized by law if the violation alleged would constitute a criminal offense  
 7 if committed by an adult;

8 ~~(e)~~(i) require the performance of community service;

9 ~~(f)~~(j) require the youth, the youth's parents or guardians, or the persons having legal custody of  
 10 the youth to receive counseling services;

11 ~~(g)~~(k) require the medical and psychological evaluation of the youth, the youth's parents or  
 12 guardians, or the persons having legal custody of the youth;

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

15 ~~(i)~~(m) order further care, treatment, evaluation, or relief that the court considers beneficial to the  
 16 youth and the community and that does not obligate funding from the department for services outside the  
 17 state of Montana without the department's approval, except that a youth may not be placed by a youth  
 18 court in a residential treatment facility as defined in 50-5-101. Only the department may, pursuant to  
 19 subsection ~~(1)(b)~~(1)(f), place a youth in a residential treatment facility.

20 ~~(j)~~(n) commit the youth to a mental health facility if, based upon the testimony of a professional  
 21 person as defined in 53-21-102, the court finds that the youth is seriously mentally ill as defined in  
 22 53-21-102. The youth is entitled to all rights provided by 53-21-114 through 53-21-119.

23 (i) A youth adjudicated mentally ill or seriously mentally ill as defined in 53-21-102 may not be  
 24 committed or sentenced to a state youth correctional facility.

25 (ii) A youth adjudicated to be mentally ill or seriously mentally ill after placement ~~by the department~~  
 26 in or sentencing to a state youth correctional facility must be moved to a more appropriate placement in  
 27 response to the youth's mental health needs and consistent with the disposition alternatives available in  
 28 53-21-127.

29 ~~(k)~~(o) place the youth under home arrest as provided in Title 46, chapter 18, part 10.

30 (2) When a youth is committed to the department, the department shall determine the appropriate

1 placement and rehabilitation program for the youth after considering the recommendations made under  
2 41-5-527 by the youth placement committee. Placement is subject to the following limitations:

3 (a) A youth in need of supervision or adjudicated delinquent for commission of an act that would  
4 not be a criminal offense if committed by an adult may not be placed in a state youth correctional facility.

5 (b) A youth may not be held in a state youth correctional facility for a period of time in excess of  
6 the maximum period of imprisonment that could be imposed on an adult convicted of the offense or  
7 offenses that brought the youth under the jurisdiction of the youth court. Nothing in this section limits the  
8 power of the department to enter into an aftercare agreement with the youth pursuant to 52-5-126.

9 (c) A youth may not be placed in or transferred to a penal institution or other facility used for the  
10 execution of sentence of adults convicted of crimes.

11 (3) A youth placed ~~by the department~~ in a state youth correctional facility or other facility or  
12 program operated by the department or who signs an aftercare agreement under 52-5-126 must be  
13 supervised by the department. A youth who is placed in any other placement by the department, the youth  
14 court, or the youth court's juvenile probation officer must be supervised by the probation officer of the  
15 youth court having jurisdiction over the youth under 41-5-205 whether or not the youth is committed to  
16 the department. Supervision by the youth probation officer includes but is not limited to:

17 (a) submitting information and documentation necessary for the person, committee, or team that  
18 is making the placement recommendation to determine an appropriate placement for the youth;

19 (b) securing approval for payment of special education costs from the youth's school district of  
20 residence or the office of public instruction, as required in Title 20, chapter 7, part 4;

21 (c) submitting an application to a facility in which the youth may be placed; and

22 (d) case management of the youth.

23 (4) The youth court may order a youth to receive a medical or psychological evaluation at any time  
24 prior to final disposition if the youth waives the youth's constitutional rights in the manner provided for in  
25 41-5-303. The county determined by the court as the residence of the youth is responsible for the cost of  
26 the evaluation, except as provided in subsection (5). A county may contract with the department or other  
27 public or private agencies to obtain evaluation services ordered by the court.

28 (5) The youth court shall determine the financial ability of the youth's parents to pay the cost of  
29 an evaluation ordered by the court under subsection (4). If they are financially able, the court shall order  
30 the youth's parents to pay all or part of the cost of the evaluation.



1           (6) The youth court may not order placement or evaluation of a youth at a state youth correctional  
2 facility unless the youth is found to be a delinquent youth or is alleged to have committed an offense that  
3 is transferable to criminal court under 41-5-206.

4           (7) An evaluation of a youth may not be performed at the Montana state hospital unless the youth  
5 is transferred to the district court under 41-5-206, [section 5], or [section 6].

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

9           (9) Whenever the court commits a youth to the department, it shall transmit with the dispositional  
10 judgment copies of medical reports, social history material, education records, and any other clinical,  
11 predisposition, or other reports and information pertinent to the care and treatment of the youth.

12           (10) If a youth is committed to the department, the court shall examine the financial ability of the  
13 youth's parents or guardians to pay a contribution covering all or part of the costs for the care,  
14 commitment, and treatment of the youth, including the costs of necessary medical, dental, and other health  
15 care.

16           (11) If the court determines that the youth's parents or guardians are financially able to pay a  
17 contribution as provided in subsection (10), the court shall order the youth's parents or guardians to pay  
18 an amount based on the uniform child support guidelines adopted by the department of social and  
19 rehabilitation services pursuant to 40-5-209.

20           (12) (a) Except as provided in subsection (12)(b), contributions ordered under this section and each  
21 modification of an existing order are enforceable by immediate or delinquency income withholding, or both,  
22 under Title 40, chapter 5, part 4. An order for contribution that is inconsistent with this section is  
23 nevertheless subject to withholding for the payment of the contribution without need for an amendment  
24 of the support order or for any further action by the court.

25           (b) A court-ordered exception from contributions under this section must be in writing and be  
26 included in the order. An exception from the immediate income withholding requirement may be granted  
27 if the court finds there is:

28           (i) good cause not to require immediate income withholding; or

29           (ii) an alternative arrangement between the department and the person who is ordered to pay  
30 contributions.

1 (c) A finding of good cause not to require immediate income withholding must, at a minimum, be  
2 based upon:

3 (i) a written determination and explanation by the court of the reasons why the implementation of  
4 immediate income withholding is not in the best interests of the ~~child~~ youth; and

5 (ii) proof of timely payment of previously ordered support in cases involving modification of  
6 contributions ordered under this section.

7 (d) An alternative arrangement must:

8 (i) provide sufficient security to ensure compliance with the arrangement;

9 (ii) be in writing and be signed by a representative of the department and the person required to  
10 make contributions; and

11 (iii) if approved by the court, be entered into the record of the proceeding.

12 (13) Upon a showing of a change in the financial ability of the youth's parents or guardians to pay,  
13 the court may modify its order for the payment of contributions required under subsection (11).

14 (14) (a) If the court orders the payment of contributions under this section, the department shall  
15 apply to the department of social and rehabilitation services for support enforcement services pursuant to  
16 Title IV-D of the Social Security Act.

17 (b) The department of social and rehabilitation services may collect and enforce a contribution order  
18 under this section by any means available under law, including the remedies provided for in Title 40,  
19 chapter 5, parts 2 and 4."

20

21 **NEW SECTION. Section 9. Codification instruction.** (1) [Sections 1 through 5] are intended to be  
22 codified as an integral part of Title 41, chapter 5, and the provisions of Title 41, chapter 5, apply to  
23 [sections 1 through 5].

24 (2) [Section 6] is intended to be codified as an integral part of Title 41, chapter 5, part 2, and the  
25 provisions of Title 41, chapter 5, part 2, apply to [section 6].

26

27 **NEW SECTION. Section 10. Effective date.** [This act] is effective on passage and approval.

28

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0380, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act establishing the extended jurisdiction prosecution act; providing that a youth court may impose an adult criminal sentence that is stayed on certain conditions; providing that a youth court judge may sentence a youth to a state youth correctional facility; providing that a youth court judge may retain jurisdiction in certain dispositions; and providing for the transfer of a youth court case to district court after disposition in youth court.

ASSUMPTIONS:

1. According to the Board of Crime Control, there are about 500 youth per year who have committed transferrable offenses and could be placed directly in a state youth correctional facility (41-5-523, MCA) by the youth court. This could increase the need for secure bed placements by 40 (from the current 80) at Pine Hills School (PHS) to a total of 120.
2. The Department of Family Services (DFS) will need additional secure detention and community-based facilities.
3. To avoid costs for new construction, some of the 40 additional placements would be served through contracts with local providers.
4. The cost per day at PHS is \$135. This would be the daily cost to serve additional youth.
5. If an additional 40 youth were to be under extended jurisdiction, the annual cost would be about \$1,971,000 (40 X 135 X 365 days).
6. All secure care costs are 100% general fund.
7. Section 41-5-523, MCA, is also amended to allow youth courts to place a youth directly in an in-state residence. DFS is already serving these youth court placements through its foster care budget, but the level of service currently provided to these placements may change with this provision. The department has no way of estimating whether this would increase or decrease costs.
8. This bill would not result in any marked increase in the adult corrections population. The bill may result in a minimal effect on probation and parole caseloads.
9. There will be no additional revenues to the state generated by the bill.

FISCAL IMPACT:

DFS Secure Care

|                      | <u>FY96</u>       | <u>FY97</u>       |
|----------------------|-------------------|-------------------|
| <u>Expenditures:</u> | <u>Difference</u> | <u>Difference</u> |
| Operating Costs      | 1,971,000         | 1,971,000         |
| <u>Funding:</u>      |                   |                   |
| General Fund (01)    | 1,971,000         | 1,971,000         |

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

Some impact to county youth probation departments is contemplated because of increased caseload due to extended jurisdiction. Unable to determine impact.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

As stated in assumption #3, it is assumed that many of the additional placements will not be at PHS. If it is necessary to serve the 40 placements at PHS, it would require construction of additional cottages at a cost of about \$1.2 million for a 24-bed unit.

*Dave Lewis 2-6-95*  
 DAVE LEWIS, BUDGET DIRECTOR      DATE  
 Office of Budget and Program Planning

JEANETTE MCKEE, PRIMARY SPONSOR      DATE  
 Fiscal Note for HB0380, as introduced

**HB 380**

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0380, third reading

DESCRIPTION OF PROPOSED LEGISLATION:

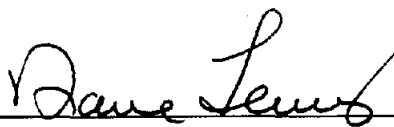
An act establishing the extended jurisdiction prosecution act; providing that a youth court may impose an adult criminal sentence that is stayed on certain conditions; providing that a youth court judge may sentence a youth to a state youth correctional facility; providing that a youth court judge may retain jurisdiction in certain dispositions; providing for the transfer of a youth court case to district court after disposition in youth court.

ASSUMPTIONS:

1. Section 8 as amended will prohibit direct placements to a youth correctional facility unless the Department of Family Services (DFS) informs the judge that space is available. This should eliminate the need for additional secure care beds for DFS.
2. Section 8 also was amended to allow youth courts to place a youth directly in an in-state residence after seeking and considering placement recommendations from the youth placement committee.
3. DFS already is serving these youth court placements through its foster care budget, but the level of service currently provided to these placements may change with this provision. The department is unable to project whether this provision will result in a net increase or decrease in costs.
4. Currently, approximately \$6.9 million of the foster care budget is spent each biennium for placements by the youth courts.
5. Program costs and available facilities will remain consistent during the 1997 biennium.
6. There will be no additional revenues to the state generated by this bill.

FISCAL IMPACT:

None.

 2-22-95  
DAVE LEWIS, BUDGET DIRECTOR      DATE  
Office of Budget and Program Planning

 2/27/95  
JEANETTE MCKEE, PRIMARY SPONSOR      DATE

Fiscal Note for HB0380, third reading

HB 380-#2

APPROVED BY COM  
ON JUDICIARY

## 1 HOUSE BILL NO. 380

2 INTRODUCED BY MCKEE, GROSFIELD, BROWN, MASOLO, RYAN, CLARK, GREEN, BRAINARD,  
3 WISEMAN, ANDERSON, DENNY, HIBBARD, KITZENBERG, AHNER, MCGEE, DEVANEY, GAGE, DEVLIN,  
4 MARSHALL, JENKINS, COCCHIARELLA, SQUIRES, CAREY, TROPILA, VAN VALKENBURG, ECK,  
5 HARDING, SOMERVILLE, GRINDE, MERCER, REAM  
6

7 A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING THE EXTENDED JURISDICTION PROSECUTION  
8 ACT; PROVIDING THAT A YOUTH COURT MAY IMPOSE AN ADULT CRIMINAL SENTENCE THAT IS  
9 STAYED ON CERTAIN CONDITIONS; PROVIDING THAT A YOUTH COURT JUDGE MAY SENTENCE A  
10 YOUTH TO A STATE YOUTH CORRECTIONAL FACILITY; PROVIDING THAT A YOUTH COURT JUDGE  
11 MAY RETAIN JURISDICTION IN CERTAIN DISPOSITIONS; PROVIDING FOR THE TRANSFER OF A YOUTH  
12 COURT CASE TO DISTRICT COURT AFTER DISPOSITION IN YOUTH COURT; AMENDING SECTIONS  
13 41-5-206 AND 41-5-523, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."  
14

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

17 NEW SECTION. **Section 1. Short title.** [Sections 1 through 5] may be cited as the "Extended  
18 Jurisdiction Prosecution Act".  
19

20 NEW SECTION. **Section 2. Extended jurisdiction prosecution defined -- jurisdiction extended.** (1)  
21 A youth court case involving a youth alleged to have committed an offense that would be a felony if  
22 committed by an adult is an extended jurisdiction prosecution if:

23 (a) the youth was at least 14 years of age at the time of the alleged offense, the prosecutor  
24 requests that the case be designated an extended jurisdiction prosecution, a hearing is held under [section  
25 3], and the court designates the case as an extended jurisdiction prosecution; or

26 (b) the alleged offense is transferable under 41-5-206 or the youth was at least 12 years of age  
27 at the time of the alleged offense and allegedly used a weapon.

28 (2) To enforce the court's disposition in an extended jurisdiction prosecution, the court shall retain  
29 jurisdiction until the case is transferred to district court under [sections 1 through 5] or jurisdiction is  
30 terminated under the provisions of 41-5-205.

1           **NEW SECTION. Section 3. Hearing -- court designation.** (1) When a prosecutor requests that a  
2 case be designated as an extended jurisdiction prosecution under [section 2(1)(a)], the court shall hold a  
3 hearing to consider the request.

4           (2) The hearing must be held within 30 days of the filing of the request unless good cause is  
5 shown by the prosecutor or the youth that the hearing should be held later, in which case the hearing must  
6 be held within 90 days of the request.

7           (3) If the prosecutor shows by clear and convincing evidence that designating the case as an  
8 extended jurisdiction prosecution serves public safety, the court may, within 15 days after the hearing,  
9 designate the case as an extended jurisdiction prosecution.

10           (4) An order designating a case as an extended jurisdiction prosecution is not appealable until after  
11 disposition under [section 4].

12  
13           **NEW SECTION. Section 4. Disposition in extended jurisdiction prosecutions.** (1) If a youth in an  
14 extended jurisdiction prosecution pleads guilty to or is found guilty of an offense described in [section  
15 2(1)(b)], the court shall:

16           (a) impose one or more juvenile dispositions under 41-5-523; and

17           (b) impose an adult criminal sentence, the execution of which must be stayed on the condition that  
18 the youth not violate the provisions of the disposition order and not commit a new offense. If the youth  
19 violates the conditions of the stay or commits a new offense, the adult criminal sentence must be executed  
20 as provided in [section 5].

21           (2) Except as provided in subsection (3), if a youth in an extended jurisdiction prosecution is  
22 convicted of an offense not described in [section 2(1)(b)], the court shall adjudicate the youth delinquent  
23 and order a disposition under 41-5-523.

24           (3) If a youth in an extended jurisdiction prosecution pleads guilty to an offense not described in  
25 [section 2(1)(b)], the court may impose, with the youth's consent, a disposition provided under subsection  
26 (1)(b). If the youth does not consent to disposition under subsection (1)(b), the court shall impose a  
27 disposition as provided under subsection (2).

28  
29           **NEW SECTION. Section 5. Execution of adult sentence -- exception -- transfer to district**  
30 **court.** (1) If a court has imposed on a youth an adult criminal sentence stayed under [section 4(1)(b)] and

1 the youth violates the conditions of the stay or is alleged to have committed a new offense, the court may,  
2 without notice, direct that the youth be taken into immediate custody and revoke the stay. The court shall  
3 notify the youth in writing of the reasons for the revocation.

4 (2) (a) If the youth challenges the reasons for the revocation, the court shall hold a summary  
5 hearing at which the youth is entitled to be heard and represented by counsel.

6 (b) After the hearing, if the court finds by a preponderance of the evidence presented that the  
7 conditions of the stay have been violated, the court shall:

8 (i) order execution of the sentence imposed under [section 4(1)(b)]; or

9 (ii) continue the stay and make written findings regarding the mitigating factors that justify  
10 continuing the stay.

11 (3) If the stay of an adult sentence is revoked under this section, jurisdiction must be transferred  
12 to district court for execution of the sentence, subject to 41-5-206(8) and (9).

13

14 **NEW SECTION. Section 6. Transfer to district court after prosecution -- disposition in district court**  
15 **-- limitation on jurisdiction.** (1) To ensure continued compliance with the court's disposition under  
16 41-5-523, at any time after a youth reaches 18 years of age but before the youth reaches 21 years of age,  
17 the youth court judge may transfer jurisdiction to district court and order the department to transfer  
18 supervisory responsibility and the youth's case files to the department of corrections and human services.

19 (2) If a youth whose case has been transferred to district court under this section violates a  
20 disposition imposed under 41-5-523, the district court may impose conditions as provided under 46-18-201  
21 through 46-18-203.

22 (3) If, at the time of transfer, the youth is incarcerated in a state youth correctional facility, the  
23 district court may order that the youth, after reaching 18 years of age:

24 (a) be incarcerated in a state adult correctional facility, boot camp, or prerelease center; or

25 (b) be supervised by the department of corrections and human services.

26 (4) The district court's jurisdiction over a case transferred under this section terminates when the  
27 youth reaches age 25 years of age.

28

29 **Section 7.** Section 41-5-206, MCA, is amended to read:

30 **"41-5-206. Transfer to criminal court prior to prosecution.** (1) After a petition has been filed

1 alleging delinquency, the court may, upon motion of the county attorney, before hearing the petition on its  
2 merits, transfer the matter of prosecution to the district court if:

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

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

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

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

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

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

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

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

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

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

18 (I) criminal production or manufacture of dangerous drugs as defined in 45-9-110;

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

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

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

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

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

30 (ii) the seriousness of the offense and the protection of the community require treatment of the



1 youth beyond that afforded by juvenile facilities; and

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

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

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

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

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

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

17 (5) The transfer terminates the jurisdiction of the youth court over the youth with respect to the  
18 acts alleged in the petition. A youth may not be prosecuted in the district court for a criminal offense  
19 originally subject to the jurisdiction of the youth court unless the case has been transferred as provided in  
20 this section. A case may be transferred to district court after prosecution as provided in [section 5] or  
21 [section 6].

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

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

26 (a) tried in youth court;

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

29 (8) If a youth is found guilty in district court of any of the offenses transferred by the youth court  
30 and is sentenced to the state prison, the commitment must be to the department of corrections and human

1 services. The department shall confine the youth in whatever institution it considers proper, including a  
 2 state youth correctional facility under the procedures of 52-5-111; ~~however~~ However, ~~no~~ a youth under  
 3 16 years of age may not be confined in the state prison.

4 (9) A youth whose case is transferred to district court may not be detained or otherwise placed  
 5 in a jail or other adult detention facility before final disposition of ~~his~~ the case unless:

6 (a) alternative facilities do not provide adequate security; and

7 (b) the youth is kept in an area that provides physical, as well as sight and sound, separation from  
 8 adults accused or convicted of criminal offenses."

9  
 10 **Section 8.** Section 41-5-523, MCA, is amended to read:

11 **"41-5-523. Disposition -- sentence to correctional facility -- commitment to department --**  
 12 **placement and evaluation of youth -- restrictions.** (1) If a youth is found to be a delinquent youth or a  
 13 youth in need of supervision, the youth court may enter its judgment making ~~any~~ one or more of the  
 14 following dispositions:

15 (a) retain jurisdiction in a disposition provided under subsection (1)(b) or (1)(d);

16 (b) place the youth on probation;

17 ~~(b)(c)~~ subject to subsections (1)(n)(i), (2)(a), (2)(b), and (6), sentence a youth to one of the state  
 18 youth correctional facilities established under 52-5-101 and, as part of the sentence, deny the youth  
 19 eligibility for release without the express approval of the sentencing judge until the youth reaches 18 years  
 20 of age; A YOUTH MAY NOT BE SENTENCED TO A STATE YOUTH CORRECTIONAL FACILITY UNLESS  
 21 THE DEPARTMENT INFORMS THE JUDGE THAT SPACE IS AVAILABLE FOR THE YOUTH AT THAT  
 22 FACILITY. THE SENTENCING JUDGE MAY NOT PLACE LIMITATIONS ON THE RELEASE UNLESS THE  
 23 JUDGE HAS SOUGHT AND CONSIDERED RELEASE LIMITATIONS RECOMMENDED BY THE YOUTH  
 24 PLACEMENT COMMITTEE.

25 (d) require the A youth FOUND TO BE DELINQUENT to register as a sex offender pursuant to  
 26 46-18-254 and 46-23-506;

27 (e) place the youth in an in-state residence that ensures that the youth is accountable, provides  
 28 for rehabilitation, and protects the public; BEFORE PLACEMENT, THE SENTENCING JUDGE SHALL SEEK  
 29 AND CONSIDER PLACEMENT RECOMMENDATIONS FROM THE YOUTH PLACEMENT COMMITTEE. THE  
 30 JUDGE MAY NOT PLACE THE YOUTH IN AN IN-STATE RESIDENCE UNLESS THE DEPARTMENT INFORMS

1 THE JUDGE THAT SPACE IS AVAILABLE FOR THE YOUTH AT THAT RESIDENCE.

2 ~~(f)~~ commit the youth to the department, ~~if the court determines that the youth is in need of~~  
 3 ~~placement in other than the youth's own home, provided that~~ In an order committing a youth to the  
 4 department:

5 (i) the court shall determine whether continuation in the home would be contrary to the welfare  
 6 of the youth and whether reasonable efforts have been made to prevent or eliminate the need for removal  
 7 of the youth from the youth's home; ~~The court shall include a determination in the order committing the~~  
 8 ~~youth to the department.~~

9 (ii) in the case of a delinquent youth who is determined by the court to be a serious juvenile  
 10 offender, the judge may specify that the youth be placed in a state youth correctional facility if the judge  
 11 finds that the placement is necessary for the protection of the public. The court may order the department  
 12 to notify the court within 5 working days before the proposed release of a youth from a youth correctional  
 13 facility. Once a youth is committed to the department for placement in a state youth correctional facility,  
 14 the department is responsible for determining an appropriate date of release into an appropriate placement.

15 ~~(e)(g)~~ order restitution by the youth or the youth's parents;

16 ~~(d)(h)~~ impose a fine as authorized by law if the violation alleged would constitute a criminal offense  
 17 if committed by an adult;

18 ~~(a)(i)~~ require the performance of community service;

19 ~~(f)(j)~~ require the youth, the youth's parents or guardians, or the persons having legal custody of  
 20 the youth to receive counseling services;

21 ~~(g)(k)~~ require the medical and psychological evaluation of the youth, the youth's parents or  
 22 guardians, or the persons having legal custody of the youth;

23 ~~(h)(l)~~ require the parents, guardians, or other persons having legal custody of the youth to furnish  
 24 services the court may designate;

25 ~~(i)(m)~~ order further care, treatment, evaluation, or relief that the court considers beneficial to the  
 26 youth and the community and that does not obligate funding from the department for services outside the  
 27 state of Montana without the department's approval, except that a youth may not be placed by a youth  
 28 court in a residential treatment facility as defined in 50-5-101. Only the department may, pursuant to  
 29 subsection ~~(1)(b)(1)(f)~~, place a youth in a residential treatment facility.

30 ~~(j)(n)~~ commit the youth to a mental health facility if, based upon the testimony of a professional

1 person as defined in 53-21-102, the court finds that the youth is seriously mentally ill as defined in  
2 53-21-102. The youth is entitled to all rights provided by 53-21-114 through 53-21-119.

3 (i) A youth adjudicated mentally ill or seriously mentally ill as defined in 53-21-102 may not be  
4 committed or sentenced to a state youth correctional facility.

5 (ii) A youth adjudicated to be mentally ill or seriously mentally ill after placement ~~by the department~~  
6 in or sentencing to a state youth correctional facility must be moved to a more appropriate placement in  
7 response to the youth's mental health needs and consistent with the disposition alternatives available in  
8 53-21-127.

9 ~~(k)(o)~~ place the youth under home arrest as provided in Title 46, chapter 18, part 10.

10 (2) When a youth is committed to the department, the department shall determine the appropriate  
11 placement and rehabilitation program for the youth after considering the recommendations made under  
12 41-5-527 by the youth placement committee. Placement is subject to the following limitations:

13 (a) A youth in need of supervision or adjudicated delinquent for commission of an act that would  
14 not be a criminal offense if committed by an adult may not be placed in a state youth correctional facility.

15 (b) A youth may not be held in a state youth correctional facility for a period of time in excess of  
16 the maximum period of imprisonment that could be imposed on an adult convicted of the offense or  
17 offenses that brought the youth under the jurisdiction of the youth court. Nothing in this section limits the  
18 power of the department to enter into an aftercare agreement with the youth pursuant to 52-5-126.

19 (c) A youth may not be placed in or transferred to a penal institution or other facility used for the  
20 execution of sentence of adults convicted of crimes.

21 (3) A youth placed ~~by the department~~ in a state youth correctional facility or other facility or  
22 program operated by the department or who signs an aftercare agreement under 52-5-126 must be  
23 supervised by the department. A youth who is placed in any other placement by the department, the youth  
24 court, or the youth court's juvenile probation officer must be supervised by the probation officer of the  
25 youth court having jurisdiction over the youth under 41-5-205 whether or not the youth is committed to  
26 the department. Supervision by the youth probation officer includes but is not limited to:

27 (a) submitting information and documentation necessary for the person, committee, or team that  
28 is making the placement recommendation to determine an appropriate placement for the youth;

29 (b) securing approval for payment of special education costs from the youth's school district of  
30 residence or the office of public instruction, as required in Title 20, chapter 7, part 4;

1 (c) submitting an application to a facility in which the youth may be placed; and

2 (d) case management of the youth.

3 (4) The youth court may order a youth to receive a medical or psychological evaluation at any time  
4 prior to final disposition if the youth waives the youth's constitutional rights in the manner provided for in  
5 41-5-303. The county determined by the court as the residence of the youth is responsible for the cost of  
6 the evaluation, except as provided in subsection (5). A county may contract with the department or other  
7 public or private agencies to obtain evaluation services ordered by the court.

8 (5) The youth court shall determine the financial ability of the youth's parents to pay the cost of  
9 an evaluation ordered by the court under subsection (4). If they are financially able, the court shall order  
10 the youth's parents to pay all or part of the cost of the evaluation.

11 (6) The youth court may not order placement or evaluation of a youth at a state youth correctional  
12 facility unless the youth is found to be a delinquent youth or is alleged to have committed an offense that  
13 is transferable to criminal court under 41-5-206.

14 (7) An evaluation of a youth may not be performed at the Montana state hospital unless the youth  
15 is transferred to the district court under 41-5-206, [section 5], or [section 6].

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

19 (9) Whenever the court commits a youth to the department, it shall transmit with the dispositional  
20 judgment copies of medical reports, social history material, education records, and any other clinical,  
21 predisposition, or other reports and information pertinent to the care and treatment of the youth.

22 (10) If a youth is committed to the department, the court shall examine the financial ability of the  
23 youth's parents or guardians to pay a contribution covering all or part of the costs for the care,  
24 commitment, and treatment of the youth, including the costs of necessary medical, dental, and other health  
25 care.

26 (11) If the court determines that the youth's parents or guardians are financially able to pay a  
27 contribution as provided in subsection (10), the court shall order the youth's parents or guardians to pay  
28 an amount based on the uniform child support guidelines adopted by the department of social and  
29 rehabilitation services pursuant to 40-5-209.

30 (12) (a) Except as provided in subsection (12)(b), contributions ordered under this section and each

1 modification of an existing order are enforceable by immediate or delinquency income withholding, or both,  
2 under Title 40, chapter 5, part 4. An order for contribution that is inconsistent with this section is  
3 nevertheless subject to withholding for the payment of the contribution without need for an amendment  
4 of the support order or for any further action by the court.

5 (b) A court-ordered exception from contributions under this section must be in writing and be  
6 included in the order. An exception from the immediate income withholding requirement may be granted  
7 if the court finds there is:

8 (i) good cause not to require immediate income withholding; or

9 (ii) an alternative arrangement between the department and the person who is ordered to pay  
10 contributions.

11 (c) A finding of good cause not to require immediate income withholding must, at a minimum, be  
12 based upon:

13 (i) a written determination and explanation by the court of the reasons why the implementation of  
14 immediate income withholding is not in the best interests of the ~~child~~ youth; and

15 (ii) proof of timely payment of previously ordered support in cases involving modification of  
16 contributions ordered under this section.

17 (d) An alternative arrangement must:

18 (i) provide sufficient security to ensure compliance with the arrangement;

19 (ii) be in writing and be signed by a representative of the department and the person required to  
20 make contributions; and

21 (iii) if approved by the court, be entered into the record of the proceeding.

22 (13) Upon a showing of a change in the financial ability of the youth's parents or guardians to pay,  
23 the court may modify its order for the payment of contributions required under subsection (11).

24 (14) (a) If the court orders the payment of contributions under this section, the department shall  
25 apply to the department of social and rehabilitation services for support enforcement services pursuant to  
26 Title IV-D of the Social Security Act.

27 (b) The department of social and rehabilitation services may collect and enforce a contribution order  
28 under this section by any means available under law, including the remedies provided for in Title 40,  
29 chapter 5, parts 2 and 4."

30



HOUSE BILL NO. 380

INTRODUCED BY MCKEE, GROSFIELD, BROWN, MASOLO, RYAN, CLARK, GREEN, BRAINARD,  
 WISEMAN, ANDERSON, DENNY, HIBBARD, KITZENBERG, AHNER, MCGEE, DEVANEY, GAGE, DEVLIN,  
 MARSHALL, JENKINS, COCCHIARELLA, SQUIRES, CAREY, TROPILA, VAN VALKENBURG, ECK,  
 HARDING, SOMERVILLE, GRINDE, MERCER, REAM

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING THE EXTENDED JURISDICTION PROSECUTION  
 ACT; PROVIDING THAT A YOUTH COURT MAY IMPOSE AN ADULT CRIMINAL SENTENCE THAT IS  
 STAYED ON CERTAIN CONDITIONS; PROVIDING THAT A YOUTH COURT JUDGE MAY SENTENCE A  
 YOUTH TO A STATE YOUTH CORRECTIONAL FACILITY; PROVIDING THAT A YOUTH COURT JUDGE  
 MAY RETAIN JURISDICTION IN CERTAIN DISPOSITIONS; PROVIDING FOR THE TRANSFER OF A YOUTH  
 COURT CASE TO DISTRICT COURT AFTER DISPOSITION IN YOUTH COURT; AMENDING SECTIONS  
 41-5-206 AND 41-5-523, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

THERE ARE NO CHANGES IN THIS BILL AND IT WILL  
 NOT BE REPRINTED. PLEASE REFER TO SECOND  
 READING COPY (YELLOW) FOR COMPLETE TEXT.

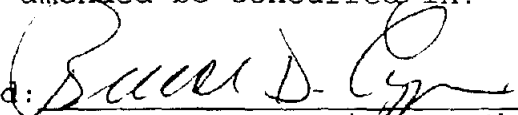


SENATE STANDING COMMITTEE REPORT

Page 1 of 1  
March 13, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration HB 380 (third reading copy -- blue), respectfully report that HB 380 be amended as follows and as so amended be concurred in.

Signed:   
Senator Bruce Crippen, Chair

That such amendments read:

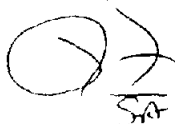
1. Page 3, line 27.  
Following: "reaches"  
Strike: "age"

2. Page 6, lines 22 and 23.  
Following: "UNLESS" on line 22  
Strike: remainder of line 22 through "LIMITATIONS" on line 23

3. Page 7, line 1.  
Strike: "SPACE IS"  
Insert: "resources are"  
Following: "FOR"  
Insert: "placement of"

4. Page 7, line 5.  
Following: second "the"  
Insert: "youth's own"

-END-



Amd. Coord.  
SA Sec. of Senate

Sen. Grosfield  
Senator Carrying Bill

HB 380  
SENATE

581407SC.SRF

HOUSE BILL NO. 380

INTRODUCED BY MCKEE, GROSFIELD, BROWN, MASOLO, RYAN, CLARK, GREEN, BRAINARD, WISEMAN, ANDERSON, DENNY, HIBBARD, KITZENBERG, AHNER, MCGEE, DEVANEY, GAGE, DEVLIN, MARSHALL, JENKINS, COCCHIARELLA, SQUIRES, CAREY, TROPILA, VAN VALKENBURG, ECK, HARDING, SOMERVILLE, GRINDE, MERCER, REAM

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING THE EXTENDED JURISDICTION PROSECUTION ACT; PROVIDING THAT A YOUTH COURT MAY IMPOSE AN ADULT CRIMINAL SENTENCE THAT IS STAYED ON CERTAIN CONDITIONS; PROVIDING THAT A YOUTH COURT JUDGE MAY SENTENCE A YOUTH TO A STATE YOUTH CORRECTIONAL FACILITY; PROVIDING THAT A YOUTH COURT JUDGE MAY RETAIN JURISDICTION IN CERTAIN DISPOSITIONS; PROVIDING FOR THE TRANSFER OF A YOUTH COURT CASE TO DISTRICT COURT AFTER DISPOSITION IN YOUTH COURT; AMENDING SECTIONS 41-5-206 AND 41-5-523, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

NEW SECTION. Section 1. Short title. [Sections 1 through 5] may be cited as the "Extended Jurisdiction Prosecution Act".

NEW SECTION. Section 2. Extended jurisdiction prosecution defined -- jurisdiction extended. (1) A youth court case involving a youth alleged to have committed an offense that would be a felony if committed by an adult is an extended jurisdiction prosecution if:

(a) the youth was at least 14 years of age at the time of the alleged offense, the prosecutor requests that the case be designated an extended jurisdiction prosecution, a hearing is held under [section 3], and the court designates the case as an extended jurisdiction prosecution; or

(b) the alleged offense is transferable under 41-5-206 or the youth was at least 12 years of age at the time of the alleged offense and allegedly used a weapon.

(2) To enforce the court's disposition in an extended jurisdiction prosecution, the court shall retain jurisdiction until the case is transferred to district court under [sections 1 through 5] or jurisdiction is terminated under the provisions of 41-5-205.

1           **NEW SECTION. Section 3. Hearing -- court designation.** (1) When a prosecutor requests that a  
2 case be designated as an extended jurisdiction prosecution under [section 2(1)(a)], the court shall hold a  
3 hearing to consider the request.

4           (2) The hearing must be held within 30 days of the filing of the request unless good cause is  
5 shown by the prosecutor or the youth that the hearing should be held later, in which case the hearing must  
6 be held within 90 days of the request.

7           (3) If the prosecutor shows by clear and convincing evidence that designating the case as an  
8 extended jurisdiction prosecution serves public safety, the court may, within 15 days after the hearing,  
9 designate the case as an extended jurisdiction prosecution.

10          (4) An order designating a case as an extended jurisdiction prosecution is not appealable until after  
11 disposition under [section 4].

12  
13           **NEW SECTION. Section 4. Disposition in extended jurisdiction prosecutions.** (1) If a youth in an  
14 extended jurisdiction prosecution pleads guilty to or is found guilty of an offense described in [section  
15 2(1)(b)], the court shall:

16           (a) impose one or more juvenile dispositions under 41-5-523; and

17           (b) impose an adult criminal sentence, the execution of which must be stayed on the condition that  
18 the youth not violate the provisions of the disposition order and not commit a new offense. If the youth  
19 violates the conditions of the stay or commits a new offense, the adult criminal sentence must be executed  
20 as provided in [section 5].

21          (2) Except as provided in subsection (3), if a youth in an extended jurisdiction prosecution is  
22 convicted of an offense not described in [section 2(1)(b)], the court shall adjudicate the youth delinquent  
23 and order a disposition under 41-5-523.

24          (3) If a youth in an extended jurisdiction prosecution pleads guilty to an offense not described in  
25 [section 2(1)(b)], the court may impose, with the youth's consent, a disposition provided under subsection  
26 (1)(b). If the youth does not consent to disposition under subsection (1)(b), the court shall impose a  
27 disposition as provided under subsection (2).

28  
29           **NEW SECTION. Section 5. Execution of adult sentence -- exception -- transfer to district**  
30 **court.** (1) If a court has imposed on a youth an adult criminal sentence stayed under [section 4(1)(b)] and

1 the youth violates the conditions of the stay or is alleged to have committed a new offense, the court may,  
 2 without notice, direct that the youth be taken into immediate custody and revoke the stay. The court shall  
 3 notify the youth in writing of the reasons for the revocation.

4 (2) (a) If the youth challenges the reasons for the revocation, the court shall hold a summary  
 5 hearing at which the youth is entitled to be heard and represented by counsel.

6 (b) After the hearing, if the court finds by a preponderance of the evidence presented that the  
 7 conditions of the stay have been violated, the court shall:

8 (i) order execution of the sentence imposed under [section 4(1)(b)]; or

9 (ii) continue the stay and make written findings regarding the mitigating factors that justify  
 10 continuing the stay.

11 (3) If the stay of an adult sentence is revoked under this section, jurisdiction must be transferred  
 12 to district court for execution of the sentence, subject to 41-5-206(8) and (9).

13  
 14 **NEW SECTION. Section 6. Transfer to district court after prosecution -- disposition in district court**  
 15 **-- limitation on jurisdiction.** (1) To ensure continued compliance with the court's disposition under  
 16 41-5-523, at any time after a youth reaches 18 years of age but before the youth reaches 21 years of age,  
 17 the youth court judge may transfer jurisdiction to district court and order the department to transfer  
 18 supervisory responsibility and the youth's case files to the department of corrections and human services.

19 (2) If a youth whose case has been transferred to district court under this section violates a  
 20 disposition imposed under 41-5-523, the district court may impose conditions as provided under 46-18-201  
 21 through 46-18-203.

22 (3) If, at the time of transfer, the youth is incarcerated in a state youth correctional facility, the  
 23 district court may order that the youth, after reaching 18 years of age:

24 (a) be incarcerated in a state adult correctional facility, boot camp, or prerelease center; or

25 (b) be supervised by the department of corrections and human services.

26 (4) The district court's jurisdiction over a case transferred under this section terminates when the  
 27 youth reaches age 25 years of age.

28  
 29 **Section 7.** Section 41-5-206, MCA, is amended to read:

30 **"41-5-206. Transfer to criminal court prior to prosecution.** (1) After a petition has been filed

1 alleging delinquency, the court may, upon motion of the county attorney, before hearing the petition on its  
2 merits, transfer the matter of prosecution to the district court if:

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

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

- 10 (A) negligent homicide as defined in 45-5-104;
- 11 (B) arson as defined in 45-6-103;
- 12 (C) aggravated or felony assault as defined in 45-5-202;
- 13 (D) robbery as defined in 45-5-401;
- 14 (E) burglary or aggravated burglary as defined in 45-6-204;
- 15 (F) aggravated kidnapping as defined in 45-5-303;
- 16 (G) possession of explosives as defined in 45-8-335;
- 17 (H) criminal sale of dangerous drugs as defined in 45-9-101;
- 18 (I) criminal production or manufacture of dangerous drugs as defined in 45-9-110;
- 19 (J) attempt, as defined in 45-4-103, of any of the acts enumerated in subsections (1)(a)(ii)(A)  
20 through (1)(a)(ii)(I);

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

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

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

- 29 (i) the youth committed the delinquent act alleged;
- 30 (ii) the seriousness of the offense and the protection of the community require treatment of the

1 youth beyond that afforded by juvenile facilities; and

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

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

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

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

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

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

17 (5) The transfer terminates the jurisdiction of the youth court over the youth with respect to the  
18 acts alleged in the petition. A youth may not be prosecuted in the district court for a criminal offense  
19 originally subject to the jurisdiction of the youth court unless the case has been transferred as provided in  
20 this section. A case may be transferred to district court after prosecution as provided in [section 5] or  
21 [section 6].

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

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

26 (a) tried in youth court;

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

29 (8) If a youth is found guilty in district court of any of the offenses transferred by the youth court  
30 and is sentenced to the state prison, the commitment must be to the department of corrections and human

1 services. The department shall confine the youth in whatever institution it considers proper, including a  
 2 state youth correctional facility under the procedures of 52-5-111~~7~~. ~~however~~ However, ~~no~~ a youth under  
 3 16 years of age may not be confined in the state prison.

4 (9) A youth whose case is transferred to district court may not be detained or otherwise placed  
 5 in a jail or other adult detention facility before final disposition of ~~his~~ the case unless:

6 (a) alternative facilities do not provide adequate security; and

7 (b) the youth is kept in an area that provides physical, as well as sight and sound, separation from  
 8 adults accused or convicted of criminal offenses."

9

10 **Section 8.** Section 41-5-523, MCA, is amended to read:

11 **"41-5-523. Disposition -- sentence to correctional facility -- commitment to department --**  
 12 **placement and evaluation of youth -- restrictions.** (1) If a youth is found to be a delinquent youth or a  
 13 youth in need of supervision, the youth court may enter its judgment making ~~any~~ one or more of the  
 14 following dispositions:

15 (a) retain jurisdiction in a disposition provided under subsection (1)(b) or (1)(d);

16 (b) place the youth on probation;

17 ~~(b)(c)~~ subject to subsections (1)(n)(i), (2)(a), (2)(b), and (6), sentence a youth to one of the state  
 18 youth correctional facilities established under 52-5-101 and, as part of the sentence, deny the youth  
 19 eligibility for release without the express approval of the sentencing judge until the youth reaches 18 years  
 20 of age. A YOUTH MAY NOT BE SENTENCED TO A STATE YOUTH CORRECTIONAL FACILITY UNLESS  
 21 THE DEPARTMENT INFORMS THE JUDGE THAT SPACE IS AVAILABLE FOR THE YOUTH AT THAT  
 22 FACILITY. THE SENTENCING JUDGE MAY NOT PLACE LIMITATIONS ON THE RELEASE UNLESS THE  
 23 JUDGE HAS SOUGHT AND CONSIDERED RELEASE LIMITATIONS RECOMMENDED BY THE YOUTH  
 24 PLACEMENT COMMITTEE.

25 (d) require ~~the~~ A youth FOUND TO BE DELINQUENT to register as a sex offender pursuant to  
 26 46-18-254 and 46-23-506;

27 (e) place the youth in an in-state residence that ensures that the youth is accountable, provides  
 28 for rehabilitation, and protects the public. BEFORE PLACEMENT, THE SENTENCING JUDGE SHALL SEEK  
 29 AND CONSIDER PLACEMENT RECOMMENDATIONS FROM THE YOUTH PLACEMENT COMMITTEE. THE  
 30 JUDGE MAY NOT PLACE THE YOUTH IN AN IN-STATE RESIDENCE UNLESS THE DEPARTMENT INFORMS

1 THE JUDGE THAT SPACE IS RESOURCES ARE AVAILABLE FOR PLACEMENT OF THE YOUTH AT THAT  
 2 RESIDENCE.

3 (f) commit the youth to the department, ~~if the court determines that the youth is in need of~~  
 4 ~~placement in other than the youth's own home, provided that~~ In an order committing a youth to the  
 5 department:

6 (i) the court shall determine whether continuation in the YOUTH'S OWN home would be contrary  
 7 to the welfare of the youth and whether reasonable efforts have been made to prevent or eliminate the need  
 8 for removal of the youth from the youth's home; ~~The court shall include a determination in the order~~  
 9 ~~committing the youth to the department.~~

10 (ii) in the case of a delinquent youth who is determined by the court to be a serious juvenile  
 11 offender, the judge may specify that the youth be placed in a state youth correctional facility if the judge  
 12 finds that the placement is necessary for the protection of the public. The court may order the department  
 13 to notify the court within 5 working days before the proposed release of a youth from a youth correctional  
 14 facility. Once a youth is committed to the department for placement in a state youth correctional facility,  
 15 the department is responsible for determining an appropriate date of release into an appropriate placement.

16 ~~(e)(g)~~ order restitution by the youth or the youth's parents;

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

19 ~~(e)(i)~~ require the performance of community service;

20 ~~(f)(j)~~ require the youth, the youth's parents or guardians, or the persons having legal custody of  
 21 the youth to receive counseling services;

22 ~~(e)(k)~~ require the medical and psychological evaluation of the youth, the youth's parents or  
 23 guardians, or the persons having legal custody of the youth;

24 ~~(h)(l)~~ require the parents, guardians, or other persons having legal custody of the youth to furnish  
 25 services the court may designate;

26 ~~(f)(m)~~ order further care, treatment, evaluation, or relief that the court considers beneficial to the  
 27 youth and the community and that does not obligate funding from the department for services outside the  
 28 state of Montana without the department's approval, except that a youth may not be placed by a youth  
 29 court in a residential treatment facility as defined in 50-5-101. Only the department may, pursuant to  
 30 subsection ~~(f)(b)(1)(f)~~, place a youth in a residential treatment facility.



1           ~~(j)(n)~~ commit the youth to a mental health facility if, based upon the testimony of a professional  
2 person as defined in 53-21-102, the court finds that the youth is seriously mentally ill as defined in  
3 53-21-102. The youth is entitled to all rights provided by 53-21-114 through 53-21-119.

4           (i) A youth adjudicated mentally ill or seriously mentally ill as defined in 53-21-102 may not be  
5 committed or sentenced to a state youth correctional facility.

6           (ii) A youth adjudicated to be mentally ill or seriously mentally ill after placement ~~by the department~~  
7 in or sentencing to a state youth correctional facility must be moved to a more appropriate placement in  
8 response to the youth's mental health needs and consistent with the disposition alternatives available in  
9 53-21-127.

10          ~~(k)(o)~~ place the youth under home arrest as provided in Title 46, chapter 18, part 10.

11          (2) When a youth is committed to the department, the department shall determine the appropriate  
12 placement and rehabilitation program for the youth after considering the recommendations made under  
13 41-5-527 by the youth placement committee. Placement is subject to the following limitations:

14           (a) A youth in need of supervision or adjudicated delinquent for commission of an act that would  
15 not be a criminal offense if committed by an adult may not be placed in a state youth correctional facility.

16           (b) A youth may not be held in a state youth correctional facility for a period of time in excess of  
17 the maximum period of imprisonment that could be imposed on an adult convicted of the offense or  
18 offenses that brought the youth under the jurisdiction of the youth court. Nothing in this section limits the  
19 power of the department to enter into an aftercare agreement with the youth pursuant to 52-5-126.

20           (c) A youth may not be placed in or transferred to a penal institution or other facility used for the  
21 execution of sentence of adults convicted of crimes.

22          (3) A youth placed ~~by the department~~ in a state youth correctional facility or other facility or  
23 program operated by the department or who signs an aftercare agreement under 52-5-126 must be  
24 supervised by the department. A youth who is placed in any other placement by the department, the youth  
25 court, or the youth court's juvenile probation officer must be supervised by the probation officer of the  
26 youth court having jurisdiction over the youth under 41-5-205 whether or not the youth is committed to  
27 the department. Supervision by the youth probation officer includes but is not limited to:

28           (a) submitting information and documentation necessary for the person, committee, or team that  
29 is making the placement recommendation to determine an appropriate placement for the youth;

30           (b) securing approval for payment of special education costs from the youth's school district of

1 residence or the office of public instruction, as required in Title 20, chapter 7, part 4;

2 (c) submitting an application to a facility in which the youth may be placed; and

3 (d) case management of the youth.

4 (4) The youth court may order a youth to receive a medical or psychological evaluation at any time  
5 prior to final disposition if the youth waives the youth's constitutional rights in the manner provided for in  
6 41-5-303. The county determined by the court as the residence of the youth is responsible for the cost of  
7 the evaluation, except as provided in subsection (5). A county may contract with the department or other  
8 public or private agencies to obtain evaluation services ordered by the court.

9 (5) The youth court shall determine the financial ability of the youth's parents to pay the cost of  
10 an evaluation ordered by the court under subsection (4). If they are financially able, the court shall order  
11 the youth's parents to pay all or part of the cost of the evaluation.

12 (6) The youth court may not order placement or evaluation of a youth at a state youth correctional  
13 facility unless the youth is found to be a delinquent youth or is alleged to have committed an offense that  
14 is transferable to criminal court under 41-5-206.

15 (7) An evaluation of a youth may not be performed at the Montana state hospital unless the youth  
16 is transferred to the district court under 41-5-206, [section 5], or [section 6].

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

20 (9) Whenever the court commits a youth to the department, it shall transmit with the dispositional  
21 judgment copies of medical reports, social history material, education records, and any other clinical,  
22 predisposition, or other reports and information pertinent to the care and treatment of the youth.

23 (10) If a youth is committed to the department, the court shall examine the financial ability of the  
24 youth's parents or guardians to pay a contribution covering all or part of the costs for the care,  
25 commitment, and treatment of the youth, including the costs of necessary medical, dental, and other health  
26 care.

27 (11) If the court determines that the youth's parents or guardians are financially able to pay a  
28 contribution as provided in subsection (10), the court shall order the youth's parents or guardians to pay  
29 an amount based on the uniform child support guidelines adopted by the department of social and  
30 rehabilitation services pursuant to 40-5-209.

1 (12) (a) Except as provided in subsection (12)(b), contributions ordered under this section and each  
2 modification of an existing order are enforceable by immediate or delinquency income withholding, or both,  
3 under Title 40, chapter 5, part 4. An order for contribution that is inconsistent with this section is  
4 nevertheless subject to withholding for the payment of the contribution without need for an amendment  
5 of the support order or for any further action by the court.

6 (b) A court-ordered exception from contributions under this section must be in writing and be  
7 included in the order. An exception from the immediate income withholding requirement may be granted  
8 if the court finds there is:

9 (i) good cause not to require immediate income withholding; or

10 (ii) an alternative arrangement between the department and the person who is ordered to pay  
11 contributions.

12 (c) A finding of good cause not to require immediate income withholding must, at a minimum, be  
13 based upon:

14 (i) a written determination and explanation by the court of the reasons why the implementation of  
15 immediate income withholding is not in the best interests of the ~~child~~ youth; and

16 (ii) proof of timely payment of previously ordered support in cases involving modification of  
17 contributions ordered under this section.

18 (d) An alternative arrangement must:

19 (i) provide sufficient security to ensure compliance with the arrangement;

20 (ii) be in writing and be signed by a representative of the department and the person required to  
21 make contributions; and

22 (iii) if approved by the court, be entered into the record of the proceeding.

23 (13) Upon a showing of a change in the financial ability of the youth's parents or guardians to pay,  
24 the court may modify its order for the payment of contributions required under subsection (11).

25 (14) (a) If the court orders the payment of contributions under this section, the department shall  
26 apply to the department of social and rehabilitation services for support enforcement services pursuant to  
27 Title IV-D of the Social Security Act.

28 (b) The department of social and rehabilitation services may collect and enforce a contribution order  
29 under this section by any means available under law, including the remedies provided for in Title 40,  
30 chapter 5, parts 2 and 4."

1            **NEW SECTION.** **Section 9. Codification instruction.** (1) [Sections 1 through 5] are intended to  
2 be codified as an integral part of Title 41, chapter 5, and the provisions of Title 41, chapter 5, apply to  
3 [sections 1 through 5].

4            (2) [Section 6] is intended to be codified as an integral part of Title 41, chapter 5, part 2, and the  
5 provisions of Title 41, chapter 5, part 2, apply to [section 6].

6

7            **NEW SECTION.** **Section 10. Effective date.** [This act] is effective on passage and approval.

8

-END-