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House BILL NO. 540

INTRODUCED BY

Brad Malina

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE MONTANA YOUTH COURT ACT; AMENDING SECTIONS 7-32-2244, 39-71-117, 39-71-118, 39-71-774, 40-6-233, 41-3-102, 41-5-102, 41-5-103, 41-5-203, 41-5-204, 41-5-205, 41-5-206, 41-5-301, 41-5-304, 41-5-305, 41-5-306, 41-5-307, 41-5-313, 41-5-401, 41-5-403, 41-5-514, 41-5-521, 41-5-522, 41-5-523, 41-5-526, 41-5-527, 41-5-529, 41-5-533, 41-5-601, 41-5-604, 41-5-703, 41-5-802, 41-5-810, 41-5-811, 41-5-812, 41-5-1001, 41-5-1004, 52-5-129, 53-21-162, AND 53-21-506, MCA; AND REPEALING SECTIONS 41-5-106, 41-5-310, 41-5-311, AND 41-5-809, MCA."

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

Section 1. Section 7-32-2244, MCA, is amended to read:

"7-32-2244. Detention of juveniles. Juveniles may be held in a detention center only in accordance with 41-5-301 through 41-5-307, and 41-5-309, and ~~41-5-311.~~"

Section 2. Section 39-71-117, MCA, is amended to read:

"39-71-117. Employer defined. (1) "Employer" means:

(a) the state and each county, city and county, city school district, irrigation district, all other districts established by law, and all public corporations and quasi-public corporations and public agencies therein and every person, every prime contractor, and every firm, voluntary association, and private corporation, including any public service corporation and including an independent contractor who has any person in service under any appointment or contract of hire, expressed or implied, oral or written, and the legal representative of any deceased employer or the receiver or trustee ~~thereof~~ of the deceased employer;

(b) any association, corporation, or organization that seeks permission and meets the requirements set by the department by rule for a group of individual employers to operate as self-insured under plan No. 1 of this chapter; and

(c) any nonprofit association or corporation or other entity funded in whole or in part by federal, state, or local government funds that places community service participants, as defined in

1 39-71-118~~(1)(f)~~(1)(e), with nonprofit organizations or associations or federal, state, or local government
2 entities.

3 (2) A temporary service contractor is the employer of a temporary worker for premium and loss
4 experience purposes.

5 (3) An employer defined in subsection (1) who utilizes the services of a worker furnished by
6 another person, association, contractor, firm, or corporation, other than a temporary service contractor,
7 is presumed to be the employer for workers' compensation premium and loss experience purposes for work
8 performed by the worker. The presumption may be rebutted by substantial credible evidence of the
9 following:

10 (a) the person, association, contractor, firm, or corporation, other than a temporary service
11 contractor, furnishing the services of a worker to another retains control over all aspects of the work
12 performed by the worker, both at the inception of employment and during all phases of the work; and

13 (b) the person, association, contractor, firm, or corporation, other than a temporary service
14 contractor, furnishing the services of a worker to another has obtained workers' compensation insurance
15 for the worker in Montana both at the inception of employment and during all phases of the work
16 performed.

17 (4) Notwithstanding the provisions of subsection (3), an interstate or intrastate common or contract
18 motor carrier doing business in this state who utilizes drivers in this state is considered the employer, is
19 liable for workers' compensation premiums, and is subject to loss experience rating in this state unless:

20 (a) the driver in this state is certified as an independent contractor as provided in 39-71-401(3);
21 or

22 (b) the person, association, contractor, firm, or corporation furnishing drivers in this state to a
23 motor carrier has obtained workers' compensation insurance on the drivers in Montana both at the inception
24 of employment and during all phases of the work performed."

25

26 **Section 3.** Section 39-71-744, MCA, is amended to read:

27 "**39-71-744. Benefits not due while claimant is incarcerated -- exceptions.** (1) Except as provided
28 in subsection (2), a claimant is not eligible for disability or rehabilitation compensation benefits while the
29 claimant is incarcerated in a correctional institution, such as the Montana state prison or the Montana
30 women's correctional center, as the result of conviction of a felony. The insurer remains liable for medical

1 benefits. A time limit on benefits otherwise provided in this chapter is not extended due to a period of
2 incarceration.

3 (2) A person who is employed while participating in a prerelease center program or a diversionary
4 program is eligible for temporary total benefits as provided in 39-71-701 and medical benefits for a
5 work-related injury received while participating in a prerelease center program or a diversionary program.
6 Other disability or rehabilitation benefits are not payable while the worker is participating in a prerelease
7 center. This subsection does not prohibit the reinstatement of other benefits upon release from
8 incarceration, nor does it apply to an employee performing community service described in 39-71-118~~(1)(f)~~
9 (1)(e)."

10

11 **Section 4.** Section 39-71-118, MCA, is amended to read:

12 **"39-71-118. Employee, worker, and volunteer firefighter defined.** (1) The terms "employee" or
13 "worker" means:

14 (a) each person in this state, including a contractor other than an independent contractor, who is
15 in the service of an employer, as defined by 39-71-117, under any appointment or contract of hire,
16 expressed or implied, oral or written. The terms include aliens and minors, whether lawfully or unlawfully
17 employed, and all of the elected and appointed paid public officers and officers and members of boards of
18 directors of quasi-public or private corporations while rendering actual service for the corporations for pay.
19 Casual employees as defined by 39-71-116 are included as employees if they are not otherwise covered
20 by workers' compensation and if an employer has elected to be bound by the provisions of the
21 compensation law for these casual employments, as provided in 39-71-401(2). Household or domestic
22 service is excluded.

23 (b) ~~any juvenile performing work under authorization of a district court judge in a delinquency~~
24 ~~prevention or rehabilitation program;~~

25 ~~(c)~~ a person receiving on-the-job vocational rehabilitation training or other on-the-job training under
26 a state or federal vocational training program, whether or not under an appointment or contract of hire with
27 an employer as defined in this chapter and whether or not receiving payment from a third party. However,
28 this subsection does not apply to students enrolled in vocational training programs as outlined in this
29 subsection while they are on the premises of a public school or community college.

30 ~~(d)~~(c) students enrolled and in attendance in programs of vocational-technical education at

1 designated vocational-technical centers;

2 ~~(e)~~(d) an aircrew member or other person employed as a volunteer under 67-2-105;

3 ~~(f)~~(e) a person, ~~other than a juvenile as defined in subsection (1)(b)~~, performing community service
4 for a nonprofit organization or association or for a federal, state, or local government entity under a court
5 order, or an order from a hearings officer as a result of a probation or parole violation, whether or not under
6 appointment or contract of hire with an employer as defined in this chapter and whether or not receiving
7 payment from a third party. For a person covered by the definition in this subsection ~~(f)~~(1)(e):

8 (i) compensation benefits must be limited to medical expenses pursuant to 39-71-704 and an
9 impairment award pursuant to 39-71-703 that is based upon the minimum wage established under Title 39,
10 chapter 3, part 4, for a full-time employee at the time of the injury; and

11 (ii) premiums must be paid by the employer, as defined in 39-71-117(3), and must be based upon
12 the minimum wage established under Title 39, chapter 3, part 4, for the number of hours of community
13 service required under the order from the court or hearings officer.

14 ~~(g)~~(f) an inmate working in a federally certified prison industries program authorized under
15 53-1-301.

16 (2) The terms defined in subsection (1) do not include a person who is:

17 (a) participating in recreational activity and who at the time is relieved of and is not performing
18 prescribed duties, regardless of whether the person is using, by discount or otherwise, a pass, ticket,
19 permit, device, or other emolument of employment; or

20 (b) performing voluntary service at a recreational facility and who receives no compensation for
21 those services other than meals, lodging, or the use of the recreational facilities.

22 (3) The term "volunteer firefighter" means a firefighter who is an enrolled and active member of
23 a fire company organized and funded by a county, a rural fire district, or a fire service area.

24 (4) (a) If the employer is a partnership or sole proprietorship, the employer may elect to include as
25 an employee within the provisions of this chapter any member of the partnership or the owner of the sole
26 proprietorship devoting full time to the partnership or proprietorship business.

27 (b) In the event of an election, the employer must serve upon the employer's insurer written notice
28 naming the partners or sole proprietor to be covered and stating the level of compensation coverage desired
29 by electing the amount of wages to be reported, subject to the limitations in subsection (4)(d). A partner
30 or sole proprietor is not considered an employee within this chapter until notice has been given.

1 (c) A change in elected wages must be in writing and is effective at the start of the next quarter
2 following notification.

3 (d) All weekly compensation benefits must be based on the amount of elected wages, subject to
4 the minimum and maximum limitations of this subsection. For premium ratemaking and for the
5 determination of weekly wage for weekly compensation benefits, the electing employer may elect not less
6 than \$900 a month and not more than 1 1/2 times the average weekly wage as defined in this chapter.

7 (5) The trustees of a rural fire district, a county governing body providing rural fire protection, or
8 the county commissioners or trustees for a fire service area may elect to include as an employee within the
9 provisions of this chapter any volunteer firefighter. A volunteer firefighter who receives workers'
10 compensation coverage under this section may not receive disability benefits under Title 19, chapter 17.

11 (6) An employee or worker in this state whose services are furnished by a person, association,
12 contractor, firm, or corporation, other than a temporary service contractor, to an employer as defined in
13 39-71-117 is presumed to be under the control and employment of the employer. This presumption may
14 be rebutted as provided in 39-71-117(3).

15 (7) For purposes of this section, an "employee or worker in this state" means:

16 (a) a resident of Montana who is employed by an employer and whose employment duties are
17 primarily carried out or controlled within this state;

18 (b) a nonresident of Montana whose principal employment duties are conducted within this state
19 on a regular basis for an employer;

20 (c) a nonresident employee of an employer from another state engaged in the construction industry,
21 as defined in 39-71-116, within this state; or

22 (d) a nonresident of Montana who does not meet the requirements of subsection (7)(b) and whose
23 employer elects coverage with an insurer that allows an election for an employer whose:

24 (i) nonresident employees are hired in Montana;

25 (ii) nonresident employees' wages are paid in Montana;

26 (iii) nonresident employees are supervised in Montana; and

27 (iv) business records are maintained in Montana.

28 (8) An insurer may require coverage for all nonresident employees of a Montana employer who do
29 not meet the requirements of subsection (7)(b) or (7)(d) as a condition of approving the election under
30 subsection (7)(d)."

1 **Section 5.** Section 40-6-233, MCA, is amended to read:

2 **"40-6-233. Remedy for parental abuse.** The abuse of parental authority is the subject of judicial
3 cognizance in a civil action brought by the child or by its relative within the third degree or by the county
4 commissioners of the county where the child resides. When the abuse is established, the child may be freed
5 from the dominion of the parent and the duty of support and education enforced. A parent or guardian of
6 a child has the right to give the child or force the child to take prescribed medicine, and exercise of the right
7 is not an abuse of parental authority."

8

9 **Section 6.** Section 41-3-102, MCA, is amended to read:

10 **"41-3-102. Definitions.** As used in this chapter, the following definitions apply:

11 (1) "A person responsible for a child's welfare" means the child's parent, guardian, or foster parent;
12 a staff person providing care in a day-care facility; an employee of a public or private residential institution,
13 facility, home, or agency; or any other person legally responsible for the child's welfare in a residential
14 setting.

15 (2) "Abused or neglected" means the state or condition of a child who has suffered child abuse
16 or neglect.

17 (3) (a) "Adequate health care" means any medical care, including the prevention of the withholding
18 of medically indicated treatment or medically indicated psychological care permitted or authorized under
19 state law.

20 (b) ~~Nothing in this~~ This chapter may not be construed to require or justify a finding of child abuse
21 or neglect for the sole reason that a parent, due to religious beliefs, does not provide medical care for a
22 child. However, nothing in this chapter may be construed to limit the administrative or judicial authority of
23 the state to ensure that medical care is provided to the child when there is imminent or substantial risk of
24 harm to the child.

25 (4) "Child" or "youth" means any person under 18 years of age.

26 (5) (a) "Child abuse or neglect" means:

27 (i) harm to a child's health or welfare, as defined in subsection (8); or

28 (ii) threatened harm to a child's health or welfare, as defined in subsection (15).

29 (b) The term includes harm or threatened harm to a child's health or welfare by the acts or
30 omissions of a person responsible for the child's welfare.

1 (c) The term does not include what appears to be an extreme reaction to extreme circumstances,
2 such as self defense or defense of others, action taken to prevent the child from self harm, or normal
3 physical punishment or normal physical consequences of one's actions.

4 (6) "Department" means the department of family services provided for in 2-15-2401.

5 (7) "Dependent youth" means a youth:

6 (a) who is abandoned;

7 (b) who is without parents or guardian or not under the care and supervision of a suitable adult;

8 (c) who has no proper guidance to provide for necessary physical, moral, and emotional well-being;

9 (d) who is destitute;

10 (e) who is dependent upon the public for support; or

11 (f) whose parent or parents have voluntarily relinquished custody and whose legal custody has
12 been transferred to a licensed agency.

13 (8) "Harm to a child's health or welfare" means the harm that occurs whenever the parent or other
14 person responsible for the child's welfare:

15 (a) inflicts or allows to be inflicted upon the child physical or mental injury;

16 (b) commits or allows to be committed sexual abuse or exploitation of the child;

17 (c) causes failure to thrive or otherwise fails to supply the child with adequate food or fails to
18 supply clothing, ~~shelter~~, education, or adequate health care, though financially able to do so or offered
19 financial or other reasonable means to do so;

20 (d) abandons the child by leaving the child under circumstances that make reasonable the belief
21 that the parent or other person does not intend to resume care of the child in the future or by willfully
22 surrendering physical custody for a period of 6 months and during that period does not manifest to the child
23 and the person having physical custody of the child a firm intention to resume physical custody or to make
24 permanent legal arrangements for the care of the child; or

25 (e) is unknown and has been unknown for a period of 90 days and reasonable efforts to identify
26 and locate the parents have failed.

27 (9) "Limited emancipation" means a status conferred on a dependent youth by a court after a
28 dispositional hearing in accordance with 41-3-406 under which the youth is entitled to exercise some but
29 not all of the rights and responsibilities of a person who is 18 years of age or older.

30 (10) "Mental injury" means an identifiable and substantial impairment of the child's intellectual or

1 psychological functioning.

2 (11) "Physical injury" means death, permanent or temporary disfigurement, or impairment of any
3 bodily organ or function and includes death, permanent or temporary disfigurement, and impairment of a
4 bodily organ or function sustained as a result of excessive corporal punishment.

5 (12) "Sexual abuse" means the commission of sexual assault, sexual intercourse without consent,
6 indecent exposure, deviate sexual conduct, or incest, as described in Title 45, chapter 5, part 5.

7 (13) "Sexual exploitation" means allowing, permitting, or encouraging a child to engage in a
8 prostitution offense, as described in 45-5-601 through 45-5-603, or allowing, permitting, or encouraging
9 sexual abuse of children as described in 45-5-625.

10 (14) "Social worker" means an employee of the department whose duties generally involve the
11 provision of either child or adult protective services, or both.

12 (15) "Threatened harm to a child's health or welfare" means substantial risk of harm to the child's
13 health or welfare.

14 (16) "Withholding of medically indicated treatment" means the failure to respond to an infant's
15 life-threatening conditions by providing treatment ~~that~~ including appropriate nutrition, hydration, and
16 medication ~~that~~ that, in the treating physician's or physicians' reasonable medical judgment, will be most likely
17 to be effective in ameliorating or correcting the conditions. However, the term does not include the failure
18 to provide treatment ~~that~~ other than appropriate nutrition, hydration, or medication ~~that~~ to an infant when, in the
19 treating physician's or physicians' reasonable medical judgment:

20 (a) the infant is chronically and irreversibly comatose;

21 (b) the provision of treatment would:

22 (i) merely prolong dying;

23 (ii) not be effective in ameliorating or correcting all of the infant's life-threatening conditions; or

24 (iii) otherwise be futile in terms of the survival of the infant; or

25 (c) the provision of treatment would be virtually futile in terms of the survival of the infant and the
26 treatment itself under the circumstances would be inhumane. For purposes of this subsection, "infant"
27 means an infant less than 1 year of age or an infant 1 year of age or older who has been continuously
28 hospitalized since birth, who was born extremely prematurely, or who has a long-term disability. The
29 reference to less than 1 year of age may not be construed to imply that treatment should be changed or
30 discontinued when an infant reaches 1 year of age or to affect or limit any existing protections available

1 under state laws regarding medical neglect of children over 1 year of age.

2 (17) "Youth in need of care" means a youth who is dependent, abused, or neglected as defined
3 in this section."
4

5 **Section 7.** Section 41-5-102, MCA, is amended to read:

6 "**41-5-102. Declaration of purpose.** The Montana Youth Court Act ~~shall~~ must be interpreted and
7 construed to effectuate the following express legislative purposes:

8 (1) to preserve the unity and welfare of the family whenever possible and to provide for the care,
9 protection, and wholesome mental and physical development of a youth coming within the provisions of
10 the Montana Youth Court Act;

11 (2) to ~~remove from youth committing violations of the law the element of retribution and to~~
12 ~~substitute therefor~~ prevent and reduce youth delinquency through immediate, consistent, enforceable, and
13 avoidable consequences of youths' actions and to establish a program of supervision, care, rehabilitation,
14 detention, and, in appropriate cases, restitution as ordered by the youth court;

15 (3) to achieve the purposes of subsections (1) and (2) ~~of this section~~ in a family environment
16 whenever possible, separating the youth from ~~his~~ the parents only when necessary for the welfare of the
17 youth or for the safety and protection of the community;

18 (4) to provide judicial procedures in which the parties are assured a fair, accurate hearing and
19 recognition and enforcement of their constitutional and statutory rights."
20

21 **Section 8.** Section 41-5-103, MCA, is amended to read:

22 "**41-5-103. Definitions.** As used in the Montana Youth Court Act, unless the context requires
23 otherwise, the following definitions apply:

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

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

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

28 (4) "Correctional facility" means a public or private residential facility used for the placement of
29 delinquent youth or individuals convicted of criminal offenses.

30 (5) "Court", when used without further qualification, means the youth court of the district court.

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

3 (7) "Delinquent youth" means a youth:

4 (a) who has committed ~~an offense that, if committed by an adult, would constitute~~ a criminal
5 offense; or

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

8 (8) "Department" means the department of family services provided for in 2-15-2401.

9 (9) "Detention" means the holding or temporary placement of a youth in the youth's home under
10 home arrest or in a facility other than the youth's own home for the purpose of ensuring the continued
11 custody of the youth at any time after the youth is taken into custody and before final disposition of his
12 case.

13 (10) "Detention facility" means a shelter care facility or a physically restricting facility designed to
14 prevent a youth from departing at will and approved by the board of county commissioners of the county
15 in which the facility is located. The term includes a youth detention facility, short-term detention center,
16 and regional detention facility.

17 (11) "Final disposition" means the implementation of a court order for the disposition or placement
18 of a youth as provided in 41-5-523.

19 (12) "Foster home" means a private residence licensed by the department for placement of a youth.

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

22 (14) "Holdover" means a room, office, building, or other place approved by the board of ~~crime~~
23 ~~control~~ county commissioners of the county in which the holdover is located for the temporary detention
24 and supervision of youth in a physically unrestricting setting for a period not to exceed 24 hours while the
25 youth is awaiting a probable cause hearing, release, or transfer to an appropriate detention or shelter care
26 facility. The term does not include a jail.

27 (15) "Jail" means a facility used for the confinement of adults accused or convicted of criminal
28 offenses. The term includes a lockup or other facility used primarily for the temporary confinement of adults
29 after arrest.

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

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

3 (i) have physical custody of the youth;

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

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

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

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

9 (18) "Necessary parties" includes the youth, ~~his~~ and the youth's parents, guardian, custodian, or
10 spouse.

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

14 (20) "Probable cause hearing" means the hearing provided for in 41-5-303.

15 (21) "Regional detention facility" means a youth detention facility established and maintained by
16 two or more counties, as authorized in 41-5-811, and approved by the board of county commissioners of
17 each county.

18 (22) "Restitution" means payments in cash to the victim or with services to the victim or the
19 general community when these payments are made pursuant to an informal adjustment, consent decree,
20 or other youth court order.

21 (23) "Secure detention facility" means any public or private facility that is approved by the board
22 of county commissioners of the county in which it is located and that:

23 (a) is used for the temporary placement of youth or individuals accused or convicted of criminal
24 offenses; and

25 (b) is designed to physically restrict the movements and activities of youth or other individuals held
26 in lawful custody of the facility.

27 (24) "Serious juvenile offender" means a youth who has committed ~~an offense that would be~~
28 ~~considered~~ a felony offense ~~if committed by an adult and that is an offense~~ against a person, ~~an offense~~
29 ~~against~~ or property, ~~or an offense involving dangerous drugs.~~

30 (25) "Shelter care" means the temporary substitute care of youth in physically unrestricting

1 facilities.

2 (26) "Shelter care facility" means a facility approved by the board of county commissioners of the
3 county in which it is located and used for the shelter care of youth. The term is limited to the facilities
4 enumerated in 41-5-306(1).

5 (27) "Short-term detention center" means a detention facility ~~licensed by the department~~ approved
6 by the board of county commissioners of the county in which the detention center is located for the
7 temporary placement or care of youth, for a period not to exceed 96 hours, pending a probable cause
8 hearing, release, or transfer of the youth to an appropriate detention facility or shelter care facility.

9 (28) "State youth correctional facility" means a residential facility used for the placement and
10 rehabilitation of delinquent youth, such as the Pine Hills school in Miles City and the Mountain View school
11 in Helena.

12 (29) "Substitute care" means full-time care of youth in a residential setting for the purpose of
13 providing food, shelter, security and safety, guidance, direction, and, if necessary, treatment to youth who
14 are removed from or are without the care and supervision of their parents or guardian.

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

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

20 (32) "Youth detention facility" means a secure detention facility ~~licensed by the department~~
21 approved by the board of county commissioners of the county in which the detention facility is located
22 the temporary substitute care of youth that:

23 (a) is operated, administered, and staffed separately and independently of a jail; and

24 (b) is used exclusively for the lawful detention of alleged or adjudicated delinquent youth.

25 (33) "Youth in need of care" has the meaning provided for in 41-3-102.

26 (34) "Youth in need of supervision" means a youth who commits an offense prohibited by law that,
27 if committed by an adult, would not constitute a criminal offense, including but not limited to a youth who:

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

29 (b) continues to exhibit behavior beyond the control of ~~his~~ the youth's parents, foster parents,
30 physical custodian, or guardian despite the attempt of ~~his~~ the parents, foster parents, physical custodian,

1 or guardian to exert all reasonable efforts to mediate, resolve, or control the youth's behavior; or

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

4
5 **Section 9.** Section 41-5-203, MCA, is amended to read:

6 **"41-5-203. Jurisdiction of the court courts.** (1) ~~Except as provided in subsection (2), the~~ The court
7 has exclusive original jurisdiction of all proceedings under the Montana Youth Court Act in which a youth
8 is alleged to be a delinquent youth, a youth in need of supervision, or a youth in need of care ~~or concerning~~
9 ~~any person under 21 years of age charged with having violated any law of the state or ordinance of any~~
10 ~~city or town other than a traffic or fish and game law prior to having become 18 years of age.~~

11 (2) Justice, municipal, ~~and city, and district~~ courts have ~~concurrent~~ jurisdiction ~~with the youth court~~
12 ~~over all alcoholic beverage and gambling violations alleged to have been committed by a youth~~ a person
13 under 21 years of age who is charged with a violation of any state criminal or other law or municipal
14 ordinance to the extent that the statutes relating to those courts in Title 3 and other titles give them
15 jurisdiction over the violation charged."

16
17 **Section 10.** Section 41-5-204, MCA, is amended to read:

18 **"41-5-204. Venue and transfer.** (1) The county where a youth is a resident or is alleged to have
19 violated the law has initial jurisdiction over any youth alleged to be a delinquent youth. The youth court
20 shall assume the initial handling of the case.

21 (2) The county where a youth is a resident has initial jurisdiction over any youth alleged to be a
22 youth in need of supervision or a youth in need of care. The youth court of that county shall assume the
23 initial handling of the case. Transfers of venue may be made to any of the following counties in the state:

- 24 (a) the county in which the youth is apprehended or found;
25 (b) the county in which the youth is alleged to have violated the law; or
26 (c) the county of residence of the youth's parents or guardian.

27 (3) In the case of a youth alleged to be a youth in need of supervision or a youth in need of care,
28 a change of venue may be ordered at any time by the concurrence of the youth court judges of both
29 counties in order to assure a fair, impartial, and speedy hearing and final disposition of the case.

30 ~~(4) In the case of a youth 16 years of age or older who is accused of one of the serious offenses~~

1 ~~listed in 41-5-206, the court in the county where the offense occurred shall serve as a transfer hearing~~
 2 ~~court, and if the youth is to be tried in district court, the charge shall be filed and trial held in the district~~
 3 ~~court of the county where the offense occurred."~~

4

5 **Section 11.** Section 41-5-205, MCA, is amended to read:

6 **"41-5-205. Retention of jurisdiction.** Once a court obtains jurisdiction over a youth, the court
 7 retains jurisdiction unless terminated by the court or by mandatory termination in the following cases:

8 ~~(1) at the time the proceedings are transferred to adult criminal court;~~

9 ~~(2)(1) at the time the youth is discharged by the department; and~~

10 (2) at the time the youth is transferred to the department of corrections and human services; and

11 (3) in any event, at the time the youth reaches the age of 21 years."

12

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

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

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

22 ~~(iii) the youth charged was 16 years of age or more at the time of the conduct alleged to be~~
 23 ~~unlawful and the unlawful act is one or more of the following:~~

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

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

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

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

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

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

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

- 1 ~~(H) criminal sale of dangerous drugs as defined in 45-9-101;~~
- 2 ~~(I) criminal production or manufacture of dangerous drugs as defined in 45-9-110;~~
- 3 ~~(J) attempt, as defined in 45-4-103, of any of the acts enumerated in subsections (1)(a)(ii)(A)~~
- 4 ~~through (1)(a)(iii)(I);~~
- 5 ~~(b) a hearing on whether the transfer should be made is held in conformity with the rules on a~~
- 6 ~~hearing on a petition alleging delinquency, except that the hearing will be conducted by the youth court~~
- 7 ~~without a jury;~~
- 8 ~~(c) notice in writing of the time, place, and purpose of the hearing is given to the youth, his~~
- 9 ~~counsel, and his parents, guardian, or custodian at least 10 days before the hearing; and~~
- 10 ~~(d) the court finds upon the hearing of all relevant evidence that there is probable cause to believe~~
- 11 ~~that:~~
- 12 ~~(i) the youth committed the delinquent act alleged;~~
- 13 ~~(ii) the seriousness of the offense and the protection of the community require treatment of the~~
- 14 ~~youth beyond that afforded by juvenile facilities; and~~
- 15 ~~(iii) the alleged offense was committed in an aggressive, violent, or premeditated manner.~~
- 16 ~~(2) In transferring the matter of prosecution to the district court, the court may also consider the~~
- 17 ~~following factors:~~
- 18 ~~(a) the sophistication and maturity of the youth, determined by consideration of the youth's home,~~
- 19 ~~environmental situation, and emotional attitude and pattern of living;~~
- 20 ~~(b) the record and previous history of the youth, including previous contacts with the youth court,~~
- 21 ~~law enforcement agencies, youth courts in other jurisdictions, prior periods of probation, and prior~~
- 22 ~~commitments to juvenile institutions. However, lack of a prior juvenile history with youth courts will not~~
- 23 ~~of itself be grounds for denying the transfer.~~
- 24 ~~(3) The court shall grant the motion to transfer if the youth was 16 years old or older at the time~~
- 25 ~~of the conduct alleged to be unlawful and the unlawful act would constitute is deliberate homicide as~~
- 26 ~~defined in 45-5-102, mitigated deliberate homicide as defined in 45-5-103, or the attempt, as defined in~~
- 27 ~~45-4-103, of either deliberate or mitigated deliberate homicide if the act had been committed by an adult.~~
- 28 ~~(4) Upon transfer to district court, the judge shall make written findings of the reasons why the~~
- 29 ~~jurisdiction of the youth court was waived and the case transferred to district court.~~
- 30 ~~(5) The transfer terminates the jurisdiction of the youth court over the youth with respect to the~~

1 ~~acts alleged in the petition. A youth may not be prosecuted in the district court for a criminal offense~~
 2 ~~originally subject to the jurisdiction of the youth court unless the case has been transferred as provided in~~
 3 ~~this section.~~

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

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

8 ~~(a) tried in youth court;~~

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

11 ~~(8) If a youth is found guilty in district court of any of the offenses transferred by the youth court~~
 12 ~~and is sentenced to the state prison, the commitment must be to the department of corrections and human~~
 13 ~~services. The department shall confine the youth in whatever institution it considers proper, including a~~
 14 ~~state youth correctional facility under the procedures of 52-5-111; however, no youth under 16 years of~~
 15 ~~age may be confined in the state prison.~~

16 (1) (a) A youth's first violation of a state criminal or other law or municipal ordinance may be
 17 handled by the probation officer under part 4 of this chapter or the probation officer may refer the youth
 18 to the county attorney, who may either file a petition in the youth court or file a criminal complaint or other
 19 appropriate proceeding in a court having jurisdiction over the violation. The youth must be tried as an adult.

20 (b) Upon a second or subsequent violation, the county attorney may file a petition, complaint, or
 21 other proceeding as provided in subsection (1)(a).

22 ~~(9)(2) A youth whose case is transferred to district court who is charged with a crime may not be~~
 23 ~~detained or otherwise placed in a jail, prison, or other adult detention facility before or after final disposition~~
 24 ~~of his the case unless:~~

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

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

28

29 **Section 13.** Section 41-5-301, MCA, is amended to read:

30 **"41-5-301. Preliminary investigation and disposition.** (1) Whenever the court receives information

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

4 (2) The probation officer may:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (b) provide for treatment or adjustment involving probation or other disposition authorized under
27 41-5-401 through 41-5-403, provided ~~such~~ the treatment or adjustment is voluntarily accepted by the
28 youth's parents or guardian and the youth, and provided further that ~~said~~ the matter is referred immediately
29 to the county attorney for review and that the probation officer proceed no further unless authorized by
30 the county attorney or a youth placement committee, whichever is appropriate; or

1 (c) refer the matter to the county attorney for filing a petition charging the youth to be a delinquent
2 youth or a youth in need of supervision or for filing a complaint or other proceeding under 41-5-206.

3 (6) The county attorney may either:

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

8 (b) file a complaint or other proceeding under 41-5-206.

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

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

18
19 **Section 14.** Section 41-5-304, MCA, is amended to read:

20 **"41-5-304. Investigation, fingerprints, and photographs.** (1) All law enforcement investigations
21 relating to a delinquent youth or youth in need of supervision must be conducted in accordance with this
22 chapter and Title 46.

23 (2) A youth may be fingerprinted or photographed for criminal identification purposes:

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

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

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

29 (3) Fingerprint records and photographs may be used by the department of justice or any law
30 enforcement agency in the judicial district for comparison and identification purposes in any other

1 investigation."

2

3 **Section 15.** Section 41-5-305, MCA, is amended to read:

4 **"41-5-305. Criteria for placement of youth in secure detention facilities or shelter care facilities.**

5 (1) A youth may not be placed in a secure detention facility unless:

6 (a) ~~he~~ the youth has allegedly committed ~~an act that if committed by an adult would constitute a~~
7 criminal offense ~~and the alleged offense is one~~ specified in 41-5-206;

8 (b) ~~he~~ the youth is alleged to be a delinquent youth and:

9 (i) ~~he~~ the youth has escaped from a shelter care facility, correctional facility, or secure detention
10 facility;

11 (ii) ~~he~~ the youth has violated a valid court order or an aftercare agreement;

12 (iii) ~~his~~ the youth's detention is required to protect persons or property;

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

15 (v) there are not adequate assurances that ~~he~~ the youth will appear for court when required; or

16 (vi) ~~he~~ the youth meets additional criteria for secure detention established by the youth court in
17 the judicial district that has current jurisdiction ~~over him~~; or

18 (c) ~~he~~ the youth has been adjudicated delinquent and is awaiting final disposition of ~~his~~ the case.

19 (2) A youth may not be placed in a shelter care facility unless:

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

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

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

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

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

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

29

30 **Section 16.** Section 41-5-306, MCA, is amended to read:

1 **"41-5-306. Place of shelter care or detention.** (1) After a probable cause hearing provided for in
2 41-5-303, a youth alleged to be a youth in need of supervision may be placed only:

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

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

5 (c) in a licensed youth group home as defined in 41-3-1102; or

6 (d) under home arrest, either in the youth's own home or in one of the facilities described in
7 subsections (1)(a) through (1)(c), as provided in Title 46, chapter 18, part 10.

8 (2) A youth alleged to be a youth in need of care may be placed only in the facilities listed in
9 subsection (1), must be segregated from juvenile offenders, and may not be placed in a jail or other facility
10 intended or used for the confinement of adults accused or convicted of criminal offenses.

11 (3) After a probable cause hearing provided for in 41-5-303, a youth alleged to be a delinquent
12 youth may be placed only in:

13 (a) the facilities described in subsection (1);

14 (b) under home arrest as provided in subsection (1);

15 (c) a short-term detention center; or

16 (d) a youth detention facility."
17

18 **Section 17.** Section 41-5-307, MCA, is amended to read:

19 **"41-5-307. Release or delivery from custody.** (1) Whenever a peace officer believes, on reasonable
20 grounds, that a youth can be released to a person who has custody of the youth, then the peace officer
21 may release the youth to that person upon receiving a written promise from the person to bring the youth
22 before the probation officer at a time and place specified in the written promise, or a peace officer may
23 release the youth under any other reasonable circumstances.

24 (2) Whenever the peace officer believes, on reasonable grounds, that the youth must be detained,
25 the peace officer shall notify the probation officer immediately and shall, as soon as practicable, provide
26 the probation officer with a written report of ~~his~~ the reasons for holding the youth in detention. If it is
27 necessary to hold the youth pending appearance before the youth court, then the youth must be held in
28 a place of detention approved by the ~~youth court~~ board of county commissioners. If the peace officer
29 believes that the youth must be sheltered, the peace officer shall notify the probation officer immediately
30 and shall provide a written report of ~~his~~ the reasons for placing the youth in shelter care. If the youth is

1 then held, the youth must be placed in a shelter care facility approved by the ~~youth court~~ board of county
 2 commissioners."

3

4 **Section 18.** Section 41-5-313, MCA, is amended to read:

5 **"41-5-313. Permitted acts -- detention of youth in law enforcement facilities -- criteria.** ~~(1) Nothing~~
 6 ~~in this~~ This chapter ~~precludes~~ does not include the detention of youth in a police station or other law
 7 enforcement facility that is attached to or part of a jail ~~if:~~

8 ~~(a) the area where the youth is held is an unlocked, multipurpose area, such as a lobby, office,~~
 9 ~~interrogation room, or other area that is not designated or used as a secure detention area or that is not~~
 10 ~~part of a secure detention area, or, if part of such an area, that is used only for the purpose of processing,~~
 11 ~~such as a booking room;~~

12 ~~(b) the youth is not secured to a cuffing rail or other stationary object during the period of~~
 13 ~~detention;~~

14 ~~(c) use of the area is limited to ensuring custody of the youth for the purpose of identification,~~
 15 ~~processing, or transfer of the youth to an appropriate detention or shelter care facility;~~

16 ~~(d) the area is not designed or intended to be used for residential purposes; and~~

17 ~~(e) the youth is under continuous visual supervision by a law enforcement officer or by facility staff~~
 18 ~~during the period of time that the youth is held in detention.~~

19 ~~(2) For purposes of this section, "secure detention" means the detention of youth or confinement~~
 20 ~~of adults accused or convicted of criminal offenses in a physically restricting setting, including but not~~
 21 ~~limited to a locked room or set of rooms or a cell designed to prevent a youth or adult from departing at~~
 22 ~~will."~~

23

24 **Section 19.** Section 41-5-401, MCA, is amended to read:

25 **"41-5-401. Consent adjustment without petition.** (1) Before a petition is filed, the probation officer
 26 may enter into an informal adjustment and give counsel and advice to the youth and other interested parties
 27 if it appears:

28 (a) the admitted facts bring the case within the jurisdiction of the court;

29 (b) counsel and advice without filing a petition would be in the best interests of the ~~child~~ youth,
 30 the youth's family, and the public; and

1 (c) the youth may be a youth in need of supervision and if the probation officer believes that the
 2 parents, foster parents, physical custodian, or guardian exerted all reasonable efforts to mediate, resolve,
 3 or control the youth's behavior and the youth continues to exhibit behavior beyond the control of the
 4 parents, foster parents, physical custodian, or guardian.

5 (2) Any probation or other disposition imposed under this section against any youth must conform
 6 to the following procedures:

7 (a) Every consent adjustment ~~shall~~ must be reduced to writing and signed by the youth and ~~his~~ the
 8 youth's parents or the person having legal custody of the youth.

9 (b) If the probation officer believes the youth is a youth in need of supervision, the probation officer
 10 shall determine that the parents, foster parents, physical custodian, or guardian exerted all reasonable
 11 efforts to mediate, resolve, or control the youth's behavior and the youth continues to exhibit behavior
 12 beyond the control of the parents, foster parents, physical custodian, or guardian.

13 (c) Approval by the youth court judge is required if the complaint alleges commission of a felony
 14 or if the youth has been or will be in any way detained.

15 (d) If a placement of the youth is made, it must be by the youth placement committee pursuant
 16 to 41-5-526 and 41-5-527."

17
 18 **Section 20.** Section 41-5-403, MCA, is amended to read:

19 **"41-5-403. Disposition permitted under informal adjustment -- contributions by parents or guardians**
 20 **for youth's care.** (1) The following dispositions may be imposed by informal adjustment:

21 (a) probation;

22 (b) placement of the youth in substitute care in a youth care facility, as defined in 41-3-1102, and
 23 as determined by the department;

24 (c) placement of the youth with a private agency responsible for the care and rehabilitation of the
 25 youth as determined by the department;

26 (d) restitution upon approval of the youth court judge;

27 (e) placement of the youth under home arrest as provided in Title 46, chapter 18, part 10.

28 (2) In determining whether restitution is appropriate in a particular case, the following factors may
 29 be considered in addition to any other evidence:

30 (a) age of the youth;

1 (b) ability of the youth to pay;

2 (c) ability of ~~the parents or legal guardian~~ persons contributing to the youth's delinquency or need
3 for supervision to pay;

4 (d) amount of damage to the victim; and

5 (e) legal remedies of the victim; ~~however~~ However, the ability of the victim or ~~his~~ the victim's
6 insurer to stand any loss may not be considered in any case.

7 (3) If the youth violates an aftercare agreement as provided for in 52-5-126, ~~he~~ the youth must
8 be returned to the court for further disposition. A youth may not be placed in a state youth correctional
9 facility under informal adjustment.

10 (4) If the youth is placed in substitute care requiring payment by the department, the court shall
11 examine the financial ability of the youth's parents or guardians to pay a contribution covering all or part
12 of the costs for the care, placement, and treatment of the youth, including the costs of necessary medical,
13 dental, and other health care.

14 (5) If the court determines that the youth's parents or guardians are financially able to pay a
15 contribution as provided in subsection (4), the court shall order the youth's parents or guardians to pay an
16 amount based on the uniform child support guidelines adopted by the department of social and rehabilitation
17 services pursuant to 40-5-209.

18 (6) (a) Except as provided in subsection (6)(b), contributions ordered under this section and each
19 modification of an existing order are enforceable by immediate or delinquency income withholding, or both,
20 under Title 40, chapter 5, part 4. An order for contribution that is inconsistent with this section is
21 nevertheless subject to withholding for the payment of the contribution without need for an amendment
22 of the support order or for any further action by the court.

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

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

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

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

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

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

5 (d) An alternative arrangement must:

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

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

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

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

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

16
17 **Section 21.** Section 41-5-514, MCA, is amended to read:

18 **"41-5-514. Admissibility of confession or illegally seized evidence.** In a proceeding alleging a youth
19 to be a delinquent youth:

20 (1) an extrajudicial statement that would be constitutionally inadmissible in a criminal matter may
21 not be received in evidence;

22 (2) evidence illegally seized or obtained may not be received in evidence to establish the allegations
23 of a petition against a youth; ~~and~~

24 (3) an extrajudicial admission or confession made by the youth out of court is insufficient to
25 support a finding that the youth committed the acts alleged in the petition unless it is corroborated by other
26 evidence; and

27 (4) the court may order the youth to undergo urinalysis for the purpose of determining whether the
28 youth is using alcoholic beverages or illegal drugs."

29
30 **Section 22.** Section 41-5-521, MCA, is amended to read:

1 **"41-5-521. Adjudicatory hearing.** (1) Prior to any adjudicatory hearing, the court shall determine
2 whether the youth admits or denies the offenses alleged in the petition. If the youth denies all offenses
3 alleged in the petition, the youth, ~~his~~ or the youth's parent, guardian, or attorney may demand a jury trial
4 on ~~such~~ the contested offenses. In the absence of ~~such~~ a demand, a jury trial is waived. If the youth denies
5 some offenses and admits others, the contested offenses may be dismissed in the discretion of the youth
6 court judge. The adjudicatory hearing ~~shall~~ must be set immediately and accorded a preferential priority.

7 (2) An adjudicatory hearing ~~shall~~ must be held to determine whether the contested offenses are
8 supported by proof beyond a reasonable doubt in cases involving a youth alleged to be delinquent or in
9 need of supervision. If the hearing is before a jury, the jury's function ~~shall be~~ is to determine whether the
10 youth committed the contested offenses. If the hearing is before the youth court judge without a jury, the
11 judge shall make and record ~~his~~ findings on all issues. If the allegations of the petitions are not established
12 at the hearing, the youth court shall dismiss the petition and discharge the youth from custody. The
13 petition and affidavits may not contain allegations against the youth or other persons unless they have been
14 admitted or proven.

15 (3) An adjudicatory hearing ~~shall~~ must be recorded verbatim by whatever means the court
16 considers appropriate.

17 (4) The youth charged in a petition must be present at the hearing and, if brought from detention
18 to the hearing, may not appear clothed in institutional clothing.

19 (5) In a hearing on a petition under this section, the general public may not be excluded when the
20 hearing is held on a contested offense to which publicity must be allowed under subsection (2) of
21 41-5-601.

22 (6) If, on the basis of a valid admission by a youth of the allegations of the petition or after the
23 hearing required by this section, a youth is found to be a delinquent youth or a youth in need of
24 supervision, the court shall schedule a dispositional hearing under this chapter.

25 (7) When a jury trial is required in a case, it may be held before a jury selected as provided in Title
26 25, chapter 7, part 2, and M.R.Civ.P., Rule 47."

27
28 **Section 23.** Section 41-5-522, MCA, is amended to read:

29 **"41-5-522. Dispositional hearing.** (1) As soon as practicable after a youth is found to be a
30 delinquent youth or a youth in need of supervision, the court shall conduct a dispositional hearing. The

1 dispositional hearing may involve a determination of the financial ability of the youth's parents or guardians
2 to pay a contribution for the cost of care, commitment, and treatment of the youth as required in 41-5-523.

3 (2) Before conducting the dispositional hearing, the court shall direct that a social summary or
4 predisposition report be made in writing by a probation officer concerning the youth, ~~his~~ the youth's family,
5 ~~his~~ the youth's environment, and other matters relevant to the need for care or rehabilitation or disposition
6 of the case. The youth court may have the youth examined, and the results of the examination ~~shall~~ must
7 be made available to the court as part of the social summary or predisposition report. The court may order
8 the examination of a parent or guardian whose ability to care for or supervise a youth is at issue before the
9 court. The results of ~~such the~~ the examination ~~shall~~ must be included in the social summary or predisposition
10 report. The youth, ~~his~~ or the youth's parents, guardian, or counsel ~~shall have~~ has the right to subpoena all
11 persons who have prepared any portion of the social summary or predisposition report and ~~shall have~~ has
12 the right to cross-examine ~~said the~~ the parties at the dispositional hearing.

13 (3) Defense counsel ~~shall~~ must be furnished with a copy of the social summary or predisposition
14 report and psychological report prior to the dispositional hearing.

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

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

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

- 24 (a) age of the youth;
- 25 (b) ability of the youth to pay;
- 26 (c) ability of ~~the parents or legal guardian~~ those that contributed to the youth's delinquency or need
27 for supervision to pay;
- 28 (d) amount of damage to the victim; and
- 29 (e) legal remedies of the victim; ~~however~~ However, the ability of the victim or ~~his~~ the victim's
30 insurer to stand any loss may not be considered in any case."

1 **Section 24.** Section 41-5-523, MCA, is amended to read:

2 **"41-5-523. Disposition -- commitment to department -- placement and evaluation of youth --**
3 **restrictions.** (1) ~~If Except as provided in subsection (15), if~~ a youth is found to be a delinquent youth or a
4 youth in need of supervision, the youth court may enter its judgment making any of the following
5 dispositions:

6 (a) place the youth on probation;

7 (b) commit the youth to the department if the court determines that the youth is in need of
8 placement in other than the youth's own home, provided that:

9 (i) the court shall determine whether continuation in the home would be contrary to the welfare
10 of the youth, the youth's family, and the community and whether reasonable efforts have been made to
11 prevent or eliminate the need for removal of the youth from the youth's home. The court shall include a
12 determination in the order committing the youth to the department.

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

19 (c) order restitution by the youth or the youth's parents;

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

22 (e) require the performance of community service;

23 (f) require the youth, the youth's parents or guardians, or the persons having legal custody of the
24 youth to receive counseling services;

25 (g) require the medical and psychological evaluation of the youth, the youth's parents or guardians,
26 or the persons having legal custody of the youth;

27 (h) require the parents, guardians, or other persons having legal custody of the youth to furnish
28 services the court may designate;

29 (i) order further care, treatment, evaluation, or relief that the court considers beneficial to the
30 youth, the youth's family, and the community and that does not obligate funding from the department

1 without the department's approval, except that a youth may not be placed by a youth court in a residential
 2 treatment facility as defined in 50-5-101. Only the department may, pursuant to subsection (1)(b), place
 3 a youth in a residential treatment facility.

4 (j) commit the youth to a mental health facility if, based upon the testimony of a professional
 5 person as defined in 53-21-102, the court finds that the youth is seriously mentally ill as defined in
 6 53-21-102. The youth is entitled to all rights provided by 53-21-114 through 53-21-119. A youth
 7 adjudicated ~~mentally ill or seriously mentally ill as defined in 53-21-102 may not be committed to a state~~
 8 ~~youth correctional facility. A youth adjudicated to be mentally ill or seriously mentally ill to have a mental~~
 9 disease or defect that renders the youth unable to appreciate the criminality of the youth's behavior or
 10 unable to conform the youth's behavior to the requirements of law after placement by the department in
 11 a state youth correctional facility must be moved to a more appropriate placement in response to the
 12 youth's mental health needs and consistent with the disposition alternatives available in 53-21-127.

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

14 (2) When a youth is committed to the department, the department shall determine the appropriate
 15 placement and rehabilitation program for the youth after considering the recommendations made under
 16 41-5-527 by the youth placement committee. Placement is subject to the following limitations:

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

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

24 ~~(e)(b)~~ A youth may ~~not~~ be placed in or transferred to a penal institution or other facility used for
 25 the execution of sentence of adults convicted of crimes.

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

1 the department. Supervision by the youth probation officer includes but is not limited to:

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

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

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

7 (d) case management of the youth.

8 (4) The youth court may order a youth to receive a medical or psychological evaluation at any time
9 prior to final disposition if the youth waives the youth's constitutional rights in the manner provided for in
10 41-5-303. The county determined by the court as the residence of the youth is responsible for the cost of
11 the evaluation, except as provided in subsection (5). A county may contract with the department or other
12 public or private agencies to obtain evaluation services ordered by the court.

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

16 (6) The youth court may not order placement or evaluation of a youth at a state youth correctional
17 facility unless the youth is found to be a delinquent youth or is alleged to have committed ~~an~~ a violent
18 felony offense that is transferable to criminal court under 41-5-206 as defined in 46-18-1001.

19 (7) An evaluation of a youth may ~~not~~ be performed at the Montana state hospital ~~unless the youth~~
20 ~~is transferred to the district court under 41-5-206.~~

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

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

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

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

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

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

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

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

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

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

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

22 (d) An alternative arrangement must:

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

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

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

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

29 (14) (a) If the court orders the payment of contributions under this section, the department shall
30 apply to the department of social and rehabilitation services for support enforcement services pursuant to

1 Title IV-D of the Social Security Act.

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

5 (15)(a) A misdemeanor counts as one point and a felony counts as three points. An offense that
6 can be committed only by a person only because of age counts as one point. A youth found to have
7 accumulated three points must be placed in a secure detention facility for 1 week. Upon accumulating six
8 points, a youth must be placed in a secure detention facility for 2 weeks, and upon accumulating nine
9 points a youth must be placed in a secure detention facility for 30 days. The staff of the secure detention
10 facility must be trained in and give the youth counseling. The youth must be segregated from other youth,
11 except when working on public works projects. Each county shall establish public works projects for the
12 youth.

13 (b) Upon accumulating 10 points, a youth must be designated as a "habitual offender" and must
14 be placed in a state youth correctional facility for no less than 90 days.

15 (c) If the court finds that a habitual offender commonly entices or assists other youth to perform
16 illegal acts, the youth must be designated as a "predatory youth" and must be placed in a state youth
17 correctional facility for no less than 180 days.

18 (d) Law enforcement, educational, and social service agencies, the court, and other agencies and
19 entities involved with a youth who is found by the court or believed by the agency or entity to be a
20 delinquent youth or a youth in need of supervision shall provide the chief youth court probation officer for
21 the county in which the youth resides with any information in the possession of the agency or entity that
22 may indicate that the youth is a habitual offender, a predatory youth, or a youth at risk.

23 (16) If a youth who is serving time in a state youth correctional facility because the youth was
24 found to be a habitual offender or a predatory youth needs and is willing to accept treatment for mental,
25 emotional, behavioral, substance abuse, or similar problems, the youth may be transferred to a residential
26 treatment facility, but not until after the youth has served at least one-half of the imposed detention period.

27 (17) Health, education, welfare, and other agencies involved with the youth shall ensure that
28 funding for the youth follows the youth to the location in which the youth is placed and that the funding
29 is assigned to the appropriate agency or entity.

30 (18) Before a youth is released from a state youth correctional facility, the department shall adopt

1 and the court shall approve a written supervision plan.

2 (19)(a) If the youth is still subject to the court's jurisdiction and to supervision under the disposition
3 when the youth becomes 21 years of age, this chapter ceases to apply to the youth and jurisdiction over
4 the youth is transferred to the department of corrections and human services, which shall make an
5 appropriate placement and shall supervise the youth. The youth may not be placed and supervised for a
6 period of time in excess of the maximum period of imprisonment that could be imposed on an adult
7 convicted of the offense or offenses that brought the youth under the jurisdiction of the youth court.

8 (b) When a youth is transferred to the department of corrections and human services, the
9 department of family services shall transmit to the department of corrections and human services the
10 dispositional judgment, copies of medical reports, social history material, education records, and any other
11 clinical, predisposition, or other reports and information pertinent to the care and treatment of the youth.

12 (c) The department of corrections and human services shall confine the youth in whatever
13 institution it considers proper, including a youth correctional facility under the procedures of 52-5-111.
14 However, a youth under 16 years of age may not be confined in the state prison."

15

16 **Section 25.** Section 41-5-526, MCA, is amended to read:

17 **"41-5-526. Duties of the youth placement committee.** A youth placement committee shall:

18 (1) review all information relevant to the placement of a youth referred or committed to the
19 department;

20 (2) consider available resources appropriate to meet the needs of the youth;

21 (3) consider the treatment recommendations of any professional person who has evaluated the
22 youth;

23 (4) recommend in writing to the department an appropriate placement for the youth, considering
24 the age and treatment needs of the youth and the relative costs of care in facilities considered appropriate
25 for placement. A committee shall consider placement in a ~~licensed~~ facility approved by the board of county
26 commissioners of the county in which the facility is located, at Mountain View school, at Pine Hills school,
27 or with a parent, other family member, or guardian.

28 (5) review temporary and emergency placements as required under 41-5-528; and

29 (6) conduct placement reviews as requested by the department."
30

1 **Section 26.** Section 41-5-527, MCA, is amended to read:

2 **"41-5-527. Youth placement committee to submit recommendation to department -- acceptance**
3 **or rejection of recommendation by department.** (1) When a youth has been referred or committed to the
4 department for placement, the department shall notify the appropriate youth placement committee. The
5 committee shall submit in writing to the department its recommendation for placement of the youth. The
6 committee shall send a copy of the recommendation to the appropriate youth court judge.

7 (2) ~~¶ Except as provided in subsection (7),~~ if the department accepts the committee's
8 recommendation, the youth must be placed according to the recommendation.

9 (3) If the department rejects the committee's recommendation, it shall promptly notify the
10 committee in writing of the reasons for rejecting the recommendation. The department shall send a copy
11 of the notice to the appropriate youth court judge.

12 (4) After receiving a notice under subsection (3), the committee shall submit in writing to the
13 department a recommendation for an alternative placement of the youth.

14 (5) ~~¶ Except as provided in subsection (7),~~ if the department accepts the committee's
15 recommendation for alternative placement, the youth must be placed according to the recommendation.

16 (6) If the department rejects the committee's recommendation for alternative placement, the
17 department shall promptly notify the committee in writing of the reasons for rejecting the recommendation
18 and shall determine an appropriate placement for the youth. The youth must be placed as determined by
19 the department.

20 (7) A placement may not be made unless the youth court judge agrees with the placement."

21

22 **Section 27.** Section 41-5-529, MCA, is amended to read:

23 **"41-5-529. Confidentiality of youth placement committee meetings and records.** (1) Meetings of
24 a youth placement committee are closed to the public to protect a youth's right to individual privacy.

25 (2) Information presented to the committee about a youth and committee records are confidential
26 and subject to confidentiality requirements established by rule by the department. Purposeful violation of
27 the confidentiality requirements is a criminal offense and a person convicted of violating the requirements
28 shall be fined \$1,000."

29

30 **Section 28.** Section 41-5-533, MCA, is amended to read:

1 **"41-5-533. Probation revocation -- disposition.** (1) A Prior to the youth's transfer to the department
 2 of corrections and human services, a youth on probation incident to an adjudication that ~~he~~ the youth is
 3 a delinquent youth or a youth in need of supervision and who violates a term of ~~such~~ the probation may
 4 be proceeded against in a probation revocation proceeding. A proceeding to revoke probation ~~shall~~ must
 5 be done by filing in the original proceeding a petition styled "petition to revoke probation".

6 (2) Petitions to revoke probation ~~shall~~ must be screened, reviewed, and prepared in the same
 7 manner and ~~shall~~ must contain the same information as petitions alleging delinquency or need of
 8 supervision. Procedures of the Montana Youth Court Act regarding taking into custody and detention ~~shall~~
 9 apply. The petition ~~shall~~ must state the terms of probation alleged to have been violated and the factual
 10 basis for ~~such~~ the allegations.

11 (3) The standard of proof in probation revocation proceedings is the same standard used in
 12 probation revocation of an adult and the hearing ~~shall~~ must be before the youth court without a jury. In all
 13 other respects proceedings to revoke probation are governed by the procedures, rights, and duties
 14 applicable to proceedings on petitions alleging that the youth is delinquent or a youth in need of
 15 supervision. If a youth is found to have violated a term of ~~his~~ probation, the youth court may make any
 16 judgment of disposition that could have been made in the original case."

17
 18 **Section 29.** Section 41-5-601, MCA, is amended to read:

19 **"41-5-601. Confidentiality.** (1) (a) ~~No~~ Except as provided in subsection (1)(b), information ~~shall~~ may
 20 not be given concerning a youth or any matter or proceeding in the youth court involving a youth proceeded
 21 against as, or found to be, a youth in need of supervision.

22 (b) If a youth as to whom there are active issues relating to drug use or crimes is placed in foster
 23 care, the court shall notify the school that the youth will attend of the issues and the school may refuse
 24 to accept the youth as a student.

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

1 (3) In all cases the victim is entitled to all information concerning the identity and disposition of the
2 youth.

3 (4) The identity of ~~any~~ a youth who for the second or subsequent time admits violating or is
4 adjudicated as having violated ~~45-5-624 or 45-9-102~~ may a statute must be disclosed by youth court
5 officials to the administrative officials of the school in which the youth is a student for purposes of referral
6 for enrollment in a substance abuse program or enforcement of school disciplinary procedures that existed
7 at the time of the admission or adjudication. The information may not be further disclosed and may not be
8 made part of the student's permanent records."

9

10 **Section 30.** Section 41-5-604, MCA, is amended to read:

11 "**41-5-604. Disposition of records.** (1) All youth court records and law enforcement records except
12 fingerprints and photographs pertaining to a youth coming under this chapter ~~shall~~ must be physically
13 sealed ~~when the youth reaches the age of 18 years~~ 3 years after supervision for an offense ends. The
14 records must be unsealed if a new offense is committed.

15 (2) In those cases in which jurisdiction of the court or any agency is extended beyond the youth's
16 18th birthday, the ~~above~~ records and files ~~shall~~ must be physically sealed upon termination of the extended
17 jurisdiction.

18 (3) Upon the physical sealing of the records pertaining to a youth pursuant to this section, any
19 agency or department that has in its possession copies of the records ~~so~~ that are sealed shall also seal or
20 destroy ~~such~~ the copies of records. Anyone violating the provisions of this subsection ~~shall be~~ is subject
21 to contempt of court.

22 (4) ~~Nothing herein contained shall~~ This section does not prohibit the destruction of ~~such~~ records
23 with the consent of the youth court judge or county attorney after 10 years from the date of sealing.

24 (5) The requirements for sealed records in this section ~~shall~~ may not apply to youth traffic records
25 or to records directly related to an offense to which access must be allowed under 41-5-601."

26

27 **Section 31.** Section 41-5-703, MCA, is amended to read:

28 "**41-5-703. Powers and duties of probation officers.** (1) A probation officer shall:

29 (a) perform the duties set out in 41-5-401;

30 (b) make predisposition studies and submit reports and recommendations to the court;

1 (c) supervise, assist, and counsel youth placed on probation or under ~~his~~ the officer's supervision,
 2 The probation officer shall ensure that a youth adjudicated as delinquent or in need of supervision and not
 3 placed in a detention center or facility complies with the orders of the court.

4 (d) perform any other functions designated by the court.

5 (2) A probation officer ~~shall have no power to~~ may make arrests ~~or to~~ and perform any other law
 6 enforcement ~~functions~~ function in carrying out ~~his~~ the officer's duties, ~~except that a probation officer may~~
 7 ~~take~~ including taking into custody ~~any~~ a youth who violates ~~either his~~ probation or a lawful order of the
 8 court."

9
 10 **Section 32.** Section 41-5-802, MCA, is amended to read:

11 **"41-5-802. Shelter care facilities.** (1) Counties, cities, or nonprofit corporations may provide by
 12 purchase, lease, or otherwise, a shelter care facility.

13 (2) A shelter care facility ~~must be physically unrestricting and~~ may be used to provide shelter care
 14 for youth alleged or adjudicated delinquent, in need of supervision, or in need of care.

15 (3) A shelter care facility must be ~~separate and apart~~ physically separated from any facility housing
 16 adults accused or convicted of criminal offenses.

17 (4) State appropriations and federal funds may be received by the counties, cities, or nonprofit
 18 corporations for establishment, maintenance, or operation of a shelter care facility.

19 (5) A shelter care facility must be furnished in a comfortable manner ~~and be as nearly as possible~~
 20 ~~like a family home.~~

21 (6) A shelter care facility may be operated in conjunction with a youth detention facility."
 22

23 **Section 33.** Section 41-5-810, MCA, is amended to read:

24 **"41-5-810. County responsibility to provide youth detention services.** (1) Each county shall provide
 25 services for the detention of youth ~~in facilities separate from adult jails~~ and space must be found for a youth
 26 in need of detention. A youth may not be released from detention because of space problems. An
 27 arresting officer shall place the youth in a detention center.

28 (2) In order to fulfill its responsibility under subsection (1), a county may:

29 (a) establish, operate, and maintain a holdover, a short-term detention center, or a youth detention
 30 facility at county expense;

- 1 (b) provide shelter care facilities as authorized in 41-5-802;
- 2 (c) contract with another county for the use of an available shelter care facility, holdover,
3 short-term detention center, or youth detention facility;
- 4 (d) establish and operate a network of holdovers in cooperation with other counties;
- 5 (e) establish a regional detention facility; or
- 6 (f) enter into an agreement with a private party under which the private party will own, operate,
7 or lease a shelter care facility or youth detention facility for use by the county. ~~The agreement may be made~~
8 ~~in substantially the same manner as provided for in 7-32-2232 and 7-32-2233.~~
- 9 (3) Each county, ~~or regional, municipal, or state~~ detention facility of any type, detention center of
10 any type, shelter care facility, or holdover must be ~~licensed~~ approved by the ~~department in accordance with~~
11 ~~rules adopted under 41-5-809~~ board of county commissioners of the county in which it is located."

12

13 **Section 34.** Section 41-5-811, MCA, is amended to read:

14 **"41-5-811. Regional detention facilities.** (1) Two or more counties may, by contract, establish and
15 maintain a regional detention facility.

16 (2) For the purpose of establishing and maintaining a regional detention facility, a county may:

17 (a) issue general obligation bonds for the acquisition, purchase, construction, renovation, and
18 maintenance of a regional detention facility;

19 (b) levy and appropriate taxes, as permitted by law, to pay its share of the cost of equipping,
20 operating, and maintaining the facility; and

21 (c) exercise all powers, under the limitations prescribed by law, necessary and convenient to carry
22 out the purposes of 41-5-810 and this section.

23 (3) Contracts authorized under subsection (1) must be made pursuant to the Interlocal Cooperation
24 Act, Title 7, chapter 11, part 1.

25 (4) Contracts between counties participating in a regional detention facility ~~must be for a term of~~
26 ~~not less than 10 years. In addition, the contracts~~ must:

27 (a) specify the responsibilities of each county participating in the agreement;

28 (b) designate responsibility for operation of the regional detention facility;

29 (c) specify the amount of funding to be contributed by each county toward payment of the cost
30 of establishing, operating, and maintaining the regional detention facility, including the necessary

1 expenditures for the transportation of youth to and from the facility;

2 (d) include the applicable per diem charge for the detention of youths in the facility, as well as the
3 basis for any adjustment in the charge; and

4 (e) specify the number of beds to be reserved for the use of each county participating in the
5 regional detention facility."

6

7 **Section 35.** Section 41-5-812, MCA, is amended to read:

8 **"41-5-812. Creation of regions -- requirements ~~—limitation on number of regions.~~** (1) Counties that
9 wish to establish a regional detention facility shall form a youth detention region.

10 (2) Each youth detention region must:

11 ~~(a) be composed of contiguous counties participating in the regional detention facility; and~~

12 ~~(b) include geographical areas of the state that contain a substantial percentage of the total youth
13 population in need of detention services, as determined by the board of crime control.~~

14 ~~(3) There may be no more than five youth detention regions established in the state at any one
15 time."~~

16

17 **Section 36.** Section 41-5-1001, MCA, is amended to read:

18 **"41-5-1001. Definitions.** As used in this part, unless the context requires otherwise, the following
19 definitions apply:

20 (1) "Attendant care" means the direct supervision of youth by a trained attendant in a physically
21 unrestricting setting.

22 (2) "Board" means the board of crime control provided for in 2-15-2006.

23 (3) "County" means a county, city-county consolidated government, or a youth detention region
24 created pursuant to 41-5-812.

25 (4) "Home detention" means the use of a youth's home for the purpose of ensuring the continued
26 custody of the youth pending adjudication or final disposition of ~~his~~ the youth's case.

27 (5) "Plan" means a county plan for providing youth detention services as required in 41-5-1003.

28 (6) "Secure detention" means the detention of youth in a physically restricting facility designed to
29 prevent a youth from departing at will.

30 (7) "Youth detention service" means service for the detention of youth ~~in facilities separate from~~

1 ~~adult jails~~. The term includes the services described in 41-5-1002."

2

3 **Section 37.** Section 41-5-1004, MCA, is amended to read:

4 **"41-5-1004. Distribution of grants -- limitation of funding -- restrictions on use.** (1) The board shall
5 award grants on an equitable basis, ~~giving preference to services that will be used on a regional basis.~~

6 (2) The board shall award grants to eligible counties:

7 (a) in a block grant in an amount not to exceed 50% of the approved, estimated cost of secure
8 detention; or

9 (b) on a matching basis in an amount not to exceed:

10 (i) 75% of the approved cost of providing holdovers, attendant care, and other alternatives to
11 secure detention, except for shelter care. Shelter care must be paid as provided by law.

12 (ii) 50% of the approved cost of programs for the transportation of youth to appropriate detention
13 or shelter care facilities, including regional detention facilities.

14 (3) Grants under 41-5-1002 may not be used to pay for the cost of youth evaluations. The cost
15 of evaluations must be paid as provided for in 41-5-523."

16

17 **Section 38.** Section 52-5-129, MCA, is amended to read:

18 **"52-5-129. Hearing on alleged violation of aftercare agreement -- right to appeal outcome.** (1)

19 When it is alleged by an aftercare counselor that a youth has violated the terms of ~~his~~ an aftercare
20 agreement, the youth must be granted a hearing at the site of the alleged violation or in the county in which
21 the youth is residing or is found within 10 days after notice has been served on the youth or the youth is
22 detained, whichever is earlier. The purpose of the hearing is to determine whether the youth committed the
23 violation and, if so, whether the violation is of ~~such~~ a nature that ~~he~~ the youth should be returned to the
24 youth correctional facility from which ~~he~~ the youth was released or a different plan for treatment should
25 be pursued by the department of family services.

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

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

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

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

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

4 (d) opportunity to have the referee subpoena witnesses;

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

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

7 (g) a record of the hearing; and

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

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

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

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

24 (7) Pending the hearing on a violation and pending the department's decision, a youth may not be
25 detained except when ~~his~~ detention or care is required to protect the person or property of the youth or of
26 others or ~~he~~ when the youth may abscond or be removed from the community. The department shall
27 determine the place and manner of detention and is responsible for the cost of the detention. Procedures
28 for taking into custody and detention of a youth charged with violation of ~~his~~ an aftercare agreement are
29 as provided in 41-5-303, 41-5-306, ~~41-5-311~~, and 41-5-314.

30 (8) If the decision is made to return the youth to the youth correctional facility from which ~~he~~ the

1 youth was released and the youth appeals that decision, ~~he~~ the youth shall await the outcome of the appeal
2 at the facility."

3

4 **Section 39.** Section 53-21-162, MCA, is amended to read:

5 **"53-21-162. Establishment of patient treatment plan -- patient's rights.** (1) Each patient admitted
6 as an inpatient to a mental health facility must have a comprehensive physical and mental examination and
7 review of behavioral status within 48 hours after admission to the mental health facility.

8 (2) Each patient must have an individualized treatment plan. This plan must be developed by
9 appropriate professional persons, including a psychiatrist, and must be implemented no later than 10 days
10 after the patient's admission. Each individualized treatment plan must contain:

11 (a) a statement of the nature of the specific problems and specific needs of the patient;

12 (b) a statement of the least restrictive treatment conditions necessary to achieve the purposes of
13 hospitalization;

14 (c) a description of treatment goals, with a projected timetable for their attainment;

15 (d) a statement and rationale for the plan of treatment for achieving these goals;

16 (e) a specification of staff responsibility for attaining each treatment goal;

17 (f) criteria for release to less restrictive treatment conditions; and

18 (g) a notation of any therapeutic tasks and labor to be performed by the patient.

19 (3) Overall development, implementation, and supervision of the treatment plan must be assigned
20 to an appropriate professional person.

21 (4) The inpatient mental health facility shall periodically reevaluate the patient and revise the
22 individualized treatment plan based on changes in the patient's condition. At a minimum, the treatment plan
23 must be reviewed:

24 (a) at the time of any transfer within the facility;

25 (b) at the time of discharge;

26 (c) upon any major change in the patient's condition;

27 (d) at the conclusion of the initial estimated length of stay and subsequent estimated lengths of
28 stay;

29 (e) no less than every 90 days; and

30 (f) at each of the times specified in subsections (4)(a) through (4)(e), by a treatment team that

1 includes at least one professional person who is not primarily responsible for the patient's treatment plan.

2 (5) A patient has the right:

3 (a) to ongoing participation, in a manner appropriate to the patient's capabilities, in the planning
4 of mental health services to be provided and in the revision of the plan; and

5 (b) to a reasonable explanation of the following, in terms and language appropriate to the patient's
6 condition and ability to understand:

7 (i) the patient's general mental condition and, if given a physical examination, the patient's physical
8 condition;

9 (ii) the objectives of treatment;

10 (iii) the nature and significant possible adverse effects of recommended treatments;

11 (iv) the reasons why a particular treatment is considered appropriate;

12 (v) the reasons why access to certain visitors may not be appropriate; and

13 (vi) any appropriate and available alternative treatments, services, or providers of mental health
14 services; ~~and~~

15 ~~(e) not to receive treatment established pursuant to the treatment plan in the absence of the
16 patient's informed, voluntary, and written consent to the treatment, except treatment:~~

17 ~~(i) during an emergency situation if the treatment is pursuant to or documented contemporaneously
18 by the written order of a responsible mental health professional; or~~

19 ~~(ii) permitted under the applicable law in the case of a person committed to a facility by a court.~~

20 ~~(6) In the case of a patient who lacks the capacity to exercise the right to consent to treatment
21 described in subsection (5)(e), the right must be exercised on behalf of the patient by a guardian appointed
22 pursuant to the provisions of Title 72, chapter 6.~~

23 ~~(7) The department shall develop procedures for initiating limited guardianship proceedings in the
24 case of a patient who appears to lack the capacity to exercise the right to consent described in subsection
25 (5)(e)."~~

26

27 **Section 40.** Section 53-21-506, MCA, is amended to read:

28 **"53-21-506. No commitment to Montana state hospital.** An individual less than 18 years of age
29 may not be voluntarily admitted or committed by a court to the Montana state hospital unless such the
30 individual is ~~transferred to district court~~ charged with a criminal offense pursuant to 41-5-206."

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0540, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act generally revising the Montana Youth Court Act.

ASSUMPTIONS:

Department of Family Services:

1. The bill provides a point system for minimum, mandatory placement of youthful offenders in detention and secure care facilities. The 10 point mandatory commitment to Pine Hills/Mountain View School will have a significant impact on daily populations.
2. The bill demands that determinate periods of time be mandated for youth acquiring point levels through youth court intervention. DFS will no longer have the flexibility to control institutional populations.
3. The bill provides that current youth court language be deleted and/or modified to increase accountability for youthful offenders and creates a new designation entitled "predatory youth" which results in 180 days in a correctional facility.
4. The bill will impact the current capacity for county-operated detention facilities and shelter care facilities. The primary administrative impact will be on county youth court procedures.
5. Montana Board of Crime Control statistics reveal that 500 youth in 1994 were charged with crimes that would qualify for a mandatory commitment to a state youth correctional facility. Although the intent of the bill is to provide a deterrence to youthful offenders, the impact will at least require a doubling of the current capacity of 80 youth in secure care placements at Pine Hills School. This will require the construction of at least two additional 24-bed cottages at Pine Hills School and contracting with community providers for about 32 additional secure care beds.
6. The average daily cost at Pine Hills School is \$130/day and construction costs for a 24-bed secure care lodge is estimated at \$2,000,000.
7. Total estimated costs are: $\$130 \times 80 \times 365 = \$3,769,000$ /year for youth care and two cottages $\times 2,000,000 = \$4,000,000$ construction costs in FY96.
8. The \$3,769,000 youth care costs would continue into future years.
9. There will be no additional revenues generated and all detention/secure care costs for DFS are 100% general fund.

Department of Corrections & Human Services:

10. This bill would provide for evaluations of youths at the Montana State Hospital (MSH).
11. MSH would need an evaluation unit for adolescents separate from the current adult treatment units.
12. Staffing the adolescent treatment unit would consist of 17.40 FTE plus a child psychiatrist who would be contracted with at a cost of approximately \$50,000 per year.

(continued)

Dave Lewis 2-19-95
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Brad Molnar
BRAD MOLNAR, PRIMARY SPONSOR DATE

Fiscal Note for HB0540, as introduced

HB 540

FISCAL IMPACT:

Department of Family Services

	<u>FY96</u>	<u>FY97</u>
	<u>Difference</u>	<u>Difference</u>
<u>Expenditures:</u>		
Operating Expenses	3,769,000	3,769,000
Construction	<u>4,000,000</u>	<u>0</u>
Total	7,769,000	3,769,000
<u>Funding:</u>		
General Fund (01)	7,769,000	3,769,000

Department of Corrections & Human Services

<u>Expenditures:</u>		
FTE	17.40	17.40
Personal Services	516,384	516,384
Operating Expenses	<u>50,000</u>	<u>50,000</u>
Total	566,384	566,384
<u>Funding:</u>		
General Fund (01)	566,384	566,384

Total Net Impact on General Fund Balance:

General Fund (Cost) (01)	(8,335,384)	(4,335,384)
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EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

1. This bill as written would have a major impact on county government costs relative to construction of detention/shelter care beds and associated operating costs.
2. Youth and/or District courts could experience increased expenses due to court-ordered testing under Section 21.

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0540, third reading

DESCRIPTION OF PROPOSED LEGISLATION:

An act generally revising the Montana Youth Court Act.

ASSUMPTIONS:

1. The Executive Budget present law base serves as the starting point from which to calculate any fiscal impact due to this proposed legislation.
2. The primary objectives of the proposed legislation are to clarify parenting roles and responsibilities and to increase youth accountability for actions along an entire continuum of behaviors. The bill will be effective October 1, 1995.

Montana Board of Crime Control:

3. Montana Board of Crime Control statistics reveal that about 500 youth in 1994 were charged with crimes that would qualify for up to three points. Complete statistics are available only for 1993 when there were 1869 status offenses, such as truancy and false liquor identification; 8185 other offenses, such as misdemeanor theft, city ordinance violations, possession of an intoxicating substance; and 660 more serious transfer offenses.
4. Repealing 41-5-106, 41-5-310, 41-5-311 and 41-5-809, MCA, would legalize holding juveniles accused of status offenses or adjudicated as status offenders in adult facilities.
5. This legislation would allow juveniles to be held in adult facilities longer than 24 hours. It is proposed that youth would be physically separated from adults, which would be inconsistent with federal mandates 42 U.S.C. 5633 Sec. 223 State Plans, issued by the Office of Juvenile Justice Delinquency Prevention Act (OJJDP), parts (12A), (13) and (14). The "sight and sound" requirements of state law are deleted by this bill [page 21, line 12].
6. Montana would not maintain compliance with the OJJDP Act and would lose grant funds of \$612,500 per year, most of which are used to help local governments provide youth services.

Department of Family Services (DFS):

7. DFS plans to serve each year of the 1997 biennium approximately 109 youth in the Youth Alternatives Program and 120 boys in the Pine Hills School (PHS). The capacity at PHS is 80 boys and the average stay is anticipated to be about seven months, resulting in annual service to about 120 boys. During FY94 PHS served 191 males.
8. The bill provides a point system, much like a driver's license point system, wherein a misdemeanor will count as one point and a felony will count as three points. Upon accumulating six points, a youth must be placed in a secure detention facility for five days and upon accumulating nine points, a youth must be placed in a secure detention facility for ten days.
9. After accumulating ten points, a youth would be placed at PHS for no less than 90 days and, if a youth is designated a "predatory youth," placement could be for up to 180 days. This placement is less than the present law base budget of 210 days per youth.

(Continued)

Dave Lewis 3-7-95

DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Brad Molnar

BRAD MOLNAR, PRIMARY SPONSOR DATE

Fiscal Note for HB0540, third reading

HB 540-#2

(continued)

10. According to the bill, if a youth placed for either 90 or 180 days is willing to accept treatment for mental, emotional, behavioral, substance abuse or other problems, the youth may be transferred to a residential treatment facility after servicing one-half of the imposed detention period.
11. DFS will no longer have as much flexibility to control institutional populations. It appears that these specific provisions in the bill will lead to increased daily populations. The increased populations are projected to be 20 males at PHS and 30 youth at the Montana Youth Alternatives Program (20 females and 10 males).
12. Average daily costs at PHS are \$135 for a total cost of \$985,500 (20 x 135 x 365 = \$985,500). Average daily costs for the Montana Youth Alternatives Program are projected to be \$134 for youth referred through this legislation for a specialized portion of the program, which are higher than daily costs for the total six-month program. The total alternatives annual cost will be about \$1,467,300 (30 x 134 x 365 = \$1,467,300).
13. PHS capacity of 80 boys cannot be increased through reopening of closed cottages because they have been condemned. Construction costs for a 24-bed secure care lodge are estimated at \$1.2 million for PHS.
14. Emotionally disturbed youth may not be sent to PHS under any of the options contained in the bill.
15. The bill will impact the current capacity for county-operated detention facilities and shelter care facilities. The primary administrative impact will be on county youth court procedures.
16. Funding for the additional services from DFS will be general fund. Expenditures are phased in the first year consistent with the October 1 effective date and accumulation of ten or more points.
17. Youth Placement Committees will provide recommendations to judges which will result in decreased foster care placements. There is no experience to project cost savings, but future savings may be anticipated.

Office of Public Instruction:

17. Neither the Pine Hills School nor the Montana School for the Deaf and Blind receives ANB payments for youth placed at the facilities. There is no provision for the education funds to follow the students.

Department of Corrections & Human Services:

18. This bill would provide for evaluations of youth at the Montana State Hospital (MSH).
19. MSH would need an evaluation unit for adolescents separate from the current adult treatment units.
20. Staffing the adolescent treatment unit would consist of 17.40 FTE, plus a child psychiatrist who would be under contract at a cost of about \$50,000 per year, and related operating expenses. Expenditures are phased in the first year consistent with the October 1 effective date. The total operating costs will be \$359,830 in FY96 and \$606,384 in FY97 and future years.

Department of Social and Rehabilitation Services:

21. Aid to Families with Dependent Children (AFDC) does not provide a specific amount for each child so no AFDC funding would follow the youth to pay for placement. Supplemental Security Income (SSI) and child support payments are made to the parent(s) and may not be diverted so long as the parent(s) can show the funds are being used to maintain a home for a child to return to after placement. In a few instances of long-term placements of at least five months or more, it may be possible to obtain a diversion of the SSI payment from the Social Security Administration when a home was not being maintained. The maximum SSI payment is \$446 per month, when there is no offsetting parental contribution. A \$97 state general fund match is provided in certain circumstances.

(Continued)

(continued)

FISCAL IMPACT:

	<u>FY96</u>	<u>FY97</u>
	<u>Difference</u>	<u>Difference</u>
Department of Corrections & Human Services		
<u>Expenditures:</u>		
FTE	10.44	17.40
Personal Services	309,830	516,384
Operating Expenses	<u>50,000</u>	<u>90,000</u>
Total	359,830	606,384
<u>Funding:</u>		
General Fund (01)	359,830	606,384
 Montana Board of Crime Control		
<u>Revenue:</u>		
OJJDP Block Grant (03)	(320,625)	(427,500)
Title V Grant (03)	(75,000)	(100,000)
Challenge Grant (03)	<u>(85,000)</u>	<u>(85,000)</u>
Total	(480,625)	(612,500)
 Department of Family Services		
<u>Expenditures</u>		
Operating Costs	492,750	2,452,800
Construction Costs	<u>1,200,000</u>	<u>0</u>
Total	1,692,750	2,452,800
<u>Funding:</u>		
General Fund (01)	1,692,750	2,452,800
 <u>Total Net Impact on General Fund Balance:</u>		
General Fund (Cost) (01)	(2,052,580)	(3,059,184)

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

1. This bill as written will have a major impact on county government costs relative to construction of detention/shelter care beds and associated operating costs for those youth who receive six or nine points.
2. Youth and/or District courts could experience increased expenses due to court-ordered testing under Section 21.

TECHNICAL NOTES:

1. Although Section 24, subsection 17 (Page 36) states that "Health, education, welfare, and other agencies involved with the youth shall ensure that funding for the youth follows the youth to the location in which the youth is placed and that the funding is assigned to the appropriate agency or entity" it is the youth probation officers of the youth courts who use a financial resources checkoff. The District Court or Youth Court judge must order financial resources and these order do not affect and cannot revise AFDC, SSI, child support, school ANB or most other known resources. Treatment funding follows only if the youth is Medicaid eligible and in an approved treatment facility.
2. Section 24, subsection 7 (Page 34, lines 9 and 10) appears to be in conflict with Section 40 (Page 47, lines 18-20).
3. Because some of the terms and provisions in the bill are new and not completely defined, the DFS would require a statement of intent in the bill to enable development of rules for implementation.
4. Page 42, lines 15 and 16, striking the minimum 10 year term will create problems for bond counsel and local governments issuing bonds. This provision needs to be maintained.

(Continued)

5. Page 43, line 25: Deleting the preference for regional services is contrary to the policy direction established by the administration and the legislature for human services. Since the amount of federal money available is capped, deleting the regional concept will only increase the cost to counties.
6. Page 47, lines 5-15: Deleting emergency and consent provisions of substantive law may create problems for patients and lead to law suits. The technical problem with current law is being addressed in HB41 to provide a method of exceptions.
7. All or portions of Section 24, subsection 15 (Page 36, lines 3-7) and subsection 16 (Page 36, lines 17-19) may be impossible or unconstitutional to implement because, in cases where a youth requires treatment, services must be provided first, not after time is served.
8. Referral to the Montana State Hospital changes the current policy which is to serve only those youth who are transferred to adult court at MSH.

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0540, reference copy

DESCRIPTION OF PROPOSED LEGISLATION:

An act revising the Youth Court Act.

ASSUMPTIONS:

1. HB540, as amended by House Appropriations and the actions of the Senate Finance and Claims, no longer has fiscal impact on the State of Montana or local governments.

FISCAL IMPACT:

None.

Dave Lewis 4-3-95

DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Finally Got It Right

BRAD MOLNAR, PRIMARY SPONSOR DATE

Fiscal Note for HB0540, reference copy

HB540 #3

REREFERRED AND APPROVED BY COM ON
APPROPRIATIONS

HOUSE BILL NO. 540

INTRODUCED BY MOLNAR

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE MONTANA YOUTH COURT ACT;
AND AMENDING SECTIONS ~~7-32-2244, 39-71-117, 39-71-118, 39-71-774, 39-71-117, 39-71-118,~~
~~39-71-774,~~ 40-6-233, 41-3-102, 41-5-102, ~~41-5-103, 41-5-203, 41-5-204, 41-5-205, 41-5-206,~~
41-5-301, 41-5-304, ~~41-5-305, 41-5-306, 41-5-307, 41-5-313, 41-5-401, 41-5-403, 41-5-514, 41-5-521,~~
41-5-522, ~~41-5-523, 41-5-526, 41-5-527, 41-5-529, 41-5-533, 41-5-601, 41-5-604, 41-5-703, 41-5-802,~~
~~41-5-810,~~ AND 41-5-811, ~~41-5-812, 41-5-1001, 41-5-1004, 52-5-129, 53-21-162, AND 53-21-506,~~
MCA; AND REPEALING SECTIONS ~~41-5-106, 41-5-310, 41-5-311, AND 41-5-809,~~ MCA."

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

~~Section 1. Section 7-32-2244, MCA, is amended to read:~~

~~"7-32-2244. Detention of juveniles. Juveniles may be held in a detention center only in accordance
with 41-5-301 through 41-5-307, and 41-5-309, and 41-5-311."~~

~~Section 2. Section 39-71-117, MCA, is amended to read:~~

~~"39-71-117. Employer defined. (1) "Employer" means:~~

~~(a) the state and each county, city and county, city school district, irrigation district, all other
districts established by law, and all public corporations and quasi-public corporations and public agencies
therein and every person, every prime contractor, and every firm, voluntary association, and private
corporation, including any public service corporation and including an independent contractor who has any
person in service under any appointment or contract of hire, expressed or implied, oral or written, and the
legal representative of any deceased employer or the receiver or trustee thereof of the deceased employer;~~

~~(b) any association, corporation, or organization that seeks permission and meets the requirements
set by the department by rule for a group of individual employers to operate as self-insured under plan
No. 1 of this chapter; and~~

~~(c) any nonprofit association or corporation or other entity funded in whole or in part by federal,
state, or local government funds that places community service participants, as defined in~~

1 ~~39-71-118(1)(f)(1)(c), with nonprofit organizations or associations or federal, state, or local government~~
 2 ~~entities.~~

3 ~~(2) A temporary service contractor is the employer of a temporary worker for premium and loss~~
 4 ~~experience purposes.~~

5 ~~(3) An employer defined in subsection (1) who utilizes the services of a worker furnished by~~
 6 ~~another person, association, contractor, firm, or corporation, other than a temporary service contractor,~~
 7 ~~is presumed to be the employer for workers' compensation premium and loss experience purposes for work~~
 8 ~~performed by the worker. The presumption may be rebutted by substantial credible evidence of the~~
 9 ~~following:~~

10 ~~(a) the person, association, contractor, firm, or corporation, other than a temporary service~~
 11 ~~contractor, furnishing the services of a worker to another retains control over all aspects of the work~~
 12 ~~performed by the worker, both at the inception of employment and during all phases of the work; and~~

13 ~~(b) the person, association, contractor, firm, or corporation, other than a temporary service~~
 14 ~~contractor, furnishing the services of a worker to another has obtained workers' compensation insurance~~
 15 ~~for the worker in Montana both at the inception of employment and during all phases of the work~~
 16 ~~performed.~~

17 ~~(4) Notwithstanding the provisions of subsection (3), an interstate or intrastate common or contract~~
 18 ~~motor carrier doing business in this state who utilizes drivers in this state is considered the employer, is~~
 19 ~~liable for workers' compensation premiums, and is subject to loss experience rating in this state unless:~~

20 ~~(a) the driver in this state is certified as an independent contractor as provided in 39-71-401(3);~~
 21 ~~or~~

22 ~~(b) the person, association, contractor, firm, or corporation furnishing drivers in this state to a~~
 23 ~~motor carrier has obtained workers' compensation insurance on the drivers in Montana both at the inception~~
 24 ~~of employment and during all phases of the work performed."~~

25

26 **Section 3.** ~~Section 39-71-744, MCA, is amended to read:~~

27 ~~"39-71-744. Benefits not due while claimant is incarcerated—exceptions. (1) Except as provided~~
 28 ~~in subsection (2), a claimant is not eligible for disability or rehabilitation compensation benefits while the~~
 29 ~~claimant is incarcerated in a correctional institution, such as the Montana state prison or the Montana~~
 30 ~~women's correctional center, as the result of conviction of a felony. The insurer remains liable for medical~~

1 ~~benefits. A time limit on benefits otherwise provided in this chapter is not extended due to a period of~~
 2 ~~incarceration.~~

3 ~~(2) A person who is employed while participating in a prerelease center program or a diversionary~~
 4 ~~program is eligible for temporary total benefits as provided in 39-71-701 and medical benefits for a~~
 5 ~~work-related injury received while participating in a prerelease center program or a diversionary program.~~
 6 ~~Other disability or rehabilitation benefits are not payable while the worker is participating in a prerelease~~
 7 ~~center. This subsection does not prohibit the reinstatement of other benefits upon release from~~
 8 ~~incarceration, nor does it apply to an employee performing community service described in 39-71-118(1)(f)~~
 9 ~~(1)(e)."~~

10
 11 ~~**Section 4.** Section 39-71-118, MCA, is amended to read:~~

12 ~~**"39-71-118. Employee, worker, and volunteer firefighter defined.** (1) The terms "employee" or~~
 13 ~~"worker" means:~~

14 ~~(a) each person in this state, including a contractor other than an independent contractor, who is~~
 15 ~~in the service of an employer, as defined by 39-71-117, under any appointment or contract of hire,~~
 16 ~~expressed or implied, oral or written. The terms include aliens and minors, whether lawfully or unlawfully~~
 17 ~~employed, and all of the elected and appointed paid public officers and officers and members of boards of~~
 18 ~~directors of quasi-public or private corporations while rendering actual service for the corporations for pay.~~
 19 ~~Casual employees as defined by 39-71-116 are included as employees if they are not otherwise covered~~
 20 ~~by workers' compensation and if an employer has elected to be bound by the provisions of the~~
 21 ~~compensation law for these casual employments, as provided in 39-71-401(2). Household or domestic~~
 22 ~~service is excluded.~~

23 ~~(b) any juvenile performing work under authorization of a district court judge in a delinquency~~
 24 ~~prevention or rehabilitation program;~~

25 ~~(c) a person receiving on-the-job vocational rehabilitation training or other on-the-job training under~~
 26 ~~a state or federal vocational training program, whether or not under an appointment or contract of hire with~~
 27 ~~an employer as defined in this chapter and whether or not receiving payment from a third party. However,~~
 28 ~~this subsection does not apply to students enrolled in vocational training programs as outlined in this~~
 29 ~~subsection while they are on the premises of a public school or community college.~~

30 ~~(d)(e) students enrolled and in attendance in programs of vocational technical education at~~

1 ~~designated vocational technical centers;~~

2 ~~(e)(d) an aircrew member or other person employed as a volunteer under 67-2-105;~~

3 ~~(f)(e) a person, other than a juvenile as defined in subsection (1)(b), performing community service~~
4 ~~for a nonprofit organization or association or for a federal, state, or local government entity under a court~~
5 ~~order, or an order from a hearings officer as a result of a probation or parole violation, whether or not under~~
6 ~~appointment or contract of hire with an employer as defined in this chapter and whether or not receiving~~
7 ~~payment from a third party. For a person covered by the definition in this subsection (f)(1)(e):~~

8 ~~(i) compensation benefits must be limited to medical expenses pursuant to 39-71-704 and an~~
9 ~~impairment award pursuant to 39-71-703 that is based upon the minimum wage established under Title 39,~~
10 ~~chapter 3, part 4, for a full-time employee at the time of the injury; and~~

11 ~~(ii) premiums must be paid by the employer, as defined in 39-71-117(3), and must be based upon~~
12 ~~the minimum wage established under Title 39, chapter 3, part 4, for the number of hours of community~~
13 ~~service required under the order from the court or hearings officer.~~

14 ~~(g)(f) an inmate working in a federally certified prison industries program authorized under~~
15 ~~53-1-301.~~

16 ~~(2) The terms defined in subsection (1) do not include a person who is:~~

17 ~~(a) participating in recreational activity and who at the time is relieved of and is not performing~~
18 ~~prescribed duties, regardless of whether the person is using, by discount or otherwise, a pass, ticket,~~
19 ~~permit, device, or other emolument of employment; or~~

20 ~~(b) performing voluntary service at a recreational facility and who receives no compensation for~~
21 ~~those services other than meals, lodging, or the use of the recreational facilities.~~

22 ~~(3) The term "volunteer firefighter" means a firefighter who is an enrolled and active member of~~
23 ~~a fire company organized and funded by a county, a rural fire district, or a fire service area.~~

24 ~~(4) (a) If the employer is a partnership or sole proprietorship, the employer may elect to include as~~
25 ~~an employee within the provisions of this chapter any member of the partnership or the owner of the sole~~
26 ~~proprietorship devoting full time to the partnership or proprietorship business.~~

27 ~~(b) In the event of an election, the employer must serve upon the employer's insurer written notice~~
28 ~~naming the partners or sole proprietor to be covered and stating the level of compensation coverage desired~~
29 ~~by electing the amount of wages to be reported, subject to the limitations in subsection (4)(d). A partner~~
30 ~~or sole proprietor is not considered an employee within this chapter until notice has been given.~~

1 ~~(c) A change in elected wages must be in writing and is effective at the start of the next quarter~~
2 ~~following notification.~~

3 ~~(d) All weekly compensation benefits must be based on the amount of elected wages, subject to~~
4 ~~the minimum and maximum limitations of this subsection. For premium ratemaking and for the~~
5 ~~determination of weekly wage for weekly compensation benefits, the electing employer may elect not less~~
6 ~~than \$900 a month and not more than 1 1/2 times the average weekly wage as defined in this chapter.~~

7 ~~(5) The trustees of a rural fire district, a county governing body providing rural fire protection, or~~
8 ~~the county commissioners or trustees for a fire service area may elect to include as an employee within the~~
9 ~~provisions of this chapter any volunteer firefighter. A volunteer firefighter who receives workers'~~
10 ~~compensation coverage under this section may not receive disability benefits under Title 19, chapter 17.~~

11 ~~(6) An employee or worker in this state whose services are furnished by a person, association,~~
12 ~~contractor, firm, or corporation, other than a temporary service contractor, to an employer as defined in~~
13 ~~39-71-117 is presumed to be under the control and employment of the employer. This presumption may~~
14 ~~be rebutted as provided in 39-71-117(3).~~

15 ~~(7) For purposes of this section, an "employee or worker in this state" means:~~

16 ~~(a) a resident of Montana who is employed by an employer and whose employment duties are~~
17 ~~primarily carried out or controlled within this state;~~

18 ~~(b) a nonresident of Montana whose principal employment duties are conducted within this state~~
19 ~~on a regular basis for an employer;~~

20 ~~(c) a nonresident employee of an employer from another state engaged in the construction industry,~~
21 ~~as defined in 39-71-116, within this state; or~~

22 ~~(d) a nonresident of Montana who does not meet the requirements of subsection (7)(b) and whose~~
23 ~~employer elects coverage with an insurer that allows an election for an employer whose:~~

24 ~~(i) nonresident employees are hired in Montana;~~

25 ~~(ii) nonresident employees' wages are paid in Montana;~~

26 ~~(iii) nonresident employees are supervised in Montana; and~~

27 ~~(iv) business records are maintained in Montana.~~

28 ~~(8) An insurer may require coverage for all nonresident employees of a Montana employer who do~~
29 ~~not meet the requirements of subsection (7)(b) or (7)(d) as a condition of approving the election under~~
30 ~~subsection (7)(d)."~~

1 ~~SECTION 2. SECTION 39-71-117, MCA, IS AMENDED TO READ:~~

2 ~~"39-71-117. Employer defined. (1) "Employer" means:~~

3 ~~(a) the state and each county, city and county, city school district, irrigation district, all other~~
4 ~~districts established by law, and all public corporations and quasi-public corporations and public agencies~~
5 ~~therein and every person, every prime contractor, and every firm, voluntary association, and private~~
6 ~~corporation, including any public service corporation and including an independent contractor who has any~~
7 ~~person in service under any appointment or contract of hire, expressed or implied, oral or written, and the~~
8 ~~legal representative of any deceased employer or the receiver or trustee thereof of the deceased employer;~~

9 ~~(b) any association, corporation, or organization that seeks permission and meets the requirements~~
10 ~~set by the department by rule for a group of individual employers to operate as self insured under plan~~
11 ~~No. 1 of this chapter; and~~

12 ~~(c) any nonprofit association or corporation or other entity funded in whole or in part by federal,~~
13 ~~state, or local government funds that places community service participants, as defined in~~
14 ~~39-71-118(1)(f)(1)(e), with nonprofit organizations or associations or federal, state, or local government~~
15 ~~entities.~~

16 ~~(2) A temporary service contractor is the employer of a temporary worker for premium and loss~~
17 ~~experience purposes.~~

18 ~~(3) An employer defined in subsection (1) who utilizes the services of a worker furnished by~~
19 ~~another person, association, contractor, firm, or corporation, other than a temporary service contractor,~~
20 ~~is presumed to be the employer for workers' compensation premium and loss experience purposes for work~~
21 ~~performed by the worker. The presumption may be rebutted by substantial credible evidence of the~~
22 ~~following:~~

23 ~~(a) the person, association, contractor, firm, or corporation, other than a temporary service~~
24 ~~contractor, furnishing the services of a worker to another retains control over all aspects of the work~~
25 ~~performed by the worker, both at the inception of employment and during all phases of the work; and~~

26 ~~(b) the person, association, contractor, firm, or corporation, other than a temporary service~~
27 ~~contractor, furnishing the services of a worker to another has obtained workers' compensation insurance~~
28 ~~for the worker in Montana both at the inception of employment and during all phases of the work~~
29 ~~performed.~~

30 ~~(4) Notwithstanding the provisions of subsection (3), an interstate or intrastate common or contract~~

1 ~~motor carrier doing business in this state who utilizes drivers in this state is considered the employer, is~~
 2 ~~liable for workers' compensation premiums, and is subject to loss experience rating in this state unless:~~

3 ~~(a) the driver in this state is certified as an independent contractor as provided in 39-71-401(3);~~

4 ~~or~~

5 ~~(b) the person, association, contractor, firm, or corporation furnishing drivers in this state to a~~
 6 ~~motor carrier has obtained workers' compensation insurance on the drivers in Montana both at the inception~~
 7 ~~of employment and during all phases of the work performed."~~

8
 9 ~~SECTION 3. SECTION 39-71-744, MCA, IS AMENDED TO READ:~~

10 ~~"39-71-744. Benefits not due while claimant is incarcerated—exceptions. (1) Except as provided~~
 11 ~~in subsection (2), a claimant is not eligible for disability or rehabilitation compensation benefits while the~~
 12 ~~claimant is incarcerated in a correctional institution, such as the Montana state prison or the Montana~~
 13 ~~women's correctional center, as the result of conviction of a felony. The insurer remains liable for medical~~
 14 ~~benefits. A time limit on benefits otherwise provided in this chapter is not extended due to a period of~~
 15 ~~incarceration.~~

16 ~~(2) A person who is employed while participating in a prerelease center program or a diversionary~~
 17 ~~program is eligible for temporary total benefits as provided in 39-71-701 and medical benefits for a~~
 18 ~~work-related injury received while participating in a prerelease center program or a diversionary program.~~
 19 ~~Other disability or rehabilitation benefits are not payable while the worker is participating in a prerelease~~
 20 ~~center. This subsection does not prohibit the reinstatement of other benefits upon release from~~
 21 ~~incarceration, nor does it apply to an employee performing community service described in 39-71-118(1)(f)~~
 22 ~~(1)(e)."~~

23
 24 ~~SECTION 4. SECTION 39-71-118, MCA, IS AMENDED TO READ:~~

25 ~~"39-71-118. Employee, worker, and volunteer firefighter defined. (1) The terms "employee" or~~
 26 ~~"worker" means:~~

27 ~~(a) each person in this state, including a contractor other than an independent contractor, who is~~
 28 ~~in the service of an employer, as defined by 39-71-117, under any appointment or contract of hire,~~
 29 ~~expressed or implied, oral or written. The terms include aliens and minors, whether lawfully or unlawfully~~
 30 ~~employed, and all of the elected and appointed paid public officers and officers and members of boards of~~

1 ~~directors of quasi public or private corporations while rendering actual service for the corporations for pay.~~
 2 ~~Casual employees as defined by 39-71-116 are included as employees if they are not otherwise covered~~
 3 ~~by workers' compensation and if an employer has elected to be bound by the provisions of the~~
 4 ~~compensation law for these casual employments, as provided in 39-71-401(2). Household or domestic~~
 5 ~~service is excluded.~~

6 ~~(b) any juvenile performing work under authorization of a district court judge in a delinquency~~
 7 ~~prevention or rehabilitation program;~~

8 ~~(c) a person receiving on the job vocational rehabilitation training or other on the job training under~~
 9 ~~a state or federal vocational training program, whether or not under an appointment or contract of hire with~~
 10 ~~an employer as defined in this chapter and whether or not receiving payment from a third party. However,~~
 11 ~~this subsection does not apply to students enrolled in vocational training programs as outlined in this~~
 12 ~~subsection while they are on the premises of a public school or community college.~~

13 ~~(d)(e) students enrolled and in attendance in programs of vocational technical education at~~
 14 ~~designated vocational technical centers;~~

15 ~~(e)(d) an aircrew member or other person employed as a volunteer under 67-2-106;~~

16 ~~(f)(e) a person, other than a juvenile as defined in subsection (1)(b), performing community service~~
 17 ~~for a nonprofit organization or association or for a federal, state, or local government entity under a court~~
 18 ~~order, or an order from a hearings officer as a result of a probation or parole violation, whether or not under~~
 19 ~~appointment or contract of hire with an employer as defined in this chapter and whether or not receiving~~
 20 ~~payment from a third party. For a person covered by the definition in this subsection (f)(1)(e):~~

21 ~~(i) compensation benefits must be limited to medical expenses pursuant to 39-71-704 and an~~
 22 ~~impairment award pursuant to 39-71-703 that is based upon the minimum wage established under Title 39,~~
 23 ~~chapter 3, part 4, for a full-time employee at the time of the injury; and~~

24 ~~(ii) premiums must be paid by the employer, as defined in 39-71-117(3), and must be based upon~~
 25 ~~the minimum wage established under Title 39, chapter 3, part 4, for the number of hours of community~~
 26 ~~service required under the order from the court or hearings officer.~~

27 ~~(g)(f) an inmate working in a federally certified prison industries program authorized under~~
 28 ~~53-1-301.~~

29 ~~(2) The terms defined in subsection (1) do not include a person who is:~~

30 ~~(a) participating in recreational activity and who at the time is relieved of and is not performing~~

1 ~~prescribed duties, regardless of whether the person is using, by discount or otherwise, a pass, ticket,~~
2 ~~permit, device, or other emolument of employment; or~~

3 ~~(b) performing voluntary service at a recreational facility and who receives no compensation for~~
4 ~~those services other than meals, lodging, or the use of the recreational facilities.~~

5 ~~(3) The term "volunteer firefighter" means a firefighter who is an enrolled and active member of~~
6 ~~a fire company organized and funded by a county, a rural fire district, or a fire service area.~~

7 ~~(4) (a) If the employer is a partnership or sole proprietorship, the employer may elect to include as~~
8 ~~an employee within the provisions of this chapter any member of the partnership or the owner of the sole~~
9 ~~proprietorship devoting full time to the partnership or proprietorship business.~~

10 ~~(b) In the event of an election, the employer must serve upon the employer's insurer written notice~~
11 ~~naming the partners or sole proprietor to be covered and stating the level of compensation coverage desired~~
12 ~~by electing the amount of wages to be reported, subject to the limitations in subsection (4)(d). A partner~~
13 ~~or sole proprietor is not considered an employee within this chapter until notice has been given.~~

14 ~~(c) A change in elected wages must be in writing and is effective at the start of the next quarter~~
15 ~~following notification.~~

16 ~~(d) All weekly compensation benefits must be based on the amount of elected wages, subject to~~
17 ~~the minimum and maximum limitations of this subsection. For premium ratemaking and for the~~
18 ~~determination of weekly wage for weekly compensation benefits, the electing employer may elect not less~~
19 ~~than \$900 a month and not more than 1 1/2 times the average weekly wage as defined in this chapter.~~

20 ~~(5) The trustees of a rural fire district, a county governing body providing rural fire protection, or~~
21 ~~the county commissioners or trustees for a fire service area may elect to include as an employee within the~~
22 ~~provisions of this chapter any volunteer firefighter. A volunteer firefighter who receives workers'~~
23 ~~compensation coverage under this section may not receive disability benefits under Title 19, chapter 17.~~

24 ~~(6) An employee or worker in this state whose services are furnished by a person, association,~~
25 ~~contractor, firm, or corporation, other than a temporary service contractor, to an employer as defined in~~
26 ~~39-71-117 is presumed to be under the control and employment of the employer. This presumption may~~
27 ~~be rebutted as provided in 39-71-117(3).~~

28 ~~(7) For purposes of this section, an "employee or worker in this state" means:~~

29 ~~(a) a resident of Montana who is employed by an employer and whose employment duties are~~
30 ~~primarily carried out or controlled within this state;~~

- 1 ~~(b) a nonresident of Montana whose principal employment duties are conducted within this state~~
 2 ~~on a regular basis for an employer;~~
- 3 ~~(c) a nonresident employee of an employer from another state engaged in the construction industry,~~
 4 ~~as defined in 39-71-116, within this state; or~~
- 5 ~~(d) a nonresident of Montana who does not meet the requirements of subsection (7)(b) and whose~~
 6 ~~employer elects coverage with an insurer that allows an election for an employer whose:~~
- 7 ~~(i) nonresident employees are hired in Montana;~~
 8 ~~(ii) nonresident employees' wages are paid in Montana;~~
 9 ~~(iii) nonresident employees are supervised in Montana; and~~
 10 ~~(iv) business records are maintained in Montana.~~
- 11 ~~(8) An insurer may require coverage for all nonresident employees of a Montana employer who do~~
 12 ~~not meet the requirements of subsection (7)(b) or (7)(d) as a condition of approving the election under~~
 13 ~~subsection (7)(d)."~~

14

15 **Section 1.** Section 40-6-233, MCA, is amended to read:

16 **"40-6-233. Remedy for parental abuse.** The abuse of parental authority is the subject of judicial
 17 cognizance in a civil action brought by the child or by its relative within the third degree or by the county
 18 commissioners of the county where the child resides. When the abuse is established, the child may be
 19 freed from the dominion of the parent and the duty of support and education enforced. A parent or
 20 guardian of a child has the right to give the child or force the child to take prescribed medicine PRESCRIBED
 21 FOR THE CHILD, and exercise of the right is not an abuse of parental authority."

22

23 **Section 2.** Section 41-3-102, MCA, is amended to read:

24 **"41-3-102. Definitions.** As used in this chapter, the following definitions apply:

- 25 (1) "A person responsible for a child's welfare" means the child's parent, guardian, or foster parent;
 26 a staff person providing care in a day-care facility; an employee of a public or private residential institution,
 27 facility, home, or agency; or any other person legally responsible for the child's welfare in a residential
 28 setting.
- 29 (2) "Abused or neglected" means the state or condition of a child who has suffered child abuse
 30 or neglect.

1 (3) (a) "Adequate health care" means any medical care, including the prevention of the withholding
 2 of medically indicated treatment or medically indicated psychological care permitted or authorized under
 3 state law.

4 (b) ~~Nothing in this~~ This chapter may not be construed to require or justify a finding of child abuse
 5 or neglect for the sole reason that a parent, due to religious beliefs, does not provide medical care for a
 6 child. However, nothing in this chapter may be construed to limit the administrative or judicial authority
 7 of the state to ensure that medical care is provided to the child when there is imminent or substantial risk
 8 of harm to the child.

9 (4) "Child" or "youth" means any person under 18 years of age.

10 (5) (a) "Child abuse or neglect" means:

11 (i) harm to a child's health or welfare, as defined in subsection (8); or

12 (ii) threatened harm to a child's health or welfare, as defined in subsection (15).

13 (b) The term includes harm or threatened harm to a child's health or welfare by the acts or
 14 omissions of a person responsible for the child's welfare.

15 (c) ~~The term does not include what appears to be an extreme reaction to extreme circumstances,~~
 16 ~~such as self defense or, defense of others, OR action taken to prevent the child from self harm, or normal~~
 17 ~~physical punishment or normal physical consequences of one's actions~~ **THAT DOES NOT CONSTITUTE**
 18 **HARM TO A CHILD'S HEALTH OR WELFARE.**

19 (6) "Department" means the department of family services provided for in 2-15-2401.

20 (7) "Dependent youth" means a youth:

21 (a) who is abandoned;

22 (b) who is without parents or guardian or not under the care and supervision of a suitable adult;

23 (c) who has no proper guidance to provide for necessary physical, moral, and emotional well-being;

24 (d) who is destitute;

25 (e) who is dependent upon the public for support; or

26 (f) whose parent or parents have voluntarily relinquished custody and whose legal custody has
 27 been transferred to a licensed agency.

28 (8) "Harm to a child's health or welfare" means the harm that occurs whenever the parent or other
 29 person responsible for the child's welfare:

30 (a) inflicts or allows to be inflicted upon the child physical or mental injury;

- 1 (b) commits or allows to be committed sexual abuse or exploitation of the child;
- 2 (c) causes failure to thrive or otherwise fails to supply the child with adequate food or fails to
3 supply clothing, ~~shelter~~, SHELTER, education, or adequate health care, though financially able to do so or
4 offered financial or other reasonable means to do so;
- 5 (d) abandons the child by leaving the child under circumstances that make reasonable the belief
6 that the parent or other person does not intend to resume care of the child in the future or by willfully
7 surrendering physical custody for a period of 6 months and during that period does not manifest to the child
8 and the person having physical custody of the child a firm intention to resume physical custody or to make
9 permanent legal arrangements for the care of the child; or
- 10 (e) is unknown and has been unknown for a period of 90 days and reasonable efforts to identify
11 and locate the parents have failed.
- 12 (9) "Limited emancipation" means a status conferred on a dependent youth by a court after a
13 dispositional hearing in accordance with 41-3-406 under which the youth is entitled to exercise some but
14 not all of the rights and responsibilities of a person who is 18 years of age or older.
- 15 (10) "Mental injury" means an identifiable and substantial impairment of the child's intellectual or
16 psychological functioning.
- 17 (11) "Physical injury" means death, permanent or temporary disfigurement, or impairment of any
18 bodily organ or function and includes death, permanent or temporary disfigurement, and impairment of a
19 bodily organ or function sustained as a result of excessive corporal punishment.
- 20 (12) "Sexual abuse" means the commission of sexual assault, sexual intercourse without consent,
21 indecent exposure, deviate sexual conduct, or incest, as described in Title 45, chapter 5, part 5.
- 22 (13) "Sexual exploitation" means allowing, permitting, or encouraging a child to engage in a
23 prostitution offense, as described in 45-5-601 through 45-5-603, or allowing, permitting, or encouraging
24 sexual abuse of children as described in 45-5-625.
- 25 (14) "Social worker" means an employee of the department whose duties generally involve the
26 provision of either child or adult protective services, or both.
- 27 (15) "Threatened harm to a child's health or welfare" means substantial risk of harm to the child's
28 health or welfare.
- 29 (16) "Withholding of medically indicated treatment" means the failure to respond to an infant's
30 life-threatening conditions by providing treatment ~~including~~ appropriate nutrition, hydration, and

1 medication}, that, in the treating physician's or physicians' reasonable medical judgment, will be most likely
 2 to be effective in ameliorating or correcting the conditions. However, the term does not include the failure
 3 to provide treatment {,other than appropriate nutrition, hydration, or medication}, to an infant when, in the
 4 treating physician's or physicians' reasonable medical judgment:

- 5 (a) the infant is chronically and irreversibly comatose;
- 6 (b) the provision of treatment would:
 - 7 (i) merely prolong dying;
 - 8 (ii) not be effective in ameliorating or correcting all of the infant's life-threatening conditions; or
 - 9 (iii) otherwise be futile in terms of the survival of the infant; or
- 10 (c) the provision of treatment would be virtually futile in terms of the survival of the infant and the
 11 treatment itself under the circumstances would be inhumane. For purposes of this subsection, "infant"
 12 means an infant less than 1 year of age or an infant 1 year of age or older who has been continuously
 13 hospitalized since birth, who was born extremely prematurely, or who has a long-term disability. The
 14 reference to less than 1 year of age may not be construed to imply that treatment should be changed or
 15 discontinued when an infant reaches 1 year of age or to affect or limit any existing protections available
 16 under state laws regarding medical neglect of children over 1 year of age.

17 (17) "Youth in need of care" means a youth who is dependent, abused, or neglected as defined in
 18 this section."
 19

20 **Section 3.** Section 41-5-102, MCA, is amended to read:

21 **"41-5-102. Declaration of purpose.** The Montana Youth Court Act ~~shall~~ must be interpreted and
 22 construed to effectuate the following express legislative purposes:

23 (1) to preserve the unity and welfare of the family whenever possible and to provide for the care,
 24 protection, and wholesome mental and physical development of a youth coming within the provisions of
 25 the Montana Youth Court Act;

26 (2) ~~to remove from youth committing violations of the law the element of retribution and to~~
 27 ~~substitute therefor~~ prevent and reduce youth delinquency through immediate, consistent, enforceable, and
 28 avoidable consequences of youths' actions and to establish a program of supervision, care, rehabilitation,
 29 detention, COMPETENCY DEVELOPMENT, COMMUNITY PROTECTION, and, in appropriate cases,
 30 restitution as ordered by the youth court;

1 (3) to achieve the purposes of subsections (1) and (2) ~~of this section~~ in a family environment
 2 whenever possible, separating the youth from ~~his~~ the parents only when necessary for the welfare of the
 3 youth or for the safety and protection of the community;

4 (4) to provide judicial procedures in which the parties are assured a fair, accurate hearing and
 5 recognition and enforcement of their constitutional and statutory rights."

6

7 ~~Section 8. Section 41-5-103, MCA, is amended to read:~~

8 ~~"41-5-103. Definitions. As used in the Montana Youth Court Act, unless the context requires~~
 9 ~~otherwise, the following definitions apply:~~

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

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

13 ~~(3) "Commit" means to transfer to legal custody.~~

14 ~~(4) "Correctional facility" means a public or private residential facility used for the placement of~~
 15 ~~delinquent youth or individuals convicted of criminal offenses.~~

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

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

19 ~~(7) "Delinquent youth" means a youth:~~

20 ~~(a) who has committed an offense that, if committed by an adult, would constitute a criminal~~
 21 ~~offense; or~~

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

24 ~~(8) "Department" means the department of family services provided for in 2-15-2401.~~

25 ~~(9) "Detention" means the holding or temporary placement of a youth in the youth's home under~~
 26 ~~home arrest or in a facility other than the youth's own home for the purpose of ensuring the continued~~
 27 ~~custody of the youth at any time after the youth is taken into custody and before final disposition of his~~
 28 ~~case.~~

29 ~~(10) "Detention facility" means a shelter care facility or a physically restricting facility designed to~~
 30 ~~prevent a youth from departing at will and approved by the board of county commissioners of the county~~

1 ~~in which the facility is located.~~ The term includes a youth detention facility, short term detention center,
2 and regional detention facility.

3 (11) ~~"Final disposition" means the implementation of a court order for the disposition or placement~~
4 ~~of a youth as provided in 41-5-523.~~

5 (12) ~~"Foster home" means a private residence licensed by the department for placement of a youth.~~

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

8 (14) ~~"Holdover" means a room, office, building, or other place approved by the board of crime~~
9 ~~control county commissioners of the county in which the holdover is located for the temporary detention~~
10 ~~and supervision of youth in a physically unrestricting setting for a period not to exceed 24 hours while the~~
11 ~~youth is awaiting a probable cause hearing, release, or transfer to an appropriate detention or shelter care~~
12 ~~facility. The term does not include a jail.~~

13 (15) ~~"Jail" means a facility used for the confinement of adults accused or convicted of criminal~~
14 ~~offenses. The term includes a lockup or other facility used primarily for the temporary confinement of~~
15 ~~adults after arrest.~~

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

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

19 (i) ~~have physical custody of the youth;~~

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

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

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

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

25 (18) ~~"Necessary parties" includes the youth, his and the youth's parents, guardian, custodian, or~~
26 ~~spouse.~~

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

30 (20) ~~"Probable cause hearing" means the hearing provided for in 41-5-303.~~

1 ~~{21} "Regional detention facility" means a youth detention facility established and maintained by~~
2 ~~two or more counties, as authorized in 41-5-811, and approved by the board of county commissioners of~~
3 ~~each county.~~

4 ~~{22} "Restitution" means payments in cash to the victim or with services to the victim or the general~~
5 ~~community when these payments are made pursuant to an informal adjustment, consent decree, or other~~
6 ~~youth court order.~~

7 ~~{23} "Secure detention facility" means any public or private facility that is approved by the board~~
8 ~~of county commissioners of the county in which it is located and that:~~

9 ~~(a) is used for the temporary placement of youth or individuals accused or convicted of criminal~~
10 ~~offenses; and~~

11 ~~(b) is designed to physically restrict the movements and activities of youth or other individuals held~~
12 ~~in lawful custody of the facility.~~

13 ~~{24} "Serious juvenile offender" means a youth who has committed an offense that would be~~
14 ~~considered a felony offense if committed by an adult and that is an offense against a person, an offense~~
15 ~~against or property, or an offense involving dangerous drugs.~~

16 ~~{25} "Shelter care" means the temporary substitute care of youth in physically unrestricting~~
17 ~~facilities.~~

18 ~~{26} "Shelter care facility" means a facility approved by the board of county commissioners of the~~
19 ~~county in which it is located and used for the shelter care of youth. The term is limited to the facilities~~
20 ~~enumerated in 41-5-306(1).~~

21 ~~{27} "Short term detention center" means a detention facility licensed by the department approved~~
22 ~~by the board of county commissioners of the county in which the detention center is located for the~~
23 ~~temporary placement or care of youth, for a period not to exceed 96 hours, pending a probable cause~~
24 ~~hearing, release, or transfer of the youth to an appropriate detention facility or shelter care facility.~~

25 ~~{28} "State youth correctional facility" means a residential facility used for the placement and~~
26 ~~rehabilitation of delinquent youth, such as the Pine Hills school in Miles City and the Mountain View school~~
27 ~~in Helena.~~

28 ~~{29} "Substitute care" means full time care of youth in a residential setting for the purpose of~~
29 ~~providing food, shelter, security and safety, guidance, direction, and, if necessary, treatment to youth who~~
30 ~~are removed from or are without the care and supervision of their parents or guardian.~~

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

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

6 ~~(32) "Youth detention facility" means a secure detention facility licensed by the department~~
 7 ~~approved by the board of county commissioners of the county in which the detention facility is located for~~
 8 ~~the temporary substitute care of youth that:~~

9 ~~(a) is operated, administered, and staffed separately and independently of a jail; and~~

10 ~~(b) is used exclusively for the lawful detention of alleged or adjudicated delinquent youth.~~

11 ~~(33) "Youth in need of care" has the meaning provided for in 41-3-102.~~

12 ~~(34) "Youth in need of supervision" means a youth who commits an offense prohibited by law that,~~
 13 ~~if committed by an adult, would not constitute a criminal offense, including but not limited to a youth who:~~

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

15 ~~(b) continues to exhibit behavior beyond the control of his the youth's parents, foster parents,~~
 16 ~~physical custodian, or guardian despite the attempt of his the parents, foster parents, physical custodian,~~
 17 ~~or guardian to exert all reasonable efforts to mediate, resolve, or control the youth's behavior; or~~

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

20
 21 ~~Section 9. Section 41-5-203, MCA, is amended to read:~~

22 ~~"41-5-203. Jurisdiction of the court courts. (1) Except as provided in subsection (2), the The~~
 23 ~~court has exclusive original jurisdiction of all proceedings under the Montana Youth Court Act in which a~~
 24 ~~youth is alleged to be a delinquent youth, a youth in need of supervision, or a youth in need of care or~~
 25 ~~concerning any person under 21 years of age charged with having violated any law of the state or~~
 26 ~~ordinance of any city or town other than a traffic or fish and game law prior to having become 18 years~~
 27 ~~of age.~~

28 ~~(2) Justice, municipal, and city, and district courts have concurrent jurisdiction with the youth court~~
 29 ~~over all alcoholic beverage and gambling violations alleged to have been committed by a youth a person~~
 30 ~~under 21 years of age who is charged with a violation of any state criminal or other law or municipal~~

1 ~~ordinance to the extent that the statutes relating to those courts in Title 3 and other titles give them~~
 2 ~~jurisdiction over the violation charged."~~

3
 4 ~~Section 10. Section 41-5-204, MCA, is amended to read:~~

5 ~~"41-5-204. Venue and transfer. (1) The county where a youth is a resident or is alleged to have~~
 6 ~~violated the law has initial jurisdiction over any youth alleged to be a delinquent youth. The youth court~~
 7 ~~shall assume the initial handling of the case.~~

8 ~~(2) The county where a youth is a resident has initial jurisdiction over any youth alleged to be a~~
 9 ~~youth in need of supervision or a youth in need of care. The youth court of that county shall assume the~~
 10 ~~initial handling of the case. Transfers of venue may be made to any of the following counties in the state:~~

11 ~~(a) the county in which the youth is apprehended or found;~~

12 ~~(b) the county in which the youth is alleged to have violated the law; or~~

13 ~~(c) the county of residence of the youth's parents or guardian.~~

14 ~~(3) In the case of a youth alleged to be a youth in need of supervision or a youth in need of care,~~
 15 ~~a change of venue may be ordered at any time by the concurrence of the youth court judges of both~~
 16 ~~counties in order to assure a fair, impartial, and speedy hearing and final disposition of the case.~~

17 ~~(4) In the case of a youth 16 years of age or older who is accused of one of the serious offenses~~
 18 ~~listed in 41-5-206, the court in the county where the offense occurred shall serve as a transfer hearing~~
 19 ~~court, and if the youth is to be tried in district court, the charge shall be filed and trial held in the district~~
 20 ~~court of the county where the offense occurred."~~

21
 22 ~~Section 11. Section 41-5-205, MCA, is amended to read:~~

23 ~~"41-5-205. Retention of jurisdiction. Once a court obtains jurisdiction over a youth, the court~~
 24 ~~retains jurisdiction unless terminated by the court or by mandatory termination in the following cases:~~

25 ~~(1) at the time the proceedings are transferred to adult criminal court;~~

26 ~~(2)(1) at the time the youth is discharged by the department; and~~

27 ~~(2) at the time the youth is transferred to the department of corrections and human services; and~~

28 ~~(3) in any event, at the time the youth reaches the age of 21 years."~~

29
 30 ~~Section 12. Section 41-5-206, MCA, is amended to read:~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 ~~(c) notice in writing of the time, place, and purpose of the hearing is given to the youth, his~~
26 ~~counsel, and his parents, guardian, or custodian at least 10 days before the hearing; 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 is deliberate homicide as~~
- 13 ~~defined in 45-5-102, mitigated deliberate homicide as defined in 45-5-103, or the attempt, as defined in~~
- 14 ~~45-4-103, 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.~~
- 21 (6) ~~Upon order of the youth court transferring the case to the district court, the county attorney~~
- 22 ~~shall file the information against the youth without unreasonable delay.~~
- 23 (7) ~~Any offense not enumerated in subsection (1) that arises during the commission of a crime~~
- 24 ~~enumerated in subsection (1) may be:~~
- 25 (a) ~~tried in youth court;~~
- 26 (b) ~~transferred to district court with an offense enumerated in subsection (1), upon motion of the~~
- 27 ~~county attorney and order of the youth court judge.~~
- 28 (8) ~~If a youth is found guilty in district court of any of the offenses transferred by the youth court~~
- 29 ~~and is sentenced to the state prison, the commitment must be to the department of corrections and human~~
- 30 ~~services. The department shall confine the youth in whatever institution it considers proper, including a~~

1 ~~state youth correctional facility under the procedures of 52-5-111; however, no youth under 16 years of~~
 2 ~~age may be confined in the state prison.~~

3 ~~(1) (a) A youth's first violation of a state criminal or other law or municipal ordinance may be~~
 4 ~~handled by the probation officer under part 4 of this chapter or the probation officer may refer the youth~~
 5 ~~to the county attorney, who may either file a petition in the youth court or file a criminal complaint or other~~
 6 ~~appropriate proceeding in a court having jurisdiction over the violation. The youth must be tried as an adult.~~

7 ~~(b) Upon a second or subsequent violation, the county attorney may file a petition, complaint, or~~
 8 ~~other proceeding as provided in subsection (1)(a).~~

9 ~~(9)(2) A youth whose case is transferred to district court who is charged with a crime may not be~~
 10 ~~detained or otherwise placed in a jail, prison, or other adult detention facility before or after final disposition~~
 11 ~~of his the case unless:~~

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

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

15

16 ~~Section 13. Section 41-5-301, MCA, is amended to read:~~

17 ~~"41-5-301. Preliminary investigation and disposition. (1) Whenever the court receives information~~
 18 ~~from any agency or person, based upon reasonable grounds, that a youth is or appears to be a delinquent~~
 19 ~~youth or a youth in need of supervision or, being subject to a court order or consent order, has violated the~~
 20 ~~terms thereof of an order, a probation officer shall make a preliminary inquiry into the matter.~~

21 ~~(2) The probation officer may:~~

22 ~~(a) require the presence of any person relevant to the inquiry;~~

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

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

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

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

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

- 1 ~~(ii) determine whether the matter is within the jurisdiction of the court;~~
- 2 ~~(iii) determine, if the youth is in detention or shelter care, whether such the detention or shelter care~~
3 ~~should be continued based upon criteria set forth in 41-5-305.~~
- 4 ~~(b) Once relevant information is secured, the probation officer shall:~~
- 5 ~~(i) determine whether the interest of the public or the youth requires that further action be taken;~~
- 6 ~~(ii) terminate the inquiry upon the determination that no further action be taken; and~~
- 7 ~~(iii) release the youth immediately upon the determination that the filing of a petition is not~~
8 ~~authorized.~~
- 9 ~~(5) The probation officer upon determining that further action is required may:~~
- 10 ~~(a) provide counseling, refer the youth and his the youth's parents to another agency providing~~
11 ~~appropriate services, or take any other action or make any informal adjustment that does not involve~~
12 ~~probation, or detention, treatment, or a placement;~~
- 13 ~~(b) provide for treatment or adjustment involving probation or other disposition authorized under~~
14 ~~41-5-401 through 41-5-403, provided such the treatment or adjustment is voluntarily accepted by the~~
15 ~~youth's parents or guardian and the youth, and provided further that said the matter is referred immediately~~
16 ~~to the county attorney for review and that the probation officer proceed no further unless authorized by~~
17 ~~the county attorney or a youth placement committee, whichever is appropriate; or~~
- 18 ~~(c) refer the matter to the county attorney for filing a petition charging the youth to be a delinquent~~
19 ~~youth or a youth in need of supervision or for filing a complaint or other proceeding under 41-5-206.~~
- 20 ~~(6) The county attorney may either:~~
- 21 ~~(a) apply to the youth court for permission to file a petition charging a youth to be a delinquent~~
22 ~~youth or a youth in need of supervision. The application must be supported by such evidence as the youth~~
23 ~~court may require. If it appears that there is probable cause to believe that the allegations of the petition~~
24 ~~are true, the youth court shall grant leave to file the petition.~~
- 25 ~~(b) file a complaint or other proceeding under 41-5-206.~~
- 26 ~~(7) A petition, complaint, or other proceeding charging a youth held in detention must be filed~~
27 ~~within 7 working days from the date the youth was first taken into custody or the petition shall be~~
28 ~~dismissed and the youth must be released unless good cause is shown to further detain such the youth.~~
- 29 ~~(8) If no a petition, complaint, or other proceeding is not filed under this section, the complainant~~
30 ~~and victim, if any, shall must be informed by the probation officer of the action and the reasons therefor~~

1 ~~for the action and shall must be advised of the right to submit the matter to the county attorney for review.~~
 2 ~~The county attorney, upon receiving a request for review, shall consider the facts, consult with the~~
 3 ~~probation officer, and make the final decision as to whether a petition, complaint, or other proceeding shall~~
 4 ~~be is to be filed."~~

5
 6 **Section 4.** Section 41-5-304, MCA, is amended to read:
 7 **"41-5-304. Investigation, fingerprints, and photographs.** (1) All law enforcement investigations
 8 relating to a delinquent youth or youth in need of supervision must be conducted in accordance with this
 9 chapter and Title 46.

10 (2) A youth may be fingerprinted or photographed for criminal identification purposes:
 11 (a) if arrested for ~~conduct alleged to be unlawful that would be a felony if committed by an adult;~~
 12 (b) pursuant to a search warrant, supported by probable cause, issued by a judge, justice of the
 13 peace, or magistrate; or

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

16 (3) Fingerprint records and photographs may be used by the department of justice or any law
 17 enforcement agency in the judicial district for comparison and identification purposes in any other
 18 investigation."

19
 20 ~~**Section 15.** Section 41-5-305, MCA, is amended to read:~~

21 ~~**"41-5-305. Criteria for placement of youth in secure detention facilities or shelter care facilities.**~~

22 ~~(1) A youth may not be placed in a secure detention facility unless:~~
 23 ~~(a) he the youth has allegedly committed an act that if committed by an adult would constitute a~~
 24 ~~criminal offense and the alleged offense is one specified in 41-5-206;~~

25 ~~(b) he the youth is alleged to be a delinquent youth and:~~
 26 ~~(i) he the youth has escaped from a shelter care facility, correctional facility, or secure detention~~
 27 ~~facility;~~

28 ~~(ii) he the youth has violated a valid court order or an aftercare agreement;~~

29 ~~(iii) his the youth's detention is required to protect persons or property;~~

30 ~~(iv) he the youth has pending court or administrative action or is awaiting a transfer to another~~

- 1 ~~jurisdiction and may abscond or be removed from the jurisdiction of the court;~~
 2 ~~(v) there are not adequate assurances that he the youth will appear for court when required; or~~
 3 ~~(vi) he the youth meets additional criteria for secure detention established by the youth court in the~~
 4 ~~judicial district that has current jurisdiction over him; or~~
 5 ~~(e) he the youth has been adjudicated delinquent and is awaiting final disposition of his the case.~~
 6 ~~(2) A youth may not be placed in a shelter care facility unless:~~
 7 ~~(a) the youth and his the youth's family need shelter care to address their problematic situation~~
 8 ~~when it is not possible for the youth to remain at home;~~
 9 ~~(b) the youth needs to be protected from physical or emotional harm;~~
 10 ~~(c) the youth needs to be deterred or prevented from immediate repetition of his the troubling~~
 11 ~~behavior;~~
 12 ~~(d) shelter care is necessary to assess the youth and his the youth's environment;~~
 13 ~~(e) shelter care is necessary to provide adequate time for case planning and disposition; or~~
 14 ~~(f) shelter care is necessary to intervene in a crisis situation and provide intensive services or~~
 15 ~~attention that might alleviate the problem and reunite the family."~~

16

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

18 **"41-5-306. Place of shelter care or detention.** (1) After a probable cause hearing provided for in
 19 41-5-303, a youth alleged to be a youth in need of supervision may be placed only:

- 20 (a) in a licensed youth foster home as defined in 41-3-1102;
 21 (b) in a facility operated by a licensed child welfare agency;
 22 (c) in a licensed youth group home as defined in 41-3-1102; ~~or~~ OR
 23 (d) under home arrest, either in the youth's own home or in one of the facilities described in
 24 subsections (1)(a) through (1)(c), as provided in Title 46, chapter 18, part 10; OR

25 ~~(E) IN A DETENTION FACILITY.~~

26 (2) A youth alleged to be a youth in need of care may be placed only in the facilities listed in
 27 subsection (1), ~~must be segregated from juvenile offenders,~~ and may not be placed in a jail or other facility
 28 intended or used for the confinement of adults accused or convicted of criminal offenses.

29 (3) After a probable cause hearing provided for in 41-5-303, a youth alleged to be a delinquent
 30 youth may be placed only in:

- 1 (a) the facilities described in subsection (1);
 2 (b) under home arrest as provided in subsection (1);
 3 (c) a short-term detention center; ~~or~~
 4 (d) a youth detention facility; OR
 5 (E) A COMMUNITY YOUTH COURT PROGRAM."
 6

7 **Section 17.** ~~Section 41-5-307, MCA, is amended to read:~~

8 ~~"41-5-307. Release or delivery from custody. (1) Whenever a peace officer believes, on~~
 9 ~~reasonable grounds, that a youth can be released to a person who has custody of the youth, then the peace~~
 10 ~~officer may release the youth to that person upon receiving a written promise from the person to bring the~~
 11 ~~youth before the probation officer at a time and place specified in the written promise, or a peace officer~~
 12 ~~may release the youth under any other reasonable circumstances.~~

13 ~~(2) Whenever the peace officer believes, on reasonable grounds, that the youth must be detained,~~
 14 ~~the peace officer shall notify the probation officer immediately and shall, as soon as practicable, provide~~
 15 ~~the probation officer with a written report of his the reasons for holding the youth in detention. If it is~~
 16 ~~necessary to hold the youth pending appearance before the youth court, then the youth must be held in~~
 17 ~~a place of detention approved by the youth court board of county commissioners. If the peace officer~~
 18 ~~believes that the youth must be sheltered, the peace officer shall notify the probation officer immediately~~
 19 ~~and shall provide a written report of his the reasons for placing the youth in shelter care. If the youth is~~
 20 ~~then held, the youth must be placed in a shelter care facility approved by the youth court board of county~~
 21 ~~commissioners."~~
 22

23 **Section 18.** ~~Section 41-5-313, MCA, is amended to read:~~

24 ~~"41-5-313. Permitted ~~acts~~ detention of youth in law enforcement facilities ~~criteria~~. (1) Nothing~~
 25 ~~in this This chapter precludes does not include PRECLUDE the detention of youth in a police station or other~~
 26 ~~law enforcement facility that is attached to or part of a jail if:~~

27 ~~(a) the area where the youth is held is an unlocked, multipurpose area, such as a lobby, office,~~
 28 ~~interrogation room, or other area that is not designated or used as a secure detention area or that is not~~
 29 ~~part of a secure detention area, or, if part of such an area, that is used only for the purpose of processing,~~
 30 ~~such as a booking room;~~

1 ~~(b) the youth is not secured to a cuffing rail or other stationary object during the period of~~
2 ~~detention;~~

3 ~~(c) use of the area is limited to ensuring custody of the youth for the purpose of identification,~~
4 ~~processing, or transfer of the youth to an appropriate detention or shelter care facility;~~

5 ~~(d) the area is not designed or intended to be used for residential purposes; and~~

6 ~~(e) the youth is under continuous visual supervision by a law enforcement officer or by facility staff~~
7 ~~during the period of time that the youth is held in detention.~~

8 ~~(2) For purposes of this section, "secure detention" means the detention of youth or confinement~~
9 ~~of adults accused or convicted of criminal offenses in a physically restricting setting, including but not~~
10 ~~limited to a locked room or set of rooms or a cell designed to prevent a youth or adult from departing at~~
11 ~~will."~~

12

13 ~~**Section 19.** Section 41-5-401, MCA, is amended to read:~~

14 ~~**"41-5-401. Consent adjustment without petition.** (1) Before a petition is filed, the probation~~
15 ~~officer may enter into an informal adjustment and give counsel and advice to the youth and other interested~~
16 ~~parties if it appears:~~

17 ~~(a) the admitted facts bring the case within the jurisdiction of the court;~~

18 ~~(b) counsel and advice without filing a petition would be in the best interests of the child youth,~~
19 ~~the youth's family, and the public; and~~

20 ~~(c) the youth may be a youth in need of supervision and if the probation officer believes that the~~
21 ~~parents, foster parents, physical custodian, or guardian exerted all reasonable efforts to mediate, resolve,~~
22 ~~or control the youth's behavior and the youth continues to exhibit behavior beyond the control of the~~
23 ~~parents, foster parents, physical custodian, or guardian.~~

24 ~~(2) Any probation or other disposition imposed under this section against any youth must conform~~
25 ~~to the following procedures:~~

26 ~~(a) Every consent adjustment shall must be reduced to writing and signed by the youth and his the~~
27 ~~youth's parents or the person having legal custody of the youth.~~

28 ~~(b) If the probation officer believes the youth is a youth in need of supervision, the probation officer~~
29 ~~shall determine that the parents, foster parents, physical custodian, or guardian exerted all reasonable~~
30 ~~efforts to mediate, resolve, or control the youth's behavior and the youth continues to exhibit behavior~~

1 ~~beyond the control of the parents, foster parents, physical custodian, or guardian.~~

2 ~~(c) Approval by the youth court judge is required if the complaint alleges commission of a felony~~
 3 ~~or if the youth has been or will be in any way detained.~~

4 ~~(d) If a placement of the youth is made, it must be by the youth placement committee pursuant~~
 5 ~~to 41-5-526 and 41-5-527."~~

6

7 **Section 6.** Section 41-5-403, MCA, is amended to read:

8 **"41-5-403. Disposition permitted under informal adjustment -- contributions by parents or guardians**
 9 **for youth's care.** (1) The following dispositions may be imposed by informal adjustment:

10 (a) probation;

11 (b) placement of the youth in substitute care in a youth care facility, as defined in 41-3-1102, and
 12 as determined by the department;

13 (c) placement of the youth with a private agency responsible for the care and rehabilitation of the
 14 youth as determined by the department;

15 (d) restitution upon approval of the youth court judge;

16 (e) placement of the youth under home arrest as provided in Title 46, chapter 18, part 10.

17 (2) In determining whether restitution is appropriate in a particular case, the following factors may
 18 be considered in addition to any other evidence:

19 (a) age of the youth;

20 (b) ability of the youth to pay;

21 (c) ability of ~~the parents or legal guardian~~ THE PARENTS, LEGAL GUARDIAN, OR persons
 22 contributing to the youth's delinquency or need for supervision to pay;

23 (d) amount of damage to the victim; and

24 (e) legal remedies of the victim; ~~however~~ However, the ability of the victim or ~~his~~ the victim's
 25 insurer to stand any loss may not be considered in any case.

26 (3) If the youth violates an aftercare agreement as provided for in 52-5-126, ~~he~~ the youth must
 27 be returned to the court for further disposition. A youth may not be placed in a state youth correctional
 28 facility under informal adjustment.

29 (4) If the youth is placed in substitute care requiring payment by the department, the court shall
 30 examine the financial ability of the youth's parents or guardians to pay a contribution covering all or part

1 of the costs for the care, placement, and treatment of the youth, including the costs of necessary medical,
2 dental, and other health care.

3 (5) If the court determines that the youth's parents or guardians are financially able to pay a
4 contribution as provided in subsection (4), the court shall order the youth's parents or guardians to pay an
5 amount based on the uniform child support guidelines adopted by the department of social and rehabilitation
6 services pursuant to 40-5-209.

7 (6) (a) Except as provided in subsection (6)(b), contributions ordered under this section and each
8 modification of an existing order are enforceable by immediate or delinquency income withholding, or both,
9 under Title 40, chapter 5, part 4. An order for contribution that is inconsistent with this section is
10 nevertheless subject to withholding for the payment of the contribution without need for an amendment
11 of the support order or for any further action by the court.

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

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

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

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

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

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

24 (d) An alternative arrangement must:

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

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

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

29 (7) (a) If the court orders the payment of contributions under this section, the department shall
30 apply to the department of social and rehabilitation services for support enforcement services pursuant to

1 Title IV-D of the Social Security Act.

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

5

6 **Section 7.** Section 41-5-514, MCA, is amended to read:

7 **"41-5-514. Admissibility of confession or illegally seized evidence.** In a proceeding alleging a youth
8 to be a delinquent youth:

9 (1) an extrajudicial statement that would be constitutionally inadmissible in a criminal matter may
10 not be received in evidence;

11 (2) evidence illegally seized or obtained may not be received in evidence to establish the allegations
12 of a petition against a youth; ~~and~~

13 (3) an extrajudicial admission or confession made by the youth out of court is insufficient to
14 support a finding that the youth committed the acts alleged in the petition unless it is corroborated by other
15 evidence; and

16 (4) UPON A FINDING OF AN OFFENSE RELATED TO USE OF ALCOHOL OR ILLEGAL DRUGS, the
17 court may order the youth to undergo urinalysis for the purpose of determining whether the youth is using
18 alcoholic beverages or illegal drugs."

19

20 ~~**Section 22.** Section 41-5-521, MCA, is amended to read:~~

21 ~~**"41-5-521. Adjudicatory hearing.** (1) Prior to any adjudicatory hearing, the court shall determine~~
22 ~~whether the youth admits or denies the offenses alleged in the petition. If the youth denies all offenses~~
23 ~~alleged in the petition, the youth, his or the youth's parent, guardian, or attorney may demand a jury trial~~
24 ~~on such the contested offenses. In the absence of such a demand, a jury trial is waived. If the youth~~
25 ~~denies some offenses and admits others, the contested offenses may be dismissed in the discretion of the~~
26 ~~youth court judge. The adjudicatory hearing shall must be set immediately and accorded a preferential~~
27 ~~priority.~~

28 ~~(2) An adjudicatory hearing shall must be held to determine whether the contested offenses are~~
29 ~~supported by proof beyond a reasonable doubt in cases involving a youth alleged to be delinquent or in~~
30 ~~need of supervision. If the hearing is before a jury, the jury's function shall be is to determine whether the~~

1 ~~youth committed the contested offenses. If the hearing is before the youth court judge without a jury, the~~
 2 ~~judge shall make and record his findings on all issues. If the allegations of the petitions are not established~~
 3 ~~at the hearing, the youth court shall dismiss the petition and discharge the youth from custody. The~~
 4 ~~petition and affidavits may not contain allegations against PERSONS OTHER THAN the youth or other~~
 5 ~~persons unless they have been admitted or proven.~~

6 ~~(3) An adjudicatory hearing shall must be recorded verbatim by whatever means the court~~
 7 ~~considers appropriate.~~

8 ~~(4) The youth charged in a petition must be present at the hearing and, if brought from detention~~
 9 ~~to the hearing, may not appear clothed in institutional clothing.~~

10 ~~(5) In a hearing on a petition under this section, the general public may not be excluded when the~~
 11 ~~hearing is held on a contested offense to which publicity must be allowed under subsection (2) of~~
 12 ~~41-5-601.~~

13 ~~(6) If, on the basis of a valid admission by a youth of the allegations of the petition or after the~~
 14 ~~hearing required by this section, a youth is found to be a delinquent youth or a youth in need of~~
 15 ~~supervision, the court shall schedule a dispositional hearing under this chapter.~~

16 ~~(7) When a jury trial is required in a case, it may be held before a jury selected as provided in Title~~
 17 ~~25, chapter 7, part 2, and M.R.Civ.P., Rule 47."~~

18

19 **Section 8.** Section 41-5-522, MCA, is amended to read:

20 **"41-5-522. Dispositional hearing.** (1) As soon as practicable after a youth is found to be a
 21 delinquent youth or a youth in need of supervision, the court shall conduct a dispositional hearing. The
 22 dispositional hearing may involve a determination of the financial ability of the youth's parents or guardians
 23 to pay a contribution for the cost of care, commitment, and treatment of the youth as required in 41-5-523.

24 (2) Before conducting the dispositional hearing, the court shall direct that a social summary or
 25 predisposition report be made in writing by a probation officer concerning the youth, ~~his~~ the youth's family,
 26 ~~his~~ the youth's environment, and other matters relevant to the need for care or rehabilitation or disposition
 27 of the case. The youth court may have the youth examined, and the results of the examination shall must
 28 be made available to the court as part of the social summary or predisposition report. The court may order
 29 the examination of a parent or guardian whose ability to care for or supervise a youth is at issue before the
 30 court. The results of ~~such~~ the examination shall must be included in the social summary or predisposition

1 report. The youth, ~~his or the youth's~~ parents, guardian, or counsel ~~shall have~~ has the right to subpoena
 2 all persons who have prepared any portion of the social summary or predisposition report and ~~shall have~~
 3 has the right to cross-examine ~~said~~ the parties at the dispositional hearing.

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

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

10 (5) If the court finds that it is in the best interest of the youth, the youth, ~~his or the youth's~~
 11 parents, or guardian may be temporarily excluded from the hearing during the taking of evidence on the
 12 issues of need for treatment and rehabilitation.

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

15 (a) age of the youth;

16 (b) ability of the youth to pay;

17 (c) ability of ~~the parents or legal guardian~~ THE PARENTS, LEGAL GUARDIAN, OR those that
 18 contributed to the youth's delinquency or need for supervision to pay;

19 (d) amount of damage to the victim; and

20 (e) legal remedies of the victim; ~~however~~ However, the ability of the victim or ~~his~~ the victim's
 21 insurer to stand any loss may not be considered in any case."

22
 23 ~~Section 24. Section 41-5-523, MCA, is amended to read:~~

24 ~~"41-5-523. Disposition—commitment to department—placement and evaluation of youth—~~
 25 ~~restrictions. (1) If Except as provided in subsection (15), if a youth is found to be a delinquent youth or~~
 26 ~~a youth in need of supervision, the youth court may enter its judgment making any of the following~~
 27 ~~dispositions:~~

28 ~~(a) place the youth on probation;~~

29 ~~(b) commit the youth to the department if the court determines that the youth is in need of~~
 30 ~~placement in other than the youth's own home, provided that:~~

1 ~~(i) the court shall determine whether continuation in the home would be contrary to the welfare~~
 2 ~~of the youth, the youth's family, and the community and whether reasonable efforts have been made to~~
 3 ~~prevent or eliminate the need for removal of the youth from the youth's home. The court shall include a~~
 4 ~~determination in the order committing the youth to the department.~~

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

11 ~~(c) order restitution by the youth or the youth's parents;~~

12 ~~(d) impose a fine as authorized by law if the violation alleged would constitute is a criminal offense~~
 13 ~~if committed by an adult;~~

14 ~~(e) require the performance of community service;~~

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

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

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

21 ~~(i) order further care, treatment, evaluation, or relief that the court considers beneficial to the~~
 22 ~~youth, the youth's family, and the community and that does not obligate funding from the department~~
 23 ~~without the department's approval, except that a youth may not be placed by a youth court in a residential~~
 24 ~~treatment facility as defined in 50-5-101. Only the department may, pursuant to subsection (1)(b), place~~
 25 ~~a youth in a residential treatment facility.~~

26 ~~(j) commit the youth to a mental health facility if, based upon the testimony of a professional~~
 27 ~~person as defined in 53-21-102, the court finds that the youth is seriously mentally ill as defined in~~
 28 ~~53-21-102. The youth is entitled to all rights provided by 53-21-114 through 53-21-119. A youth~~
 29 ~~adjudicated mentally ill or seriously mentally ill as defined in 53-21-102 may not be committed to a state~~
 30 ~~youth correctional facility. A youth adjudicated to be mentally ill or seriously mentally ill to have a mental~~

~~1 disease or defect that renders the youth unable to appreciate the criminality of the youth's behavior or
2 unable to conform the youth's behavior to the requirements of law after placement by the department in
3 a state youth correctional facility must be moved to a more appropriate placement in response to the
4 youth's mental health needs and consistent with the disposition alternatives available in 53-21-127.~~

~~5 (k) place the youth under home arrest as provided in Title 46, chapter 18, part 10.~~

~~6 (2) When a youth is committed to the department, the department shall determine the appropriate
7 placement and rehabilitation program for the youth after considering the recommendations made under
8 41-5-527 by the youth placement committee. Placement is subject to the following limitations:~~

~~9 (a) A youth in need of supervision or adjudicated delinquent for commission of an act that would
10 not be a criminal offense if committed by an adult may not be placed in a state youth correctional facility.~~

~~11 (b) A youth may not be held in a state youth correctional facility for a period of time in excess of
12 the maximum period of imprisonment that could be imposed on an adult convicted of the offense or
13 offenses that brought the youth under the jurisdiction of the youth court. Nothing in this This section limits
14 does not limit the power of the department to enter into an aftercare agreement with the youth pursuant
15 to 52-5-126.~~

~~16 (c)(b) A youth may not be placed in or transferred to a penal institution or other facility used for
17 the execution of sentence of adults convicted of crimes.~~

~~18 (3) A youth placed by the department in a state youth correctional facility or other facility or
19 program operated by the department or who signs an aftercare agreement under 52-5-126 must be
20 supervised by the department. A youth who is placed in any other placement by the department, the youth
21 court, or the youth court's juvenile probation officer must be supervised by the probation officer of the
22 youth court having jurisdiction over the youth under 41-5-205 whether or not the youth is committed to
23 the department. Supervision by the youth probation officer includes but is not limited to:~~

~~24 (a) submitting information and documentation necessary for the person, committee, or team that
25 is making the placement recommendation to determine an appropriate placement for the youth;~~

~~26 (b) securing approval for payment of special education costs from the youth's school district of
27 residence or the office of public instruction, as required in Title 20, chapter 7, part 4;~~

~~28 (c) submitting an application to a facility in which the youth may be placed; and~~

~~29 (d) case management of the youth.~~

~~30 (4) The youth court may order a youth to receive a medical or psychological evaluation at any time~~

1 prior to final disposition if the youth waives the youth's constitutional rights in the manner provided for in
2 41-5-303. The county determined by the court as the residence of the youth is responsible for the cost
3 of the evaluation, except as provided in subsection (5). A county may contract with the department or
4 other public or private agencies to obtain evaluation services ordered by the court.

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

8 (6) The youth court may not order placement or evaluation of a youth at a state youth correctional
9 facility unless the youth is found to be a delinquent youth or is alleged to have committed an violent
10 felony offense that is transferable to criminal court under 41-5-206 as defined in 46-18-1001.

11 (7) An evaluation of a youth may not be performed at the Montana state hospital unless the youth
12 is transferred to the district court under 41-5-206.

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

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

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

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

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

1 of the support order or for any further action by the court.

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

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

6 ~~(ii) an alternative arrangement between the department and the person who is ordered to pay~~
 7 ~~contributions.~~

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

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

12 ~~(ii) proof of timely payment of previously ordered support in cases involving modification of~~
 13 ~~contributions ordered under this section.~~

14 ~~(d) An alternative arrangement must:~~

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

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

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

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

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

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

27 ~~(15) (a) A misdemeanor counts as one point and a felony counts as three points. An offense that~~
 28 ~~can be committed only by a person only because of age counts as one point. A youth found to have~~
 29 ~~accumulated three points must be placed in a secure detention facility for 1 week. Upon accumulating six~~
 30 ~~points, a youth must be placed in a secure detention facility for 2 weeks 5 DAYS, and upon accumulating~~

1 ~~nine points, a youth must be placed in a secure detention facility for 30-10 days. The staff of the secure~~
2 ~~detention facility must be trained in and give the youth counseling. The youth must be segregated from~~
3 ~~other youth, except when working on public works projects. Each county shall establish public works~~
4 ~~projects for the youth.~~

5 ~~(b) Upon accumulating 10 points, a youth must be designated as a "habitual offender" and must~~
6 ~~be placed in a state youth correctional facility for no less than 90 days.~~

7 ~~(c) If the court finds that a habitual offender commonly entices or assists other youth to perform~~
8 ~~illegal acts, the youth must be designated as a "predatory youth" and must be placed in a state youth~~
9 ~~correctional facility for no less than 180 days.~~

10 ~~(d) Law enforcement, educational, and social service agencies, the court, and other agencies and~~
11 ~~entities involved with a youth who is found by the court or believed by the agency or entity to be a~~
12 ~~delinquent youth or a youth in need of supervision shall provide the chief youth court probation officer for~~
13 ~~the county in which the youth resides with any information in the possession of the agency or entity that~~
14 ~~may indicate that the youth is a habitual offender, a predatory youth, or a youth at risk.~~

15 ~~(16) If a youth who is serving time in a state youth correctional facility because the youth was~~
16 ~~found to be a habitual offender or a predatory youth needs and is willing to accept treatment for mental,~~
17 ~~emotional, behavioral, substance abuse, or similar problems, the youth may be transferred to a residential~~
18 ~~treatment facility, but not until after the youth has served at least one-half of the imposed detention period.~~

19 ~~(17) Health, education, welfare, and other agencies involved with the youth shall ensure that~~
20 ~~funding for the youth follows the youth to the location in which the youth is placed and that the funding~~
21 ~~is assigned to the appropriate agency or entity.~~

22 ~~(18) Before a youth is released from a state youth correctional facility, the department shall adopt~~
23 ~~and the court shall approve a written supervision plan.~~

24 ~~(19) (a) If the youth is still subject to the court's jurisdiction and to supervision under the disposition~~
25 ~~when the youth becomes 21 years of age, this chapter ceases to apply to the youth and jurisdiction over~~
26 ~~the youth is transferred to the department of corrections and human services, which shall make an~~
27 ~~appropriate placement and shall supervise the youth. The youth may not be placed and supervised for a~~
28 ~~period of time in excess of the maximum period of imprisonment that could be imposed on an adult~~
29 ~~convicted of the offense or offenses that brought the youth under the jurisdiction of the youth court.~~

30 ~~(b) When a youth is transferred to the department of corrections and human services, the~~

~~department of family services shall transmit to the department of corrections and human services the dispositional judgment, copies of medical reports, social history material, education records, and any other clinical, predisposition, or other reports and information pertinent to the care and treatment of the youth.~~

~~(e) The department of corrections and human services shall confine the youth in whatever institution it considers proper, including a youth correctional facility under the procedures of 52-5-111. However, a youth under 16 years of age may not be confined in the state prison."~~

Section 25. Section 41-5-526, MCA, is amended to read:

~~"41-5-526. Duties of the youth placement committee. A youth placement committee shall:~~

~~(1) review all information relevant to the placement of a youth referred or committed to the department;~~

~~(2) consider available resources appropriate to meet the needs of the youth;~~

~~(3) consider the treatment recommendations of any professional person who has evaluated the youth;~~

~~(4) recommend in writing to the department an appropriate placement for the youth, considering the age and treatment needs of the youth and the relative costs of care in facilities considered appropriate for placement. A committee shall consider placement in a licensed facility approved by the board of county commissioners of the county in which the facility is located, at Mountain View school, at Pine Hills school, or with a parent, other family member, or guardian.~~

~~(5) review temporary and emergency placements as required under 41-5-528; and~~

~~(6) conduct placement reviews as requested by the department."~~

Section 26. Section 41-5-527, MCA, is amended to read:

~~"41-5-527. Youth placement committee to submit recommendation to department — acceptance or rejection of recommendation by department. (1) When a youth has been referred or committed to the department for placement, the department shall notify the appropriate youth placement committee. The committee shall submit in writing to the department its recommendation for placement of the youth. The committee shall send a copy of the recommendation to the appropriate youth court judge.~~

~~(2) If Except as provided in subsection (7), if the department accepts the committee's recommendation, the youth must be placed according to the recommendation.~~

1 ~~(3) If the department rejects the committee's recommendation, it shall promptly notify the~~
 2 ~~committee in writing of the reasons for rejecting the recommendation. The department shall send a copy~~
 3 ~~of the notice to the appropriate youth court judge.~~

4 ~~(4) After receiving a notice under subsection (3), the committee shall submit in writing to the~~
 5 ~~department a recommendation for an alternative placement of the youth.~~

6 ~~(5) If Except as provided in subsection (7), if the department accepts the committee's~~
 7 ~~recommendation for alternative placement, the youth must be placed according to the recommendation.~~

8 ~~(6) If the department rejects the committee's recommendation for alternative placement, the~~
 9 ~~department shall promptly notify the committee in writing of the reasons for rejecting the recommendation~~
 10 ~~and shall determine an appropriate placement for the youth. The youth must be placed as determined by~~
 11 ~~the department.~~

12 ~~(7) A placement may not be made unless the youth court judge agrees with the placement.~~

13
 14 ~~**Section 27.** Section 41-5-529, MCA, is amended to read:~~

15 ~~**"41-5-529. Confidentiality of youth placement committee meetings and records.** (1) Meetings of~~
 16 ~~a youth placement committee are closed to the public to protect a youth's right to individual privacy.~~

17 ~~(2) Information presented to the committee about a youth and committee records are confidential~~
 18 ~~and subject to confidentiality requirements established by rule by the department. Purposeful violation of~~
 19 ~~the confidentiality requirements is a criminal offense and a person convicted of violating the requirements~~
 20 ~~shall be fined \$1,000.~~

21

22 ~~**Section 28.** Section 41-5-533, MCA, is amended to read:~~

23 ~~**"41-5-533. Probation revocation disposition.** (1) A Prior to the youth's transfer to the~~
 24 ~~department of corrections and human services, a youth on probation incident to an adjudication that he the~~
 25 ~~youth is a delinquent youth or a youth in need of supervision and who violates a term of such the probation~~
 26 ~~may be proceeded against in a probation revocation proceeding. A proceeding to revoke probation shall~~
 27 ~~must be done by filing in the original proceeding a petition styled "petition to revoke probation".~~

28 ~~(2) Petitions to revoke probation shall must be screened, reviewed, and prepared in the same~~
 29 ~~manner and shall must contain the same information as petitions alleging delinquency or need of~~
 30 ~~supervision. Procedures of the Montana Youth Court Act regarding taking into custody and detention shall~~

1 apply. The petition shall must state the terms of probation alleged to have been violated and the factual
2 basis for such the allegations.

3 ~~(3) The standard of proof in probation revocation proceedings is the same standard used in~~
4 ~~probation revocation of an adult and the hearing shall must be before the youth court without a jury. In~~
5 ~~all other respects proceedings to revoke probation are governed by the procedures, rights, and duties~~
6 ~~applicable to proceedings on petitions alleging that the youth is delinquent or a youth in need of~~
7 ~~supervision. If a youth is found to have violated a term of his probation, the youth court may make any~~
8 ~~judgment of disposition that could have been made in the original case."~~

9

10 **Section 29.** Section 41-5-601, MCA, is amended to read:

11 ~~"41-5-601. Confidentiality. (1) (a) No Except as provided in subsection (1)(b), information shall~~
12 ~~may not be given concerning a youth or any matter or proceeding in the youth court involving a youth~~
13 ~~proceeded against as, or found to be, a youth in need of supervision.~~

14 ~~(b) If a youth as to whom there are active issues relating to drug use or crimes is placed in foster~~
15 ~~care, the court shall notify the school that the youth will attend of the issues and the school may refuse~~
16 ~~to accept the youth as a student.~~

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

23 (3) In all cases the victim is entitled to all information concerning the identity and disposition of the
24 youth.

25 (4) The identity of any a youth who for the second or subsequent time admits violating or is
26 adjudicated as having violated 45-5-624 or 45-9-102 may a statute must be disclosed by youth court
27 officials to the administrative officials of the school in which the youth is a student for purposes of referral
28 for enrollment in a substance abuse program or enforcement of school disciplinary procedures that existed
29 at the time of the admission or adjudication. The information may not be further disclosed and may not be
30 made part of the student's permanent records."

1 **Section 9.** Section 41-5-604, MCA, is amended to read:

2 "**41-5-604. Disposition of records.** (1) All youth court records and law enforcement records
3 except fingerprints and photographs pertaining to a youth coming under this chapter ~~shall~~ must be
4 physically sealed ~~when the youth reaches the age of 18 years~~ 3 years after supervision for an offense ends.
5 The records ~~must~~ MAY be unsealed if a new offense is committed.

6 (2) In those cases in which jurisdiction of the court or any agency is extended beyond the youth's
7 18th birthday, the ~~above~~ records and files ~~shall~~ must be physically sealed upon termination of the extended
8 jurisdiction.

9 (3) Upon the physical sealing of the records pertaining to a youth pursuant to this section, any
10 agency or department that has in its possession copies of the records ~~se~~ that are sealed shall also seal or
11 destroy ~~such~~ the copies of records. Anyone violating the provisions of this subsection ~~shall be~~ is subject
12 to contempt of court.

13 (4) ~~Nothing herein contained shall~~ This section does not prohibit the destruction of ~~such~~ records
14 with the consent of the youth court judge or county attorney after 10 years from the date of sealing.

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

17

18 ~~**Section 31.** Section 41-5-703, MCA, is amended to read:~~

19 ~~"41-5-703. Powers and duties of probation officers.~~ (1) A probation officer shall:

20 ~~(a) perform the duties set out in 41-5-401;~~

21 ~~(b) make predisposition studies and submit reports and recommendations to the court;~~

22 ~~(c) supervise, assist, and counsel youth placed on probation or under his the officer's supervision;~~

23 ~~The probation officer shall ensure that a youth adjudicated as delinquent or in need of supervision and not~~
24 ~~placed in a detention center or facility complies with the orders of the court;~~

25 ~~(d) perform any other functions designated by the court.~~

26 (2) A probation officer shall have no power to ~~may~~ make arrests or to ~~and~~ perform any other law
27 enforcement functions ~~function~~ in carrying out his ~~the officer's~~ duties, ~~except that a probation officer may~~
28 ~~take including taking~~ into custody any a youth who violates either his probation or a lawful order of the
29 court."

30

1 **Section 10.** Section 41-5-802, MCA, is amended to read:

2 "**41-5-802. Shelter care facilities.** (1) Counties, cities, or nonprofit corporations may provide by
3 purchase, lease, or otherwise, a shelter care facility.

4 (2) A shelter care facility ~~must be physically unrestricting and~~ may be used to provide shelter care
5 AN APPROPRIATELY PHYSICALLY RESTRICTING SETTING for youth alleged or adjudicated delinquent, in
6 need of supervision, or in need of care.

7 (3) A shelter care facility must be ~~separate and apart~~ physically separated from any facility housing
8 adults accused or convicted of criminal offenses.

9 (4) State appropriations and federal funds may be received by the counties, cities, or nonprofit
10 corporations for establishment, maintenance, or operation of a shelter care facility.

11 (5) A shelter care facility must be furnished in a comfortable manner ~~and be as nearly as possible~~
12 ~~like a family home.~~

13 (6) A shelter care facility may be operated in conjunction with a youth detention facility."

14

15 **Section 33.** ~~Section 41-5-810, MCA, is amended to read:~~

16 "~~**41-5-810. County responsibility to provide youth detention services.** (1) Each county shall~~
17 ~~provide services for the detention of youth in facilities separate from adult jails and space must be found~~
18 ~~for a youth in need of detention. A youth may not be released from detention because of space problems.~~
19 ~~An arresting officer shall place the youth in a detention center.~~

20 ~~(2) In order to fulfill its responsibility under subsection (1), a county may:~~

21 ~~(a) establish, operate, and maintain a holdover, a short term detention center, or a youth detention~~
22 ~~facility at county expense;~~

23 ~~(b) provide shelter care facilities as authorized in 41-5-802;~~

24 ~~(c) contract with another county for the use of an available shelter care facility, holdover,~~
25 ~~short term detention center, or youth detention facility;~~

26 ~~(d) establish and operate a network of holdovers in cooperation with other counties;~~

27 ~~(e) establish a regional detention facility; or~~

28 ~~(f) enter into an agreement with a private party under which the private party will own, operate,~~
29 ~~or lease a shelter care facility or youth detention facility for use by the county. The agreement may be~~
30 ~~made in substantially the same manner as provided for in 7-32-2232 and 7-32-2233.~~

1 ~~(3) Each county, or regional, municipal, or state detention facility of any type, detention center of~~
 2 ~~any type, shelter care facility, or holdover must be licensed approved by the department in accordance with~~
 3 ~~rules adopted under 41-5-809 board of county commissioners of the county in which it is located."~~

4

5 **Section 11.** Section 41-5-811, MCA, is amended to read:

6 **"41-5-811. Regional detention facilities.** (1) Two or more counties may, by contract, establish
 7 and maintain a regional detention facility.

8 (2) For the purpose of establishing and maintaining a regional detention facility, a county may:

9 (a) issue general obligation bonds for the acquisition, purchase, construction, renovation, and
 10 maintenance of a regional detention facility;

11 (b) levy and appropriate taxes, as permitted by law, to pay its share of the cost of equipping,
 12 operating, and maintaining the facility; and

13 (c) exercise all powers, under the limitations prescribed by law, necessary and convenient to carry
 14 out the purposes of 41-5-810 and this section.

15 (3) Contracts authorized under subsection (1) must be made pursuant to the Interlocal Cooperation
 16 Act, Title 7, chapter 11, part 1.

17 (4) Contracts between counties participating in a regional detention facility ~~must be for a term of~~
 18 ~~not less than 10 years. In addition, the contracts~~ must:

19 (a) specify the responsibilities of each county participating in the agreement;

20 (b) designate responsibility for operation of the regional detention facility;

21 (c) specify the amount of funding to be contributed by each county toward payment of the cost
 22 of establishing, operating, and maintaining the regional detention facility, including the necessary
 23 expenditures for the transportation of youth to and from the facility;

24 (d) include the applicable per diem charge for the detention of youths in the facility, as well as the
 25 basis for any adjustment in the charge; and

26 (e) specify the number of beds to be reserved for the use of each county participating in the
 27 regional detention facility."

28

29 ~~**Section 35.** Section 41-5-812, MCA, is amended to read:~~

30 ~~**"41-5-812. Creation of regions requirements limitation on number of regions.** (1) Counties~~

1 ~~that wish to establish a regional detention facility shall form a youth detention region.~~

2 ~~(2) Each youth detention region must:~~

3 ~~(a) be composed of contiguous counties participating in the regional detention facility; and~~

4 ~~(b) include geographical areas of the state that contain a substantial percentage of the total youth~~
 5 ~~population in need of detention services, as determined by the board of crime control.~~

6 ~~(3) There may be no more than five youth detention regions established in the state at any one~~
 7 ~~time."~~

8
 9 **Section 36.** ~~Section 41-5-1001, MCA, is amended to read:~~

10 ~~"41-5-1001. Definitions. As used in this part, unless the context requires otherwise, the following~~
 11 ~~definitions apply:~~

12 ~~(1) "Attendant care" means the direct supervision of youth by a trained attendant in a physically~~
 13 ~~unrestricting setting.~~

14 ~~(2) "Board" means the board of crime control provided for in 2-15-2006.~~

15 ~~(3) "County" means a county, city county consolidated government, or a youth detention region~~
 16 ~~created pursuant to 41-5-812.~~

17 ~~(4) "Home detention" means the use of a youth's home for the purpose of ensuring the continued~~
 18 ~~custody of the youth pending adjudication or final disposition of his the youth's case.~~

19 ~~(5) "Plan" means a county plan for providing youth detention services as required in 41-5-1003.~~

20 ~~(6) "Secure detention" means the detention of youth in a physically restricting facility designed to~~
 21 ~~prevent a youth from departing at will.~~

22 ~~(7) "Youth detention service" means service for the detention of youth in facilities separate from~~
 23 ~~adult jails. The term includes the services described in 41-5-1002."~~

24
 25 **Section 37.** ~~Section 41-5-1004, MCA, is amended to read:~~

26 ~~"41-5-1004. Distribution of grants — limitation of funding — restrictions on use. (1) The board~~
 27 ~~shall award grants on an equitable basis, giving preference to services that will be used on a regional basis.~~

28 ~~(2) The board shall award grants to eligible counties:~~

29 ~~(a) in a block grant in an amount not to exceed 50% of the approved, estimated cost of secure~~
 30 ~~detention; or~~

- 1 ~~(b) on a matching basis in an amount not to exceed:~~
- 2 ~~(i) 75% of the approved cost of providing holdovers, attendant care, and other alternatives to~~
- 3 ~~secure detention, except for shelter care. Shelter care must be paid as provided by law.~~
- 4 ~~(ii) 50% of the approved cost of programs for the transportation of youth to appropriate detention~~
- 5 ~~or shelter care facilities, including regional detention facilities.~~
- 6 ~~(3) Grants under 41-5-1002 may not be used to pay for the cost of youth evaluations. The cost~~
- 7 ~~of evaluations must be paid as provided for in 41-5-523."~~

8

9 **Section 38.** ~~Section 52-5-129, MCA, is amended to read:~~

10 ~~"52-5-129. Hearing on alleged violation of aftercare agreement — right to appeal outcome. (1)~~

11 ~~When it is alleged by an aftercare counselor that a youth has violated the terms of his an aftercare~~

12 ~~agreement, the youth must be granted a hearing at the site of the alleged violation or in the county in which~~

13 ~~the youth is residing or is found within 10 days after notice has been served on the youth or the youth is~~

14 ~~detained, whichever is earlier. The purpose of the hearing is to determine whether the youth committed~~

15 ~~the violation and, if so, whether the violation is of such a nature that he the youth should be returned to~~

16 ~~the youth correctional facility from which he the youth was released or a different plan for treatment should~~

17 ~~be pursued by the department of family services.~~

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

19 ~~(3) With regard to this hearing, the youth must be given:~~

20 ~~(a) written notice of the alleged violation of his an aftercare agreement, including notice of the~~

21 ~~purpose of the hearing;~~

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

23 ~~(c) opportunity to be heard in person and to present witnesses and documentary evidence to~~

24 ~~controvert the evidence against him the youth and to show that there are compelling reasons that justify~~

25 ~~or mitigate the violation;~~

26 ~~(d) opportunity to have the referee subpoena witnesses;~~

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

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

29 ~~(g) a record of the hearing; and~~

30 ~~(h) notice that a written statement as to the evidence relied upon in reaching the final decision and~~

1 ~~the reasons for the final decision will be provided by the referee.~~

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

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

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

16 ~~(7) Pending the hearing on a violation and pending the department's decision, a youth may not be~~
 17 ~~detained except when his detention or care is required to protect the person or property of the youth or of~~
 18 ~~others or he when the youth may abscond or be removed from the community. The department shall~~
 19 ~~determine the place and manner of detention and is responsible for the cost of the detention. Procedures~~
 20 ~~for taking into custody and detention of a youth charged with violation of his an aftercare agreement are~~
 21 ~~as provided in 41-5-303, 41-5-306, 41-5-311, and 41-5-314.~~

22 ~~(8) If the decision is made to return the youth to the youth correctional facility from which he the~~
 23 ~~youth was released and the youth appeals that decision, he the youth shall await the outcome of the appeal~~
 24 ~~at the facility."~~

25
 26 **Section 39.** ~~Section 53-21-162, MCA, is amended to read:~~

27 ~~"53-21-162. Establishment of patient treatment plan — patient's rights. (1) Each patient admitted~~
 28 ~~as an inpatient to a mental health facility must have a comprehensive physical and mental examination and~~
 29 ~~review of behavioral status within 48 hours after admission to the mental health facility.~~

30 ~~(2) Each patient must have an individualized treatment plan. This plan must be developed by~~

- 1 appropriate professional persons, including a psychiatrist, and must be implemented no later than 10 days
2 after the patient's admission. Each individualized treatment plan must contain:
- 3 (a) a statement of the nature of the specific problems and specific needs of the patient;
 - 4 (b) a statement of the least restrictive treatment conditions necessary to achieve the purposes of
5 hospitalization;
 - 6 (c) a description of treatment goals, with a projected timetable for their attainment;
 - 7 (d) a statement and rationale for the plan of treatment for achieving these goals;
 - 8 (e) a specification of staff responsibility for attaining each treatment goal;
 - 9 (f) criteria for release to less restrictive treatment conditions; and
 - 10 (g) a notation of any therapeutic tasks and labor to be performed by the patient.
- 11 (3) Overall development, implementation, and supervision of the treatment plan must be assigned
12 to an appropriate professional person.
- 13 (4) The inpatient mental health facility shall periodically reevaluate the patient and revise the
14 individualized treatment plan based on changes in the patient's condition. At a minimum, the treatment plan
15 must be reviewed:
- 16 (a) at the time of any transfer within the facility;
 - 17 (b) at the time of discharge;
 - 18 (c) upon any major change in the patient's condition;
 - 19 (d) at the conclusion of the initial estimated length of stay and subsequent estimated lengths of
20 stay;
 - 21 (e) no less than every 90 days; and
 - 22 (f) at each of the times specified in subsections (4)(a) through (4)(e), by a treatment team that
23 includes at least one professional person who is not primarily responsible for the patient's treatment plan.
- 24 (5) A patient has the right:
- 25 (a) to ongoing participation, in a manner appropriate to the patient's capabilities, in the planning
26 of mental health services to be provided and in the revision of the plan; and
 - 27 (b) to a reasonable explanation of the following, in terms and language appropriate to the patient's
28 condition and ability to understand:
 - 29 (i) the patient's general mental condition and, if given a physical examination, the patient's physical
30 condition;

1 HOUSE BILL NO. 540

2 INTRODUCED BY MOLNAR

3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE MONTANA YOUTH COURT ACT;
 5 AMENDING SECTIONS 7-32-2244, ~~39-71-117, 39-71-118, 39-71-774,~~ 39-71-117, 39-71-118, 39-71-774,
 6 40-6-233, 41-3-102, 41-5-102, 41-5-103, 41-5-203, 41-5-204, 41-5-205, 41-5-206, 41-5-301, 41-5-304,
 7 41-5-305, 41-5-306, 41-5-307, 41-5-313, 41-5-401, 41-5-403, 41-5-514, 41-5-521, 41-5-522, 41-5-523,
 8 41-5-526, 41-5-527, 41-5-529, 41-5-533, 41-5-601, 41-5-604, 41-5-703, 41-5-802, 41-5-810, 41-5-811,
 9 41-5-812, 41-5-1001, 41-5-1004, 52-5-129, 53-21-162, AND 53-21-506, MCA; AND REPEALING
 10 SECTIONS 41-5-106, 41-5-310, 41-5-311, AND 41-5-809, MCA."
 11

12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 13

14 **Section 1.** Section 7-32-2244, MCA, is amended to read:

15 **"7-32-2244. Detention of juveniles.** Juveniles may be held in a detention center only in accordance
 16 with 41-5-301 through 41-5-307, and 41-5-309, ~~and 41-5-311.~~"
 17

18 **Section 2.** ~~Section 39-71-117, MCA, is amended to read:~~

19 ~~**"39-71-117. Employer defined.** (1) "Employer" means:~~

20 ~~(a) the state and each county, city and county, city school district, irrigation district, all other~~
 21 ~~districts established by law, and all public corporations and quasi public corporations and public agencies~~
 22 ~~therein and every person, every prime contractor, and every firm, voluntary association, and private~~
 23 ~~corporation, including any public service corporation and including an independent contractor who has any~~
 24 ~~person in service under any appointment or contract of hire, expressed or implied, oral or written, and the~~
 25 ~~legal representative of any deceased employer or the receiver or trustee thereof of the deceased employer;~~

26 ~~(b) any association, corporation, or organization that seeks permission and meets the requirements~~
 27 ~~set by the department by rule for a group of individual employers to operate as self insured under plan~~
 28 ~~No. 1 of this chapter; and~~

29 ~~(c) any nonprofit association or corporation or other entity funded in whole or in part by federal,~~
 30 ~~state, or local government funds that places community service participants, as defined in~~

1 ~~39-71-118(1)(f)(1)(e), with nonprofit organizations or associations or federal, state, or local government~~
 2 ~~entities.~~

3 ~~(2) A temporary service contractor is the employer of a temporary worker for premium and loss~~
 4 ~~experience purposes.~~

5 ~~(3) An employer defined in subsection (1) who utilizes the services of a worker furnished by~~
 6 ~~another person, association, contractor, firm, or corporation, other than a temporary service contractor,~~
 7 ~~is presumed to be the employer for workers' compensation premium and loss experience purposes for work~~
 8 ~~performed by the worker. The presumption may be rebutted by substantial credible evidence of the~~
 9 ~~following:~~

10 ~~(a) the person, association, contractor, firm, or corporation, other than a temporary service~~
 11 ~~contractor, furnishing the services of a worker to another retains control over all aspects of the work~~
 12 ~~performed by the worker, both at the inception of employment and during all phases of the work; and~~

13 ~~(b) the person, association, contractor, firm, or corporation, other than a temporary service~~
 14 ~~contractor, furnishing the services of a worker to another has obtained workers' compensation insurance~~
 15 ~~for the worker in Montana both at the inception of employment and during all phases of the work~~
 16 ~~performed.~~

17 ~~(4) Notwithstanding the provisions of subsection (3), an interstate or intrastate common or contract~~
 18 ~~motor carrier doing business in this state who utilizes drivers in this state is considered the employer, is~~
 19 ~~liable for workers' compensation premiums, and is subject to loss experience rating in this state unless:~~

20 ~~(a) the driver in this state is certified as an independent contractor as provided in 39-71-401(3);~~
 21 ~~or~~

22 ~~(b) the person, association, contractor, firm, or corporation furnishing drivers in this state to a~~
 23 ~~motor carrier has obtained workers' compensation insurance on the drivers in Montana both at the inception~~
 24 ~~of employment and during all phases of the work performed."~~

25

26 ~~**Section 3.** Section 39-71-744, MCA, is amended to read:~~

27 ~~**"39-71-744. Benefits not due while claimant is incarcerated — exceptions.** (1) Except as provided~~
 28 ~~in subsection (2), a claimant is not eligible for disability or rehabilitation compensation benefits while the~~
 29 ~~claimant is incarcerated in a correctional institution, such as the Montana state prison or the Montana~~
 30 ~~women's correctional center, as the result of conviction of a felony. The insurer remains liable for medical~~

1 ~~benefits. A time limit on benefits otherwise provided in this chapter is not extended due to a period of~~
 2 ~~incarceration.~~

3 ~~(2) A person who is employed while participating in a prerelease center program or a diversionary~~
 4 ~~program is eligible for temporary total benefits as provided in 39-71-701 and medical benefits for a~~
 5 ~~work-related injury received while participating in a prerelease center program or a diversionary program.~~
 6 ~~Other disability or rehabilitation benefits are not payable while the worker is participating in a prerelease~~
 7 ~~center. This subsection does not prohibit the reinstatement of other benefits upon release from~~
 8 ~~incarceration, nor does it apply to an employee performing community service described in 39-71-118(1)(f)~~
 9 ~~(1)(e)."~~

10

11 ~~Section 4. Section 39-71-118, MCA, is amended to read:~~

12 ~~"39-71-118. Employee, worker, and volunteer firefighter defined. (1) The terms "employee" or~~
 13 ~~"worker" means:~~

14 ~~(a) each person in this state, including a contractor other than an independent contractor, who is~~
 15 ~~in the service of an employer, as defined by 39-71-117, under any appointment or contract of hire,~~
 16 ~~expressed or implied, oral or written. The terms include aliens and minors, whether lawfully or unlawfully~~
 17 ~~employed, and all of the elected and appointed paid public officers and officers and members of boards of~~
 18 ~~directors of quasi-public or private corporations while rendering actual service for the corporations for pay.~~
 19 ~~Casual employees as defined by 39-71-116 are included as employees if they are not otherwise covered~~
 20 ~~by workers' compensation and if an employer has elected to be bound by the provisions of the~~
 21 ~~compensation law for those casual employments, as provided in 39-71-401(2). Household or domestic~~
 22 ~~service is excluded.~~

23 ~~(b) any juvenile performing work under authorization of a district court judge in a delinquency~~
 24 ~~prevention or rehabilitation program;~~

25 ~~(c) a person receiving on-the-job vocational rehabilitation training or other on-the-job training under~~
 26 ~~a state or federal vocational training program, whether or not under an appointment or contract of hire with~~
 27 ~~an employer as defined in this chapter and whether or not receiving payment from a third party. However,~~
 28 ~~this subsection does not apply to students enrolled in vocational training programs as outlined in this~~
 29 ~~subsection while they are on the premises of a public school or community college.~~

30 ~~(d)(e) students enrolled and in attendance in programs of vocational technical education at~~

1 ~~designated vocational technical centers;~~

2 ~~(e)(d) an aircrew member or other person employed as a volunteer under 67-2-106;~~

3 ~~(f)(e) a person, other than a juvenile as defined in subsection (1)(b), performing community service~~
 4 ~~for a nonprofit organization or association or for a federal, state, or local government entity under a court~~
 5 ~~order, or an order from a hearings officer as a result of a probation or parole violation, whether or not under~~
 6 ~~appointment or contract of hire with an employer as defined in this chapter and whether or not receiving~~
 7 ~~payment from a third party. For a person covered by the definition in this subsection (f)(1)(e):~~

8 ~~(i) compensation benefits must be limited to medical expenses pursuant to 39-71-704 and an~~
 9 ~~impairment award pursuant to 39-71-703 that is based upon the minimum wage established under Title 39,~~
 10 ~~chapter 3, part 4, for a full time employee at the time of the injury; and~~

11 ~~(ii) premiums must be paid by the employer, as defined in 39-71-117(3), and must be based upon~~
 12 ~~the minimum wage established under Title 39, chapter 3, part 4, for the number of hours of community~~
 13 ~~service required under the order from the court or hearings officer.~~

14 ~~(g)(f) an inmate working in a federally certified prison industries program authorized under~~
 15 ~~53-1-301.~~

16 ~~(2) The terms defined in subsection (1) do not include a person who is:~~

17 ~~(a) participating in recreational activity and who at the time is relieved of and is not performing~~
 18 ~~prescribed duties, regardless of whether the person is using, by discount or otherwise, a pass, ticket,~~
 19 ~~permit, device, or other emolument of employment; or~~

20 ~~(b) performing voluntary service at a recreational facility and who receives no compensation for~~
 21 ~~those services other than meals, lodging, or the use of the recreational facilities.~~

22 ~~(3) The term "volunteer firefighter" means a firefighter who is an enrolled and active member of~~
 23 ~~a fire company organized and funded by a county, a rural fire district, or a fire service area.~~

24 ~~(4) (a) If the employer is a partnership or sole proprietorship, the employer may elect to include as~~
 25 ~~an employee within the provisions of this chapter any member of the partnership or the owner of the sole~~
 26 ~~proprietorship devoting full time to the partnership or proprietorship business.~~

27 ~~(b) In the event of an election, the employer must serve upon the employer's insurer written notice~~
 28 ~~naming the partners or sole proprietor to be covered and stating the level of compensation coverage desired~~
 29 ~~by electing the amount of wages to be reported, subject to the limitations in subsection (4)(d). A partner~~
 30 ~~or sole proprietor is not considered an employee within this chapter until notice has been given.~~

1 ~~(e) A change in elected wages must be in writing and is effective at the start of the next quarter~~
2 ~~following notification.~~

3 ~~(d) All weekly compensation benefits must be based on the amount of elected wages, subject to~~
4 ~~the minimum and maximum limitations of this subsection. For premium ratemaking and for the~~
5 ~~determination of weekly wage for weekly compensation benefits, the electing employer may elect not less~~
6 ~~than \$900 a month and not more than 1 1/2 times the average weekly wage as defined in this chapter.~~

7 ~~(5) The trustees of a rural fire district, a county governing body providing rural fire protection, or~~
8 ~~the county commissioners or trustees for a fire service area may elect to include as an employee within the~~
9 ~~provisions of this chapter any volunteer firefighter. A volunteer firefighter who receives workers'~~
10 ~~compensation coverage under this section may not receive disability benefits under Title 19, chapter 17.~~

11 ~~(6) An employee or worker in this state whose services are furnished by a person, association,~~
12 ~~contractor, firm, or corporation, other than a temporary service contractor, to an employer as defined in~~
13 ~~39-71-117 is presumed to be under the control and employment of the employer. This presumption may~~
14 ~~be rebutted as provided in 39-71-117(3).~~

15 ~~(7) For purposes of this section, an "employee or worker in this state" means:~~

16 ~~(a) a resident of Montana who is employed by an employer and whose employment duties are~~
17 ~~primarily carried out or controlled within this state;~~

18 ~~(b) a nonresident of Montana whose principal employment duties are conducted within this state~~
19 ~~on a regular basis for an employer;~~

20 ~~(c) a nonresident employee of an employer from another state engaged in the construction industry,~~
21 ~~as defined in 39-71-116, within this state; or~~

22 ~~(d) a nonresident of Montana who does not meet the requirements of subsection (7)(b) and whose~~
23 ~~employer elects coverage with an insurer that allows an election for an employer whose:~~

24 ~~(i) nonresident employees are hired in Montana;~~

25 ~~(ii) nonresident employees' wages are paid in Montana;~~

26 ~~(iii) nonresident employees are supervised in Montana; and~~

27 ~~(iv) business records are maintained in Montana.~~

28 ~~(9) An insurer may require coverage for all nonresident employees of a Montana employer who do~~
29 ~~not meet the requirements of subsection (7)(b) or (7)(d) as a condition of approving the election under~~
30 ~~subsection (7)(d)."~~

1 **SECTION 2. SECTION 39-71-117, MCA, IS AMENDED TO READ:**

2 **"39-71-117. Employer defined.** (1) "Employer" means:

3 (a) the state and each county, city and county, city school district, irrigation district, all other
4 districts established by law, and all public corporations and quasi-public corporations and public agencies
5 therein and every person, every prime contractor, and every firm, voluntary association, and private
6 corporation, including any public service corporation and including an independent contractor who has any
7 person in service under any appointment or contract of hire, expressed or implied, oral or written, and the
8 legal representative of any deceased employer or the receiver or trustee ~~thereof~~ of the deceased employer;

9 (b) any association, corporation, or organization that seeks permission and meets the requirements
10 set by the department by rule for a group of individual employers to operate as self-insured under plan
11 No. 1 of this chapter; and

12 (c) any nonprofit association or corporation or other entity funded in whole or in part by federal,
13 state, or local government funds that places community service participants, as defined in
14 39-71-118(1)(f)(1)(e), with nonprofit organizations or associations or federal, state, or local government
15 entities.

16 (2) A temporary service contractor is the employer of a temporary worker for premium and loss
17 experience purposes.

18 (3) An employer defined in subsection (1) who utilizes the services of a worker furnished by
19 another person, association, contractor, firm, or corporation, other than a temporary service contractor,
20 is presumed to be the employer for workers' compensation premium and loss experience purposes for work
21 performed by the worker. The presumption may be rebutted by substantial credible evidence of the
22 following:

23 (a) the person, association, contractor, firm, or corporation, other than a temporary service
24 contractor, furnishing the services of a worker to another retains control over all aspects of the work
25 performed by the worker, both at the inception of employment and during all phases of the work; and

26 (b) the person, association, contractor, firm, or corporation, other than a temporary service
27 contractor, furnishing the services of a worker to another has obtained workers' compensation insurance
28 for the worker in Montana both at the inception of employment and during all phases of the work
29 performed.

30 (4) Notwithstanding the provisions of subsection (3), an interstate or intrastate common or contract

1 motor carrier doing business in this state who utilizes drivers in this state is considered the employer, is
 2 liable for workers' compensation premiums, and is subject to loss experience rating in this state unless:

3 (a) the driver in this state is certified as an independent contractor as provided in 39-71-401(3);
 4 or

5 (b) the person, association, contractor, firm, or corporation furnishing drivers in this state to a
 6 motor carrier has obtained workers' compensation insurance on the drivers in Montana both at the inception
 7 of employment and during all phases of the work performed."
 8

9 **SECTION 3. SECTION 39-71-744, MCA, IS AMENDED TO READ:**

10 **"39-71-744. Benefits not due while claimant is incarcerated -- exceptions.** (1) Except as provided
 11 in subsection (2), a claimant is not eligible for disability or rehabilitation compensation benefits while the
 12 claimant is incarcerated in a correctional institution, such as the Montana state prison or the Montana
 13 women's correctional center, as the result of conviction of a felony. The insurer remains liable for medical
 14 benefits. A time limit on benefits otherwise provided in this chapter is not extended due to a period of
 15 incarceration.

16 (2) A person who is employed while participating in a prerelease center program or a diversionary
 17 program is eligible for temporary total benefits as provided in 39-71-701 and medical benefits for a
 18 work-related injury received while participating in a prerelease center program or a diversionary program.
 19 Other disability or rehabilitation benefits are not payable while the worker is participating in a prerelease
 20 center. This subsection does not prohibit the reinstatement of other benefits upon release from
 21 incarceration, nor does it apply to an employee performing community service described in 39-71-118(1)(f)
 22 (1)(e)."
 23

24 **SECTION 4. SECTION 39-71-118, MCA, IS AMENDED TO READ:**

25 **"39-71-118. Employee, worker, and volunteer firefighter defined.** (1) The terms "employee" or
 26 "worker" means:

27 (a) each person in this state, including a contractor other than an independent contractor, who is
 28 in the service of an employer, as defined by 39-71-117, under any appointment or contract of hire,
 29 expressed or implied, oral or written. The terms include aliens and minors, whether lawfully or unlawfully
 30 employed, and all of the elected and appointed paid public officers and officers and members of boards of

1 directors of quasi-public or private corporations while rendering actual service for the corporations for pay.
 2 Casual employees as defined by 39-71-116 are included as employees if they are not otherwise covered
 3 by workers' compensation and if an employer has elected to be bound by the provisions of the
 4 compensation law for these casual employments, as provided in 39-71-401(2). Household or domestic
 5 service is excluded.

6 ~~(b) any juvenile performing work under authorization of a district court judge in a delinquency
 7 prevention or rehabilitation program;~~

8 ~~(c)~~ a person receiving on-the-job vocational rehabilitation training or other on-the-job training under
 9 a state or federal vocational training program, whether or not under an appointment or contract of hire with
 10 an employer as defined in this chapter and whether or not receiving payment from a third party. However,
 11 this subsection does not apply to students enrolled in vocational training programs as outlined in this
 12 subsection while they are on the premises of a public school or community college.

13 ~~(d)~~(c) students enrolled and in attendance in programs of vocational-technical education at
 14 designated vocational-technical centers;

15 ~~(e)~~(d) an aircrew member or other person employed as a volunteer under 67-2-105;

16 ~~(f)~~(e) a person, ~~other than a juvenile as defined in subsection (1)(b),~~ performing community service
 17 for a nonprofit organization or association or for a federal, state, or local government entity under a court
 18 order, or an order from a hearings officer as a result of a probation or parole violation, whether or not under
 19 appointment or contract of hire with an employer as defined in this chapter and whether or not receiving
 20 payment from a third party. For a person covered by the definition in this subsection ~~(f)~~(1)(e):

21 (i) compensation benefits must be limited to medical expenses pursuant to 39-71-704 and an
 22 impairment award pursuant to 39-71-703 that is based upon the minimum wage established under Title 39,
 23 chapter 3, part 4, for a full-time employee at the time of the injury; and

24 (ii) premiums must be paid by the employer, as defined in 39-71-117(3), and must be based upon
 25 the minimum wage established under Title 39, chapter 3, part 4, for the number of hours of community
 26 service required under the order from the court or hearings officer.

27 ~~(g)~~(f) an inmate working in a federally certified prison industries program authorized under
 28 53-1-301.

29 (2) The terms defined in subsection (1) do not include a person who is:

30 (a) participating in recreational activity and who at the time is relieved of and is not performing

1 prescribed duties, regardless of whether the person is using, by discount or otherwise, a pass, ticket,
2 permit, device, or other emolument of employment; or

3 (b) performing voluntary service at a recreational facility and who receives no compensation for
4 those services other than meals, lodging, or the use of the recreational facilities.

5 (3) The term "volunteer firefighter" means a firefighter who is an enrolled and active member of
6 a fire company organized and funded by a county, a rural fire district, or a fire service area.

7 (4) (a) If the employer is a partnership or sole proprietorship, the employer may elect to include as
8 an employee within the provisions of this chapter any member of the partnership or the owner of the sole
9 proprietorship devoting full time to the partnership or proprietorship business.

10 (b) In the event of an election, the employer must serve upon the employer's insurer written notice
11 naming the partners or sole proprietor to be covered and stating the level of compensation coverage desired
12 by electing the amount of wages to be reported, subject to the limitations in subsection (4)(d). A partner
13 or sole proprietor is not considered an employee within this chapter until notice has been given.

14 (c) A change in elected wages must be in writing and is effective at the start of the next quarter
15 following notification.

16 (d) All weekly compensation benefits must be based on the amount of elected wages, subject to
17 the minimum and maximum limitations of this subsection. For premium ratemaking and for the
18 determination of weekly wage for weekly compensation benefits, the electing employer may elect not less
19 than \$900 a month and not more than 1 1/2 times the average weekly wage as defined in this chapter.

20 (5) The trustees of a rural fire district, a county governing body providing rural fire protection, or
21 the county commissioners or trustees for a fire service area may elect to include as an employee within the
22 provisions of this chapter any volunteer firefighter. A volunteer firefighter who receives workers'
23 compensation coverage under this section may not receive disability benefits under Title 19, chapter 17.

24 (6) An employee or worker in this state whose services are furnished by a person, association,
25 contractor, firm, or corporation, other than a temporary service contractor, to an employer as defined in
26 39-71-117 is presumed to be under the control and employment of the employer. This presumption may
27 be rebutted as provided in 39-71-117(3).

28 (7) For purposes of this section, an "employee or worker in this state" means:

29 (a) a resident of Montana who is employed by an employer and whose employment duties are
30 primarily carried out or controlled within this state;

1 (b) a nonresident of Montana whose principal employment duties are conducted within this state
2 on a regular basis for an employer;

3 (c) a nonresident employee of an employer from another state engaged in the construction industry,
4 as defined in 39-71-116, within this state; or

5 (d) a nonresident of Montana who does not meet the requirements of subsection (7)(b) and whose
6 employer elects coverage with an insurer that allows an election for an employer whose:

7 (i) nonresident employees are hired in Montana;

8 (ii) nonresident employees' wages are paid in Montana;

9 (iii) nonresident employees are supervised in Montana; and

10 (iv) business records are maintained in Montana.

11 (8) An insurer may require coverage for all nonresident employees of a Montana employer who do
12 not meet the requirements of subsection (7)(b) or (7)(d) as a condition of approving the election under
13 subsection (7)(d)."

14

15 **Section 5.** Section 40-6-233, MCA, is amended to read:

16 **"40-6-233. Remedy for parental abuse.** The abuse of parental authority is the subject of judicial
17 cognizance in a civil action brought by the child or by its relative within the third degree or by the county
18 commissioners of the county where the child resides. When the abuse is established, the child may be
19 freed from the dominion of the parent and the duty of support and education enforced. A parent or
20 guardian of a child has the right to give the child or force the child to take prescribed medicine, and exercise
21 of the right is not an abuse of parental authority."

22

23 **Section 6.** Section 41-3-102, MCA, is amended to read:

24 **"41-3-102. Definitions.** As used in this chapter, the following definitions apply:

25 (1) "A person responsible for a child's welfare" means the child's parent, guardian, or foster parent;
26 a staff person providing care in a day-care facility; an employee of a public or private residential institution,
27 facility, home, or agency; or any other person legally responsible for the child's welfare in a residential
28 setting.

29 (2) "Abused or neglected" means the state or condition of a child who has suffered child abuse
30 or neglect.

1 (3) (a) "Adequate health care" means any medical care, including the prevention of the withholding
2 of medically indicated treatment or medically indicated psychological care permitted or authorized under
3 state law.

4 (b) ~~Nothing in this~~ This chapter may not be construed to require or justify a finding of child abuse
5 or neglect for the sole reason that a parent, due to religious beliefs, does not provide medical care for a
6 child. However, nothing in this chapter may be construed to limit the administrative or judicial authority
7 of the state to ensure that medical care is provided to the child when there is imminent or substantial risk
8 of harm to the child.

9 (4) "Child" or "youth" means any person under 18 years of age.

10 (5) (a) "Child abuse or neglect" means:

11 (i) harm to a child's health or welfare, as defined in subsection (8); or

12 (ii) threatened harm to a child's health or welfare, as defined in subsection (15).

13 (b) The term includes harm or threatened harm to a child's health or welfare by the acts or
14 omissions of a person responsible for the child's welfare.

15 (c) The term does not include what appears to be an extreme reaction to extreme circumstances,
16 such as self defense or defense of others, action taken to prevent the child from self harm, or normal
17 physical punishment or normal physical consequences of one's actions.

18 (6) "Department" means the department of family services provided for in 2-15-2401.

19 (7) "Dependent youth" means a youth:

20 (a) who is abandoned;

21 (b) who is without parents or guardian or not under the care and supervision of a suitable adult;

22 (c) who has no proper guidance to provide for necessary physical, moral, and emotional well-being;

23 (d) who is destitute;

24 (e) who is dependent upon the public for support; or

25 (f) whose parent or parents have voluntarily relinquished custody and whose legal custody has
26 been transferred to a licensed agency.

27 (8) "Harm to a child's health or welfare" means the harm that occurs whenever the parent or other
28 person responsible for the child's welfare:

29 (a) inflicts or allows to be inflicted upon the child physical or mental injury;

30 (b) commits or allows to be committed sexual abuse or exploitation of the child;

1 (c) causes failure to thrive or otherwise fails to supply the child with adequate food or fails to
2 supply clothing, ~~shelter~~, education, or adequate health care, though financially able to do so or offered
3 financial or other reasonable means to do so;

4 (d) abandons the child by leaving the child under circumstances that make reasonable the belief
5 that the parent or other person does not intend to resume care of the child in the future or by willfully
6 surrendering physical custody for a period of 6 months and during that period does not manifest to the child
7 and the person having physical custody of the child a firm intention to resume physical custody or to make
8 permanent legal arrangements for the care of the child; or

9 (e) is unknown and has been unknown for a period of 90 days and reasonable efforts to identify
10 and locate the parents have failed.

11 (9) "Limited emancipation" means a status conferred on a dependent youth by a court after a
12 dispositional hearing in accordance with 41-3-406 under which the youth is entitled to exercise some but
13 not all of the rights and responsibilities of a person who is 18 years of age or older.

14 (10) "Mental injury" means an identifiable and substantial impairment of the child's intellectual or
15 psychological functioning.

16 (11) "Physical injury" means death, permanent or temporary disfigurement, or impairment of any
17 bodily organ or function and includes death, permanent or temporary disfigurement, and impairment of a
18 bodily organ or function sustained as a result of excessive corporal punishment.

19 (12) "Sexual abuse" means the commission of sexual assault, sexual intercourse without consent,
20 indecent exposure, deviate sexual conduct, or incest, as described in Title 45, chapter 5, part 5.

21 (13) "Sexual exploitation" means allowing, permitting, or encouraging a child to engage in a
22 prostitution offense, as described in 45-5-601 through 45-5-603, or allowing, permitting, or encouraging
23 sexual abuse of children as described in 45-5-625.

24 (14) "Social worker" means an employee of the department whose duties generally involve the
25 provision of either child or adult protective services, or both.

26 (15) "Threatened harm to a child's health or welfare" means substantial risk of harm to the child's
27 health or welfare.

28 (16) "Withholding of medically indicated treatment" means the failure to respond to an infant's
29 life-threatening conditions by providing treatment ~~including~~ appropriate nutrition, hydration, and
30 medication, that, in the treating physician's or physicians' reasonable medical judgment, will be most likely

1 to be effective in ameliorating or correcting the conditions. However, the term does not include the failure
 2 to provide treatment ~~to~~ other than appropriate nutrition, hydration, or medication, to an infant when, in the
 3 treating physician's or physicians' reasonable medical judgment:

4 (a) the infant is chronically and irreversibly comatose;

5 (b) the provision of treatment would:

6 (i) merely prolong dying;

7 (ii) not be effective in ameliorating or correcting all of the infant's life-threatening conditions; or

8 (iii) otherwise be futile in terms of the survival of the infant; or

9 (c) the provision of treatment would be virtually futile in terms of the survival of the infant and the
 10 treatment itself under the circumstances would be inhumane. For purposes of this subsection, "infant"
 11 means an infant less than 1 year of age or an infant 1 year of age or older who has been continuously
 12 hospitalized since birth, who was born extremely prematurely, or who has a long-term disability. The
 13 reference to less than 1 year of age may not be construed to imply that treatment should be changed or
 14 discontinued when an infant reaches 1 year of age or to affect or limit any existing protections available
 15 under state laws regarding medical neglect of children over 1 year of age.

16 (17) "Youth in need of care" means a youth who is dependent, abused, or neglected as defined in
 17 this section."

18
 19 **Section 7.** Section 41-5-102, MCA, is amended to read:

20 **"41-5-102. Declaration of purpose.** The Montana Youth Court Act ~~shall~~ must be interpreted and
 21 construed to effectuate the following express legislative purposes:

22 (1) to preserve the unity and welfare of the family whenever possible and to provide for the care,
 23 protection, and wholesome mental and physical development of a youth coming within the provisions of
 24 the Montana Youth Court Act;

25 (2) to ~~remove from youth committing violations of the law the element of retribution and to~~
 26 ~~substitute therefor~~ prevent and reduce youth delinquency through immediate, consistent, enforceable, and
 27 avoidable consequences of youths' actions and to establish a program of supervision, care, rehabilitation,
 28 detention, COMPETENCY DEVELOPMENT, COMMUNITY PROTECTION, and, in appropriate cases,
 29 restitution as ordered by the youth court;

30 (3) to achieve the purposes of subsections (1) and (2) ~~of this section~~ in a family environment

1 whenever possible, separating the youth from ~~his~~ the parents only when necessary for the welfare of the
2 youth or for the safety and protection of the community;

3 (4) to provide judicial procedures in which the parties are assured a fair, accurate hearing and
4 recognition and enforcement of their constitutional and statutory rights."

5

6 **Section 8.** Section 41-5-103, MCA, is amended to read:

7 **"41-5-103. Definitions.** As used in the Montana Youth Court Act, unless the context requires
8 otherwise, the following definitions apply:

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

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

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

13 (4) "Correctional facility" means a public or private residential facility used for the placement of
14 delinquent youth or individuals convicted of criminal offenses.

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

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

18 (7) "Delinquent youth" means a youth:

19 (a) who has committed ~~an offense that, if committed by an adult, would constitute~~ a criminal
20 offense; or

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

23 (8) "Department" means the department of family services provided for in 2-15-2401.

24 (9) "Detention" means the holding or temporary placement of a youth in the youth's home under
25 home arrest or in a facility other than the youth's own home for the purpose of ensuring the continued
26 custody of the youth at any time after the youth is taken into custody and before final disposition of his
27 case.

28 (10) "Detention facility" means a shelter care facility or a physically restricting facility designed to
29 prevent a youth from departing at will and approved by the board of county commissioners of the county
30 in which the facility is located. The term includes a youth detention facility, short-term detention center,

1 and regional detention facility.

2 (11) "Final disposition" means the implementation of a court order for the disposition or placement
3 of a youth as provided in 41-5-523.

4 (12) "Foster home" means a private residence licensed by the department for placement of a youth.

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

7 (14) "Holdover" means a room, office, building, or other place approved by the board of ~~crime~~
8 ~~control~~ county commissioners of the county in which the holdover is located for the temporary detention
9 and supervision of youth in a physically unrestricting setting for a period not to exceed 24 hours while the
10 youth is awaiting a probable cause hearing, release, or transfer to an appropriate detention or shelter care
11 facility. The term does not include a jail.

12 (15) "Jail" means a facility used for the confinement of adults accused or convicted of criminal
13 offenses. The term includes a lockup or other facility used primarily for the temporary confinement of
14 adults after arrest.

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

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

18 (i) have physical custody of the youth;

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

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

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

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

24 (18) "Necessary parties" includes the youth, ~~his~~ and the youth's parents, guardian, custodian, or
25 spouse.

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

29 (20) "Probable cause hearing" means the hearing provided for in 41-5-303.

30 (21) "Regional detention facility" means a youth detention facility established and maintained by

1 two or more counties, as authorized in 41-5-811, and approved by the board of county commissioners of
2 each county.

3 (22) "Restitution" means payments in cash to the victim or with services to the victim or the general
4 community when these payments are made pursuant to an informal adjustment, consent decree, or other
5 youth court order.

6 (23) "Secure detention facility" means any public or private facility that is approved by the board
7 of county commissioners of the county in which it is located and that:

8 (a) is used for the temporary placement of youth or individuals accused or convicted of criminal
9 offenses; and

10 (b) is designed to physically restrict the movements and activities of youth or other individuals held
11 in lawful custody of the facility.

12 (24) "Serious juvenile offender" means a youth who has committed ~~an offense that would be~~
13 ~~considered a felony offense if committed by an adult and that is an offense~~ against a person, ~~an offense~~
14 ~~against or~~ property, or an offense involving dangerous drugs.

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

17 (26) "Shelter care facility" means a facility approved by the board of county commissioners of the
18 county in which it is located and used for the shelter care of youth. The term is limited to the facilities
19 enumerated in 41-5-306(1).

20 (27) "Short-term detention center" means a detention facility ~~licensed by the department~~ approved
21 by the board of county commissioners of the county in which the detention center is located for the
22 temporary placement or care of youth, for a period not to exceed 96 hours, pending a probable cause
23 hearing, release, or transfer of the youth to an appropriate detention facility or shelter care facility.

24 (28) "State youth correctional facility" means a residential facility used for the placement and
25 rehabilitation of delinquent youth, such as the Pine Hills school in Miles City and the Mountain View school
26 in Helena.

27 (29) "Substitute care" means full-time care of youth in a residential setting for the purpose of
28 providing food, shelter, security and safety, guidance, direction, and, if necessary, treatment to youth who
29 are removed from or are without the care and supervision of their parents or guardian.

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

1 emancipation.

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

5 (32) "Youth detention facility" means a secure detention facility ~~licensed by the department~~
6 approved by the board of county commissioners of the county in which the detention facility is located for
7 the temporary substitute care of youth that:

8 (a) is operated, administered, and staffed separately and independently of a jail; and

9 (b) is used exclusively for the lawful detention of alleged or adjudicated delinquent youth.

10 (33) "Youth in need of care" has the meaning provided for in 41-3-102.

11 (34) "Youth in need of supervision" means a youth who commits an offense prohibited by law that,
12 if committed by an adult, would not constitute a criminal offense, including but not limited to a youth who:

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

14 (b) continues to exhibit behavior beyond the control of ~~his~~ the youth's parents, foster parents,
15 physical custodian, or guardian despite the attempt of ~~his~~ the parents, foster parents, physical custodian,
16 or guardian to exert all reasonable efforts to mediate, resolve, or control the youth's behavior; or

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

19

20 **Section 9.** Section 41-5-203, MCA, is amended to read:

21 "**41-5-203. Jurisdiction of the court courts.** (1) ~~Except as provided in subsection (2), the~~ The
22 court has exclusive original jurisdiction of all proceedings under the Montana Youth Court Act in which a
23 youth is alleged to be a delinquent youth, a youth in need of supervision, or a youth in need of care ~~or~~
24 ~~concerning any person under 21 years of age charged with having violated any law of the state or~~
25 ~~ordinance of any city or town other than a traffic or fish and game law prior to having become 18 years~~
26 ~~of age.~~

27 (2) Justice, municipal, ~~and city, and district courts have concurrent jurisdiction with the youth court~~
28 ~~over all alcoholic beverage and gambling violations alleged to have been committed by a youth~~ a person
29 under 21 years of age who is charged with a violation of any state criminal or other law or municipal
30 ordinance to the extent that the statutes relating to those courts in Title 3 and other titles give them

1 jurisdiction over the violation charged."

2

3 **Section 10.** Section 41-5-204, MCA, is amended to read:

4 **"41-5-204. Venue and transfer.** (1) The county where a youth is a resident or is alleged to have
5 violated the law has initial jurisdiction over any youth alleged to be a delinquent youth. The youth court
6 shall assume the initial handling of the case.

7 (2) The county where a youth is a resident has initial jurisdiction over any youth alleged to be a
8 youth in need of supervision or a youth in need of care. The youth court of that county shall assume the
9 initial handling of the case. Transfers of venue may be made to any of the following counties in the state:

10 (a) the county in which the youth is apprehended or found;

11 (b) the county in which the youth is alleged to have violated the law; or

12 (c) the county of residence of the youth's parents or guardian.

13 (3) In the case of a youth alleged to be a youth in need of supervision or a youth in need of care,
14 a change of venue may be ordered at any time by the concurrence of the youth court judges of both
15 counties in order to assure a fair, impartial, and speedy hearing and final disposition of the case.

16 ~~(4) In the case of a youth 16 years of age or older who is accused of one of the serious offenses~~
17 ~~listed in 41-5-206, the court in the county where the offense occurred shall serve as a transfer hearing~~
18 ~~court, and if the youth is to be tried in district court, the charge shall be filed and trial held in the district~~
19 ~~court of the county where the offense occurred."~~

20

21 **Section 11.** Section 41-5-205, MCA, is amended to read:

22 **"41-5-205. Retention of jurisdiction.** Once a court obtains jurisdiction over a youth, the court
23 retains jurisdiction unless terminated by the court or by mandatory termination in the following cases:

24 ~~(1) at the time the proceedings are transferred to adult criminal court;~~

25 ~~(2)(1) at the time the youth is discharged by the department; and~~

26 (2) at the time the youth is transferred to the department of corrections and human services; and

27 (3) in any event, at the time the youth reaches the age of 21 years."

28

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

30 **"41-5-206. Transfer to criminal court.** ~~(1) After a petition has been filed alleging delinquency, the~~

1 court may, upon motion of the county attorney, before hearing the petition on its merits, transfer the matter
2 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)(J);~~

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~~
25 ~~counsel, and his parents, guardian, or custodian at least 10 days before the hearing; and~~

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

28 ~~(i) the youth committed the delinquent act alleged;~~

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

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

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

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

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

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

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

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

20 ~~(6) Upon order of the youth court transferring the case to the district court, the county attorney~~
21 ~~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; however, no youth under 16 years of~~

1 ~~age may be confined in the state prison.~~

2 (1) (a) A youth's first violation of a state criminal or other law or municipal ordinance may be
 3 handled by the probation officer under part 4 of this chapter or the probation officer may refer the youth
 4 to the county attorney, who may either file a petition in the youth court or file a criminal complaint or other
 5 appropriate proceeding in a court having jurisdiction over the violation. The youth must be tried as an adult.

6 (b) Upon a second or subsequent violation, the county attorney may file a petition, complaint, or
 7 other proceeding as provided in subsection (1)(a).

8 ~~(2)~~ (2) A youth whose case is transferred to district court who is charged with a crime may not be
 9 detained or otherwise placed in a jail, prison, or other adult detention facility before or after final disposition
 10 of his the case unless:

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

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

14

15 **Section 13.** Section 41-5-301, MCA, is amended to read:

16 **"41-5-301. Preliminary investigation and disposition.** (1) Whenever the court receives information
 17 from any agency or person, based upon reasonable grounds, that a youth is or appears to be a delinquent
 18 youth or a youth in need of supervision or, being subject to a court order or consent order, has violated the
 19 terms ~~thereof~~ of an order, a probation officer shall make a preliminary inquiry into the matter.

20 (2) The probation officer may:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 (c) refer the matter to the county attorney for filing a petition charging the youth to be a delinquent
18 youth or a youth in need of supervision or for filing a complaint or other proceeding under 41-5-206.

19 (6) The county attorney may either:

20 (a) apply to the youth court for permission to file a petition charging a youth to be a delinquent
21 youth or a youth in need of supervision. The application must be supported by ~~such~~ evidence as the youth
22 court may require. If it appears that there is probable cause to believe that the allegations of the petition
23 are true, the youth court shall grant leave to file the petition.

24 (b) file a complaint or other proceeding under 41-5-206.

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

28 (8) If ~~no~~ a petition, complaint, or other proceeding is not filed under this section, the complainant
29 and victim, if any, ~~shall~~ must be informed by the probation officer of the action and the reasons ~~therefor~~
30 for the action and ~~shall~~ must be advised of the right to submit the matter to the county attorney for review.

1 The county attorney, upon receiving a request for review, shall consider the facts, consult with the
 2 probation officer, and make the final decision as to whether a petition, complaint, or other proceeding ~~shall~~
 3 be is to be filed."

4
 5 **Section 14.** Section 41-5-304, MCA, is amended to read:

6 **"41-5-304. Investigation, fingerprints, and photographs.** (1) All law enforcement investigations
 7 relating to a delinquent youth or youth in need of supervision must be conducted in accordance with this
 8 chapter and Title 46.

9 (2) A youth may be fingerprinted or photographed for criminal identification purposes:

- 10 (a) if arrested for ~~conduct alleged to be unlawful that would be a felony if committed by an adult;~~
 11 (b) pursuant to a search warrant, supported by probable cause, issued by a judge, justice of the
 12 peace, or magistrate; or
 13 (c) upon the order of the youth court judge, after a petition alleging delinquency has been filed in
 14 which the unlawful act alleged ~~would constitute~~ is a felony ~~if the act had been committed by an adult.~~

15 (3) Fingerprint records and photographs may be used by the department of justice or any law
 16 enforcement agency in the judicial district for comparison and identification purposes in any other
 17 investigation."

18
 19 **Section 15.** Section 41-5-305, MCA, is amended to read:

20 **"41-5-305. Criteria for placement of youth in secure detention facilities or shelter care facilities.**

21 (1) A youth may not be placed in a secure detention facility unless:

- 22 (a) ~~he the youth~~ has allegedly committed ~~an act that if committed by an adult would constitute a~~
 23 criminal offense ~~and the alleged offense is one~~ specified in 41-5-206;
 24 (b) ~~he the youth~~ is alleged to be a delinquent youth and:
 25 (i) ~~he the youth~~ has escaped from a shelter care facility, correctional facility, or secure detention
 26 facility;
 27 (ii) ~~he the youth~~ has violated a valid court order or an aftercare agreement;
 28 (iii) ~~his the youth's~~ detention is required to protect persons or property;
 29 (iv) ~~he the youth~~ has pending court or administrative action or is awaiting a transfer to another
 30 jurisdiction and may abscond or be removed from the jurisdiction of the court;

- 1 (v) there are not adequate assurances that ~~he~~ the youth will appear for court when required; or
- 2 (vi) ~~he~~ the youth meets additional criteria for secure detention established by the youth court in the
- 3 judicial district that has current jurisdiction ~~over him~~; or
- 4 (c) ~~he~~ the youth has been adjudicated delinquent and is awaiting final disposition of ~~his~~ the case.
- 5 (2) A youth may not be placed in a shelter care facility unless:
- 6 (a) the youth and ~~his~~ the youth's family need shelter care to address their problematic situation
- 7 when it is not possible for the youth to remain at home;
- 8 (b) the youth needs to be protected from physical or emotional harm;
- 9 (c) the youth needs to be deterred or prevented from immediate repetition of ~~his~~ the troubling
- 10 behavior;
- 11 (d) shelter care is necessary to assess the youth and ~~his~~ the youth's environment;
- 12 (e) shelter care is necessary to provide adequate time for case planning and disposition; or
- 13 (f) shelter care is necessary to intervene in a crisis situation and provide intensive services or
- 14 attention that might alleviate the problem and reunite the family."

15

16 **Section 16.** Section 41-5-306, MCA, is amended to read:

17 "**41-5-306. Place of shelter care or detention.** (1) After a probable cause hearing provided for in

18 41-5-303, a youth alleged to be a youth in need of supervision may be placed only:

- 19 (a) in a licensed youth foster home as defined in 41-3-1102;
- 20 (b) in a facility operated by a licensed child welfare agency;
- 21 (c) in a licensed youth group home as defined in 41-3-1102; ~~or~~
- 22 (d) under home arrest, either in the youth's own home or in one of the facilities described in
- 23 subsections (1)(a) through (1)(c), as provided in Title 46, chapter 18, part 10; OR

24 (E) IN A DETENTION FACILITY.

25 (2) A youth alleged to be a youth in need of care may be placed only in the facilities listed in

26 subsection (1), must be segregated from juvenile offenders, and may not be placed in a jail or other facility

27 intended or used for the confinement of adults accused or convicted of criminal offenses.

28 (3) After a probable cause hearing provided for in 41-5-303, a youth alleged to be a delinquent

29 youth may be placed only in:

- 30 (a) the facilities described in subsection (1);

1 (b) under home arrest as provided in subsection (1);

2 (c) a short-term detention center; ~~or~~

3 (d) a youth detention facility; OR

4 (E) A COMMUNITY YOUTH COURT PROGRAM."

5
6 **Section 17.** Section 41-5-307, MCA, is amended to read:

7 **"41-5-307. Release or delivery from custody.** (1) Whenever a peace officer believes, on
8 reasonable grounds, that a youth can be released to a person who has custody of the youth, then the peace
9 officer may release the youth to that person upon receiving a written promise from the person to bring the
10 youth before the probation officer at a time and place specified in the written promise, or a peace officer
11 may release the youth under any other reasonable circumstances.

12 (2) Whenever the peace officer believes, on reasonable grounds, that the youth must be detained,
13 the peace officer shall notify the probation officer immediately and shall, as soon as practicable, provide
14 the probation officer with a written report of ~~his~~ the reasons for holding the youth in detention. If it is
15 necessary to hold the youth pending appearance before the youth court, then the youth must be held in
16 a place of detention approved by the ~~youth court~~ board of county commissioners. If the peace officer
17 believes that the youth must be sheltered, the peace officer shall notify the probation officer immediately
18 and shall provide a written report of ~~his~~ the reasons for placing the youth in shelter care. If the youth is
19 then held, the youth must be placed in a shelter care facility approved by the ~~youth court~~ board of county
20 commissioners."

21
22 **Section 18.** Section 41-5-313, MCA, is amended to read:

23 **"41-5-313. Permitted acts -- detention of youth in law enforcement facilities -- criteria.** ~~(1) Nothing~~
24 ~~in this~~ This chapter precludes does not include PRECLUDE the detention of youth in a police station or other
25 law enforcement facility that is attached to or part of a jail if:

26 ~~(a) the area where the youth is held is an unlocked, multipurpose area, such as a lobby, office,~~
27 ~~interrogation room, or other area that is not designated or used as a secure detention area or that is not~~
28 ~~part of a secure detention area, or, if part of such an area, that is used only for the purpose of processing,~~
29 ~~such as a booking room;~~

30 ~~(b) the youth is not secured to a cuffing rail or other stationary object during the period of~~

1 detention;

2 ~~(c) use of the area is limited to ensuring custody of the youth for the purpose of identification,~~
3 ~~processing, or transfer of the youth to an appropriate detention or shelter care facility;~~

4 ~~(d) the area is not designed or intended to be used for residential purposes; and~~

5 ~~(e) the youth is under continuous visual supervision by a law enforcement officer or by facility staff~~
6 ~~during the period of time that the youth is held in detention.~~

7 ~~(2) For purposes of this section, "secure detention" means the detention of youth or confinement~~
8 ~~of adults accused or convicted of criminal offenses in a physically restricting setting, including but not~~
9 ~~limited to a locked room or set of rooms or a cell designed to prevent a youth or adult from departing at~~
10 ~~will."~~

11

12 **Section 19.** Section 41-5-401, MCA, is amended to read:

13 **"41-5-401. Consent adjustment without petition.** (1) Before a petition is filed, the probation
14 officer may enter into an informal adjustment and give counsel and advice to the youth and other interested
15 parties if it appears:

16 (a) the admitted facts bring the case within the jurisdiction of the court;

17 (b) counsel and advice without filing a petition would be in the best interests of the ~~child~~ youth,
18 the youth's family, and the public; and

19 (c) the youth may be a youth in need of supervision and if the probation officer believes that the
20 parents, foster parents, physical custodian, or guardian exerted all reasonable efforts to mediate, resolve,
21 or control the youth's behavior and the youth continues to exhibit behavior beyond the control of the
22 parents, foster parents, physical custodian, or guardian.

23 (2) Any probation or other disposition imposed under this section against any youth must conform
24 to the following procedures:

25 (a) Every consent adjustment ~~shall~~ must be reduced to writing and signed by the youth and ~~his~~ the
26 youth's parents or the person having legal custody of the youth.

27 (b) If the probation officer believes the youth is a youth in need of supervision, the probation officer
28 shall determine that the parents, foster parents, physical custodian, or guardian exerted all reasonable
29 efforts to mediate, resolve, or control the youth's behavior and the youth continues to exhibit behavior
30 beyond the control of the parents, foster parents, physical custodian, or guardian.

1 (c) Approval by the youth court judge is required if the complaint alleges commission of a felony
2 or if the youth has been or will be in any way detained.

3 (d) If a placement of the youth is made, it must be by the youth placement committee pursuant
4 to 41-5-526 and 41-5-527."

5
6 **Section 20.** Section 41-5-403, MCA, is amended to read:

7 **"41-5-403. Disposition permitted under informal adjustment -- contributions by parents or guardians**
8 **for youth's care.** (1) The following dispositions may be imposed by informal adjustment:

9 (a) probation;

10 (b) placement of the youth in substitute care in a youth care facility, as defined in 41-3-1102, and
11 as determined by the department;

12 (c) placement of the youth with a private agency responsible for the care and rehabilitation of the
13 youth as determined by the department;

14 (d) restitution upon approval of the youth court judge;

15 (e) placement of the youth under home arrest as provided in Title 46, chapter 18, part 10.

16 (2) In determining whether restitution is appropriate in a particular case, the following factors may
17 be considered in addition to any other evidence:

18 (a) age of the youth;

19 (b) ability of the youth to pay;

20 (c) ability of ~~the parents or legal guardian~~ persons contributing to the youth's delinquency or need
21 for supervision to pay;

22 (d) amount of damage to the victim; and

23 (e) legal remedies of the victim; ~~however~~ However, the ability of the victim or ~~his~~ the victim's
24 insurer to stand any loss may not be considered in any case.

25 (3) If the youth violates an aftercare agreement as provided for in 52-5-126, ~~he~~ the youth must
26 be returned to the court for further disposition. A youth may not be placed in a state youth correctional
27 facility under informal adjustment.

28 (4) If the youth is placed in substitute care requiring payment by the department, the court shall
29 examine the financial ability of the youth's parents or guardians to pay a contribution covering all or part
30 of the costs for the care, placement, and treatment of the youth, including the costs of necessary medical,

1 dental, and other health care.

2 (5) If the court determines that the youth's parents or guardians are financially able to pay a
3 contribution as provided in subsection (4), the court shall order the youth's parents or guardians to pay an
4 amount based on the uniform child support guidelines adopted by the department of social and rehabilitation
5 services pursuant to 40-5-209.

6 (6) (a) Except as provided in subsection (6)(b), contributions ordered under this section and each
7 modification of an existing order are enforceable by immediate or delinquency income withholding, or both,
8 under Title 40, chapter 5, part 4. An order for contribution that is inconsistent with this section is
9 nevertheless subject to withholding for the payment of the contribution without need for an amendment
10 of the support order or for any further action by the court.

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

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

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

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

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

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

23 (d) An alternative arrangement must:

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

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

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

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

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

5 **Section 21.** Section 41-5-514, MCA, is amended to read:

6 **"41-5-514. Admissibility of confession or illegally seized evidence.** In a proceeding alleging a youth
7 to be a delinquent youth:

8 (1) an extrajudicial statement that would be constitutionally inadmissible in a criminal matter may
9 not be received in evidence;

10 (2) evidence illegally seized or obtained may not be received in evidence to establish the allegations
11 of a petition against a youth; ~~and~~

12 (3) an extrajudicial admission or confession made by the youth out of court is insufficient to
13 support a finding that the youth committed the acts alleged in the petition unless it is corroborated by other
14 evidence; and

15 (4) the court may order the youth to undergo urinalysis for the purpose of determining whether the
16 youth is using alcoholic beverages or illegal drugs."
17

18 **Section 22.** Section 41-5-521, MCA, is amended to read:

19 **"41-5-521. Adjudicatory hearing.** (1) Prior to any adjudicatory hearing, the court shall determine
20 whether the youth admits or denies the offenses alleged in the petition. If the youth denies all offenses
21 alleged in the petition, the youth, ~~his~~ or the youth's parent, guardian, or attorney may demand a jury trial
22 on ~~such~~ the contested offenses. In the absence of ~~such~~ a demand, a jury trial is waived. If the youth
23 denies some offenses and admits others, the contested offenses may be dismissed in the discretion of the
24 youth court judge. The adjudicatory hearing ~~shall~~ must be set immediately and accorded a preferential
25 priority.

26 (2) An adjudicatory hearing ~~shall~~ must be held to determine whether the contested offenses are
27 supported by proof beyond a reasonable doubt in cases involving a youth alleged to be delinquent or in
28 need of supervision. If the hearing is before a jury, the jury's function ~~shall be~~ is to determine whether the
29 youth committed the contested offenses. If the hearing is before the youth court judge without a jury, the
30 judge shall make and record ~~his~~ findings on all issues. If the allegations of the petitions are not established

1 at the hearing, the youth court shall dismiss the petition and discharge the youth from custody. The
 2 petition and affidavits may not contain allegations against PERSONS OTHER THAN the youth or other
 3 persons unless they have been admitted or proven.

4 (3) An adjudicatory hearing ~~shall~~ must be recorded verbatim by whatever means the court
 5 considers appropriate.

6 (4) The youth charged in a petition must be present at the hearing and, if brought from detention
 7 to the hearing, may not appear clothed in institutional clothing.

8 (5) In a hearing on a petition under this section, the general public may not be excluded when the
 9 hearing is held on a contested offense to which publicity must be allowed under subsection (2) of
 10 41-5-601.

11 (6) If, on the basis of a valid admission by a youth of the allegations of the petition or after the
 12 hearing required by this section, a youth is found to be a delinquent youth or a youth in need of
 13 supervision, the court shall schedule a dispositional hearing under this chapter.

14 (7) When a jury trial is required in a case, it may be held before a jury selected as provided in Title
 15 25, chapter 7, part 2, and M.R.Civ.P., Rule 47."

16

17 **Section 23.** Section 41-5-522, MCA, is amended to read:

18 **"41-5-522. Dispositional hearing.** (1) As soon as practicable after a youth is found to be a
 19 delinquent youth or a youth in need of supervision, the court shall conduct a dispositional hearing. The
 20 dispositional hearing may involve a determination of the financial ability of the youth's parents or guardians
 21 to pay a contribution for the cost of care, commitment, and treatment of the youth as required in 41-5-523.

22 (2) Before conducting the dispositional hearing, the court shall direct that a social summary or
 23 predisposition report be made in writing by a probation officer concerning the youth, ~~his~~ the youth's family,
 24 ~~his~~ the youth's environment, and other matters relevant to the need for care or rehabilitation or disposition
 25 of the case. The youth court may have the youth examined, and the results of the examination ~~shall~~ must
 26 be made available to the court as part of the social summary or predisposition report. The court may order
 27 the examination of a parent or guardian whose ability to care for or supervise a youth is at issue before the
 28 court. The results of ~~such~~ the examination ~~shall~~ must be included in the social summary or predisposition
 29 report. The youth, ~~his~~ or the youth's parents, guardian, or counsel ~~shall have~~ has the right to subpoena
 30 all persons who have prepared any portion of the social summary or predisposition report and ~~shall have~~

1 has the right to cross-examine ~~said~~ the parties at the dispositional hearing.

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

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

8 (5) If the court finds that it is in the best interest of the youth, the youth, ~~his~~ or the youth's
9 parents, or guardian may be temporarily excluded from the hearing during the taking of evidence on the
10 issues of need for treatment and rehabilitation.

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

13 (a) age of the youth;

14 (b) ability of the youth to pay;

15 (c) ability of ~~the parents or legal guardian~~ those that contributed to the youth's delinquency or need
16 for supervision to pay;

17 (d) amount of damage to the victim; and

18 (e) legal remedies of the victim; ~~however~~ However, the ability of the victim or ~~his~~ the victim's
19 insurer to stand any loss may not be considered in any case."

20

21 **Section 24.** Section 41-5-523, MCA, is amended to read:

22 **"41-5-523. Disposition -- commitment to department -- placement and evaluation of youth --**
23 **restrictions.** (1) ~~If~~ Except as provided in subsection (15), if a youth is found to be a delinquent youth or
24 a youth in need of supervision, the youth court may enter its judgment making any of the following
25 dispositions:

26 (a) place the youth on probation;

27 (b) commit the youth to the department if the court determines that the youth is in need of
28 placement in other than the youth's own home, provided that:

29 (i) the court shall determine whether continuation in the home would be contrary to the welfare
30 of the youth, the youth's family, and the community and whether reasonable efforts have been made to

1 prevent or eliminate the need for removal of the youth from the youth's home. The court shall include a
2 determination in the order committing the youth to the department.

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

9 (c) order restitution by the youth or the youth's parents;

10 (d) impose a fine as authorized by law if the violation alleged ~~would constitute~~ is a criminal offense
11 ~~if committed by an adult~~;

12 (e) require the performance of community service;

13 (f) require the youth, the youth's parents or guardians, or the persons having legal custody of the
14 youth to receive counseling services;

15 (g) require the medical and psychological evaluation of the youth, the youth's parents or guardians,
16 or the persons having legal custody of the youth;

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

19 (i) order further care, treatment, evaluation, or relief that the court considers beneficial to the
20 youth, the youth's family, and the community and that does not obligate funding from the department
21 without the department's approval, except that a youth may not be placed by a youth court in a residential
22 treatment facility as defined in 50-5-101. Only the department may, pursuant to subsection (1)(b), place
23 a youth in a residential treatment facility.

24 (j) commit the youth to a mental health facility if, based upon the testimony of a professional
25 person as defined in 53-21-102, the court finds that the youth is seriously mentally ill as defined in
26 53-21-102. The youth is entitled to all rights provided by 53-21-114 through 53-21-119. A youth
27 adjudicated ~~mentally ill or seriously mentally ill as defined in 53-21-102 may not be committed to a state~~
28 ~~youth correctional facility. A youth adjudicated to be mentally ill or seriously mentally ill~~ to have a mental
29 disease or defect that renders the youth unable to appreciate the criminality of the youth's behavior or
30 unable to conform the youth's behavior to the requirements of law after placement by the department in

1 a state youth correctional facility must be moved to a more appropriate placement in response to the
2 youth's mental health needs and consistent with the disposition alternatives available in 53-21-127.

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

4 (2) When a youth is committed to the department, the department shall determine the appropriate
5 placement and rehabilitation program for the youth after considering the recommendations made under
6 41-5-527 by the youth placement committee. Placement is subject to the following limitations:

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

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

14 ~~(e)(b)~~ A youth may ~~not~~ be placed in or transferred to a penal institution or other facility used for
15 the execution of sentence of adults convicted of crimes.

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

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

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

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

27 (d) case management of the youth.

28 (4) The youth court may order a youth to receive a medical or psychological evaluation at any time
29 prior to final disposition if the youth waives the youth's constitutional rights in the manner provided for in
30 41-5-303. The county determined by the court as the residence of the youth is responsible for the cost

1 of the evaluation, except as provided in subsection (5). A county may contract with the department or
2 other public or private agencies to obtain evaluation services ordered by the court.

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

6 (6) The youth court may not order placement or evaluation of a youth at a state youth correctional
7 facility unless the youth is found to be a delinquent youth or is alleged to have committed ~~an~~ a violent
8 felony offense that is transferable to criminal court under 41-5-206 as defined in 46-18-1001.

9 (7) An evaluation of a youth may ~~not~~ be performed at the Montana state hospital ~~unless the youth~~
10 ~~is transferred to the district court under 41-5-206.~~

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

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

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

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

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

30 (b) A court-ordered exception from contributions under this section must be in writing and be

1 included in the order. An exception from the immediate income withholding requirement may be granted
 2 if the court finds there is:

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

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

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

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

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

12 (d) An alternative arrangement must:

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

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

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

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

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

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

25 (15) (a) A misdemeanor counts as one point and a felony counts as three points. An offense that
 26 can be committed only by a person only because of age counts as one point. A youth found to have
 27 accumulated three points must be placed in a secure detention facility for 1 week. Upon accumulating six
 28 points, a youth must be placed in a secure detention facility for 2 weeks 5 DAYS, and upon accumulating
 29 nine points, a youth must be placed in a secure detention facility for 30 10 days. The staff of the secure
 30 detention facility must be trained in and give the youth counseling. The youth must be segregated from

1 other youth, except when working on public works projects. Each county shall establish public works
2 projects for the youth.

3 (b) Upon accumulating 10 points, a youth must be designated as a "habitual offender" and must
4 be placed in a state youth correctional facility for no less than 90 days.

5 (c) If the court finds that a habitual offender commonly entices or assists other youth to perform
6 illegal acts, the youth must be designated as a "predatory youth" and must be placed in a state youth
7 correctional facility for no less than 180 days.

8 (d) Law enforcement, educational, and social service agencies, the court, and other agencies and
9 entities involved with a youth who is found by the court or believed by the agency or entity to be a
10 delinquent youth or a youth in need of supervision shall provide the chief youth court probation officer for
11 the county in which the youth resides with any information in the possession of the agency or entity that
12 may indicate that the youth is a habitual offender, a predatory youth, or a youth at risk.

13 (16) If a youth who is serving time in a state youth correctional facility because the youth was
14 found to be a habitual offender or a predatory youth needs and is willing to accept treatment for mental,
15 emotional, behavioral, substance abuse, or similar problems, the youth may be transferred to a residential
16 treatment facility, but not until after the youth has served at least one-half of the imposed detention period.

17 (17) Health, education, welfare, and other agencies involved with the youth shall ensure that
18 funding for the youth follows the youth to the location in which the youth is placed and that the funding
19 is assigned to the appropriate agency or entity.

20 (18) Before a youth is released from a state youth correctional facility, the department shall adopt
21 and the court shall approve a written supervision plan.

22 (19) (a) If the youth is still subject to the court's jurisdiction and to supervision under the disposition
23 when the youth becomes 21 years of age, this chapter ceases to apply to the youth and jurisdiction over
24 the youth is transferred to the department of corrections and human services, which shall make an
25 appropriate placement and shall supervise the youth. The youth may not be placed and supervised for a
26 period of time in excess of the maximum period of imprisonment that could be imposed on an adult
27 convicted of the offense or offenses that brought the youth under the jurisdiction of the youth court.

28 (b) When a youth is transferred to the department of corrections and human services, the
29 department of family services shall transmit to the department of corrections and human services the
30 dispositional judgment, copies of medical reports, social history material, education records, and any other

1 clinical, predisposition, or other reports and information pertinent to the care and treatment of the youth.

2 (c) The department of corrections and human services shall confine the youth in whatever
3 institution it considers proper, including a youth correctional facility under the procedures of 52-5-111.
4 However, a youth under 16 years of age may not be confined in the state prison."

5
6 **Section 25.** Section 41-5-526, MCA, is amended to read:

7 **"41-5-526. Duties of the youth placement committee.** A youth placement committee shall:

8 (1) review all information relevant to the placement of a youth referred or committed to the
9 department;

10 (2) consider available resources appropriate to meet the needs of the youth;

11 (3) consider the treatment recommendations of any professional person who has evaluated the
12 youth;

13 (4) recommend in writing to the department an appropriate placement for the youth, considering
14 the age and treatment needs of the youth and the relative costs of care in facilities considered appropriate
15 for placement. A committee shall consider placement in a ~~licensed~~ facility approved by the board of county
16 commissioners of the county in which the facility is located, at Mountain View school, at Pine Hills school,
17 or with a parent, other family member, or guardian.

18 (5) review temporary and emergency placements as required under 41-5-528; and

19 (6) conduct placement reviews as requested by the department."
20

21 **Section 26.** Section 41-5-527, MCA, is amended to read:

22 **"41-5-527. Youth placement committee to submit recommendation to department -- acceptance**
23 **or rejection of recommendation by department.** (1) When a youth has been referred or committed to the
24 department for placement, the department shall notify the appropriate youth placement committee. The
25 committee shall submit in writing to the department its recommendation for placement of the youth. The
26 committee shall send a copy of the recommendation to the appropriate youth court judge.

27 (2) ~~Except as provided in subsection (7),~~ if the department accepts the committee's
28 recommendation, the youth must be placed according to the recommendation.

29 (3) If the department rejects the committee's recommendation, it shall promptly notify the
30 committee in writing of the reasons for rejecting the recommendation. The department shall send a copy

1 of the notice to the appropriate youth court judge.

2 (4) After receiving a notice under subsection (3), the committee shall submit in writing to the
3 department a recommendation for an alternative placement of the youth.

4 (5) ~~If~~ Except as provided in subsection (7), if the department accepts the committee's
5 recommendation for alternative placement, the youth must be placed according to the recommendation.

6 (6) If the department rejects the committee's recommendation for alternative placement, the
7 department shall promptly notify the committee in writing of the reasons for rejecting the recommendation
8 and shall determine an appropriate placement for the youth. The youth must be placed as determined by
9 the department.

10 (7) A placement may not be made unless the youth court judge agrees with the placement."

11

12 **Section 27.** Section 41-5-529, MCA, is amended to read:

13 **"41-5-529. Confidentiality of youth placement committee meetings and records.** (1) Meetings of
14 a youth placement committee are closed to the public to protect a youth's right to individual privacy.

15 (2) Information presented to the committee about a youth and committee records are confidential
16 and subject to confidentiality requirements established by rule by the department. Purposeful violation of
17 the confidentiality requirements is a criminal offense and a person convicted of violating the requirements
18 shall be fined \$1,000."

19

20 **Section 28.** Section 41-5-533, MCA, is amended to read:

21 **"41-5-533. Probation revocation -- disposition.** (1) A Prior to the youth's transfer to the
22 department of corrections and human services, a youth on probation incident to an adjudication that he the
23 youth is a delinquent youth or a youth in need of supervision and who violates a term of such the probation
24 may be proceeded against in a probation revocation proceeding. A proceeding to revoke probation shall
25 must be done by filing in the original proceeding a petition styled "petition to revoke probation".

26 (2) Petitions to revoke probation ~~shall~~ must be screened, reviewed, and prepared in the same
27 manner and ~~shall~~ must contain the same information as petitions alleging delinquency or need of
28 supervision. Procedures of the Montana Youth Court Act regarding taking into custody and detention ~~shall~~
29 apply. The petition ~~shall~~ must state the terms of probation alleged to have been violated and the factual
30 basis for ~~such the~~ the allegations.

1 (3) The standard of proof in probation revocation proceedings is the same standard used in
 2 probation revocation of an adult and the hearing ~~shall~~ must be before the youth court without a jury. In
 3 all other respects proceedings to revoke probation are governed by the procedures, rights, and duties
 4 applicable to proceedings on petitions alleging that the youth is delinquent or a youth in need of
 5 supervision. If a youth is found to have violated a term of ~~his~~ probation, the youth court may make any
 6 judgment of disposition that could have been made in the original case."

7
 8 **Section 29.** Section 41-5-601, MCA, is amended to read:

9 **"41-5-601. Confidentiality.** (1) ~~(a) No~~ Except as provided in subsection (1)(b), information ~~shall~~
 10 may not be given concerning a youth or any matter or proceeding in the youth court involving a youth
 11 proceeded against as, or found to be, a youth in need of supervision.

12 (b) If a youth as to whom there are active issues relating to drug use or crimes is placed in foster
 13 care, the court shall notify the school that the youth will attend of the issues and the school may refuse
 14 to accept the youth as a student.

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

21 (3) In all cases the victim is entitled to all information concerning the identity and disposition of the
 22 youth.

23 (4) The identity of ~~any~~ a youth who for the second or subsequent time admits violating or is
 24 adjudicated as having violated ~~45-5-624 or 45-9-102~~ may a statute must be disclosed by youth court
 25 officials to the administrative officials of the school in which the youth is a student for purposes of referral
 26 for enrollment in a substance abuse program or enforcement of school disciplinary procedures that existed
 27 at the time of the admission or adjudication. The information may not be further disclosed and may not be
 28 made part of the student's permanent records."

29
 30 **Section 30.** Section 41-5-604, MCA, is amended to read:

1 **"41-5-604. Disposition of records.** (1) All youth court records and law enforcement records
 2 except fingerprints and photographs pertaining to a youth coming under this chapter ~~shall~~ must be
 3 physically sealed ~~when the youth reaches the age of 18 years~~ 3 years after supervision for an offense ends.
 4 The records must be unsealed if a new offense is committed.

5 (2) In those cases in which jurisdiction of the court or any agency is extended beyond the youth's
 6 18th birthday, the ~~above~~ records and files ~~shall~~ must be physically sealed upon termination of the extended
 7 jurisdiction.

8 (3) Upon the physical sealing of the records pertaining to a youth pursuant to this section, any
 9 agency or department that has in its possession copies of the records ~~so~~ that are sealed shall also seal or
 10 destroy ~~such~~ the copies of records. Anyone violating the provisions of this subsection ~~shall be~~ is subject
 11 to contempt of court.

12 (4) ~~Nothing herein contained shall~~ This section does not prohibit the destruction of ~~such~~ records
 13 with the consent of the youth court judge or county attorney after 10 years from the date of sealing.

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

16
 17 **Section 31.** Section 41-5-703, MCA, is amended to read:

18 **"41-5-703. Powers and duties of probation officers.** (1) A probation officer shall:

19 (a) perform the duties set out in 41-5-401;

20 (b) make predisposition studies and submit reports and recommendations to the court;

21 (c) supervise, assist, and counsel youth placed on probation or under ~~his~~ the officer's supervision,

22 The probation officer shall ensure that a youth adjudicated as delinquent or in need of supervision and not
 23 placed in a detention center or facility complies with the orders of the court;

24 (d) perform any other functions designated by the court.

25 (2) A probation officer ~~shall have no power to~~ may make arrests ~~or to~~ and perform any other law
 26 enforcement ~~functions~~ function in carrying out ~~his~~ the officer's duties, ~~except that a probation officer may~~
 27 ~~take~~ including taking into custody ~~any~~ a youth who violates ~~either his~~ probation or a lawful order of the
 28 court."

29

30 **Section 32.** Section 41-5-802, MCA, is amended to read:

1 **"41-5-802. Shelter care facilities.** (1) Counties, cities, or nonprofit corporations may provide by
2 purchase, lease, or otherwise, a shelter care facility.

3 (2) A shelter care facility ~~must be physically unrestricting and~~ may be used to provide shelter care
4 for youth alleged or adjudicated delinquent, in need of supervision, or in need of care.

5 (3) A shelter care facility must be ~~separate and apart~~ physically separated from any facility housing
6 adults accused or convicted of criminal offenses.

7 (4) State appropriations and federal funds may be received by the counties, cities, or nonprofit
8 corporations for establishment, maintenance, or operation of a shelter care facility.

9 (5) A shelter care facility must be furnished in a comfortable manner ~~and be as nearly as possible~~
10 ~~like a family home.~~

11 (6) A shelter care facility may be operated in conjunction with a youth detention facility."
12

13 **Section 33.** Section 41-5-810, MCA, is amended to read:

14 **"41-5-810. County responsibility to provide youth detention services.** (1) Each county shall
15 provide services for the detention of youth ~~in facilities separate from adult jails~~ and space must be found
16 for a youth in need of detention. A youth may not be released from detention because of space problems.
17 An arresting officer shall place the youth in a detention center.

18 (2) In order to fulfill its responsibility under subsection (1), a county may:

19 (a) establish, operate, and maintain a holdover, a short-term detention center, or a youth detention
20 facility at county expense;

21 (b) provide shelter care facilities as authorized in 41-5-802;

22 (c) contract with another county for the use of an available shelter care facility, holdover,
23 short-term detention center, or youth detention facility;

24 (d) establish and operate a network of holdovers in cooperation with other counties;

25 (e) establish a regional detention facility; or

26 (f) enter into an agreement with a private party under which the private party will own, operate,
27 or lease a shelter care facility or youth detention facility for use by the county. ~~The agreement may be~~
28 ~~made in substantially the same manner as provided for in 7-32-2232 and 7-32-2233.~~

29 (3) Each county, ~~or regional, municipal, or state~~ detention facility of any type, detention center of
30 any type, shelter care facility, or holdover must be licensed approved by the department in accordance with

1 ~~rules adopted under 41-5-809~~ board of county commissioners of the county in which it is located."

2

3 **Section 34.** Section 41-5-811, MCA, is amended to read:

4 **"41-5-811. Regional detention facilities.** (1) Two or more counties may, by contract, establish
5 and maintain a regional detention facility.

6 (2) For the purpose of establishing and maintaining a regional detention facility, a county may:

7 (a) issue general obligation bonds for the acquisition, purchase, construction, renovation, and
8 maintenance of a regional detention facility;

9 (b) levy and appropriate taxes, as permitted by law, to pay its share of the cost of equipping,
10 operating, and maintaining the facility; and

11 (c) exercise all powers, under the limitations prescribed by law, necessary and convenient to carry
12 out the purposes of 41-5-810 and this section.

13 (3) Contracts authorized under subsection (1) must be made pursuant to the Interlocal Cooperation
14 Act, Title 7, chapter 11, part 1.

15 (4) Contracts between counties participating in a regional detention facility ~~must be for a term of~~
16 ~~not less than 10 years. In addition, the contracts~~ must:

17 (a) specify the responsibilities of each county participating in the agreement;

18 (b) designate responsibility for operation of the regional detention facility;

19 (c) specify the amount of funding to be contributed by each county toward payment of the cost
20 of establishing, operating, and maintaining the regional detention facility, including the necessary
21 expenditures for the transportation of youth to and from the facility;

22 (d) include the applicable per diem charge for the detention of youths in the facility, as well as the
23 basis for any adjustment in the charge; and

24 (e) specify the number of beds to be reserved for the use of each county participating in the
25 regional detention facility."

26

27 **Section 35.** Section 41-5-812, MCA, is amended to read:

28 **"41-5-812. Creation of regions -- requirements ~~— limitation on number of regions.~~** (1) Counties
29 that wish to establish a regional detention facility shall form a youth detention region.

30 (2) Each youth detention region must:

1 ~~(a) be composed of contiguous counties participating in the regional detention facility; and~~
 2 ~~(b) include geographical areas of the state that contain a substantial percentage of the total youth~~
 3 ~~population in need of detention services, as determined by the board of crime control.~~
 4 ~~(3) There may be no more than five youth detention regions established in the state at any one~~
 5 ~~time."~~

6
 7 **Section 36.** Section 41-5-1001, MCA, is amended to read:

8 **"41-5-1001. Definitions.** As used in this part, unless the context requires otherwise, the following
 9 definitions apply:

10 (1) "Attendant care" means the direct supervision of youth by a trained attendant in a physically
 11 unrestricting setting.

12 (2) "Board" means the board of crime control provided for in 2-15-2006.

13 (3) "County" means a county, city-county consolidated government, or a youth detention region
 14 created pursuant to 41-5-812.

15 (4) "Home detention" means the use of a youth's home for the purpose of ensuring the continued
 16 custody of the youth pending adjudication or final disposition of ~~his~~ the youth's case.

17 (5) "Plan" means a county plan for providing youth detention services as required in 41-5-1003.

18 (6) "Secure detention" means the detention of youth in a physically restricting facility designed to
 19 prevent a youth from departing at will.

20 (7) "Youth detention service" means service for the detention of youth ~~in facilities separate from~~
 21 ~~adult jails.~~ The term includes the services described in 41-5-1002."

22
 23 **Section 37.** Section 41-5-1004, MCA, is amended to read:

24 **"41-5-1004. Distribution of grants -- limitation of funding -- restrictions on use.** (1) The board
 25 shall award grants on an equitable basis, ~~giving preference to services that will be used on a regional basis.~~

26 (2) The board shall award grants to eligible counties:

27 (a) in a block grant in an amount not to exceed 50% of the approved, estimated cost of secure
 28 detention; or

29 (b) on a matching basis in an amount not to exceed:

30 (i) 75% of the approved cost of providing holdovers, attendant care, and other alternatives to

1 secure detention, except for shelter care. Shelter care must be paid as provided by law.

2 (ii) 50% of the approved cost of programs for the transportation of youth to appropriate detention
3 or shelter care facilities, including regional detention facilities.

4 (3) Grants under 41-5-1002 may not be used to pay for the cost of youth evaluations. The cost
5 of evaluations must be paid as provided for in 41-5-523."
6

6

7 **Section 38.** Section 52-5-129, MCA, is amended to read:

8 **"52-5-129. Hearing on alleged violation of aftercare agreement -- right to appeal outcome.** (1)

9 When it is alleged by an aftercare counselor that a youth has violated the terms of ~~his~~ an aftercare
10 agreement, the youth must be granted a hearing at the site of the alleged violation or in the county in which
11 the youth is residing or is found within 10 days after notice has been served on the youth or the youth is
12 detained, whichever is earlier. The purpose of the hearing is to determine whether the youth committed
13 the violation and, if so, whether the violation is of ~~such~~ a nature that ~~he~~ the youth should be returned to
14 the youth correctional facility from which ~~he~~ the youth was released or a different plan for treatment should
15 be pursued by the department of family services.

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

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

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

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

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

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

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

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

27 (g) a record of the hearing; and

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

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

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

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

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

14 (7) Pending the hearing on a violation and pending the department's decision, a youth may not be
15 detained except when ~~his~~ detention or care is required to protect the person or property of the youth or of
16 others or ~~he~~ when the youth may abscond or be removed from the community. The department shall
17 determine the place and manner of detention and is responsible for the cost of the detention. Procedures
18 for taking into custody and detention of a youth charged with violation of ~~his~~ an aftercare agreement are
19 as provided in 41-5-303, 41-5-306, ~~41-5-311~~, and 41-5-314.

20 (8) If the decision is made to return the youth to the youth correctional facility from which ~~he~~ the
21 youth was released and the youth appeals that decision, ~~he~~ the youth shall await the outcome of the appeal
22 at the facility."
23

24 **Section 39.** Section 53-21-162, MCA, is amended to read:

25 "53-21-162. **Establishment of patient treatment plan -- patient's rights.** (1) Each patient admitted
26 as an inpatient to a mental health facility must have a comprehensive physical and mental examination and
27 review of behavioral status within 48 hours after admission to the mental health facility.

28 (2) Each patient must have an individualized treatment plan. This plan must be developed by
29 appropriate professional persons, including a psychiatrist, and must be implemented no later than 10 days
30 after the patient's admission. Each individualized treatment plan must contain:

- 1 (a) a statement of the nature of the specific problems and specific needs of the patient;
- 2 (b) a statement of the least restrictive treatment conditions necessary to achieve the purposes of
3 hospitalization;
- 4 (c) a description of treatment goals, with a projected timetable for their attainment;
- 5 (d) a statement and rationale for the plan of treatment for achieving these goals;
- 6 (e) a specification of staff responsibility for attaining each treatment goal;
- 7 (f) criteria for release to less restrictive treatment conditions; and
- 8 (g) a notation of any therapeutic tasks and labor to be performed by the patient.
- 9 (3) Overall development, implementation, and supervision of the treatment plan must be assigned
10 to an appropriate professional person.
- 11 (4) The inpatient mental health facility shall periodically reevaluate the patient and revise the
12 individualized treatment plan based on changes in the patient's condition. At a minimum, the treatment plan
13 must be reviewed:
- 14 (a) at the time of any transfer within the facility;
- 15 (b) at the time of discharge;
- 16 (c) upon any major change in the patient's condition;
- 17 (d) at the conclusion of the initial estimated length of stay and subsequent estimated lengths of
18 stay;
- 19 (e) no less than every 90 days; and
- 20 (f) at each of the times specified in subsections (4)(a) through (4)(e), by a treatment team that
21 includes at least one professional person who is not primarily responsible for the patient's treatment plan.
- 22 (5) A patient has the right:
- 23 (a) to ongoing participation, in a manner appropriate to the patient's capabilities, in the planning
24 of mental health services to be provided and in the revision of the plan; and
- 25 (b) to a reasonable explanation of the following, in terms and language appropriate to the patient's
26 condition and ability to understand:
- 27 (i) the patient's general mental condition and, if given a physical examination, the patient's physical
28 condition;
- 29 (ii) the objectives of treatment;
- 30 (iii) the nature and significant possible adverse effects of recommended treatments;

- 1 (iv) the reasons why a particular treatment is considered appropriate;
- 2 (v) the reasons why access to certain visitors may not be appropriate; and
- 3 (vi) any appropriate and available alternative treatments, services, or providers of mental health
- 4 services; and
- 5 ~~(e) not to receive treatment established pursuant to the treatment plan in the absence of the~~
- 6 ~~patient's informed, voluntary, and written consent to the treatment, except treatment:~~
- 7 ~~(i) during an emergency situation if the treatment is pursuant to or documented contemporaneously~~
- 8 ~~by the written order of a responsible mental health professional; or~~
- 9 ~~(ii) permitted under the applicable law in the case of a person committed to a facility by a court.~~
- 10 ~~(6) In the case of a patient who lacks the capacity to exercise the right to consent to treatment~~
- 11 ~~described in subsection (5)(e), the right must be exercised on behalf of the patient by a guardian appointed~~
- 12 ~~pursuant to the provisions of Title 72, chapter 5.~~
- 13 ~~(7) The department shall develop procedures for initiating limited guardianship proceedings in the~~
- 14 ~~case of a patient who appears to lack the capacity to exercise the right to consent described in subsection~~
- 15 ~~(5)(e)."~~

16

17 **Section 40.** Section 53-21-506, MCA, is amended to read:

18 **"53-21-506. No commitment to Montana state hospital.** An individual less than 18 years of age

19 may not be voluntarily admitted or committed by a court to the Montana state hospital unless ~~each~~ the

20 individual is ~~transferred to district court~~ charged with a criminal offense pursuant to 41-5-206."

21

22 **NEW SECTION. Section 41. Repealer.** Sections 41-5-106, 41-5-310, 41-5-311, and 41-5-809,

23 MCA, are repealed.

24

-END-

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HOUSE BILL NO. 540
INTRODUCED BY MOLNAR

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE MONTANA YOUTH COURT ACT;
AND AMENDING SECTIONS ~~7-32-2244, 39-71-117, 39-71-118, 39-71-774, 39-71-117, 39-71-118,~~
~~39-71-774,~~ 40-6-233, 41-3-102, 41-5-102, ~~41-5-103, 41-5-203, 41-5-204, 41-5-205, 41-5-206,~~
~~41-5-301, 41-5-304, 41-5-305, 41-5-306, 41-5-307, 41-5-313, 41-5-401, 41-5-403, 41-5-514, 41-5-521,~~
~~41-5-522, 41-5-523, 41-5-526, 41-5-527, 41-5-529, 41-5-533, 41-5-601, 41-5-604, 41-5-703, 41-5-802,~~
~~41-5-810,~~ AND 41-5-811, ~~41-5-812, 41-5-1001, 41-5-1004, 52-5-129, 53-21-162, AND 53-21-506,~~
MGA; AND REPEALING SECTIONS ~~41-5-106, 41-5-310, 41-5-311, AND 41-5-809,~~ MCA."

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 RD--2ND PRINTING--FOR COMPLETE TEXT.



HOUSE BILL NO. 540

INTRODUCED BY MOLNAR

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE MONTANA YOUTH COURT ACT; AND AMENDING SECTIONS ~~7-32-2244, 39-71-117, 39-71-118, 39-71-774, 39-71-117, 39-71-118, 39-71-774,~~ 40-6-233, 41-3-102, 41-5-102, ~~41-5-103, 41-5-203, 41-5-204, 41-5-205, 41-5-206, 41-5-301, 41-5-304, 41-5-305, 41-5-306, 41-5-307, 41-5-313, 41-5-401, 41-5-403, 41-5-514, 41-5-521, 41-5-522, 41-5-523, 41-5-526, 41-5-527, 41-5-529, 41-5-533, 41-5-601, 41-5-604, 41-5-703, 41-5-802, 41-5-810,~~ AND 41-5-811, ~~41-5-812, 41-5-1001, 41-5-1004, 52-5-129, 53-21-162,~~ AND ~~53-21-506,~~ MCA; AND REPEALING SECTIONS ~~41-5-106, 41-5-310, 41-5-311, AND 41-5-809,~~ MCA."

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

~~Section 1. Section 7-32-2244, MCA, is amended to read:~~

~~"7-32-2244. Detention of juveniles. Juveniles may be held in a detention center only in accordance with 41-5-301 through 41-5-307, and 41-5-309, and 41-5-311."~~

~~Section 2. Section 39-71-117, MCA, is amended to read:~~

~~"39-71-117. Employer defined. (1) "Employer" means:~~

~~(a) the state and each county, city and county, city school district, irrigation district, all other districts established by law, and all public corporations and quasi-public corporations and public agencies therein and every person, every prime contractor, and every firm, voluntary association, and private corporation, including any public service corporation and including an independent contractor who has any person in service under any appointment or contract of hire, expressed or implied, oral or written, and the legal representative of any deceased employer or the receiver or trustee thereof of the deceased employer;~~

~~(b) any association, corporation, or organization that seeks permission and meets the requirements set by the department by rule for a group of individual employers to operate as self-insured under plan No. 1 of this chapter; and~~

~~(c) any nonprofit association or corporation or other entity funded in whole or in part by federal, state, or local government funds that places community service participants, as defined in~~

1 ~~39-71-118(1)(f)(1)(e), with nonprofit organizations or associations or federal, state, or local government~~
 2 ~~entities.~~

3 ~~(2) A temporary service contractor is the employer of a temporary worker for premium and loss~~
 4 ~~experience purposes.~~

5 ~~(3) An employer defined in subsection (1) who utilizes the services of a worker furnished by~~
 6 ~~another person, association, contractor, firm, or corporation, other than a temporary service contractor,~~
 7 ~~is presumed to be the employer for workers' compensation premium and loss experience purposes for work~~
 8 ~~performed by the worker. The presumption may be rebutted by substantial credible evidence of the~~
 9 ~~following:~~

10 ~~(a) the person, association, contractor, firm, or corporation, other than a temporary service~~
 11 ~~contractor, furnishing the services of a worker to another retains control over all aspects of the work~~
 12 ~~performed by the worker, both at the inception of employment and during all phases of the work; and~~

13 ~~(b) the person, association, contractor, firm, or corporation, other than a temporary service~~
 14 ~~contractor, furnishing the services of a worker to another has obtained workers' compensation insurance~~
 15 ~~for the worker in Montana both at the inception of employment and during all phases of the work~~
 16 ~~performed.~~

17 ~~(4) Notwithstanding the provisions of subsection (3), an interstate or intrastate common or contract~~
 18 ~~motor carrier doing business in this state who utilizes drivers in this state is considered the employer, is~~
 19 ~~liable for workers' compensation premiums, and is subject to loss experience rating in this state unless:~~

20 ~~(a) the driver in this state is certified as an independent contractor as provided in 39-71-401(3);~~
 21 ~~or~~

22 ~~(b) the person, association, contractor, firm, or corporation furnishing drivers in this state to a~~
 23 ~~motor carrier has obtained workers' compensation insurance on the drivers in Montana both at the inception~~
 24 ~~of employment and during all phases of the work performed."~~

25
 26 **Section 3. Section 39-71-744, MCA, is amended to read:**

27 **~~"39-71-744. Benefits not due while claimant is incarcerated—exceptions. (1) Except as provided~~**
 28 **~~in subsection (2), a claimant is not eligible for disability or rehabilitation compensation benefits while the~~**
 29 **~~claimant is incarcerated in a correctional institution, such as the Montana state prison or the Montana~~**
 30 **~~women's correctional center, as the result of conviction of a felony. The insurer remains liable for medical~~**

1 ~~benefits. A time limit on benefits otherwise provided in this chapter is not extended due to a period of~~
 2 ~~incarceration.~~

3 ~~(2) A person who is employed while participating in a prerelease center program or a diversionary~~
 4 ~~program is eligible for temporary total benefits as provided in 39-71-701 and medical benefits for a~~
 5 ~~work-related injury received while participating in a prerelease center program or a diversionary program.~~
 6 ~~Other disability or rehabilitation benefits are not payable while the worker is participating in a prerelease~~
 7 ~~center. This subsection does not prohibit the reinstatement of other benefits upon release from~~
 8 ~~incarceration, nor does it apply to an employee performing community service described in 39-71-118(1)(f)~~
 9 ~~(1)(e)."~~

10
 11 **Section 4. Section 39-71-118, MCA, is amended to read:**

12 ~~"39-71-118. Employee, worker, and volunteer firefighter defined. (1) The terms "employee" or~~
 13 ~~"worker" means:~~

14 ~~(a) each person in this state, including a contractor other than an independent contractor, who is~~
 15 ~~in the service of an employer, as defined by 39-71-117, under any appointment or contract of hire,~~
 16 ~~expressed or implied, oral or written. The terms include aliens and minors, whether lawfully or unlawfully~~
 17 ~~employed, and all of the elected and appointed paid public officers and officers and members of boards of~~
 18 ~~directors of quasi-public or private corporations while rendering actual service for the corporations for pay.~~
 19 ~~Casual employees as defined by 39-71-116 are included as employees if they are not otherwise covered~~
 20 ~~by workers' compensation and if an employer has elected to be bound by the provisions of the~~
 21 ~~compensation law for these casual employments, as provided in 39-71-401(2). Household or domestic~~
 22 ~~service is excluded.~~

23 ~~(b) any juvenile performing work under authorization of a district court judge in a delinquency~~
 24 ~~prevention or rehabilitation program;~~

25 ~~(c) a person receiving on-the-job vocational rehabilitation training or other on-the-job training under~~
 26 ~~a state or federal vocational training program, whether or not under an appointment or contract of hire with~~
 27 ~~an employer as defined in this chapter and whether or not receiving payment from a third party. However,~~
 28 ~~this subsection does not apply to students enrolled in vocational training programs as outlined in this~~
 29 ~~subsection while they are on the premises of a public school or community college.~~

30 ~~(d)(e) students enrolled and in attendance in programs of vocational technical education at~~

1 ~~designated vocational technical centers;~~

2 ~~(e)(d) an aircrew member or other person employed as a volunteer under 67-2-106;~~

3 ~~(f)(e) a person, other than a juvenile as defined in subsection (1)(b), performing community service~~
 4 ~~for a nonprofit organization or association or for a federal, state, or local government entity under a court~~
 5 ~~order, or an order from a hearings officer as a result of a probation or parole violation, whether or not under~~
 6 ~~appointment or contract of hire with an employer as defined in this chapter and whether or not receiving~~
 7 ~~payment from a third party. For a person covered by the definition in this subsection (f)(1)(e):~~

8 ~~(i) compensation benefits must be limited to medical expenses pursuant to 39-71-704 and an~~
 9 ~~impairment award pursuant to 39-71-703 that is based upon the minimum wage established under Title 39,~~
 10 ~~chapter 3, part 4, for a full time employee at the time of the injury; and~~

11 ~~(ii) premiums must be paid by the employer, as defined in 39-71-117(3), and must be based upon~~
 12 ~~the minimum wage established under Title 39, chapter 3, part 4, for the number of hours of community~~
 13 ~~service required under the order from the court or hearings officer.~~

14 ~~(g)(f) an inmate working in a federally certified prison industries program authorized under~~
 15 ~~53-1-301.~~

16 ~~(2) The terms defined in subsection (1) do not include a person who is:~~

17 ~~(a) participating in recreational activity and who at the time is relieved of and is not performing~~
 18 ~~prescribed duties, regardless of whether the person is using, by discount or otherwise, a pass, ticket,~~
 19 ~~permit, device, or other emolument of employment; or~~

20 ~~(b) performing voluntary service at a recreational facility and who receives no compensation for~~
 21 ~~these services other than meals, lodging, or the use of the recreational facilities.~~

22 ~~(3) The term "volunteer firefighter" means a firefighter who is an enrolled and active member of~~
 23 ~~a fire company organized and funded by a county, a rural fire district, or a fire service area.~~

24 ~~(4) (a) If the employer is a partnership or sole proprietorship, the employer may elect to include as~~
 25 ~~an employee within the provisions of this chapter any member of the partnership or the owner of the sole~~
 26 ~~proprietorship devoting full time to the partnership or proprietorship business.~~

27 ~~(b) In the event of an election, the employer must serve upon the employer's insurer written notice~~
 28 ~~naming the partners or sole proprietor to be covered and stating the level of compensation coverage desired~~
 29 ~~by electing the amount of wages to be reported, subject to the limitations in subsection (4)(d). A partner~~
 30 ~~or sole proprietor is not considered an employee within this chapter until notice has been given.~~

1 ~~(c) A change in elected wages must be in writing and is effective at the start of the next quarter~~
2 ~~following notification.~~

3 ~~(d) All weekly compensation benefits must be based on the amount of elected wages, subject to~~
4 ~~the minimum and maximum limitations of this subsection. For premium ratemaking and for the~~
5 ~~determination of weekly wage for weekly compensation benefits, the electing employer may elect not less~~
6 ~~than \$900 a month and not more than 1 1/2 times the average weekly wage as defined in this chapter.~~

7 ~~(5) The trustees of a rural fire district, a county governing body providing rural fire protection, or~~
8 ~~the county commissioners or trustees for a fire service area may elect to include as an employee within the~~
9 ~~provisions of this chapter any volunteer firefighter. A volunteer firefighter who receives workers'~~
10 ~~compensation coverage under this section may not receive disability benefits under Title 19, chapter 17.~~

11 ~~(6) An employee or worker in this state whose services are furnished by a person, association,~~
12 ~~contractor, firm, or corporation, other than a temporary service contractor, to an employer as defined in~~
13 ~~39-71-117 is presumed to be under the control and employment of the employer. This presumption may~~
14 ~~be rebutted as provided in 39-71-117(3).~~

15 ~~(7) For purposes of this section, an "employee or worker in this state" means:~~

16 ~~(a) a resident of Montana who is employed by an employer and whose employment duties are~~
17 ~~primarily carried out or controlled within this state;~~

18 ~~(b) a nonresident of Montana whose principal employment duties are conducted within this state~~
19 ~~on a regular basis for an employer;~~

20 ~~(c) a nonresident employee of an employer from another state engaged in the construction industry,~~
21 ~~as defined in 39-71-116, within this state; or~~

22 ~~(d) a nonresident of Montana who does not meet the requirements of subsection (7)(b) and whose~~
23 ~~employer elects coverage with an insurer that allows an election for an employer whose:~~

24 ~~(i) nonresident employees are hired in Montana;~~

25 ~~(ii) nonresident employees' wages are paid in Montana;~~

26 ~~(iii) nonresident employees are supervised in Montana; and~~

27 ~~(iv) business records are maintained in Montana.~~

28 ~~(8) An insurer may require coverage for all nonresident employees of a Montana employer who do~~
29 ~~not meet the requirements of subsection (7)(b) or (7)(d) as a condition of approving the election under~~
30 ~~subsection (7)(d)."~~

1 ~~SECTION 2. SECTION 39-71-117, MCA, IS AMENDED TO READ:~~

2 ~~"39-71-117. Employer defined. (1) "Employer" means:~~

3 ~~(a) the state and each county, city and county, city school district, irrigation district, all other~~
 4 ~~districts established by law, and all public corporations and quasi public corporations and public agencies~~
 5 ~~therein and every person, every prime contractor, and every firm, voluntary association, and private~~
 6 ~~corporation, including any public service corporation and including an independent contractor who has any~~
 7 ~~person in service under any appointment or contract of hire, expressed or implied, oral or written, and the~~
 8 ~~legal representative of any deceased employer or the receiver or trustee thereof of the deceased employer;~~

9 ~~(b) any association, corporation, or organization that seeks permission and meets the requirements~~
 10 ~~set by the department by rule for a group of individual employers to operate as self insured under plan~~
 11 ~~No. 1 of this chapter; and~~

12 ~~(c) any nonprofit association or corporation or other entity funded in whole or in part by federal,~~
 13 ~~state, or local government funds that places community service participants, as defined in~~
 14 ~~39-71-118(1)(f)(1)(e), with nonprofit organizations or associations or federal, state, or local government~~
 15 ~~entities.~~

16 ~~(2) A temporary service contractor is the employer of a temporary worker for premium and loss~~
 17 ~~experience purposes.~~

18 ~~(3) An employer defined in subsection (1) who utilizes the services of a worker furnished by~~
 19 ~~another person, association, contractor, firm, or corporation, other than a temporary service contractor,~~
 20 ~~is presumed to be the employer for workers' compensation premium and loss experience purposes for work~~
 21 ~~performed by the worker. The presumption may be rebutted by substantial credible evidence of the~~
 22 ~~following:~~

23 ~~(a) the person, association, contractor, firm, or corporation, other than a temporary service~~
 24 ~~contractor, furnishing the services of a worker to another retains control over all aspects of the work~~
 25 ~~performed by the worker, both at the inception of employment and during all phases of the work; and~~

26 ~~(b) the person, association, contractor, firm, or corporation, other than a temporary service~~
 27 ~~contractor, furnishing the services of a worker to another has obtained workers' compensation insurance~~
 28 ~~for the worker in Montana both at the inception of employment and during all phases of the work~~
 29 ~~performed.~~

30 ~~(4) Notwithstanding the provisions of subsection (3), an interstate or intrastate common or contract~~

1 ~~motor carrier doing business in this state who utilizes drivers in this state is considered the employer, is~~
 2 ~~liable for workers' compensation premiums, and is subject to loss experience rating in this state unless:~~

3 ~~(a) the driver in this state is certified as an independent contractor as provided in 39-71-401(3);~~

4 ~~or~~

5 ~~(b) the person, association, contractor, firm, or corporation furnishing drivers in this state to a~~
 6 ~~motor carrier has obtained workers' compensation insurance on the drivers in Montana both at the inception~~
 7 ~~of employment and during all phases of the work performed."~~

8
 9 **SECTION 3. SECTION 39-71-744, MCA, IS AMENDED TO READ:**

10 ~~"39-71-744. Benefits not due while claimant is incarcerated—exceptions. (1) Except as provided~~
 11 ~~in subsection (2), a claimant is not eligible for disability or rehabilitation compensation benefits while the~~
 12 ~~claimant is incarcerated in a correctional institution, such as the Montana state prison or the Montana~~
 13 ~~women's correctional center, as the result of conviction of a felony. The insurer remains liable for medical~~
 14 ~~benefits. A time limit on benefits otherwise provided in this chapter is not extended due to a period of~~
 15 ~~incarceration.~~

16 ~~(2) A person who is employed while participating in a prerelease center program or a diversionary~~
 17 ~~program is eligible for temporary total benefits as provided in 39-71-701 and medical benefits for a~~
 18 ~~work-related injury received while participating in a prerelease center program or a diversionary program.~~
 19 ~~Other disability or rehabilitation benefits are not payable while the worker is participating in a prerelease~~
 20 ~~center. This subsection does not prohibit the reinstatement of other benefits upon release from~~
 21 ~~incarceration, nor does it apply to an employee performing community service described in 39-71-118(1)(f)~~
 22 ~~(1)(e)."~~

23
 24 **SECTION 4. SECTION 39-71-118, MCA, IS AMENDED TO READ:**

25 ~~"39-71-118. Employee, worker, and volunteer firefighter defined. (1) The terms "employee" or~~
 26 ~~"worker" means:~~

27 ~~(a) each person in this state, including a contractor other than an independent contractor, who is~~
 28 ~~in the service of an employer, as defined by 39-71-117, under any appointment or contract of hire,~~
 29 ~~expressed or implied, oral or written. The terms include aliens and minors, whether lawfully or unlawfully~~
 30 ~~employed, and all of the elected and appointed paid public officers and officers and members of boards of~~

1 ~~directors of quasi-public or private corporations while rendering actual service for the corporations for pay.~~
 2 ~~Casual employees as defined by 39-71-116 are included as employees if they are not otherwise covered~~
 3 ~~by workers' compensation and if an employer has elected to be bound by the provisions of the~~
 4 ~~compensation law for these casual employments, as provided in 39-71-401(2). Household or domestic~~
 5 ~~service is excluded.~~

6 ~~(b) any juvenile performing work under authorization of a district court judge in a delinquency~~
 7 ~~prevention or rehabilitation program;~~

8 ~~(c) a person receiving on the job vocational rehabilitation training or other on the job training under~~
 9 ~~a state or federal vocational training program, whether or not under an appointment or contract of hire with~~
 10 ~~an employer as defined in this chapter and whether or not receiving payment from a third party. However,~~
 11 ~~this subsection does not apply to students enrolled in vocational training programs as outlined in this~~
 12 ~~subsection while they are on the premises of a public school or community college.~~

13 ~~(d)(e) students enrolled and in attendance in programs of vocational technical education at~~
 14 ~~designated vocational technical centers;~~

15 ~~(e)(d) an aircrew member or other person employed as a volunteer under 67-2-105;~~

16 ~~(f)(e) a person, other than a juvenile as defined in subsection (1)(b), performing community service~~
 17 ~~for a nonprofit organization or association or for a federal, state, or local government entity under a court~~
 18 ~~order, or an order from a hearings officer as a result of a probation or parole violation, whether or not under~~
 19 ~~appointment or contract of hire with an employer as defined in this chapter and whether or not receiving~~
 20 ~~payment from a third party. For a person covered by the definition in this subsection (f)(1)(e):~~

21 ~~(i) compensation benefits must be limited to medical expenses pursuant to 39-71-704 and an~~
 22 ~~impairment award pursuant to 39-71-703 that is based upon the minimum wage established under Title 39,~~
 23 ~~chapter 3, part 4, for a full-time employee at the time of the injury; and~~

24 ~~(ii) premiums must be paid by the employer, as defined in 39-71-117(3), and must be based upon~~
 25 ~~the minimum wage established under Title 39, chapter 3, part 4, for the number of hours of community~~
 26 ~~service required under the order from the court or hearings officer.~~

27 ~~(g)(f) an inmate working in a federally certified prison industries program authorized under~~
 28 ~~53-1-301.~~

29 ~~(2) The terms defined in subsection (1) do not include a person who is:~~

30 ~~(a) participating in recreational activity and who at the time is relieved of and is not performing~~

1 ~~prescribed duties, regardless of whether the person is using, by discount or otherwise, a pass, ticket,~~
2 ~~permit, device, or other emolument of employment; or~~

3 ~~(b) performing voluntary service at a recreational facility and who receives no compensation for~~
4 ~~those services other than meals, lodging, or the use of the recreational facilities.~~

5 ~~(3) The term "volunteer firefighter" means a firefighter who is an enrolled and active member of~~
6 ~~a fire company organized and funded by a county, a rural fire district, or a fire service area.~~

7 ~~(4) (a) If the employer is a partnership or sole proprietorship, the employer may elect to include as~~
8 ~~an employee within the provisions of this chapter any member of the partnership or the owner of the sole~~
9 ~~proprietorship devoting full time to the partnership or proprietorship business.~~

10 ~~(b) In the event of an election, the employer must serve upon the employer's insurer written notice~~
11 ~~naming the partners or sole proprietor to be covered and stating the level of compensation coverage desired~~
12 ~~by electing the amount of wages to be reported, subject to the limitations in subsection (4)(d). A partner~~
13 ~~or sole proprietor is not considered an employee within this chapter until notice has been given.~~

14 ~~(c) A change in elected wages must be in writing and is effective at the start of the next quarter~~
15 ~~following notification.~~

16 ~~(d) All weekly compensation benefits must be based on the amount of elected wages, subject to~~
17 ~~the minimum and maximum limitations of this subsection. For premium ratemaking and for the~~
18 ~~determination of weekly wage for weekly compensation benefits, the electing employer may elect not less~~
19 ~~than \$900 a month and not more than 1 1/2 times the average weekly wage as defined in this chapter.~~

20 ~~(5) The trustees of a rural fire district, a county governing body providing rural fire protection, or~~
21 ~~the county commissioners or trustees for a fire service area may elect to include as an employee within the~~
22 ~~provisions of this chapter any volunteer firefighter. A volunteer firefighter who receives workers'~~
23 ~~compensation coverage under this section may not receive disability benefits under Title 18, chapter 17.~~

24 ~~(6) An employee or worker in this state whose services are furnished by a person, association,~~
25 ~~contractor, firm, or corporation, other than a temporary service contractor, to an employer as defined in~~
26 ~~39-71-117 is presumed to be under the control and employment of the employer. This presumption may~~
27 ~~be rebutted as provided in 39-71-117(3).~~

28 ~~(7) For purposes of this section, an "employee or worker in this state" means:~~

29 ~~(a) a resident of Montana who is employed by an employer and whose employment duties are~~
30 ~~primarily carried out or controlled within this state;~~

1 ~~(b) a nonresident of Montana whose principal employment duties are conducted within this state~~
 2 ~~on a regular basis for an employer;~~

3 ~~(c) a nonresident employee of an employer from another state engaged in the construction industry,~~
 4 ~~as defined in 39-71-116, within this state; or~~

5 ~~(d) a nonresident of Montana who does not meet the requirements of subsection (7)(b) and whose~~
 6 ~~employer elects coverage with an insurer that allows an election for an employer whose:~~

7 ~~(i) nonresident employees are hired in Montana;~~

8 ~~(ii) nonresident employees' wages are paid in Montana;~~

9 ~~(iii) nonresident employees are supervised in Montana; and~~

10 ~~(iv) business records are maintained in Montana.~~

11 ~~(8) An insurer may require coverage for all nonresident employees of a Montana employer who do~~
 12 ~~not meet the requirements of subsection (7)(b) or (7)(d) as a condition of approving the election under~~
 13 ~~subsection (7)(d)."~~

14
 15 **Section 1.** Section 40-6-233, MCA, is amended to read:

16 **"40-6-233. Remedy for parental abuse.** The abuse of parental authority is the subject of judicial
 17 cognizance in a civil action brought by the child or by its relative within the third degree or by the county
 18 commissioners of the county where the child resides. When the abuse is established, the child may be
 19 freed from the dominion of the parent and the duty of support and education enforced. A parent or
 20 guardian of a child has the right to give the child or force the child to take prescribed medicine PRESCRIBED
 21 FOR THE CHILD, and exercise of the right is not an abuse of parental authority."

22
 23 **Section 2.** Section 41-3-102, MCA, is amended to read:

24 **"41-3-102. Definitions.** As used in this chapter, the following definitions apply:

25 (1) "A person responsible for a child's welfare" means the child's parent, guardian, or foster parent;
 26 a staff person providing care in a day-care facility; an employee of a public or private residential institution,
 27 facility, home, or agency; or any other person legally responsible for the child's welfare in a residential
 28 setting.

29 (2) "Abused or neglected" means the state or condition of a child who has suffered child abuse
 30 or neglect.

1 (3) (a) "Adequate health care" means any medical care, including the prevention of the withholding
 2 of medically indicated treatment or medically indicated psychological care permitted or authorized under
 3 state law.

4 (b) ~~Nothing in this~~ This chapter may not be construed to require or justify a finding of child abuse
 5 or neglect for the sole reason that a parent, due to religious beliefs, does not provide medical care for a
 6 child. However, nothing in this chapter may be construed to limit the administrative or judicial authority
 7 of the state to ensure that medical care is provided to the child when there is imminent or substantial risk
 8 of harm to the child.

9 (4) "Child" or "youth" means any person under 18 years of age.

10 (5) (a) "Child abuse or neglect" means:

11 (i) harm to a child's health or welfare, as defined in subsection (8); or

12 (ii) threatened harm to a child's health or welfare, as defined in subsection (15).

13 (b) The term includes harm or threatened harm to a child's health or welfare by the acts or
 14 omissions of a person responsible for the child's welfare.

15 ~~(c) The term does not include what appears to be an extreme reaction to extreme circumstances,~~
 16 ~~such as self defense or, defense of others, OR action taken to prevent the child from self harm, or normal~~
 17 ~~physical punishment or normal physical consequences of one's actions~~ THAT DOES NOT CONSTITUTE
 18 HARM TO A CHILD'S HEALTH OR WELFARE.

19 (6) "Department" means the department of family services provided for in 2-15-2401.

20 (7) "Dependent youth" means a youth:

21 (a) who is abandoned;

22 (b) who is without parents or guardian or not under the care and supervision of a suitable adult;

23 (c) who has no proper guidance to provide for necessary physical, moral, and emotional well-being;

24 (d) who is destitute;

25 (e) who is dependent upon the public for support; or

26 (f) whose parent or parents have voluntarily relinquished custody and whose legal custody has
 27 been transferred to a licensed agency.

28 (8) "Harm to a child's health or welfare" means the harm that occurs whenever the parent or other
 29 person responsible for the child's welfare:

30 (a) inflicts or allows to be inflicted upon the child physical or mental injury;

1 (b) commits or allows to be committed sexual abuse or exploitation of the child;

2 (c) causes failure to thrive or otherwise fails to supply the child with adequate food or fails to
3 supply clothing, ~~shelter~~, SHELTER, education, or adequate health care, though financially able to do so or
4 offered financial or other reasonable means to do so;

5 (d) abandons the child by leaving the child under circumstances that make reasonable the belief
6 that the parent or other person does not intend to resume care of the child in the future or by willfully
7 surrendering physical custody for a period of 6 months and during that period does not manifest to the child
8 and the person having physical custody of the child a firm intention to resume physical custody or to make
9 permanent legal arrangements for the care of the child; or

10 (e) is unknown and has been unknown for a period of 90 days and reasonable efforts to identify
11 and locate the parents have failed.

12 (9) "Limited emancipation" means a status conferred on a dependent youth by a court after a
13 dispositional hearing in accordance with 41-3-406 under which the youth is entitled to exercise some but
14 not all of the rights and responsibilities of a person who is 18 years of age or older.

15 (10) "Mental injury" means an identifiable and substantial impairment of the child's intellectual or
16 psychological functioning.

17 (11) "Physical injury" means death, permanent or temporary disfigurement, or impairment of any
18 bodily organ or function and includes death, permanent or temporary disfigurement, and impairment of a
19 bodily organ or function sustained as a result of excessive corporal punishment.

20 (12) "Sexual abuse" means the commission of sexual assault, sexual intercourse without consent,
21 indecent exposure, deviate sexual conduct, or incest, as described in Title 45, chapter 5, part 5.

22 (13) "Sexual exploitation" means allowing, permitting, or encouraging a child to engage in a
23 prostitution offense, as described in 45-5-601 through 45-5-603, or allowing, permitting, or encouraging
24 sexual abuse of children as described in 45-5-625.

25 (14) "Social worker" means an employee of the department whose duties generally involve the
26 provision of either child or adult protective services, or both.

27 (15) "Threatened harm to a child's health or welfare" means substantial risk of harm to the child's
28 health or welfare.

29 (16) "Withholding of medically indicated treatment" means the failure to respond to an infant's
30 life-threatening conditions by providing treatment ~~f~~including appropriate nutrition, hydration, and

1 medication, that, in the treating physician's or physicians' reasonable medical judgment, will be most likely
 2 to be effective in ameliorating or correcting the conditions. However, the term does not include the failure
 3 to provide treatment {other than appropriate nutrition, hydration, or medication} to an infant when, in the
 4 treating physician's or physicians' reasonable medical judgment:

5 (a) the infant is chronically and irreversibly comatose;

6 (b) the provision of treatment would:

7 (i) merely prolong dying;

8 (ii) not be effective in ameliorating or correcting all of the infant's life-threatening conditions; or

9 (iii) otherwise be futile in terms of the survival of the infant; or

10 (c) the provision of treatment would be virtually futile in terms of the survival of the infant and the
 11 treatment itself under the circumstances would be inhumane. For purposes of this subsection, "infant"
 12 means an infant less than 1 year of age or an infant 1 year of age or older who has been continuously
 13 hospitalized since birth, who was born extremely prematurely, or who has a long-term disability. The
 14 reference to less than 1 year of age may not be construed to imply that treatment should be changed or
 15 discontinued when an infant reaches 1 year of age or to affect or limit any existing protections available
 16 under state laws regarding medical neglect of children over 1 year of age.

17 (17) "Youth in need of care" means a youth who is dependent, abused, or neglected as defined in
 18 this section."

19
 20 **Section 3.** Section 41-5-102, MCA, is amended to read:

21 **"41-5-102. Declaration of purpose.** The Montana Youth Court Act ~~shall~~ must be interpreted and
 22 construed to effectuate the following express legislative purposes:

23 (1) to preserve the unity and welfare of the family whenever possible and to provide for the care,
 24 protection, and wholesome mental and physical development of a youth coming within the provisions of
 25 the Montana Youth Court Act;

26 (2) to ~~remove from youth committing violations of the law the element of retribution and to~~
 27 ~~substitute therefor~~ prevent and reduce youth delinquency through immediate, consistent, enforceable, and
 28 avoidable consequences of youths' actions and to establish a program of supervision, care, rehabilitation,
 29 detention, COMPETENCY DEVELOPMENT, COMMUNITY PROTECTION, and, in appropriate cases,
 30 restitution as ordered by the youth court;

1 (3) to achieve the purposes of subsections (1) and (2) ~~of this section~~ in a family environment
 2 whenever possible, separating the youth from ~~his~~ the parents only when necessary for the welfare of the
 3 youth or for the safety and protection of the community;

4 (4) to provide judicial procedures in which the parties are assured a fair, accurate hearing and
 5 recognition and enforcement of their constitutional and statutory rights."
 6

7 ~~Section 8. Section 41-5-103, MCA, is amended to read:~~

8 ~~"41-5-103. Definitions. As used in the Montana Youth Court Act, unless the context requires~~
 9 ~~otherwise, the following definitions apply:~~

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

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

13 ~~(3) "Commit" means to transfer to legal custody.~~

14 ~~(4) "Correctional facility" means a public or private residential facility used for the placement of~~
 15 ~~delinquent youth or individuals convicted of criminal offenses.~~

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

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

19 ~~(7) "Delinquent youth" means a youth:~~

20 ~~(a) who has committed an offense that, if committed by an adult, would constitute a criminal~~
 21 ~~offense; or~~

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

24 ~~(8) "Department" means the department of family services provided for in 2-15-2401.~~

25 ~~(9) "Detention" means the holding or temporary placement of a youth in the youth's home under~~
 26 ~~home arrest or in a facility other than the youth's own home for the purpose of ensuring the continued~~
 27 ~~custody of the youth at any time after the youth is taken into custody and before final disposition of his~~
 28 ~~case.~~

29 ~~(10) "Detention facility" means a shelter care facility or a physically restricting facility designed to~~
 30 ~~prevent a youth from departing at will and approved by the board of county commissioners of the county~~

1 ~~in which the facility is located. The term includes a youth detention facility, short-term detention center,~~
2 ~~and regional detention facility.~~

3 ~~(11) "Final disposition" means the implementation of a court order for the disposition or placement~~
4 ~~of a youth as provided in 41-5-523.~~

5 ~~(12) "Foster home" means a private residence licensed by the department for placement of a youth.~~

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

8 ~~(14) "Holdover" means a room, office, building, or other place approved by the board of crime~~
9 ~~control county commissioners of the county in which the holdover is located for the temporary detention~~
10 ~~and supervision of youth in a physically unrestricting setting for a period not to exceed 24 hours while the~~
11 ~~youth is awaiting a probable cause hearing, release, or transfer to an appropriate detention or shelter-care~~
12 ~~facility. The term does not include a jail.~~

13 ~~(15) "Jail" means a facility used for the confinement of adults accused or convicted of criminal~~
14 ~~offenses. The term includes a lockup or other facility used primarily for the temporary confinement of~~
15 ~~adults after arrest.~~

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

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

19 ~~(i) have physical custody of the youth;~~

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

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

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

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

25 ~~(18) "Necessary parties" includes the youth, his and the youth's parents, guardian, custodian, or~~
26 ~~spouse.~~

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

30 ~~(20) "Probable cause hearing" means the hearing provided for in 41-5-303.~~

1 ~~(21) "Regional detention facility" means a youth detention facility established and maintained by~~
2 ~~two or more counties, as authorized in 41-5-911, and approved by the board of county commissioners of~~
3 ~~each county.~~

4 ~~(22) "Restitution" means payments in cash to the victim or with services to the victim or the general~~
5 ~~community when these payments are made pursuant to an informal adjustment, consent decree, or other~~
6 ~~youth court order.~~

7 ~~(23) "Secure detention facility" means any public or private facility that is approved by the board~~
8 ~~of county commissioners of the county in which it is located and that:~~

9 ~~(a) is used for the temporary placement of youth or individuals accused or convicted of criminal~~
10 ~~offenses; and~~

11 ~~(b) is designed to physically restrict the movements and activities of youth or other individuals held~~
12 ~~in lawful custody of the facility.~~

13 ~~(24) "Serious juvenile offender" means a youth who has committed an offense that would be~~
14 ~~considered a felony offense if committed by an adult and that is an offense against a person, an offense~~
15 ~~against or property, or an offense involving dangerous drugs.~~

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

18 ~~(26) "Shelter care facility" means a facility approved by the board of county commissioners of the~~
19 ~~county in which it is located and used for the shelter care of youth. The term is limited to the facilities~~
20 ~~enumerated in 41-5-306(1).~~

21 ~~(27) "Short term detention center" means a detention facility licensed by the department approved~~
22 ~~by the board of county commissioners of the county in which the detention center is located for the~~
23 ~~temporary placement or care of youth, for a period not to exceed 96 hours, pending a probable cause~~
24 ~~hearing, release, or transfer of the youth to an appropriate detention facility or shelter care facility.~~

25 ~~(28) "State youth correctional facility" means a residential facility used for the placement and~~
26 ~~rehabilitation of delinquent youth, such as the Pine Hills school in Miles City and the Mountain View school~~
27 ~~in Helena.~~

28 ~~(29) "Substitute care" means full time care of youth in a residential setting for the purpose of~~
29 ~~providing food, shelter, security and safety, guidance, direction, and, if necessary, treatment to youth who~~
30 ~~are removed from or are without the care and supervision of their parents or guardian.~~

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

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

6 ~~(32) "Youth detention facility" means a secure detention facility licensed by the department~~
 7 ~~approved by the board of county commissioners of the county in which the detention facility is located for~~
 8 ~~the temporary substitute care of youth that:~~

9 ~~(a) is operated, administered, and staffed separately and independently of a jail; and~~

10 ~~(b) is used exclusively for the lawful detention of alleged or adjudicated delinquent youth.~~

11 ~~(33) "Youth in need of care" has the meaning provided for in 41-3-102.~~

12 ~~(34) "Youth in need of supervision" means a youth who commits an offense prohibited by law that,~~
 13 ~~if committed by an adult, would not constitute a criminal offense, including but not limited to a youth who:~~

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

15 ~~(b) continues to exhibit behavior beyond the control of his the youth's parents, foster parents,~~
 16 ~~physical custodian, or guardian despite the attempt of his the parents, foster parents, physical custodian,~~
 17 ~~or guardian to exert all reasonable efforts to mediate, resolve, or control the youth's behavior; or~~

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

20
 21 ~~**Section 9. Section 41-5-203, MCA, is amended to read:**~~

22 ~~"41-5-203. Jurisdiction of the court courts. (1) Except as provided in subsection (2), the The~~
 23 ~~court has exclusive original jurisdiction of all proceedings under the Montana Youth Court Act in which a~~
 24 ~~youth is alleged to be a delinquent youth, a youth in need of supervision, or a youth in need of care or~~
 25 ~~concerning any person under 21 years of age charged with having violated any law of the state or~~
 26 ~~ordinance of any city or town other than a traffic or fish and game law prior to having become 18 years~~
 27 ~~of age.~~

28 ~~(2) Justice, municipal, and city, and district courts have concurrent jurisdiction with the youth court~~
 29 ~~over all alcoholic beverage and gambling violations alleged to have been committed by a youth a person~~
 30 ~~under 21 years of age who is charged with a violation of any state criminal or other law or municipal~~

1 ~~ordinance to the extent that the statutes relating to these courts in Title 3 and other titles give them~~
 2 ~~jurisdiction over the violation charged."~~

3
 4 ~~Section 10. Section 41-5-204, MCA, is amended to read:~~

5 ~~"41-5-204. Venue and transfer. (1) The county where a youth is a resident or is alleged to have~~
 6 ~~violated the law has initial jurisdiction over any youth alleged to be a delinquent youth. The youth court~~
 7 ~~shall assume the initial handling of the case.~~

8 ~~(2) The county where a youth is a resident has initial jurisdiction over any youth alleged to be a~~
 9 ~~youth in need of supervision or a youth in need of care. The youth court of that county shall assume the~~
 10 ~~initial handling of the case. Transfers of venue may be made to any of the following counties in the state:~~

11 ~~(a) the county in which the youth is apprehended or found;~~

12 ~~(b) the county in which the youth is alleged to have violated the law; or~~

13 ~~(c) the county of residence of the youth's parents or guardian.~~

14 ~~(3) In the case of a youth alleged to be a youth in need of supervision or a youth in need of care,~~
 15 ~~a change of venue may be ordered at any time by the concurrence of the youth court judges of both~~
 16 ~~counties in order to assure a fair, impartial, and speedy hearing and final disposition of the case.~~

17 ~~(4) In the case of a youth 16 years of age or older who is accused of one of the serious offenses~~
 18 ~~listed in 41-5-206, the court in the county where the offense occurred shall serve as a transfer hearing~~
 19 ~~court, and if the youth is to be tried in district court, the charge shall be filed and trial held in the district~~
 20 ~~court of the county where the offense occurred."~~

21
 22 ~~Section 11. Section 41-5-205, MCA, is amended to read:~~

23 ~~"41-5-205. Retention of jurisdiction. Once a court obtains jurisdiction over a youth, the court~~
 24 ~~retains jurisdiction unless terminated by the court or by mandatory termination in the following cases:~~

25 ~~(1) at the time the proceedings are transferred to adult criminal court;~~

26 ~~(2)(1) at the time the youth is discharged by the department; and~~

27 ~~(2) at the time the youth is transferred to the department of corrections and human services; and~~

28 ~~(3) in any event, at the time the youth reaches the age of 21 years."~~

29
 30 ~~Section 12. Section 41-5-206, MCA, is amended to read:~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 ~~(c) notice in writing of the time, place, and purpose of the hearing is given to the youth, his~~
 26 ~~counsel, and his parents, guardian, or custodian at least 10 days before the hearing; 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 ~~(iii) 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 ig deliberate homicide as~~
13 ~~defined in 45-5-102, mitigated deliberate homicide as defined in 45-5-103, or the attempt, as defined in~~
14 ~~45-4-103, 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.~~

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

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

25 ~~(a) tried in youth court;~~

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

28 ~~(8) If a youth is found guilty in district court of any of the offenses transferred by the youth court~~
29 ~~and is sentenced to the state prison, the commitment must be to the department of corrections and human~~
30 ~~services. The department shall confine the youth in whatever institution it considers proper, including a~~

1 ~~state youth correctional facility under the procedures of 52-5-111; however, no youth under 16 years of~~
 2 ~~age may be confined in the state prison.~~

3 ~~(1) (a) A youth's first violation of a state criminal or other law or municipal ordinance may be~~
 4 ~~handled by the probation officer under part 4 of this chapter or the probation officer may refer the youth~~
 5 ~~to the county attorney, who may either file a petition in the youth court or file a criminal complaint or other~~
 6 ~~appropriate proceeding in a court having jurisdiction over the violation. The youth must be tried as an adult.~~

7 ~~(b) Upon a second or subsequent violation, the county attorney may file a petition, complaint, or~~
 8 ~~other proceeding as provided in subsection (1)(a).~~

9 ~~(1)(2) A youth whose case is transferred to district court who is charged with a crime may not be~~
 10 ~~detained or otherwise placed in a jail, prison, or other adult detention facility before or after final disposition~~
 11 ~~of his the case unless:~~

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

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

15

16 ~~Section 13. Section 41-5-301, MCA, is amended to read:~~

17 ~~"41-5-301. Preliminary investigation and disposition. (1) Whenever the court receives information~~
 18 ~~from any agency or person, based upon reasonable grounds, that a youth is or appears to be a delinquent~~
 19 ~~youth or a youth in need of supervision or, being subject to a court order or consent order, has violated the~~
 20 ~~terms thereof of an order, a probation officer shall make a preliminary inquiry into the matter.~~

21 ~~(2) The probation officer may:~~

22 ~~(a) require the presence of any person relevant to the inquiry;~~

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

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

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

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

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

- 1 ~~(ii) determine whether the matter is within the jurisdiction of the court;~~
- 2 ~~(iii) determine, if the youth is in detention or shelter care, whether such the detention or shelter care~~
3 ~~should be continued based upon criteria set forth in 41-5-206.~~
- 4 ~~(b) Once relevant information is secured, the probation officer shall:~~
- 5 ~~(i) determine whether the interest of the public or the youth requires that further action be taken;~~
- 6 ~~(ii) terminate the inquiry upon the determination that no further action be taken; and~~
- 7 ~~(iii) release the youth immediately upon the determination that the filing of a petition is not~~
8 ~~authorized.~~
- 9 ~~(5) The probation officer upon determining that further action is required may:~~
- 10 ~~(a) provide counseling, refer the youth and his the youth's parents to another agency providing~~
11 ~~appropriate services, or take any other action or make any informal adjustment that does not involve~~
12 ~~probation, or detention, treatment, or a placement;~~
- 13 ~~(b) provide for treatment or adjustment involving probation or other disposition authorized under~~
14 ~~41-5-401 through 41-5-403, provided such the treatment or adjustment is voluntarily accepted by the~~
15 ~~youth's parents or guardian and the youth, and provided further that said the matter is referred immediately~~
16 ~~to the county attorney for review and that the probation officer proceed no further unless authorized by~~
17 ~~the county attorney or a youth placement committee, whichever is appropriate; or~~
- 18 ~~(c) refer the matter to the county attorney for filing a petition charging the youth to be a delinquent~~
19 ~~youth or a youth in need of supervision or for filing a complaint or other proceeding under 41-5-206.~~
- 20 ~~(6) The county attorney may either:~~
- 21 ~~(a) apply to the youth court for permission to file a petition charging a youth to be a delinquent~~
22 ~~youth or a youth in need of supervision. The application must be supported by such evidence as the youth~~
23 ~~court may require. If it appears that there is probable cause to believe that the allegations of the petition~~
24 ~~are true, the youth court shall grant leave to file the petition.~~
- 25 ~~(b) file a complaint or other proceeding under 41-5-206.~~
- 26 ~~(7) A petition, complaint, or other proceeding charging a youth held in detention must be filed~~
27 ~~within 7 working days from the date the youth was first taken into custody or the petition shall be~~
28 ~~dismissed and the youth must be released unless good cause is shown to further detain such the youth.~~
- 29 ~~(8) If no a petition, complaint, or other proceeding is not filed under this section, the complainant~~
30 ~~and victim, if any, shall must be informed by the probation officer of the action and the reasons therefor~~

1 ~~for the action and shall must be advised of the right to submit the matter to the county attorney for review.~~
 2 ~~The county attorney, upon receiving a request for review, shall consider the facts, consult with the~~
 3 ~~probation officer, and make the final decision as to whether a petition, complaint, or other proceeding shall~~
 4 ~~be is to be filed."~~

5
 6 **Section 4.** Section 41-5-304, MCA, is amended to read:

7 **"41-5-304. Investigation, fingerprints, and photographs.** (1) All law enforcement investigations
 8 relating to a delinquent youth or youth in need of supervision must be conducted in accordance with this
 9 chapter and Title 46.

10 (2) A youth may be fingerprinted or photographed for criminal identification purposes:

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

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

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

16 (3) Fingerprint records and photographs may be used by the department of justice or any law
 17 enforcement agency in the judicial district for comparison and identification purposes in any other
 18 investigation."

19
 20 ~~**Section 15.** Section 41-5-305, MCA, is amended to read:~~

21 ~~**"41-5-305. Criteria for placement of youth in secure detention facilities or shelter care facilities.**~~

22 ~~(1) A youth may not be placed in a secure detention facility unless:~~

23 ~~(a) he the youth has allegedly committed an act that if committed by an adult would constitute a~~
 24 ~~criminal offense and the alleged offense is one specified in 41-5-206;~~

25 ~~(b) he the youth is alleged to be a delinquent youth and:~~

26 ~~(i) he the youth has escaped from a shelter care facility, correctional facility, or secure detention~~
 27 ~~facility;~~

28 ~~(ii) he the youth has violated a valid court order or an aftercare agreement;~~

29 ~~(iii) his the youth's detention is required to protect persons or property;~~

30 ~~(iv) he the youth has pending court or administrative action or is awaiting a transfer to another~~

- 1 ~~jurisdiction and may abscond or be removed from the jurisdiction of the court;~~
 2 ~~(v) there are not adequate assurances that he the youth will appear for court when required; or~~
 3 ~~(vi) he the youth meets additional criteria for secure detention established by the youth court in the~~
 4 ~~judicial district that has current jurisdiction over him; or~~
 5 ~~(e) he the youth has been adjudicated delinquent and is awaiting final disposition of his the case.~~
 6 ~~(2) A youth may not be placed in a shelter care facility unless:~~
 7 ~~(a) the youth and his the youth's family need shelter care to address their problematic situation~~
 8 ~~when it is not possible for the youth to remain at home;~~
 9 ~~(b) the youth needs to be protected from physical or emotional harm;~~
 10 ~~(c) the youth needs to be deterred or prevented from immediate repetition of his the troubling~~
 11 ~~behavior;~~
 12 ~~(d) shelter care is necessary to assess the youth and his the youth's environment;~~
 13 ~~(e) shelter care is necessary to provide adequate time for case planning and disposition; or~~
 14 ~~(f) shelter care is necessary to intervene in a crisis situation and provide intensive services or~~
 15 ~~attention that might alleviate the problem and reunite the family."~~

16
 17 **Section 5.** Section 41-5-306, MCA, is amended to read:

18 **"41-5-306. Place of shelter care or detention.** (1) After a probable cause hearing provided for in
 19 41-5-303, a youth alleged to be a youth in need of supervision may be placed only:

- 20 (a) in a licensed youth foster home as defined in 41-3-1102;
 21 (b) in a facility operated by a licensed child welfare agency;
 22 (c) in a licensed youth group home as defined in 41-3-1102; ~~or~~ **OR**
 23 (d) under home arrest, either in the youth's own home or in one of the facilities described in
 24 subsections (1)(a) through (1)(c), as provided in Title 46, chapter 18, part 10; ~~or~~ **OR**

25 ~~**(E) IN A DETENTION FACILITY.**~~

26 (2) A youth alleged to be a youth in need of care may be placed only in the facilities listed in
 27 subsection (1), ~~must be segregated from juvenile offenders,~~ and may not be placed in a jail or other facility
 28 intended or used for the confinement of adults accused or convicted of criminal offenses.

29 (3) After a probable cause hearing provided for in 41-5-303, a youth alleged to be a delinquent
 30 youth may be placed only in:

- 1 (a) the facilities described in subsection (1);
- 2 (b) under home arrest as provided in subsection (1);
- 3 (c) a short-term detention center; ~~or~~
- 4 (d) a youth detention facility; OR
- 5 (E) A COMMUNITY YOUTH COURT PROGRAM."

6
7 ~~Section 17. Section 41-5-307, MCA, is amended to read:~~

8 ~~"41-5-307. Release or delivery from custody. (1) Whenever a peace officer believes, on~~
9 ~~reasonable grounds, that a youth can be released to a person who has custody of the youth, then the peace~~
10 ~~officer may release the youth to that person upon receiving a written promise from the person to bring the~~
11 ~~youth before the probation officer at a time and place specified in the written promise, or a peace officer~~
12 ~~may release the youth under any other reasonable circumstances.~~

13 ~~(2) Whenever the peace officer believes, on reasonable grounds, that the youth must be detained,~~
14 ~~the peace officer shall notify the probation officer immediately and shall, as soon as practicable, provide~~
15 ~~the probation officer with a written report of his the reasons for holding the youth in detention. If it is~~
16 ~~necessary to hold the youth pending appearance before the youth court, then the youth must be held in~~
17 ~~a place of detention approved by the youth court board of county commissioners. If the peace officer~~
18 ~~believes that the youth must be sheltered, the peace officer shall notify the probation officer immediately~~
19 ~~and shall provide a written report of his the reasons for placing the youth in shelter care. If the youth is~~
20 ~~then held, the youth must be placed in a shelter care facility approved by the youth court board of county~~
21 ~~commissioners."~~

22
23 ~~Section 18. Section 41-5-313, MCA, is amended to read:~~

24 ~~"41-5-313. Permitted acts—detention of youth in law enforcement facilities—criteria. (1) Nothing~~
25 ~~in this This chapter precludes ~~does not include~~ PRECLUDE the detention of youth in a police station or other~~
26 ~~law enforcement facility that is attached to or part of a jail if:~~

- 27 (a) ~~the area where the youth is held is an unlocked, multipurpose area, such as a lobby, office,~~
- 28 ~~interrogation room, or other area that is not designated or used as a secure detention area or that is not~~
- 29 ~~part of a secure detention area, or, if part of such an area, that is used only for the purpose of processing,~~
- 30 ~~such as a booking room;~~

1 ~~(b) the youth is not secured to a cuffing rail or other stationary object during the period of~~
2 ~~detention;~~

3 ~~(c) use of the area is limited to ensuring custody of the youth for the purpose of identification,~~
4 ~~processing, or transfer of the youth to an appropriate detention or shelter care facility;~~

5 ~~(d) the area is not designed or intended to be used for residential purposes; and~~

6 ~~(e) the youth is under continuous visual supervision by a law enforcement officer or by facility staff~~
7 ~~during the period of time that the youth is held in detention.~~

8 ~~(2) For purposes of this section, "secure detention" means the detention of youth or confinement~~
9 ~~of adults accused or convicted of criminal offenses in a physically restricting setting, including but not~~
10 ~~limited to a locked room or set of rooms or a cell designed to prevent a youth or adult from departing at~~
11 ~~will."~~

12
13 ~~Section 19. Section 41-5-401, MCA, is amended to read:~~

14 ~~"41-5-401. Consent adjustment without petition. (1) Before a petition is filed, the probation~~
15 ~~officer may enter into an informal adjustment and give counsel and advice to the youth and other interested~~
16 ~~parties if it appears:~~

17 ~~(a) the admitted facts bring the case within the jurisdiction of the court;~~

18 ~~(b) counsel and advice without filing a petition would be in the best interests of the child youth,~~
19 ~~the youth's family, and the public; and~~

20 ~~(c) the youth may be a youth in need of supervision and if the probation officer believes that the~~
21 ~~parents, foster parents, physical custodian, or guardian exerted all reasonable efforts to mediate, resolve,~~
22 ~~or control the youth's behavior and the youth continues to exhibit behavior beyond the control of the~~
23 ~~parents, foster parents, physical custodian, or guardian.~~

24 ~~(2) Any probation or other disposition imposed under this section against any youth must conform~~
25 ~~to the following procedures:~~

26 ~~(a) Every consent adjustment shall must be reduced to writing and signed by the youth and his the~~
27 ~~youth's parents or the person having legal custody of the youth.~~

28 ~~(b) If the probation officer believes the youth is a youth in need of supervision, the probation officer~~
29 ~~shall determine that the parents, foster parents, physical custodian, or guardian exerted all reasonable~~
30 ~~efforts to mediate, resolve, or control the youth's behavior and the youth continues to exhibit behavior~~

1 ~~beyond the control of the parents, foster parents, physical custodian, or guardian.~~

2 ~~(e) Approval by the youth court judge is required if the complaint alleges commission of a felony~~
 3 ~~or if the youth has been or will be in any way detained.~~

4 ~~(d) If a placement of the youth is made, it must be by the youth placement committee pursuant~~
 5 ~~to 41-5-526 and 41-5-527."~~

6

7 **Section 6.** Section 41-5-403, MCA, is amended to read:

8 **"41-5-403. Disposition permitted under informal adjustment -- contributions by parents or guardians**
 9 **for youth's care.** (1) The following dispositions may be imposed by informal adjustment:

10 (a) probation;

11 (b) placement of the youth in substitute care in a youth care facility, as defined in 41-3-1102, and
 12 as determined by the department;

13 (c) placement of the youth with a private agency responsible for the care and rehabilitation of the
 14 youth as determined by the department;

15 (d) restitution upon approval of the youth court judge;

16 (e) placement of the youth under home arrest as provided in Title 46, chapter 18, part 10.

17 (2) In determining whether restitution is appropriate in a particular case, the following factors may
 18 be considered in addition to any other evidence:

19 (a) age of the youth;

20 (b) ability of the youth to pay;

21 (c) ability of ~~the parents or legal guardian~~ THE PARENTS, LEGAL GUARDIAN, OR persons
 22 contributing to the youth's delinquency or need for supervision to pay;

23 (d) amount of damage to the victim; and

24 (e) legal remedies of the victim, ~~however~~ However, the ability of the victim or ~~his~~ the victim's
 25 insurer to stand any loss may not be considered in any case.

26 (3) If the youth violates an aftercare agreement as provided for in 52-5-126, ~~he~~ the youth must
 27 be returned to the court for further disposition. A youth may not be placed in a state youth correctional
 28 facility under informal adjustment.

29 (4) If the youth is placed in substitute care requiring payment by the department, the court shall
 30 examine the financial ability of the youth's parents or guardians to pay a contribution covering all or part

1 of the costs for the care, placement, and treatment of the youth, including the costs of necessary medical,
2 dental, and other health care.

3 (5) If the court determines that the youth's parents or guardians are financially able to pay a
4 contribution as provided in subsection (4), the court shall order the youth's parents or guardians to pay an
5 amount based on the uniform child support guidelines adopted by the department of social and rehabilitation
6 services pursuant to 40-5-209.

7 (6) (a) Except as provided in subsection (6)(b), contributions ordered under this section and each
8 modification of an existing order are enforceable by immediate or delinquency income withholding, or both,
9 under Title 40, chapter 5, part 4. An order for contribution that is inconsistent with this section is
10 nevertheless subject to withholding for the payment of the contribution without need for an amendment
11 of the support order or for any further action by the court.

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

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

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

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

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

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

24 (d) An alternative arrangement must:

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

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

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

29 (7) (a) If the court orders the payment of contributions under this section, the department shall
30 apply to the department of social and rehabilitation services for support enforcement services pursuant to

1 Title IV-D of the Social Security Act.

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

5

6 **Section 7.** Section 41-5-514, MCA, is amended to read:

7 **"41-5-514. Admissibility of confession or illegally seized evidence.** In a proceeding alleging a youth
8 to be a delinquent youth:

9 (1) an extrajudicial statement that would be constitutionally inadmissible in a criminal matter may
10 not be received in evidence;

11 (2) evidence illegally seized or obtained may not be received in evidence to establish the allegations
12 of a petition against a youth; ~~and~~

13 (3) an extrajudicial admission or confession made by the youth out of court is insufficient to
14 support a finding that the youth committed the acts alleged in the petition unless it is corroborated by other
15 evidence; and

16 (4) UPON A FINDING OF AN OFFENSE RELATED TO USE OF ALCOHOL OR ILLEGAL DRUGS, the
17 court may order the youth to undergo urinalysis for the purpose of determining whether the youth is using
18 alcoholic beverages or illegal drugs."

19

20 ~~**Section 22.** Section 41-5-521, MCA, is amended to read:~~

21 ~~**"41-5-521. Adjudicatory hearing.** (1) Prior to any adjudicatory hearing, the court shall determine~~
22 ~~whether the youth admits or denies the offenses alleged in the petition. If the youth denies all offenses~~
23 ~~alleged in the petition, the youth, his or the youth's parent, guardian, or attorney may demand a jury trial~~
24 ~~on such the contested offenses. In the absence of such a demand, a jury trial is waived. If the youth~~
25 ~~denies some offenses and admits others, the contested offenses may be dismissed in the discretion of the~~
26 ~~youth court judge. The adjudicatory hearing shall must be set immediately and accorded a preferential~~
27 ~~priority.~~

28 ~~(2) An adjudicatory hearing shall must be held to determine whether the contested offenses are~~
29 ~~supported by proof beyond a reasonable doubt in cases involving a youth alleged to be delinquent or in~~
30 ~~need of supervision. If the hearing is before a jury, the jury's function shall be is to determine whether the~~

1 youth committed the contested offenses. If the hearing is before the youth court judge without a jury, the
 2 judge shall make and record his findings on all issues. If the allegations of the petitions are not established
 3 at the hearing, the youth court shall dismiss the petition and discharge the youth from custody. The
 4 petition and affidavits may not contain allegations against PERSONS OTHER THAN the youth or other
 5 persons unless they have been admitted or proven.

6 (3) ~~An adjudicatory hearing shall must be recorded verbatim by whatever means the court~~
 7 ~~considers appropriate.~~

8 (4) ~~The youth charged in a petition must be present at the hearing and, if brought from detention~~
 9 ~~to the hearing, may not appear clothed in institutional clothing.~~

10 (5) ~~In a hearing on a petition under this section, the general public may not be excluded when the~~
 11 ~~hearing is held on a contested offense to which publicity must be allowed under subsection (2) of~~
 12 ~~41-5-601.~~

13 (6) ~~If, on the basis of a valid admission by a youth of the allegations of the petition or after the~~
 14 ~~hearing required by this section, a youth is found to be a delinquent youth or a youth in need of~~
 15 ~~supervision, the court shall schedule a dispositional hearing under this chapter.~~

16 (7) ~~When a jury trial is required in a case, it may be held before a jury selected as provided in Title~~
 17 ~~25, chapter 7, part 2, and M.R.Civ.P., Rule 47."~~

18
 19 **Section 8.** Section 41-5-522, MCA, is amended to read:

20 **"41-5-522. Dispositional hearing.** (1) As soon as practicable after a youth is found to be a
 21 delinquent youth or a youth in need of supervision, the court shall conduct a dispositional hearing. The
 22 dispositional hearing may involve a determination of the financial ability of the youth's parents or guardians
 23 to pay a contribution for the cost of care, commitment, and treatment of the youth as required in 41-5-523.

24 (2) Before conducting the dispositional hearing, the court shall direct that a social summary or
 25 predisposition report be made in writing by a probation officer concerning the youth, ~~his~~ the youth's family,
 26 ~~his~~ the youth's environment, and other matters relevant to the need for care or rehabilitation or disposition
 27 of the case. The youth court may have the youth examined, and the results of the examination ~~shall~~ must
 28 be made available to the court as part of the social summary or predisposition report. The court may order
 29 the examination of a parent or guardian whose ability to care for or supervise a youth is at issue before the
 30 court. The results of ~~such~~ the examination ~~shall~~ must be included in the social summary or predisposition

1 report. The youth, ~~his or the youth's~~ parents, guardian, or counsel ~~shall have~~ has the right to subpoena
 2 all persons who have prepared any portion of the social summary or predisposition report and ~~shall have~~
 3 has the right to cross-examine ~~said the~~ parties at the dispositional hearing.

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

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

10 (5) If the court finds that it is in the best interest of the youth, the youth, ~~his or the youth's~~
 11 parents, or guardian may be temporarily excluded from the hearing during the taking of evidence on the
 12 issues of need for treatment and rehabilitation.

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

- 15 (a) age of the youth;
 16 (b) ability of the youth to pay;
 17 (c) ability of ~~the parents or legal guardian~~ THE PARENTS, LEGAL GUARDIAN, OR those that
 18 contributed to the youth's delinquency or need for supervision to pay;
 19 (d) amount of damage to the victim; and
 20 (e) legal remedies of the victim; ~~however~~ However, the ability of the victim or ~~his~~ the victim's
 21 insurer to stand any loss may not be considered in any case."

22
 23 ~~Section 24. Section 41-5-523, MCA, is amended to read:~~

24 ~~"41-5-523. Disposition — commitment to department — placement and evaluation of youth —~~
 25 ~~restrictions. (1) If Except as provided in subsection (15), if a youth is found to be a delinquent youth or~~
 26 ~~a youth in need of supervision, the youth court may enter its judgment making any of the following~~
 27 ~~dispositions:~~

- 28 (a) ~~place the youth on probation;~~
 29 (b) ~~commit the youth to the department if the court determines that the youth is in need of~~
 30 ~~placement in other than the youth's own home, provided that:~~

1 ~~(i) the court shall determine whether continuation in the home would be contrary to the welfare~~
2 ~~of the youth, the youth's family, and the community and whether reasonable efforts have been made to~~
3 ~~prevent or eliminate the need for removal of the youth from the youth's home. The court shall include a~~
4 ~~determination in the order committing the youth to the department.~~

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

11 ~~(c) order restitution by the youth or the youth's parents;~~

12 ~~(d) impose a fine as authorized by law if the violation alleged would constitute is a criminal offense~~
13 ~~if committed by an adult;~~

14 ~~(e) require the performance of community service;~~

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

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

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

21 ~~(i) order further care, treatment, evaluation, or relief that the court considers beneficial to the~~
22 ~~youth, the youth's family, and the community and that does not obligate funding from the department~~
23 ~~without the department's approval, except that a youth may not be placed by a youth court in a residential~~
24 ~~treatment facility as defined in 50-5-101. Only the department may, pursuant to subsection (1)(b), place~~
25 ~~a youth in a residential treatment facility.~~

26 ~~(j) commit the youth to a mental health facility if, based upon the testimony of a professional~~
27 ~~person as defined in 53-21-102, the court finds that the youth is seriously mentally ill as defined in~~
28 ~~53-21-102. The youth is entitled to all rights provided by 53-21-114 through 53-21-119. A youth~~
29 ~~adjudicated mentally ill or seriously mentally ill as defined in 53-21-102 may not be committed to a state~~
30 ~~youth correctional facility. A youth adjudicated to be mentally ill or seriously mentally ill to have a mental~~

1 ~~disease or defect that renders the youth unable to appreciate the criminality of the youth's behavior or~~
 2 ~~unable to conform the youth's behavior to the requirements of law after placement by the department in~~
 3 ~~a state youth correctional facility must be moved to a more appropriate placement in response to the~~
 4 ~~youth's mental health needs and consistent with the disposition alternatives available in 53-21-127.~~

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

6 (2) ~~When a youth is committed to the department, the department shall determine the appropriate~~
 7 ~~placement and rehabilitation program for the youth after considering the recommendations made under~~
 8 ~~41-5-527 by the youth placement committee. Placement is subject to the following limitations:~~

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

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

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

18 (3) ~~A youth placed by the department in a state youth correctional facility or other facility or~~
 19 ~~program operated by the department or who signs an aftercare agreement under 52-5-126 must be~~
 20 ~~supervised by the department. A youth who is placed in any other placement by the department, the youth~~
 21 ~~court, or the youth court's juvenile probation officer must be supervised by the probation officer of the~~
 22 ~~youth court having jurisdiction over the youth under 41-5-206 whether or not the youth is committed to~~
 23 ~~the department. Supervision by the youth probation officer includes but is not limited to:~~

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

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

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

29 (d) ~~case management of the youth.~~

30 (4) ~~The youth court may order a youth to receive a medical or psychological evaluation at any time~~

1 prior to final disposition if the youth waives the youth's constitutional rights in the manner provided for in
2 41-5-303. The county determined by the court as the residence of the youth is responsible for the cost
3 of the evaluation, except as provided in subsection (5). A county may contract with the department or
4 other public or private agencies to obtain evaluation services ordered by the court.

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

8 (6) The youth court may not order placement or evaluation of a youth at a state youth correctional
9 facility unless the youth is found to be a delinquent youth or is alleged to have committed an a violent
10 felony offense that is transferable to criminal court under 41-5-206 as defined in 46-18-1001.

11 (7) An evaluation of a youth may not be performed at the Montana state hospital unless the youth
12 is transferred to the district court under 41-5-206.

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

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

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

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

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

1 ~~of the support order or for any further action by the court.~~

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

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

6 ~~(ii) an alternative arrangement between the department and the person who is ordered to pay~~
7 ~~contributions.~~

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

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

12 ~~(ii) proof of timely payment of previously ordered support in cases involving modification of~~
13 ~~contributions ordered under this section.~~

14 ~~(d) An alternative arrangement must:~~

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

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

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

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

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

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

27 ~~(15) (a) A misdemeanor counts as one point and a felony counts as three points. An offense that~~
28 ~~can be committed only by a person only because of age counts as one point. A youth found to have~~
29 ~~accumulated three points must be placed in a secure detention facility for 1 week. Upon accumulating six~~
30 ~~points, a youth must be placed in a secure detention facility for 2 weeks 5 DAYS, and upon accumulating~~

1 ~~nine points, a youth must be placed in a secure detention facility for 30-10 days. The staff of the secure~~
2 ~~detention facility must be trained in and give the youth counseling. The youth must be segregated from~~
3 ~~other youth, except when working on public works projects. Each county shall establish public works~~
4 ~~projects for the youth.~~

5 ~~(b) Upon accumulating 10 points, a youth must be designated as a "habitual offender" and must~~
6 ~~be placed in a state youth correctional facility for no less than 90 days.~~

7 ~~(c) If the court finds that a habitual offender commonly entices or assists other youth to perform~~
8 ~~illegal acts, the youth must be designated as a "predatory youth" and must be placed in a state youth~~
9 ~~correctional facility for no less than 180 days.~~

10 ~~(d) Law enforcement, educational, and social service agencies, the court, and other agencies and~~
11 ~~entities involved with a youth who is found by the court or believed by the agency or entity to be a~~
12 ~~delinquent youth or a youth in need of supervision shall provide the chief youth court probation officer for~~
13 ~~the county in which the youth resides with any information in the possession of the agency or entity that~~
14 ~~may indicate that the youth is a habitual offender, a predatory youth, or a youth at risk.~~

15 ~~(16) If a youth who is serving time in a state youth correctional facility because the youth was~~
16 ~~found to be a habitual offender or a predatory youth needs and is willing to accept treatment for mental,~~
17 ~~emotional, behavioral, substance abuse, or similar problems, the youth may be transferred to a residential~~
18 ~~treatment facility, but not until after the youth has served at least one-half of the imposed detention period.~~

19 ~~(17) Health, education, welfare, and other agencies involved with the youth shall ensure that~~
20 ~~funding for the youth follows the youth to the location in which the youth is placed and that the funding~~
21 ~~is assigned to the appropriate agency or entity.~~

22 ~~(18) Before a youth is released from a state youth correctional facility, the department shall adopt~~
23 ~~and the court shall approve a written supervision plan.~~

24 ~~(19) (a) If the youth is still subject to the court's jurisdiction and to supervision under the disposition~~
25 ~~when the youth becomes 21 years of age, this chapter ceases to apply to the youth and jurisdiction over~~
26 ~~the youth is transferred to the department of corrections and human services, which shall make an~~
27 ~~appropriate placement and shall supervise the youth. The youth may not be placed and supervised for a~~
28 ~~period of time in excess of the maximum period of imprisonment that could be imposed on an adult~~
29 ~~convicted of the offense or offenses that brought the youth under the jurisdiction of the youth court.~~

30 ~~(b) When a youth is transferred to the department of corrections and human services, the~~

1 ~~department of family services shall transmit to the department of corrections and human services the~~
 2 ~~dispositional judgment, copies of medical reports, social history material, education records, and any other~~
 3 ~~clinical, predisposition, or other reports and information pertinent to the care and treatment of the youth.~~

4 ~~(e) The department of corrections and human services shall confine the youth in whatever~~
 5 ~~institution it considers proper, including a youth correctional facility under the procedures of 52-5-111.~~
 6 ~~However, a youth under 16 years of age may not be confined in the state prison."~~

7

8 **Section 25.** ~~Section 41-5-526, MCA, is amended to read:~~

9 ~~"41-5-526. Duties of the youth placement committee. A youth placement committee shall:~~

10 ~~(1) review all information relevant to the placement of a youth referred or committed to the~~
 11 ~~department;~~

12 ~~(2) consider available resources appropriate to meet the needs of the youth;~~

13 ~~(3) consider the treatment recommendations of any professional person who has evaluated the~~
 14 ~~youth;~~

15 ~~(4) recommend in writing to the department an appropriate placement for the youth, considering~~
 16 ~~the age and treatment needs of the youth and the relative costs of care in facilities considered appropriate~~
 17 ~~for placement. A committee shall consider placement in a licensed facility approved by the board of county~~
 18 ~~commissioners of the county in which the facility is located, at Mountain View school, at Pine Hills school,~~
 19 ~~or with a parent, other family member, or guardian.~~

20 ~~(5) review temporary and emergency placements as required under 41-5-528; and~~

21 ~~(6) conduct placement reviews as requested by the department."~~

22

23 **Section 26.** ~~Section 41-5-527, MCA, is amended to read:~~

24 ~~"41-5-527. Youth placement committee to submit recommendation to department — acceptance~~
 25 ~~or rejection of recommendation by department. (1) When a youth has been referred or committed to the~~
 26 ~~department for placement, the department shall notify the appropriate youth placement committee. The~~
 27 ~~committee shall submit in writing to the department its recommendation for placement of the youth. The~~
 28 ~~committee shall send a copy of the recommendation to the appropriate youth court judge.~~

29 ~~(2) If Except as provided in subsection (7), if the department accepts the committee's~~
 30 ~~recommendation, the youth must be placed according to the recommendation.~~

1 ~~(3) If the department rejects the committee's recommendation, it shall promptly notify the~~
2 ~~committee in writing of the reasons for rejecting the recommendation. The department shall send a copy~~
3 ~~of the notice to the appropriate youth court judge.~~

4 ~~(4) After receiving a notice under subsection (3), the committee shall submit in writing to the~~
5 ~~department a recommendation for an alternative placement of the youth.~~

6 ~~(5) If Except as provided in subsection (7), if the department accepts the committee's~~
7 ~~recommendation for alternative placement, the youth must be placed according to the recommendation.~~

8 ~~(6) If the department rejects the committee's recommendation for alternative placement, the~~
9 ~~department shall promptly notify the committee in writing of the reasons for rejecting the recommendation~~
10 ~~and shall determine an appropriate placement for the youth. The youth must be placed as determined by~~
11 ~~the department.~~

12 ~~(7) A placement may not be made unless the youth court judge agrees with the placement.~~
13

14 ~~**Section 27.** Section 41-5-529, MCA, is amended to read:~~

15 ~~**"41-5-529. Confidentiality of youth placement committee meetings and records.** (1) Meetings of~~
16 ~~a youth placement committee are closed to the public to protect a youth's right to individual privacy.~~

17 ~~(2) Information presented to the committee about a youth and committee records are confidential~~
18 ~~and subject to confidentiality requirements established by rule by the department. Purposeful violation of~~
19 ~~the confidentiality requirements is a criminal offense and a person convicted of violating the requirements~~
20 ~~shall be fined \$1,000.~~

21
22 ~~**Section 28.** Section 41-5-533, MCA, is amended to read:~~

23 ~~**"41-5-533. Probation revocation disposition.** (1) A Prior to the youth's transfer to the~~
24 ~~department of corrections and human services, a youth on probation incident to an adjudication that he the~~
25 ~~youth is a delinquent youth or a youth in need of supervision and who violates a term of such the probation~~
26 ~~may be proceeded against in a probation revocation proceeding. A proceeding to revoke probation shall~~
27 ~~must be done by filing in the original proceeding a petition styled "petition to revoke probation".~~

28 ~~(2) Petitions to revoke probation shall must be screened, reviewed, and prepared in the same~~
29 ~~manner and shall must contain the same information as petitions alleging delinquency or need of~~
30 ~~supervision. Procedures of the Montana Youth Court Act regarding taking into custody and detention shall~~

1 apply. The petition shall must state the terms of probation alleged to have been violated and the factual
 2 basis for such the allegations.

3 ~~(3) The standard of proof in probation revocation proceedings is the same standard used in~~
 4 ~~probation revocation of an adult and the hearing shall must be before the youth court without a jury. In~~
 5 ~~all other respects proceedings to revoke probation are governed by the procedures, rights, and duties~~
 6 ~~applicable to proceedings on petitions alleging that the youth is delinquent or a youth in need of~~
 7 ~~supervision. If a youth is found to have violated a term of his probation, the youth court may make any~~
 8 ~~judgment of disposition that could have been made in the original case."~~

9

10 ~~Section 29. Section 41-5-601, MCA, is amended to read:~~

11 ~~"41-5-601. Confidentiality. (1) (a) No Except as provided in subsection (1)(b), information shall~~
 12 ~~may not be given concerning a youth or any matter or proceeding in the youth court involving a youth~~
 13 ~~proceeded against as, or found to be, a youth in need of supervision.~~

14 ~~(b) If a youth as to whom there are active issues relating to drug use or crimes is placed in foster~~
 15 ~~care, the court shall notify the school that the youth will attend of the issues and the school may refuse~~
 16 ~~to accept the youth as a student.~~

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

23 ~~(3) In all cases the victim is entitled to all information concerning the identity and disposition of the~~
 24 ~~youth.~~

25 ~~(4) The identity of any a youth who for the second or subsequent time admits violating or is~~
 26 ~~adjudicated as having violated 45-5-624 or 45-9-102 may a statute must be disclosed by youth court~~
 27 ~~officials to the administrative officials of the school in which the youth is a student for purposes of referral~~
 28 ~~for enrollment in a substance abuse program or enforcement of school disciplinary procedures that existed~~
 29 ~~at the time of the admission or adjudication. The information may not be further disclosed and may not be~~
 30 ~~made part of the student's permanent records."~~

1 Section 9. Section 41-5-604, MCA, is amended to read:

2 "41-5-604. Disposition of records. (1) All youth court records and law enforcement records
3 except fingerprints and photographs pertaining to a youth coming under this chapter ~~shall~~ must be
4 physically sealed ~~when the youth reaches the age of 18 years~~ 3 years after supervision for an offense ends.
5 The records ~~must~~ MAY be unsealed if a new offense is committed.

6 (2) In those cases in which jurisdiction of the court or any agency is extended beyond the youth's
7 18th birthday, the ~~above~~ records and files ~~shall~~ must be physically sealed upon termination of the extended
8 jurisdiction.

9 (3) Upon the physical sealing of the records pertaining to a youth pursuant to this section, any
10 agency or department that has in its possession copies of the records ~~so~~ that are sealed shall also seal or
11 destroy ~~such~~ the copies of records. Anyone violating the provisions of this subsection ~~shall be~~ is subject
12 to contempt of court.

13 (4) ~~Nothing herein contained shall~~ This section does not prohibit the destruction of ~~such~~ records
14 with the consent of the youth court judge or county attorney after 10 years from the date of sealing.

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

17

18 ~~Section 31. Section 41-5-703, MCA, is amended to read:~~

19 ~~"41-5-703. Powers and duties of probation officers. (1) A probation officer shall:~~

20 ~~(a) perform the duties set out in 41-5-401;~~

21 ~~(b) make predisposition studies and submit reports and recommendations to the court;~~

22 ~~(c) supervise, assist, and counsel youth placed on probation or under his the officer's supervision;~~

23 ~~The probation officer shall ensure that a youth adjudicated as delinquent or in need of supervision and not~~
24 ~~placed in a detention center or facility complies with the orders of the court;~~

25 ~~(d) perform any other functions designated by the court.~~

26 ~~(2) A probation officer shall have no power to may make arrests or to and perform any other law~~
27 ~~enforcement functions function in carrying out his the officer's duties, except that a probation officer may~~
28 ~~take including taking into custody any a youth who violates either his probation or a lawful order of the~~
29 ~~court."~~

30

1 **Section 10.** Section 41-5-802, MCA, is amended to read:

2 "**41-5-802. Shelter care facilities.** (1) Counties, cities, or nonprofit corporations may provide by
3 purchase, lease, or otherwise, a shelter care facility.

4 (2) A shelter care facility ~~must be physically unrestricting and~~ may be used to provide shelter care
5 AN APPROPRIATELY PHYSICALLY RESTRICTING SETTING for youth alleged or adjudicated delinquent, in
6 need of supervision, or in need of care.

7 (3) A shelter care facility must be ~~separate and apart~~ physically separated from any facility housing
8 adults accused or convicted of criminal offenses.

9 (4) State appropriations and federal funds may be received by the counties, cities, or nonprofit
10 corporations for establishment, maintenance, or operation of a shelter care facility.

11 (5) A shelter care facility must be furnished in a comfortable manner ~~and be as nearly as possible~~
12 ~~like a family home.~~

13 (6) A shelter care facility may be operated in conjunction with a youth detention facility."

14

15 ~~**Section 33.** Section 41-5-810, MCA, is amended to read:~~

16 ~~"**41-5-810. County responsibility to provide youth detention services.** (1) Each county shall~~
17 ~~provide services for the detention of youth in facilities separate from adult jails and space must be found~~
18 ~~for a youth in need of detention. A youth may not be released from detention because of space problems.~~
19 ~~An arresting officer shall place the youth in a detention center.~~

20 ~~(2) In order to fulfill its responsibility under subsection (1), a county may:~~

21 ~~(a) establish, operate, and maintain a holdover, a short term detention center, or a youth detention~~
22 ~~facility at county expense;~~

23 ~~(b) provide shelter care facilities as authorized in 41-5-802;~~

24 ~~(c) contract with another county for the use of an available shelter care facility, holdover,~~
25 ~~short term detention center, or youth detention facility;~~

26 ~~(d) establish and operate a network of holdovers in cooperation with other counties;~~

27 ~~(e) establish a regional detention facility; or~~

28 ~~(f) enter into an agreement with a private party under which the private party will own, operate,~~
29 ~~or lease a shelter care facility or youth detention facility for use by the county. The agreement may be~~
30 ~~made in substantially the same manner as provided for in 7-32-2232 and 7-32-2233.~~

1 ~~(3) Each county, or regional, municipal, or state detention facility of any type, detention center of~~
 2 ~~any type, shelter care facility, or holdover must be licensed approved by the department in accordance with~~
 3 ~~rules adopted under 41-5-809 board of county commissioners of the county in which it is located."~~

4
 5 **Section 11.** Section 41-5-811, MCA, is amended to read:

6 **"41-5-811. Regional detention facilities.** (1) Two or more counties may, by contract, establish
 7 and maintain a regional detention facility.

8 (2) For the purpose of establishing and maintaining a regional detention facility, a county may:

9 (a) issue general obligation bonds for the acquisition, purchase, construction, renovation, and
 10 maintenance of a regional detention facility;

11 (b) levy and appropriate taxes, as permitted by law, to pay its share of the cost of equipping,
 12 operating, and maintaining the facility; and

13 (c) exercise all powers, under the limitations prescribed by law, necessary and convenient to carry
 14 out the purposes of 41-5-810 and this section.

15 (3) Contracts authorized under subsection (1) must be made pursuant to the Interlocal Cooperation
 16 Act, Title 7, chapter 11, part 1.

17 (4) Contracts between counties participating in a regional detention facility ~~must be for a term of~~
 18 ~~not less than 10 years. In addition, the contracts~~ must:

19 (a) specify the responsibilities of each county participating in the agreement;

20 (b) designate responsibility for operation of the regional detention facility;

21 (c) specify the amount of funding to be contributed by each county toward payment of the cost
 22 of establishing, operating, and maintaining the regional detention facility, including the necessary
 23 expenditures for the transportation of youth to and from the facility;

24 (d) include the applicable per diem charge for the detention of youths in the facility, as well as the
 25 basis for any adjustment in the charge; and

26 (e) specify the number of beds to be reserved for the use of each county participating in the
 27 regional detention facility."

28
 29 ~~**Section 35.** Section 41-5-812, MCA, is amended to read:~~

30 ~~**"41-5-812. Creation of regions requirements limitation on number of regions.** (1) Counties~~

1 ~~that wish to establish a regional detention facility shall form a youth detention region.~~

2 ~~(2) Each youth detention region must:~~

3 ~~(a) be composed of contiguous counties participating in the regional detention facility; and~~

4 ~~(b) include geographical areas of the state that contain a substantial percentage of the total youth~~
5 ~~population in need of detention services, as determined by the board of crime control.~~

6 ~~(3) There may be no more than five youth detention regions established in the state at any one~~
7 ~~time."~~

8
9 ~~Section 36. Section 41-5-1001, MCA, is amended to read:~~

10 ~~"41-5-1001. Definitions. As used in this part, unless the context requires otherwise, the following~~
11 ~~definitions apply:~~

12 ~~(1) "Attendant care" means the direct supervision of youth by a trained attendant in a physically~~
13 ~~unrestricting setting.~~

14 ~~(2) "Board" means the board of crime control provided for in 2-15-2006.~~

15 ~~(3) "County" means a county, city-county consolidated government, or a youth detention region~~
16 ~~created pursuant to 41-5-812.~~

17 ~~(4) "Home detention" means the use of a youth's home for the purpose of ensuring the continued~~
18 ~~custody of the youth pending adjudication or final disposition of his the youth's case.~~

19 ~~(5) "Plan" means a county plan for providing youth detention services as required in 41-5-1003.~~

20 ~~(6) "Secure detention" means the detention of youth in a physically restricting facility designed to~~
21 ~~prevent a youth from departing at will.~~

22 ~~(7) "Youth detention service" means service for the detention of youth in facilities separate from~~
23 ~~adult jails. The term includes the services described in 41-5-1002."~~

24
25 ~~Section 37. Section 41-5-1004, MCA, is amended to read:~~

26 ~~"41-5-1004. Distribution of grants—limitation of funding—restrictions on use. (1) The board~~
27 ~~shall award grants on an equitable basis, giving preference to services that will be used on a regional basis.~~

28 ~~(2) The board shall award grants to eligible counties:~~

29 ~~(a) in a block grant in an amount not to exceed 50% of the approved, estimated cost of secure~~
30 ~~detention; or~~

- 1 ~~(b) on a matching basis in an amount not to exceed:~~
- 2 ~~(i) 75% of the approved cost of providing holdovers, attendant care, and other alternatives to~~
- 3 ~~secure detention, except for shelter care. Shelter care must be paid as provided by law.~~
- 4 ~~(ii) 50% of the approved cost of programs for the transportation of youth to appropriate detention~~
- 5 ~~or shelter care facilities, including regional detention facilities.~~
- 6 ~~(3) Grants under 41-5-1002 may not be used to pay for the cost of youth evaluations. The cost~~
- 7 ~~of evaluations must be paid as provided for in 41-5-523."~~

8

9 ~~Section 38. Section 52-5-129, MCA, is amended to read:~~

10 ~~"52-5-129. Hearing on alleged violation of aftercare agreement — right to appeal outcome. (1)~~

11 ~~When it is alleged by an aftercare counselor that a youth has violated the terms of his an aftercare~~

12 ~~agreement, the youth must be granted a hearing at the site of the alleged violation or in the county in which~~

13 ~~the youth is residing or is found within 10 days after notice has been served on the youth or the youth is~~

14 ~~detained, whichever is earlier. The purpose of the hearing is to determine whether the youth committed~~

15 ~~the violation and, if so, whether the violation is of such a nature that he the youth should be returned to~~

16 ~~the youth correctional facility from which he the youth was released or a different plan for treatment should~~

17 ~~be pursued by the department of family services.~~

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

19 ~~(3) With regard to this hearing, the youth must be given:~~

20 ~~(a) written notice of the alleged violation of his an aftercare agreement, including notice of the~~

21 ~~purpose of the hearing;~~

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

23 ~~(c) opportunity to be heard in person and to present witnesses and documentary evidence to~~

24 ~~controvert the evidence against him the youth and to show that there are compelling reasons that justify~~

25 ~~or mitigate the violation;~~

26 ~~(d) opportunity to have the referee subpoena witnesses;~~

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

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

29 ~~(g) a record of the hearing; and~~

30 ~~(h) notice that a written statement as to the evidence relied upon in reaching the final decision and~~

1 ~~the reasons for the final decision will be provided by the referee.~~

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

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

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

16 ~~(7) Pending the hearing on a violation and pending the department's decision, a youth may not be~~
 17 ~~detained except when his detention or care is required to protect the person or property of the youth or of~~
 18 ~~others or he when the youth may abscond or be removed from the community. The department shall~~
 19 ~~determine the place and manner of detention and is responsible for the cost of the detention. Procedures~~
 20 ~~for taking into custody and detention of a youth charged with violation of his an aftercare agreement are~~
 21 ~~as provided in 41-5-303, 41-5-306, 41-5-311, and 41-5-314.~~

22 ~~(8) If the decision is made to return the youth to the youth correctional facility from which he the~~
 23 ~~youth was released and the youth appeals that decision, he the youth shall await the outcome of the appeal~~
 24 ~~at the facility."~~

25
 26 ~~Section 39. Section 53-21-162, MCA, is amended to read:~~

27 ~~"53-21-162. Establishment of patient treatment plan—patient's rights. (1) Each patient admitted~~
 28 ~~as an inpatient to a mental health facility must have a comprehensive physical and mental examination and~~
 29 ~~review of behavioral status within 48 hours after admission to the mental health facility.~~

30 ~~(2) Each patient must have an individualized treatment plan. This plan must be developed by~~

1 appropriate professional persons, including a psychiatrist, and must be implemented no later than 10 days
2 after the patient's admission. Each individualized treatment plan must contain:

3 ~~(a) a statement of the nature of the specific problems and specific needs of the patient;~~

4 ~~(b) a statement of the least restrictive treatment conditions necessary to achieve the purposes of
5 hospitalization;~~

6 ~~(c) a description of treatment goals, with a projected timetable for their attainment;~~

7 ~~(d) a statement and rationale for the plan of treatment for achieving these goals;~~

8 ~~(e) a specification of staff responsibility for attaining each treatment goal;~~

9 ~~(f) criteria for release to less restrictive treatment conditions; and~~

10 ~~(g) a notation of any therapeutic tasks and labor to be performed by the patient.~~

11 ~~(3) Overall development, implementation, and supervision of the treatment plan must be assigned
12 to an appropriate professional person.~~

13 ~~(4) The inpatient mental health facility shall periodically reevaluate the patient and revise the
14 individualized treatment plan based on changes in the patient's condition. At a minimum, the treatment plan
15 must be reviewed:~~

16 ~~(a) at the time of any transfer within the facility;~~

17 ~~(b) at the time of discharge;~~

18 ~~(c) upon any major change in the patient's condition;~~

19 ~~(d) at the conclusion of the initial estimated length of stay and subsequent estimated lengths of
20 stay;~~

21 ~~(e) no less than every 90 days; and~~

22 ~~(f) at each of the times specified in subsections (4)(a) through (4)(e), by a treatment team that
23 includes at least one professional person who is not primarily responsible for the patient's treatment plan.~~

24 ~~(5) A patient has the right:~~

25 ~~(a) to ongoing participation, in a manner appropriate to the patient's capabilities, in the planning
26 of mental health services to be provided and in the revision of the plan; and~~

27 ~~(b) to a reasonable explanation of the following, in terms and language appropriate to the patient's
28 condition and ability to understand:~~

29 ~~(i) the patient's general mental condition and, if given a physical examination, the patient's physical
30 condition;~~

GOVERNOR'S AMENDMENTS TO
HOUSE BILL NO. 540
(REFERENCE COPY)
April 10, 1995

1. Page 23, line 11.

Following: "~~would be~~"

Insert: "conduct alleged to be unlawful that would be"

Following: "felony"

Insert: "if committed by an adult"

HOUSE BILL NO. 540

INTRODUCED BY MOLNAR

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE MONTANA YOUTH COURT ACT; AND AMENDING SECTIONS ~~7-32-2244, 39-71-117, 39-71-118, 39-71-774, 39-71-117, 39-71-118, 39-71-774,~~ 40-6-233, 41-3-102, 41-5-102, ~~41-5-103, 41-5-203, 41-5-204, 41-5-205, 41-5-206, 41-5-301, 41-5-304, 41-5-305, 41-5-306, 41-5-307, 41-5-313, 41-5-401, 41-5-403, 41-5-514, 41-5-521, 41-5-522, 41-5-523, 41-5-526, 41-5-527, 41-5-529, 41-5-533, 41-5-601, 41-5-604, 41-5-703, 41-5-802, 41-5-810,~~ AND 41-5-811, ~~41-5-812, 41-5-1001, 41-5-1004, 52-5-129, 53-21-162, AND 53-21-506,~~ MCA; AND REPEALING SECTIONS ~~41-5-106, 41-5-310, 41-5-311, AND 41-5-809,~~ MCA."

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

~~Section 1. Section 7-32-2244, MCA, is amended to read:~~

~~"7-32-2244. Detention of juveniles. Juveniles may be held in a detention center only in accordance with 41-5-301 through 41-5-307, and 41-5-309, and 41-5-311."~~

~~Section 2. Section 39-71-117, MCA, is amended to read:~~

~~"39-71-117. Employer defined. (1) "Employer" means:~~

~~(a) the state and each county, city and county, city school district, irrigation district, all other districts established by law, and all public corporations and quasi-public corporations and public agencies therein and every person, every prime contractor, and every firm, voluntary association, and private corporation, including any public service corporation and including an independent contractor who has any person in service under any appointment or contract of hire, expressed or implied, oral or written, and the legal representative of any deceased employer or the receiver or trustee thereof of the deceased employer;~~

~~(b) any association, corporation, or organization that seeks permission and meets the requirements set by the department by rule for a group of individual employers to operate as self insured under plan No. 1 of this chapter; and~~

~~(c) any nonprofit association or corporation or other entity funded in whole or in part by federal, state, or local government funds that places community service participants, as defined in~~

1 ~~39-71-118(1)(f)(1)(e), with nonprofit organizations or associations or federal, state, or local government~~
 2 ~~entities.~~

3 ~~(2) A temporary service contractor is the employer of a temporary worker for premium and loss~~
 4 ~~experience purposes.~~

5 ~~(3) An employer defined in subsection (1) who utilizes the services of a worker furnished by~~
 6 ~~another person, association, contractor, firm, or corporation, other than a temporary service contractor,~~
 7 ~~is presumed to be the employer for workers' compensation premium and loss experience purposes for work~~
 8 ~~performed by the worker. The presumption may be rebutted by substantial credible evidence of the~~
 9 ~~following:~~

10 ~~(a) the person, association, contractor, firm, or corporation, other than a temporary service~~
 11 ~~contractor, furnishing the services of a worker to another retains control over all aspects of the work~~
 12 ~~performed by the worker, both at the inception of employment and during all phases of the work; and~~

13 ~~(b) the person, association, contractor, firm, or corporation, other than a temporary service~~
 14 ~~contractor, furnishing the services of a worker to another has obtained workers' compensation insurance~~
 15 ~~for the worker in Montana both at the inception of employment and during all phases of the work~~
 16 ~~performed.~~

17 ~~(4) Notwithstanding the provisions of subsection (3), an interstate or intrastate common or contract~~
 18 ~~motor carrier doing business in this state who utilizes drivers in this state is considered the employer, is~~
 19 ~~liable for workers' compensation premiums, and is subject to loss experience rating in this state unless:~~

20 ~~(a) the driver in this state is certified as an independent contractor as provided in 39-71-401(3);~~
 21 ~~or~~

22 ~~(b) the person, association, contractor, firm, or corporation furnishing drivers in this state to a~~
 23 ~~motor carrier has obtained workers' compensation insurance on the drivers in Montana both at the inception~~
 24 ~~of employment and during all phases of the work performed."~~

25

26 **Section 3.** Section 39-71-744, MCA, is amended to read:

27 **"39-71-744. Benefits not due while claimant is incarcerated—exceptions.** (1) Except as provided
 28 in subsection (2), a claimant is not eligible for disability or rehabilitation compensation benefits while the
 29 claimant is incarcerated in a correctional institution, such as the Montana state prison or the Montana
 30 women's correctional center, as the result of conviction of a felony. The insurer remains liable for medical

1 ~~benefits. A time limit on benefits otherwise provided in this chapter is not extended due to a period of~~
2 ~~incarceration.~~

3 ~~(2) A person who is employed while participating in a prerelease center program or a diversionary~~
4 ~~program is eligible for temporary total benefits as provided in 39-71-701 and medical benefits for a~~
5 ~~work-related injury received while participating in a prerelease center program or a diversionary program.~~
6 ~~Other disability or rehabilitation benefits are not payable while the worker is participating in a prerelease~~
7 ~~center. This subsection does not prohibit the reinstatement of other benefits upon release from~~
8 ~~incarceration, nor does it apply to an employee performing community service described in 39-71-118(1)(f)~~
9 ~~(1)(e)."~~

10

11 ~~Section 4. Section 39-71-118, MCA, is amended to read:~~

12 ~~"39-71-118. Employee, worker, and volunteer firefighter defined. (1) The terms "employee" or~~
13 ~~"worker" means:~~

14 ~~(a) each person in this state, including a contractor other than an independent contractor, who is~~
15 ~~in the service of an employer, as defined by 39-71-117, under any appointment or contract of hire,~~
16 ~~expressed or implied, oral or written. The terms include aliens and minors, whether lawfully or unlawfully~~
17 ~~employed, and all of the elected and appointed paid public officers and officers and members of boards of~~
18 ~~directors of quasi-public or private corporations while rendering actual service for the corporations for pay.~~
19 ~~Casual employees as defined by 39-71-116 are included as employees if they are not otherwise covered~~
20 ~~by workers' compensation and if an employer has elected to be bound by the provisions of the~~
21 ~~compensation law for these casual employments, as provided in 39-71-401(2). Household or domestic~~
22 ~~service is excluded.~~

23 ~~(b) any juvenile performing work under authorization of a district court judge in a delinquency~~
24 ~~prevention or rehabilitation program;~~

25 ~~(c) a person receiving on the job vocational rehabilitation training or other on the job training under~~
26 ~~a state or federal vocational training program, whether or not under an appointment or contract of hire with~~
27 ~~an employer as defined in this chapter and whether or not receiving payment from a third party. However,~~
28 ~~this subsection does not apply to students enrolled in vocational training programs as outlined in this~~
29 ~~subsection while they are on the premises of a public school or community college.~~

30 ~~(d)(e) students enrolled and in attendance in programs of vocational technical education at~~

1 ~~designated vocational technical centers;~~

2 ~~(e)(d) an aircrew member or other person employed as a volunteer under 67-2-105;~~

3 ~~(f)(e) a person, other than a juvenile as defined in subsection (1)(b), performing community service~~
4 ~~for a nonprofit organization or association or for a federal, state, or local government entity under a court~~
5 ~~order, or an order from a hearings officer as a result of a probation or parole violation, whether or not under~~
6 ~~appointment or contract of hire with an employer as defined in this chapter and whether or not receiving~~
7 ~~payment from a third party. For a person covered by the definition in this subsection (f)(1)(e):~~

8 ~~(i) compensation benefits must be limited to medical expenses pursuant to 39-71-704 and an~~
9 ~~impairment award pursuant to 39-71-703 that is based upon the minimum wage established under Title 39,~~
10 ~~chapter 3, part 4, for a full-time employee at the time of the injury; and~~

11 ~~(ii) premiums must be paid by the employer, as defined in 39-71-117(3), and must be based upon~~
12 ~~the minimum wage established under Title 39, chapter 3, part 4, for the number of hours of community~~
13 ~~service required under the order from the court or hearings officer.~~

14 ~~(g)(f) an inmate working in a federally certified prison industries program authorized under~~
15 ~~53-1-301.~~

16 ~~(2) The terms defined in subsection (1) do not include a person who is:~~

17 ~~(a) participating in recreational activity and who at the time is relieved of and is not performing~~
18 ~~prescribed duties, regardless of whether the person is using, by discount or otherwise, a pass, ticket,~~
19 ~~permit, device, or other emolument of employment; or~~

20 ~~(b) performing voluntary service at a recreational facility and who receives no compensation for~~
21 ~~those services other than meals, lodging, or the use of the recreational facilities.~~

22 ~~(3) The term "volunteer firefighter" means a firefighter who is an enrolled and active member of~~
23 ~~a fire company organized and funded by a county, a rural fire district, or a fire service area.~~

24 ~~(4) (a) If the employer is a partnership or sole proprietorship, the employer may elect to include as~~
25 ~~an employee within the provisions of this chapter any member of the partnership or the owner of the sole~~
26 ~~proprietorship devoting full time to the partnership or proprietorship business.~~

27 ~~(b) In the event of an election, the employer must serve upon the employer's insurer written notice~~
28 ~~naming the partners or sole proprietor to be covered and stating the level of compensation coverage desired~~
29 ~~by electing the amount of wages to be reported, subject to the limitations in subsection (4)(d). A partner~~
30 ~~or sole proprietor is not considered an employee within this chapter until notice has been given.~~

1 ~~(c) A change in elected wages must be in writing and is effective at the start of the next quarter~~
 2 ~~following notification.~~

3 ~~(d) All weekly compensation benefits must be based on the amount of elected wages, subject to~~
 4 ~~the minimum and maximum limitations of this subsection. For premium ratemaking and for the~~
 5 ~~determination of weekly wage for weekly compensation benefits, the electing employer may elect not less~~
 6 ~~than \$900 a month and not more than 1 1/2 times the average weekly wage as defined in this chapter.~~

7 ~~(5) The trustees of a rural fire district, a county governing body providing rural fire protection, or~~
 8 ~~the county commissioners or trustees for a fire service area may elect to include as an employee within the~~
 9 ~~provisions of this chapter any volunteer firefighter. A volunteer firefighter who receives workers'~~
 10 ~~compensation coverage under this section may not receive disability benefits under Title 19, chapter 17.~~

11 ~~(6) An employee or worker in this state whose services are furnished by a person, association,~~
 12 ~~contractor, firm, or corporation, other than a temporary service contractor, to an employer as defined in~~
 13 ~~39-71-117 is presumed to be under the control and employment of the employer. This presumption may~~
 14 ~~be rebutted as provided in 39-71-117(3).~~

15 ~~(7) For purposes of this section, an "employee or worker in this state" means:~~

16 ~~(a) a resident of Montana who is employed by an employer and whose employment duties are~~
 17 ~~primarily carried out or controlled within this state;~~

18 ~~(b) a nonresident of Montana whose principal employment duties are conducted within this state~~
 19 ~~on a regular basis for an employer;~~

20 ~~(c) a nonresident employee of an employer from another state engaged in the construction industry,~~
 21 ~~as defined in 39-71-116, within this state; or~~

22 ~~(d) a nonresident of Montana who does not meet the requirements of subsection (7)(b) and whose~~
 23 ~~employer elects coverage with an insurer that allows an election for an employer whose:~~

24 ~~(i) nonresident employees are hired in Montana;~~

25 ~~(ii) nonresident employees' wages are paid in Montana;~~

26 ~~(iii) nonresident employees are supervised in Montana; and~~

27 ~~(iv) business records are maintained in Montana.~~

28 ~~(8) An insurer may require coverage for all nonresident employees of a Montana employer who do~~
 29 ~~not meet the requirements of subsection (7)(b) or (7)(d) as a condition of approving the election under~~
 30 ~~subsection (7)(d)."~~

1 ~~SECTION 2. SECTION 39-71-117, MCA, IS AMENDED TO READ:~~

2 ~~"39-71-117. Employer defined. (1) "Employer" means:~~

3 ~~(a) the state and each county, city and county, city school district, irrigation district, all other~~
4 ~~districts established by law, and all public corporations and quasi public corporations and public agencies~~
5 ~~therein and every person, every prime contractor, and every firm, voluntary association, and private~~
6 ~~corporation, including any public service corporation and including an independent contractor who has any~~
7 ~~person in service under any appointment or contract of hire, expressed or implied, oral or written, and the~~
8 ~~legal representative of any deceased employer or the receiver or trustee thereof of the deceased employer;~~

9 ~~(b) any association, corporation, or organization that seeks permission and meets the requirements~~
10 ~~set by the department by rule for a group of individual employers to operate as self insured under plan~~
11 ~~No. 1 of this chapter; and~~

12 ~~(c) any nonprofit association or corporation or other entity funded in whole or in part by federal,~~
13 ~~state, or local government funds that places community service participants, as defined in~~
14 ~~39-71-118(1)(f)(1)(e), with nonprofit organizations or associations or federal, state, or local government~~
15 ~~entities.~~

16 ~~(2) A temporary service contractor is the employer of a temporary worker for premium and loss~~
17 ~~experience purposes.~~

18 ~~(3) An employer defined in subsection (1) who utilizes the services of a worker furnished by~~
19 ~~another person, association, contractor, firm, or corporation, other than a temporary service contractor,~~
20 ~~is presumed to be the employer for workers' compensation premium and loss experience purposes for work~~
21 ~~performed by the worker. The presumption may be rebutted by substantial credible evidence of the~~
22 ~~following:~~

23 ~~(a) the person, association, contractor, firm, or corporation, other than a temporary service~~
24 ~~contractor, furnishing the services of a worker to another retains control over all aspects of the work~~
25 ~~performed by the worker, both at the inception of employment and during all phases of the work; and~~

26 ~~(b) the person, association, contractor, firm, or corporation, other than a temporary service~~
27 ~~contractor, furnishing the services of a worker to another has obtained workers' compensation insurance~~
28 ~~for the worker in Montana both at the inception of employment and during all phases of the work~~
29 ~~performed.~~

30 ~~(4) Notwithstanding the provisions of subsection (3), an interstate or intrastate common or contract~~

1 ~~motor carrier doing business in this state who utilizes drivers in this state is considered the employer, is~~
 2 ~~liable for workers' compensation premiums, and is subject to loss experience rating in this state unless:~~

3 ~~(a) the driver in this state is certified as an independent contractor as provided in 39-71-401(3);~~

4 ~~or~~

5 ~~(b) the person, association, contractor, firm, or corporation furnishing drivers in this state to a~~
 6 ~~motor carrier has obtained workers' compensation insurance on the drivers in Montana both at the inception~~
 7 ~~of employment and during all phases of the work performed."~~

8
 9 **SECTION 3. SECTION 39-71-744, MCA, IS AMENDED TO READ:**

10 ~~"39-71-744. Benefits not due while claimant is incarcerated—exceptions. (1) Except as provided~~
 11 ~~in subsection (2), a claimant is not eligible for disability or rehabilitation compensation benefits while the~~
 12 ~~claimant is incarcerated in a correctional institution, such as the Montana state prison or the Montana~~
 13 ~~women's correctional center, as the result of conviction of a felony. The insurer remains liable for medical~~
 14 ~~benefits. A time limit on benefits otherwise provided in this chapter is not extended due to a period of~~
 15 ~~incarceration.~~

16 ~~(2) A person who is employed while participating in a prerelease center program or a diversionary~~
 17 ~~program is eligible for temporary total benefits as provided in 39-71-701 and medical benefits for a~~
 18 ~~work-related injury received while participating in a prerelease center program or a diversionary program.~~
 19 ~~Other disability or rehabilitation benefits are not payable while the worker is participating in a prerelease~~
 20 ~~center. This subsection does not prohibit the reinstatement of other benefits upon release from~~
 21 ~~incarceration, nor does it apply to an employee performing community service described in 39-71-118(1)(f)~~
 22 ~~(1)(e)."~~

23
 24 **SECTION 4. SECTION 39-71-118, MCA, IS AMENDED TO READ:**

25 ~~"39-71-118. Employee, worker, and volunteer firefighter defined. (1) The terms "employee" or~~
 26 ~~"worker" means:~~

27 ~~(a) each person in this state, including a contractor other than an independent contractor, who is~~
 28 ~~in the service of an employer, as defined by 39-71-117, under any appointment or contract of hire,~~
 29 ~~expressed or implied, oral or written. The terms include aliens and minors, whether lawfully or unlawfully~~
 30 ~~employed, and all of the elected and appointed paid public officers and officers and members of boards of~~

1 ~~directors of quasi-public or private corporations while rendering actual service for the corporations for pay.~~
 2 ~~Casual employees as defined by 39-71-116 are included as employees if they are not otherwise covered~~
 3 ~~by workers' compensation and if an employer has elected to be bound by the provisions of the~~
 4 ~~compensation law for these casual employments, as provided in 39-71-401(2). Household or domestic~~
 5 ~~service is excluded.~~

6 ~~(b) any juvenile performing work under authorization of a district court judge in a delinquency~~
 7 ~~prevention or rehabilitation program;~~

8 ~~(c) a person receiving on-the-job vocational rehabilitation training or other on-the-job training under~~
 9 ~~a state or federal vocational training program, whether or not under an appointment or contract of hire with~~
 10 ~~an employer as defined in this chapter and whether or not receiving payment from a third party. However,~~
 11 ~~this subsection does not apply to students enrolled in vocational training programs as outlined in this~~
 12 ~~subsection while they are on the premises of a public school or community college.~~

13 ~~(d)(e) students enrolled and in attendance in programs of vocational technical education at~~
 14 ~~designated vocational technical centers;~~

15 ~~(e)(d) an aircrew member or other person employed as a volunteer under 67-2-105;~~

16 ~~(f)(e) a person, other than a juvenile as defined in subsection (1)(b), performing community service~~
 17 ~~for a nonprofit organization or association or for a federal, state, or local government entity under a court~~
 18 ~~order, or an order from a hearings officer as a result of a probation or parole violation, whether or not under~~
 19 ~~appointment or contract of hire with an employer as defined in this chapter and whether or not receiving~~
 20 ~~payment from a third party. For a person covered by the definition in this subsection (f)(1)(e):~~

21 ~~(i) compensation benefits must be limited to medical expenses pursuant to 39-71-704 and an~~
 22 ~~impairment award pursuant to 39-71-703 that is based upon the minimum wage established under Title 39,~~
 23 ~~chapter 3, part 4, for a full-time employee at the time of the injury; and~~

24 ~~(ii) premiums must be paid by the employer, as defined in 39-71-117(3), and must be based upon~~
 25 ~~the minimum wage established under Title 39, chapter 3, part 4, for the number of hours of community~~
 26 ~~service required under the order from the court or hearings officer.~~

27 ~~(g)(f) an inmate working in a federally certified prison industries program authorized under~~
 28 ~~53-1-301.~~

29 ~~(2) The terms defined in subsection (1) do not include a person who is:~~

30 ~~(a) participating in recreational activity and who at the time is relieved of and is not performing~~

1 ~~prescribed duties, regardless of whether the person is using, by discount or otherwise, a pass, ticket,~~
2 ~~permit, device, or other emolument of employment; or~~

3 ~~(b) performing voluntary service at a recreational facility and who receives no compensation for~~
4 ~~those services other than meals, lodging, or the use of the recreational facilities.~~

5 ~~(3) The term "volunteer firefighter" means a firefighter who is an enrolled and active member of~~
6 ~~a fire company organized and funded by a county, a rural fire district, or a fire service area.~~

7 ~~(4) (a) If the employer is a partnership or sole proprietorship, the employer may elect to include as~~
8 ~~an employee within the provisions of this chapter any member of the partnership or the owner of the sole~~
9 ~~proprietorship devoting full time to the partnership or proprietorship business.~~

10 ~~(b) In the event of an election, the employer must serve upon the employer's insurer written notice~~
11 ~~naming the partners or sole proprietor to be covered and stating the level of compensation coverage desired~~
12 ~~by electing the amount of wages to be reported, subject to the limitations in subsection (4)(d). A partner~~
13 ~~or sole proprietor is not considered an employee within this chapter until notice has been given.~~

14 ~~(c) A change in elected wages must be in writing and is effective at the start of the next quarter~~
15 ~~following notification.~~

16 ~~(d) All weekly compensation benefits must be based on the amount of elected wages, subject to~~
17 ~~the minimum and maximum limitations of this subsection. For premium ratemaking and for the~~
18 ~~determination of weekly wage for weekly compensation benefits, the electing employer may elect not less~~
19 ~~than \$900 a month and not more than 1 1/2 times the average weekly wage as defined in this chapter.~~

20 ~~(5) The trustees of a rural fire district, a county governing body providing rural fire protection, or~~
21 ~~the county commissioners or trustees for a fire service area may elect to include as an employee within the~~
22 ~~provisions of this chapter any volunteer firefighter. A volunteer firefighter who receives workers'~~
23 ~~compensation coverage under this section may not receive disability benefits under Title 19, chapter 17.~~

24 ~~(6) An employee or worker in this state whose services are furnished by a person, association,~~
25 ~~contractor, firm, or corporation, other than a temporary service contractor, to an employer as defined in~~
26 ~~39-71-117 is presumed to be under the control and employment of the employer. This presumption may~~
27 ~~be rebutted as provided in 39-71-117(3).~~

28 ~~(7) For purposes of this section, an "employee or worker in this state" means:~~

29 ~~(a) a resident of Montana who is employed by an employer and whose employment duties are~~
30 ~~primarily carried out or controlled within this state;~~

1 ~~(b) a nonresident of Montana whose principal employment duties are conducted within this state~~
2 ~~on a regular basis for an employer;~~

3 ~~(c) a nonresident employee of an employer from another state engaged in the construction industry,~~
4 ~~as defined in 39-71-116, within this state; or~~

5 ~~(d) a nonresident of Montana who does not meet the requirements of subsection (7)(b) and whose~~
6 ~~employer elects coverage with an insurer that allows an election for an employer whose:~~

7 ~~(i) nonresident employees are hired in Montana;~~

8 ~~(ii) nonresident employees' wages are paid in Montana;~~

9 ~~(iii) nonresident employees are supervised in Montana; and~~

10 ~~(iv) business records are maintained in Montana.~~

11 ~~(8) An insurer may require coverage for all nonresident employees of a Montana employer who do~~
12 ~~not meet the requirements of subsection (7)(b) or (7)(d) as a condition of approving the election under~~
13 ~~subsection (7)(d)."~~

14
15 **Section 1.** Section 40-6-233, MCA, is amended to read:

16 "**40-6-233. Remedy for parental abuse.** The abuse of parental authority is the subject of judicial
17 cognizance in a civil action brought by the child or by its relative within the third degree or by the county
18 commissioners of the county where the child resides. When the abuse is established, the child may be
19 freed from the dominion of the parent and the duty of support and education enforced. A parent or
20 guardian of a child has the right to give the child or force the child to take prescribed medicine PRESCRIBED
21 FOR THE CHILD, and exercise of the right is not an abuse of parental authority."

22
23 **Section 2.** Section 41-3-102, MCA, is amended to read:

24 "**41-3-102. Definitions.** As used in this chapter, the following definitions apply:

25 (1) "A person responsible for a child's welfare" means the child's parent, guardian, or foster parent;
26 a staff person providing care in a day-care facility; an employee of a public or private residential institution,
27 facility, home, or agency; or any other person legally responsible for the child's welfare in a residential
28 setting.

29 (2) "Abused or neglected" means the state or condition of a child who has suffered child abuse
30 or neglect.

1 (3) (a) "Adequate health care" means any medical care, including the prevention of the withholding
 2 of medically indicated treatment or medically indicated psychological care permitted or authorized under
 3 state law.

4 (b) ~~Nothing in this~~ This chapter may not be construed to require or justify a finding of child abuse
 5 or neglect for the sole reason that a parent, due to religious beliefs, does not provide medical care for a
 6 child. However, nothing in this chapter may be construed to limit the administrative or judicial authority
 7 of the state to ensure that medical care is provided to the child when there is imminent or substantial risk
 8 of harm to the child.

9 (4) "Child" or "youth" means any person under 18 years of age.

10 (5) (a) "Child abuse or neglect" means:

11 (i) harm to a child's health or welfare, as defined in subsection (8); or

12 (ii) threatened harm to a child's health or welfare, as defined in subsection (15).

13 (b) The term includes harm or threatened harm to a child's health or welfare by the acts or
 14 omissions of a person responsible for the child's welfare.

15 ~~(c) The term does not include what appears to be an extreme reaction to extreme circumstances,~~
 16 ~~such as self defense or, defense of others, OR action taken to prevent the child from self harm, or normal~~
 17 ~~physical punishment or normal physical consequences of one's actions~~ **THAT DOES NOT CONSTITUTE**
 18 **HARM TO A CHILD'S HEALTH OR WELFARE.**

19 (6) "Department" means the department of family services provided for in 2-15-2401.

20 (7) "Dependent youth" means a youth:

21 (a) who is abandoned;

22 (b) who is without parents or guardian or not under the care and supervision of a suitable adult;

23 (c) who has no proper guidance to provide for necessary physical, moral, and emotional well-being;

24 (d) who is destitute;

25 (e) who is dependent upon the public for support; or

26 (f) whose parent or parents have voluntarily relinquished custody and whose legal custody has
 27 been transferred to a licensed agency.

28 (8) "Harm to a child's health or welfare" means the harm that occurs whenever the parent or other
 29 person responsible for the child's welfare:

30 (a) inflicts or allows to be inflicted upon the child physical or mental injury;

1 (b) commits or allows to be committed sexual abuse or exploitation of the child;

2 (c) causes failure to thrive or otherwise fails to supply the child with adequate food or fails to
3 supply clothing, ~~shelter~~, SHELTER, education, or adequate health care, though financially able to do so or
4 offered financial or other reasonable means to do so;

5 (d) abandons the child by leaving the child under circumstances that make reasonable the belief
6 that the parent or other person does not intend to resume care of the child in the future or by willfully
7 surrendering physical custody for a period of 6 months and during that period does not manifest to the child
8 and the person having physical custody of the child a firm intention to resume physical custody or to make
9 permanent legal arrangements for the care of the child; or

10 (e) is unknown and has been unknown for a period of 90 days and reasonable efforts to identify
11 and locate the parents have failed.

12 (9) "Limited emancipation" means a status conferred on a dependent youth by a court after a
13 dispositional hearing in accordance with 41-3-406 under which the youth is entitled to exercise some but
14 not all of the rights and responsibilities of a person who is 18 years of age or older.

15 (10) "Mental injury" means an identifiable and substantial impairment of the child's intellectual or
16 psychological functioning.

17 (11) "Physical injury" means death, permanent or temporary disfigurement, or impairment of any
18 bodily organ or function and includes death, permanent or temporary disfigurement, and impairment of a
19 bodily organ or function sustained as a result of excessive corporal punishment.

20 (12) "Sexual abuse" means the commission of sexual assault, sexual intercourse without consent,
21 indecent exposure, deviate sexual conduct, or incest, as described in Title 45, chapter 5, part 5.

22 (13) "Sexual exploitation" means allowing, permitting, or encouraging a child to engage in a
23 prostitution offense, as described in 45-5-601 through 45-5-603, or allowing, permitting, or encouraging
24 sexual abuse of children as described in 45-5-625.

25 (14) "Social worker" means an employee of the department whose duties generally involve the
26 provision of either child or adult protective services, or both.

27 (15) "Threatened harm to a child's health or welfare" means substantial risk of harm to the child's
28 health or welfare.

29 (16) "Withholding of medically indicated treatment" means the failure to respond to an infant's
30 life-threatening conditions by providing treatment ~~including~~ appropriate nutrition, hydration, and

1 medication}, that, in the treating physician's or physicians' reasonable medical judgment, will be most likely
 2 to be effective in ameliorating or correcting the conditions. However, the term does not include the failure
 3 to provide treatment {other than appropriate nutrition, hydration, or medication} to an infant when, in the
 4 treating physician's or physicians' reasonable medical judgment:

5 (a) the infant is chronically and irreversibly comatose;

6 (b) the provision of treatment would:

7 (i) merely prolong dying;

8 (ii) not be effective in ameliorating or correcting all of the infant's life-threatening conditions; or

9 (iii) otherwise be futile in terms of the survival of the infant; or

10 (c) the provision of treatment would be virtually futile in terms of the survival of the infant and the
 11 treatment itself under the circumstances would be inhumane. For purposes of this subsection, "infant"
 12 means an infant less than 1 year of age or an infant 1 year of age or older who has been continuously
 13 hospitalized since birth, who was born extremely prematurely, or who has a long-term disability. The
 14 reference to less than 1 year of age may not be construed to imply that treatment should be changed or
 15 discontinued when an infant reaches 1 year of age or to affect or limit any existing protections available
 16 under state laws regarding medical neglect of children over 1 year of age.

17 (17) "Youth in need of care" means a youth who is dependent, abused, or neglected as defined in
 18 this section."

19

20 **Section 3.** Section 41-5-102, MCA, is amended to read:

21 **"41-5-102. Declaration of purpose.** The Montana Youth Court Act shall must be interpreted and
 22 construed to effectuate the following express legislative purposes:

23 (1) to preserve the unity and welfare of the family whenever possible and to provide for the care,
 24 protection, and wholesome mental and physical development of a youth coming within the provisions of
 25 the Montana Youth Court Act;

26 (2) to ~~remove from youth committing violations of the law the element of retribution and to~~
 27 ~~substitute therefor~~ prevent and reduce youth delinquency through immediate, consistent, enforceable, and
 28 avoidable consequences of youths' actions and to establish a program of supervision, care, rehabilitation,
 29 detention, COMPETENCY DEVELOPMENT, COMMUNITY PROTECTION, and, in appropriate cases,
 30 restitution as ordered by the youth court;

1 (3) to achieve the purposes of subsections (1) and (2) ~~of this section~~ in a family environment
 2 whenever possible, separating the youth from ~~his~~ the parents only when necessary for the welfare of the
 3 youth or for the safety and protection of the community;

4 (4) to provide judicial procedures in which the parties are assured a fair, accurate hearing and
 5 recognition and enforcement of their constitutional and statutory rights."

6
 7 **Section 8.** ~~Section 41-5-103, MCA, is amended to read:~~

8 ~~"41-5-103. Definitions. As used in the Montana Youth Court Act, unless the context requires~~
 9 ~~otherwise, the following definitions apply:~~

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

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

13 (3) ~~"Commit" means to transfer to legal custody.~~

14 (4) ~~"Correctional facility" means a public or private residential facility used for the placement of~~
 15 ~~delinquent youth or individuals convicted of criminal offenses.~~

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

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

19 (7) ~~"Delinquent youth" means a youth:~~

20 (a) ~~who has committed an offense that, if committed by an adult, would constitute a criminal~~
 21 ~~offense; or~~

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

24 (8) ~~"Department" means the department of family services provided for in 2-15-2401.~~

25 (9) ~~"Detention" means the holding or temporary placement of a youth in the youth's home under~~
 26 ~~home arrest or in a facility other than the youth's own home for the purpose of ensuring the continued~~
 27 ~~custody of the youth at any time after the youth is taken into custody and before final disposition of his~~
 28 ~~case.~~

29 (10) ~~"Detention facility" means a shelter care facility or a physically restricting facility designed to~~
 30 ~~prevent a youth from departing at will and approved by the board of county commissioners of the county~~

1 ~~in which the facility is located. The term includes a youth detention facility, short term detention center,~~
2 ~~and regional detention facility.~~

3 ~~(11) "Final disposition" means the implementation of a court order for the disposition or placement~~
4 ~~of a youth as provided in 41-5-523.~~

5 ~~(12) "Foster home" means a private residence licensed by the department for placement of a youth.~~

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

8 ~~(14) "Holdover" means a room, office, building, or other place approved by the board of crime~~
9 ~~control county commissioners of the county in which the holdover is located for the temporary detention~~
10 ~~and supervision of youth in a physically unrestricting setting for a period not to exceed 24 hours while the~~
11 ~~youth is awaiting a probable cause hearing, release, or transfer to an appropriate detention or shelter care~~
12 ~~facility. The term does not include a jail.~~

13 ~~(15) "Jail" means a facility used for the confinement of adults accused or convicted of criminal~~
14 ~~offenses. The term includes a lookup or other facility used primarily for the temporary confinement of~~
15 ~~adults prior to arrest.~~

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

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

19 ~~(i) have physical custody of the youth;~~

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

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

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

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

25 ~~(18) "Necessary parties" includes the youth, his and the youth's parents, guardian, custodian, or~~
26 ~~spouse.~~

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

30 ~~(20) "Probable cause hearing" means the hearing provided for in 41-5-303.~~

1 ~~(21) "Regional detention facility" means a youth detention facility established and maintained by~~
2 ~~two or more counties, as authorized in 41-5-811, and approved by the board of county commissioners of~~
3 ~~each county.~~

4 ~~(22) "Restitution" means payments in cash to the victim or with services to the victim or the general~~
5 ~~community when these payments are made pursuant to an informal adjustment, consent decree, or other~~
6 ~~youth court order.~~

7 ~~(23) "Secure detention facility" means any public or private facility that is approved by the board~~
8 ~~of county commissioners of the county in which it is located and that:~~

9 ~~(a) is used for the temporary placement of youth or individuals accused or convicted of criminal~~
10 ~~offenses; and~~

11 ~~(b) is designed to physically restrict the movements and activities of youth or other individuals held~~
12 ~~in lawful custody of the facility.~~

13 ~~(24) "Serious juvenile offender" means a youth who has committed an offense that would be~~
14 ~~considered a felony offense if committed by an adult and that is an offense against a person, an offense~~
15 ~~against or property, or an offense involving dangerous drugs.~~

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

18 ~~(26) "Shelter care facility" means a facility approved by the board of county commissioners of the~~
19 ~~county in which it is located and used for the shelter care of youth. The term is limited to the facilities~~
20 ~~enumerated in 41-5-306(1).~~

21 ~~(27) "Short term detention center" means a detention facility licensed by the department approved~~
22 ~~by the board of county commissioners of the county in which the detention center is located for the~~
23 ~~temporary placement or care of youth, for a period not to exceed 96 hours, pending a probable cause~~
24 ~~hearing, release, or transfer of the youth to an appropriate detention facility or shelter care facility.~~

25 ~~(28) "State youth correctional facility" means a residential facility used for the placement and~~
26 ~~rehabilitation of delinquent youth, such as the Pine Hills school in Miles City and the Mountain View school~~
27 ~~in Helena.~~

28 ~~(29) "Substitute care" means full time care of youth in a residential setting for the purpose of~~
29 ~~providing food, shelter, security and safety, guidance, direction, and, if necessary, treatment to youth who~~
30 ~~are removed from or are without the care and supervision of their parents or guardian.~~

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

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

6 ~~(32) "Youth detention facility" means a secure detention facility licensed by the department~~
7 ~~approved by the board of county commissioners of the county in which the detention facility is located for~~
8 ~~the temporary substitute care of youth that:~~

9 ~~(a) is operated, administered, and staffed separately and independently of a jail; and~~

10 ~~(b) is used exclusively for the lawful detention of alleged or adjudicated delinquent youth.~~

11 ~~(33) "Youth in need of care" has the meaning provided for in 41-3-102.~~

12 ~~(34) "Youth in need of supervision" means a youth who commits an offense prohibited by law that,~~
13 ~~if committed by an adult, would not constitute a criminal offense, including but not limited to a youth who:~~

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

15 ~~(b) continues to exhibit behavior beyond the control of his the youth's parents, foster parents,~~
16 ~~physical custodian, or guardian despite the attempt of his the parents, foster parents, physical custodian,~~
17 ~~or guardian to exert all reasonable efforts to mediate, resolve, or control the youth's behavior; or~~

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

20

21 ~~**Section 9.** Section 41-5-203, MCA, is amended to read:~~

22 ~~"41-5-203. Jurisdiction of the court courts. (1) Except as provided in subsection (2), the The~~
23 ~~court has exclusive original jurisdiction of all proceedings under the Montana Youth Court Act in which a~~
24 ~~youth is alleged to be a delinquent youth, a youth in need of supervision, or a youth in need of care or~~
25 ~~concerning any person under 21 years of age charged with having violated any law of the state or~~
26 ~~ordinance of any city or town other than a traffic or fish and game law prior to having become 18 years~~
27 ~~of age.~~

28 ~~(2) Justice, municipal, and city, and district courts have concurrent jurisdiction with the youth court~~
29 ~~over all alcoholic beverage and gambling violations alleged to have been committed by a youth a person~~
30 ~~under 21 years of age who is charged with a violation of any state criminal or other law or municipal~~

1 ~~ordinance to the extent that the statutes relating to those courts in Title 3 and other titles give them~~
 2 ~~jurisdiction over the violation charged."~~

3

4 ~~Section 10. Section 41-5-204, MCA, is amended to read:~~

5 ~~"41-5-204. Venue and transfer. (1) The county where a youth is a resident or is alleged to have~~
 6 ~~violated the law has initial jurisdiction over any youth alleged to be a delinquent youth. The youth court~~
 7 ~~shall assume the initial handling of the case.~~

8 ~~(2) The county where a youth is a resident has initial jurisdiction over any youth alleged to be a~~
 9 ~~youth in need of supervision or a youth in need of care. The youth court of that county shall assume the~~
 10 ~~initial handling of the case. Transfers of venue may be made to any of the following counties in the state:~~

11 ~~(a) the county in which the youth is apprehended or found;~~

12 ~~(b) the county in which the youth is alleged to have violated the law; or~~

13 ~~(c) the county of residence of the youth's parents or guardian.~~

14 ~~(3) In the case of a youth alleged to be a youth in need of supervision or a youth in need of care,~~
 15 ~~a change of venue may be ordered at any time by the concurrence of the youth court judges of both~~
 16 ~~counties in order to assure a fair, impartial, and speedy hearing and final disposition of the case.~~

17 ~~(4) In the case of a youth 16 years of age or older who is accused of one of the serious offenses~~
 18 ~~listed in 41-5-206, the court in the county where the offense occurred shall serve as a transfer hearing~~
 19 ~~court, and if the youth is to be tried in district court, the charge shall be filed and trial held in the district~~
 20 ~~court of the county where the offense occurred."~~

21

22 ~~Section 11. Section 41-5-205, MCA, is amended to read:~~

23 ~~"41-5-205. Retention of jurisdiction. Once a court obtains jurisdiction over a youth, the court~~
 24 ~~retains jurisdiction unless terminated by the court or by mandatory termination in the following cases:~~

25 ~~(1) at the time the proceedings are transferred to adult criminal court;~~

26 ~~(2)(1) at the time the youth is discharged by the department; and~~

27 ~~(2) at the time the youth is transferred to the department of corrections and human services; and~~

28 ~~(3) in any event, at the time the youth reaches the age of 21 years."~~

29

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 ~~(c) notice in writing of the time, place, and purpose of the hearing is given to the youth, his~~
 26 ~~counsel, and his parents, guardian, or custodian at least 10 days before the hearing; 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 is deliberate homicide as~~
13 ~~defined in 45-5-102, mitigated deliberate homicide as defined in 45-5-103, or the attempt, as defined in~~
14 ~~45-4-103, 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.~~

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

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

25 ~~(a) tried in youth court;~~

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

28 ~~(8) If a youth is found guilty in district court of any of the offenses transferred by the youth court~~
29 ~~and is sentenced to the state prison, the commitment must be to the department of corrections and human~~
30 ~~services. The department shall confine the youth in whatever institution it considers proper, including a~~

1 ~~state youth correctional facility under the procedures of 52-5-111; however, no youth under 16 years of~~
 2 ~~age may be confined in the state prison.~~

3 ~~(1) (a) A youth's first violation of a state criminal or other law or municipal ordinance may be~~
 4 ~~handled by the probation officer under part 4 of this chapter or the probation officer may refer the youth~~
 5 ~~to the county attorney, who may either file a petition in the youth court or file a criminal complaint or other~~
 6 ~~appropriate proceeding in a court having jurisdiction over the violation. The youth must be tried as an adult.~~

7 ~~(b) Upon a second or subsequent violation, the county attorney may file a petition, complaint, or~~
 8 ~~other proceeding as provided in subsection (1)(a).~~

9 ~~(0)(2) A youth whose case is transferred to district court who is charged with a crime may not be~~
 10 ~~detained or otherwise placed in a jail, prison, or other adult detention facility before or after final disposition~~
 11 ~~of his the case unless:~~

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

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

15

16 **Section 13.** ~~Section 41-5-301, MCA, is amended to read:~~

17 ~~"41-5-301. Preliminary investigation and disposition. (1) Whenever the court receives information~~
 18 ~~from any agency or person, based upon reasonable grounds, that a youth is or appears to be a delinquent~~
 19 ~~youth or a youth in need of supervision or, being subject to a court order or consent order, has violated the~~
 20 ~~terms thereof of an order, a probation officer shall make a preliminary inquiry into the matter.~~

21 ~~(2) The probation officer may:~~

22 ~~(a) require the presence of any person relevant to the inquiry;~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 ~~(c) refer the matter to the county attorney for filing a petition charging the youth to be a delinquent~~
19 ~~youth or a youth in need of supervision or for filing a complaint or other proceeding under 41-5-206.~~

20 ~~(6) The county attorney may either:~~

21 ~~(a) apply to the youth court for permission to file a petition charging a youth to be a delinquent~~
22 ~~youth or a youth in need of supervision. The application must be supported by such evidence as the youth~~
23 ~~court may require. If it appears that there is probable cause to believe that the allegations of the petition~~
24 ~~are true, the youth court shall grant leave to file the petition.~~

25 ~~(b) file a complaint or other proceeding under 41-5-206.~~

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

29 ~~(8) If no a petition, complaint, or other proceeding is not filed under this section, the complainant~~
30 ~~and victim, if any, shall must be informed by the probation officer of the action and the reasons therefor~~

1 ~~for the action and shall must be advised of the right to submit the matter to the county attorney for review.~~
 2 ~~The county attorney, upon receiving a request for review, shall consider the facts, consult with the~~
 3 ~~probation officer, and make the final decision as to whether a petition, complaint, or other proceeding shall~~
 4 ~~be is to be filed."~~

5

6 **Section 4.** Section 41-5-304, MCA, is amended to read:

7 **"41-5-304. Investigation, fingerprints, and photographs.** (1) All law enforcement investigations
 8 relating to a delinquent youth or youth in need of supervision must be conducted in accordance with this
 9 chapter and Title 46.

10 (2) A youth may be fingerprinted or photographed for criminal identification purposes:

11 (a) if arrested for ~~conduct alleged to be unlawful that would be~~ CONDUCT ALLEGED TO BE
 12 UNLAWFUL THAT WOULD BE a felony if ~~committed by an adult~~ IF COMMITTED BY AN ADULT;

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

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

17 (3) Fingerprint records and photographs may be used by the department of justice or any law
 18 enforcement agency in the judicial district for comparison and identification purposes in any other
 19 investigation."

20

21 ~~**Section 15.** Section 41-5-305, MCA, is amended to read:~~

22 ~~**"41-5-305. Criteria for placement of youth in secure detention facilities or shelter care facilities.**~~

23 ~~(1) A youth may not be placed in a secure detention facility unless:~~

24 ~~(a) he the youth has allegedly committed an act that if committed by an adult would constitute a~~
 25 ~~criminal offense and the alleged offense is one specified in 41-5-206;~~

26 ~~(b) he the youth is alleged to be a delinquent youth and:~~

27 ~~(i) he the youth has escaped from a shelter care facility, correctional facility, or secure detention~~
 28 ~~facility;~~

29 ~~(ii) he the youth has violated a valid court order or an aftercare agreement;~~

30 ~~(iii) his the youth's detention is required to protect persons or property;~~

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

3 ~~(v) there are not adequate assurances that he the youth will appear for court when required; or~~

4 ~~(vi) he the youth meets additional criteria for secure detention established by the youth court in the~~
 5 ~~judicial district that has current jurisdiction over him; or~~

6 ~~(e) he the youth has been adjudicated delinquent and is awaiting final disposition of his the case.~~

7 ~~(2) A youth may not be placed in a shelter care facility unless:~~

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

10 ~~(b) the youth needs to be protected from physical or emotional harm;~~

11 ~~(c) the youth needs to be deterred or prevented from immediate repetition of his the troubling~~
 12 ~~behavior;~~

13 ~~(d) shelter care is necessary to assess the youth and his the youth's environment;~~

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

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

17
 18 **Section 5.** Section 41-5-306, MCA, is amended to read:

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

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

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

23 (c) in a licensed youth group home as defined in 41-3-1102; ~~or~~ OR

24 (d) under home arrest, either in the youth's own home or in one of the facilities described in
 25 subsections (1)(a) through (1)(c), as provided in Title 46, chapter 18, part 10; ~~OR~~

26 ~~(E) IN A DETENTION FACILITY.~~

27 (2) A youth alleged to be a youth in need of care may be placed only in the facilities listed in
 28 subsection (1), ~~must be segregated from juvenile offenders,~~ and may not be placed in a jail or other facility
 29 intended or used for the confinement of adults accused or convicted of criminal offenses.

30 (3) After a probable cause hearing provided for in 41-5-303, a youth alleged to be a delinquent

1 youth may be placed only in:

- 2 (a) the facilities described in subsection (1);
 3 (b) under home arrest as provided in subsection (1);
 4 (c) a short-term detention center; or
 5 (d) a youth detention facility; OR
 6 (E) A COMMUNITY YOUTH COURT PROGRAM."
 7

8 **Section 17.** Section 41-5-307, MCA, is amended to read:

9 ~~"41-5-307. Release or delivery from custody. (1) Whenever a peace officer believes, on~~
 10 ~~reasonable grounds, that a youth can be released to a person who has custody of the youth, then the peace~~
 11 ~~officer may release the youth to that person upon receiving a written promise from the person to bring the~~
 12 ~~youth before the probation officer at a time and place specified in the written promise, or a peace officer~~
 13 ~~may release the youth under any other reasonable circumstances.~~

14 ~~(2) Whenever the peace officer believes, on reasonable grounds, that the youth must be detained,~~
 15 ~~the peace officer shall notify the probation officer immediately and shall, as soon as practicable, provide~~
 16 ~~the probation officer with a written report of his the reasons for holding the youth in detention. If it is~~
 17 ~~necessary to hold the youth pending appearance before the youth court, then the youth must be held in~~
 18 ~~a place of detention approved by the youth court board of county commissioners. If the peace officer~~
 19 ~~believes that the youth must be sheltered, the peace officer shall notify the probation officer immediately~~
 20 ~~and shall provide a written report of his the reasons for placing the youth in shelter care. If the youth is~~
 21 ~~then held, the youth must be placed in a shelter care facility approved by the youth court board of county~~
 22 ~~commissioners."~~

23
 24 **Section 18.** Section 41-5-313, MCA, is amended to read:

25 ~~"41-5-313. Permitted acts—detention of youth in law enforcement facilities—criteria. (1) Nothing~~
 26 ~~in this This chapter precludes does not include PRECLUDE the detention of youth in a police station or other~~
 27 ~~law enforcement facility that is attached to or part of a jail if:~~

28 ~~(a) the area where the youth is held is an unlocked, multipurpose area, such as a lobby, office,~~
 29 ~~interrogation room, or other area that is not designated or used as a secure detention area or that is not~~
 30 ~~part of a secure detention area, or, if part of such an area, that is used only for the purpose of processing,~~

1 such as a booking room;

2 ~~(b) the youth is not secured to a cuffing rail or other stationary object during the period of~~
3 ~~detention;~~

4 ~~(c) use of the area is limited to ensuring custody of the youth for the purpose of identification,~~
5 ~~processing, or transfer of the youth to an appropriate detention or shelter care facility;~~

6 ~~(d) the area is not designed or intended to be used for residential purposes; and~~

7 ~~(e) the youth is under continuous visual supervision by a law enforcement officer or by facility staff~~
8 ~~during the period of time that the youth is held in detention.~~

9 ~~(2) For purposes of this section, "secure detention" means the detention of youth or confinement~~
10 ~~of adults accused or convicted of criminal offenses in a physically restricting setting, including but not~~
11 ~~limited to a locked room or set of rooms or a cell designed to prevent a youth or adult from departing at~~
12 ~~will."~~

13

14 ~~**Section 19.** Section 41-5-401, MCA, is amended to read:~~

15 ~~"41-5-401. Consent adjustment without petition. (1) Before a petition is filed, the probation~~
16 ~~officer may enter into an informal adjustment and give counsel and advice to the youth and other interested~~
17 ~~parties if it appears:~~

18 ~~(a) the admitted facts bring the case within the jurisdiction of the court;~~

19 ~~(b) counsel and advice without filing a petition would be in the best interests of the child youth,~~
20 ~~the youth's family, and the public; and~~

21 ~~(c) the youth may be a youth in need of supervision and if the probation officer believes that the~~
22 ~~parents, foster parents, physical custodian, or guardian exerted all reasonable efforts to mediate, resolve,~~
23 ~~or control the youth's behavior and the youth continues to exhibit behavior beyond the control of the~~
24 ~~parents, foster parents, physical custodian, or guardian.~~

25 ~~(2) Any probation or other disposition imposed under this section against any youth must conform~~
26 ~~to the following procedures:~~

27 ~~(a) Every consent adjustment shall must be reduced to writing and signed by the youth and his the~~
28 ~~youth's parents or the person having legal custody of the youth.~~

29 ~~(b) If the probation officer believes the youth is a youth in need of supervision, the probation officer~~
30 ~~shall determine that the parents, foster parents, physical custodian, or guardian exerted all reasonable~~

1 ~~efforts to mediate, resolve, or control the youth's behavior and the youth continues to exhibit behavior~~
 2 ~~beyond the control of the parents, foster parents, physical custodian, or guardian.~~

3 ~~(c) Approval by the youth court judge is required if the complaint alleges commission of a felony~~
 4 ~~or if the youth has been or will be in any way detained.~~

5 ~~(d) If a placement of the youth is made, it must be by the youth placement committee pursuant~~
 6 ~~to 41-5-526 and 41-5-527."~~

7

8 **Section 6.** Section 41-5-403, MCA, is amended to read:

9 **"41-5-403. Disposition permitted under informal adjustment -- contributions by parents or guardians**
 10 **for youth's care.** (1) The following dispositions may be imposed by informal adjustment:

11 (a) probation;

12 (b) placement of the youth in substitute care in a youth care facility, as defined in 41-3-1102, and
 13 as determined by the department;

14 (c) placement of the youth with a private agency responsible for the care and rehabilitation of the
 15 youth as determined by the department;

16 (d) restitution upon approval of the youth court judge;

17 (e) placement of the youth under home arrest as provided in Title 46, chapter 18, part 10.

18 (2) In determining whether restitution is appropriate in a particular case, the following factors may
 19 be considered in addition to any other evidence:

20 (a) age of the youth;

21 (b) ability of the youth to pay;

22 (c) ability of ~~the parents or legal guardian~~ THE PARENTS, LEGAL GUARDIAN, OR persons
 23 contributing to the youth's delinquency or need for supervision to pay;

24 (d) amount of damage to the victim; and

25 (e) legal remedies of the victim; ~~however~~ However, the ability of the victim or ~~his~~ the victim's
 26 insurer to stand any loss may not be considered in any case.

27 (3) If the youth violates an aftercare agreement as provided for in 52-5-126, ~~he~~ the youth must
 28 be returned to the court for further disposition. A youth may not be placed in a state youth correctional
 29 facility under informal adjustment.

30 (4) If the youth is placed in substitute care requiring payment by the department, the court shall

1 examine the financial ability of the youth's parents or guardians to pay a contribution covering all or part
2 of the costs for the care, placement, and treatment of the youth, including the costs of necessary medical,
3 dental, and other health care.

4 (5) If the court determines that the youth's parents or guardians are financially able to pay a
5 contribution as provided in subsection (4), the court shall order the youth's parents or guardians to pay an
6 amount based on the uniform child support guidelines adopted by the department of social and rehabilitation
7 services pursuant to 40-5-209.

8 (6) (a) Except as provided in subsection (6)(b), contributions ordered under this section and each
9 modification of an existing order are enforceable by immediate or delinquency income withholding, or both,
10 under Title 40, chapter 5, part 4. An order for contribution that is inconsistent with this section is
11 nevertheless subject to withholding for the payment of the contribution without need for an amendment
12 of the support order or for any further action by the court.

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

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

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

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

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

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

25 (d) An alternative arrangement must:

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

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

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

30 (7) (a) If the court orders the payment of contributions under this section, the department shall

1 apply to the department of social and rehabilitation services for support enforcement services pursuant to
2 Title IV-D of the Social Security Act.

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

6

7 **Section 7.** Section 41-5-514, MCA, is amended to read:

8 **"41-5-514. Admissibility of confession or illegally seized evidence.** In a proceeding alleging a youth
9 to be a delinquent youth:

10 (1) an extrajudicial statement that would be constitutionally inadmissible in a criminal matter may
11 not be received in evidence;

12 (2) evidence illegally seized or obtained may not be received in evidence to establish the allegations
13 of a petition against a youth; ~~and~~

14 (3) an extrajudicial admission or confession made by the youth out of court is insufficient to
15 support a finding that the youth committed the acts alleged in the petition unless it is corroborated by other
16 evidence; and

17 (4) UPON A FINDING OF AN OFFENSE RELATED TO USE OF ALCOHOL OR ILLEGAL DRUGS, the
18 court may order the youth to undergo urinalysis for the purpose of determining whether the youth is using
19 alcoholic beverages or illegal drugs."

20

21 ~~**Section 22.** Section 41-5-521, MCA, is amended to read:~~

22 ~~**"41-5-521. Adjudicatory hearing.** (1) Prior to any adjudicatory hearing, the court shall determine~~
23 ~~whether the youth admits or denies the offenses alleged in the petition. If the youth denies all offenses~~
24 ~~alleged in the petition, the youth, his or the youth's parent, guardian, or attorney may demand a jury trial~~
25 ~~on such the contested offenses. In the absence of such a demand, a jury trial is waived. If the youth~~
26 ~~denies some offenses and admits others, the contested offenses may be dismissed in the discretion of the~~
27 ~~youth court judge. The adjudicatory hearing shall must be set immediately and accorded a preferential~~
28 ~~priority.~~

29 (2) ~~An adjudicatory hearing shall must be held to determine whether the contested offenses are~~
30 ~~supported by proof beyond a reasonable doubt in cases involving a youth alleged to be delinquent or in~~

1 ~~need of supervision. If the hearing is before a jury, the jury's function shall be is to determine whether the~~
 2 ~~youth committed the contested offenses. If the hearing is before the youth court judge without a jury, the~~
 3 ~~judge shall make and record his findings on all issues. If the allegations of the petitions are not established~~
 4 ~~at the hearing, the youth court shall dismiss the petition and discharge the youth from custody. The~~
 5 ~~petition and affidavits may not contain allegations against PERSONS OTHER THAN the youth or other~~
 6 ~~persons unless they have been admitted or proven.~~

7 ~~(3) An adjudicatory hearing shall must be recorded verbatim by whatever means the court~~
 8 ~~considers appropriate.~~

9 ~~(4) The youth charged in a petition must be present at the hearing and, if brought from detention~~
 10 ~~to the hearing, may not appear clothed in institutional clothing.~~

11 ~~(5) In a hearing on a petition under this section, the general public may not be excluded when the~~
 12 ~~hearing is held on a contested offense to which publicity must be allowed under subsection (2) of~~
 13 ~~41-5-601.~~

14 ~~(6) If, on the basis of a valid admission by a youth of the allegations of the petition or after the~~
 15 ~~hearing required by this section, a youth is found to be a delinquent youth or a youth in need of~~
 16 ~~supervision, the court shall schedule a dispositional hearing under this chapter.~~

17 ~~(7) When a jury trial is required in a case, it may be held before a jury selected as provided in Title~~
 18 ~~25, chapter 7, part 2, and M.R.Civ.P., Rule 47."~~

19
 20 **Section 8.** Section 41-5-522, MCA, is amended to read:

21 **"41-5-522. Dispositional hearing.** (1) As soon as practicable after a youth is found to be a
 22 delinquent youth or a youth in need of supervision, the court shall conduct a dispositional hearing. The
 23 dispositional hearing may involve a determination of the financial ability of the youth's parents or guardians
 24 to pay a contribution for the cost of care, commitment, and treatment of the youth as required in 41-5-523.

25 (2) Before conducting the dispositional hearing, the court shall direct that a social summary or
 26 predisposition report be made in writing by a probation officer concerning the youth, ~~his~~ the youth's family,
 27 ~~his~~ the youth's environment, and other matters relevant to the need for care or rehabilitation or disposition
 28 of the case. The youth court may have the youth examined, and the results of the examination ~~shall~~ must
 29 be made available to the court as part of the social summary or predisposition report. The court may order
 30 the examination of a parent or guardian whose ability to care for or supervise a youth is at issue before the

1 court. The results of ~~such~~ the examination ~~shall~~ must be included in the social summary or predisposition
 2 report. The youth, ~~his or the youth's~~ parents, guardian, or counsel ~~shall have~~ has the right to subpoena
 3 all persons who have prepared any portion of the social summary or predisposition report and ~~shall have~~
 4 has the right to cross-examine ~~said~~ the parties at the dispositional hearing.

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

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

11 (5) If the court finds that it is in the best interest of the youth, the youth, ~~his or the youth's~~
 12 parents, or guardian may be temporarily excluded from the hearing during the taking of evidence on the
 13 issues of need for treatment and rehabilitation.

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

16 (a) age of the youth;

17 (b) ability of the youth to pay;

18 (c) ability of ~~the parents or legal guardian~~ THE PARENTS, LEGAL GUARDIAN, OR those that
 19 contributed to the youth's delinquency or need for supervision to pay;

20 (d) amount of damage to the victim; and

21 (e) legal remedies of the victim; ~~however~~ However, the ability of the victim or ~~his~~ the victim's
 22 insurer to stand any loss may not be considered in any case."

23

24 ~~Section 24. Section 41-5-523, MCA, is amended to read:~~

25 ~~"41-5-523. Disposition — commitment to department — placement and evaluation of youth —~~
 26 ~~restrictions. (1) If Except as provided in subsection (15), if a youth is found to be a delinquent youth or~~
 27 ~~a youth in need of supervision, the youth court may enter its judgment making any of the following~~
 28 ~~dispositions:~~

29 (a) ~~place the youth on probation;~~

30 (b) ~~commit the youth to the department if the court determines that the youth is in need of~~

1 placement in other than the youth's own home, provided that:

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

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

12 (c) ~~order restitution by the youth or the youth's parents;~~

13 (d) ~~impose a fine as authorized by law if the violation alleged would constitute is a criminal offense~~
14 ~~if committed by an adult;~~

15 (e) ~~require the performance of community service;~~

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

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

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

22 (i) ~~order further care, treatment, evaluation, or relief that the court considers beneficial to the~~
23 ~~youth, the youth's family, and the community and that does not obligate funding from the department~~
24 ~~without the department's approval, except that a youth may not be placed by a youth court in a residential~~
25 ~~treatment facility as defined in 50-5-101. Only the department may, pursuant to subsection (1)(b), place~~
26 ~~a youth in a residential treatment facility.~~

27 (j) ~~commit the youth to a mental health facility if, based upon the testimony of a professional~~
28 ~~person as defined in 53-21-102, the court finds that the youth is seriously mentally ill as defined in~~
29 ~~53-21-102. The youth is entitled to all rights provided by 53-21-114 through 53-21-119. A youth~~
30 ~~adjudicated mentally ill or seriously mentally ill as defined in 53-21-102 may not be committed to a state~~

1 ~~youth correctional facility. A youth adjudicated to be mentally ill or seriously mentally ill to have a mental~~
2 ~~disease or defect that renders the youth unable to appreciate the criminality of the youth's behavior or~~
3 ~~unable to conform the youth's behavior to the requirements of law after placement by the department in~~
4 ~~a state youth correctional facility must be moved to a more appropriate placement in response to the~~
5 ~~youth's mental health needs and consistent with the disposition alternatives available in 53-21-127.~~

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

7 ~~(2) When a youth is committed to the department, the department shall determine the appropriate~~
8 ~~placement and rehabilitation program for the youth after considering the recommendations made under~~
9 ~~41-5-527 by the youth placement committee. Placement is subject to the following limitations:~~

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

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

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

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

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

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

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

30 ~~(d) case management of the youth.~~

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

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

9 ~~(6) The youth court may not order placement or evaluation of a youth at a state youth correctional~~
10 ~~facility unless the youth is found to be a delinquent youth or is alleged to have committed an a violent~~
11 ~~felony offense that is transferable to criminal court under 41-5-206 as defined in 46-18-1001.~~

12 ~~(7) An evaluation of a youth may not be performed at the Montana state hospital unless the youth~~
13 ~~is transferred to the district court under 41-5-206.~~

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

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

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

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

28 ~~(12) (a) Except as provided in subsection (12)(b), contributions ordered under this section and each~~
29 ~~modification of an existing order are enforceable by immediate or delinquency income withholding, or both,~~
30 ~~under Title 40, chapter 5, part 4. An order for contribution that is inconsistent with this section is~~

1 nevertheless subject to withholding for the payment of the contribution without need for an amendment
2 of the support order or for any further action by the court.

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

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

7 (ii) ~~an alternative arrangement between the department and the person who is ordered to pay~~
8 ~~contributions.~~

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

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

13 (ii) ~~proof of timely payment of previously ordered support in cases involving modification of~~
14 ~~contributions ordered under this section.~~

15 (d) ~~An alternative arrangement must:~~

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

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

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

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

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

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

28 ~~(15) (a) A misdemeanor counts as one point and a felony counts as three points. An offense that~~
29 ~~can be committed only by a person only because of age counts as one point. A youth found to have~~
30 ~~accumulated three points must be placed in a secure detention facility for 1 week. Upon accumulating six~~

1 ~~points, a youth must be placed in a secure detention facility for 2 weeks 5 DAYS, and upon accumulating~~
2 ~~nine points, a youth must be placed in a secure detention facility for 30 10 days. The staff of the secure~~
3 ~~detention facility must be trained in and give the youth counseling. The youth must be segregated from~~
4 ~~other youth, except when working on public works projects. Each county shall establish public works~~
5 ~~projects for the youth.~~

6 ~~(b) Upon accumulating 10 points, a youth must be designated as a "habitual offender" and must~~
7 ~~be placed in a state youth correctional facility for no less than 90 days.~~

8 ~~(c) If the court finds that a habitual offender commonly entices or assists other youth to perform~~
9 ~~illegal acts, the youth must be designated as a "predatory youth" and must be placed in a state youth~~
10 ~~correctional facility for no less than 180 days.~~

11 ~~(d) Law enforcement, educational, and social service agencies, the court, and other agencies and~~
12 ~~entities involved with a youth who is found by the court or believed by the agency or entity to be a~~
13 ~~delinquent youth or a youth in need of supervision shall provide the chief youth court probation officer for~~
14 ~~the county in which the youth resides with any information in the possession of the agency or entity that~~
15 ~~may indicate that the youth is a habitual offender, a predatory youth, or a youth at risk.~~

16 ~~(16) If a youth who is serving time in a state youth correctional facility because the youth was~~
17 ~~found to be a habitual offender or a predatory youth needs and is willing to accept treatment for mental,~~
18 ~~emotional, behavioral, substance abuse, or similar problems, the youth may be transferred to a residential~~
19 ~~treatment facility, but not until after the youth has served at least one half of the imposed detention period.~~

20 ~~(17) Health, education, welfare, and other agencies involved with the youth shall ensure that~~
21 ~~funding for the youth follows the youth to the location in which the youth is placed and that the funding~~
22 ~~is assigned to the appropriate agency or entity.~~

23 ~~(18) Before a youth is released from a state youth correctional facility, the department shall adopt~~
24 ~~and the court shall approve a written supervision plan.~~

25 ~~(19) (a) If the youth is still subject to the court's jurisdiction and to supervision under the disposition~~
26 ~~when the youth becomes 21 years of age, this chapter ceases to apply to the youth and jurisdiction over~~
27 ~~the youth is transferred to the department of corrections and human services, which shall make an~~
28 ~~appropriate placement and shall supervise the youth. The youth may not be placed and supervised for a~~
29 ~~period of time in excess of the maximum period of imprisonment that could be imposed on an adult~~
30 ~~convicted of the offense or offenses that brought the youth under the jurisdiction of the youth court.~~

1 ~~(b) When a youth is transferred to the department of corrections and human services, the~~
 2 ~~department of family services shall transmit to the department of corrections and human services the~~
 3 ~~dispositional judgment, copies of medical reports, social history material, education records, and any other~~
 4 ~~clinical, predisposition, or other reports and information pertinent to the care and treatment of the youth.~~

5 ~~(c) The department of corrections and human services shall confine the youth in whatever~~
 6 ~~institution it considers proper, including a youth correctional facility under the procedures of 52-5-111.~~
 7 ~~However, a youth under 16 years of age may not be confined in the state prison."~~

8
 9 **Section 25.** ~~Section 41-5-526, MCA, is amended to read:~~

10 ~~"41-5-526. Duties of the youth placement committee. A youth placement committee shall:~~

11 ~~(1) review all information relevant to the placement of a youth referred or committed to the~~
 12 ~~department;~~

13 ~~(2) consider available resources appropriate to meet the needs of the youth;~~

14 ~~(3) consider the treatment recommendations of any professional person who has evaluated the~~
 15 ~~youth;~~

16 ~~(4) recommend in writing to the department an appropriate placement for the youth, considering~~
 17 ~~the age and treatment needs of the youth and the relative costs of care in facilities considered appropriate~~
 18 ~~for placement. A committee shall consider placement in a licensed facility approved by the board of county~~
 19 ~~commissioners of the county in which the facility is located, at Mountain View school, at Pine Hills school,~~
 20 ~~or with a parent, other family member, or guardian.~~

21 ~~(5) review temporary and emergency placements as required under 41-5-528; and~~

22 ~~(6) conduct placement reviews as requested by the department."~~

23
 24 **Section 26.** ~~Section 41-5-527, MCA, is amended to read:~~

25 ~~"41-5-527. Youth placement committee to submit recommendation to department — acceptance~~
 26 ~~or rejection of recommendation by department. (1) When a youth has been referred or committed to the~~
 27 ~~department for placement, the department shall notify the appropriate youth placement committee. The~~
 28 ~~committee shall submit in writing to the department its recommendation for placement of the youth. The~~
 29 ~~committee shall send a copy of the recommendation to the appropriate youth court judge.~~

30 ~~(2) If Except as provided in subsection (7), if the department accepts the committee's~~

1 ~~recommendation, the youth must be placed according to the recommendation.~~

2 ~~(3) If the department rejects the committee's recommendation, it shall promptly notify the~~
 3 ~~committee in writing of the reasons for rejecting the recommendation. The department shall send a copy~~
 4 ~~of the notice to the appropriate youth court judge.~~

5 ~~(4) After receiving a notice under subsection (3), the committee shall submit in writing to the~~
 6 ~~department a recommendation for an alternative placement of the youth.~~

7 ~~(5) If Except as provided in subsection (7), if the department accepts the committee's~~
 8 ~~recommendation for alternative placement, the youth must be placed according to the recommendation.~~

9 ~~(6) If the department rejects the committee's recommendation for alternative placement, the~~
 10 ~~department shall promptly notify the committee in writing of the reasons for rejecting the recommendation~~
 11 ~~and shall determine an appropriate placement for the youth. The youth must be placed as determined by~~
 12 ~~the department.~~

13 ~~(7) A placement may not be made unless the youth court judge agrees with the placement.~~

14
 15 ~~Section 27. Section 41-5-529, MCA, is amended to read:~~

16 ~~"41-5-529. Confidentiality of youth placement committee meetings and records. (1) Meetings of~~
 17 ~~a youth placement committee are closed to the public to protect a youth's right to individual privacy.~~

18 ~~(2) Information presented to the committee about a youth and committee records are confidential~~
 19 ~~and subject to confidentiality requirements established by rule by the department. Purposeful violation of~~
 20 ~~the confidentiality requirements is a criminal offense and a person convicted of violating the requirements~~
 21 ~~shall be fined \$1,000.~~

22
 23 ~~Section 28. Section 41-5-533, MCA, is amended to read:~~

24 ~~"41-5-533. Probation revocation disposition. (1) A Prior to the youth's transfer to the~~
 25 ~~department of corrections and human services, a youth on probation incident to an adjudication that he the~~
 26 ~~youth is a delinquent youth or a youth in need of supervision and who violates a term of such the probation~~
 27 ~~may be proceeded against in a probation revocation proceeding. A proceeding to revoke probation shall~~
 28 ~~must be done by filing in the original proceeding a petition styled "petition to revoke probation".~~

29 ~~(2) Petitions to revoke probation shall must be screened, reviewed, and prepared in the same~~
 30 ~~manner and shall must contain the same information as petitions alleging delinquency or need of~~

1 supervision. Procedures of the Montana Youth Court Act regarding taking into custody and detention shall
2 apply. The petition shall must state the terms of probation alleged to have been violated and the factual
3 basis for such the allegations.

4 ~~(3) The standard of proof in probation revocation proceedings is the same standard used in~~
5 ~~probation revocation of an adult and the hearing shall must be before the youth court without a jury. In~~
6 ~~all other respects proceedings to revoke probation are governed by the procedures, rights, and duties~~
7 ~~applicable to proceedings on petitions alleging that the youth is delinquent or a youth in need of~~
8 ~~supervision. If a youth is found to have violated a term of his probation, the youth court may make any~~
9 ~~judgment of disposition that could have been made in the original case."~~

10
11 **Section 29.** Section 41-5-601, MCA, is amended to read:

12 ~~"41-5-601. Confidentiality. (1) (a) No Except as provided in subsection (1)(b), information shall~~
13 ~~may not be given concerning a youth or any matter or proceeding in the youth court involving a youth~~
14 ~~proceeded against as, or found to be, a youth in need of supervision.~~

15 ~~(b) If a youth as to whom there are active issues relating to drug use or crimes is placed in foster~~
16 ~~care, the court shall notify the school that the youth will attend of the issues and the school may refuse~~
17 ~~to accept the youth as a student.~~

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

24 ~~(3) In all cases the victim is entitled to all information concerning the identity and disposition of the~~
25 ~~youth.~~

26 ~~(4) The identity of any a youth who for the second or subsequent time admits violating or is~~
27 ~~adjudicated as having violated 45-5-624 or 45-9-102 may a statute must be disclosed by youth court~~
28 ~~officials to the administrative officials of the school in which the youth is a student for purposes of referral~~
29 ~~for enrollment in a substance abuse program or enforcement of school disciplinary procedures that existed~~
30 ~~at the time of the admission or adjudication. The information may not be further disclosed and may not be~~

1 ~~made part of the student's permanent records."~~

2
3 **Section 9.** Section 41-5-604, MCA, is amended to read:

4 **"41-5-604. Disposition of records.** (1) All youth court records and law enforcement records
5 except fingerprints and photographs pertaining to a youth coming under this chapter ~~shall~~ must be
6 physically sealed ~~when the youth reaches the age of 18 years~~ 3 years after supervision for an offense ends.
7 The records must MAY be unsealed if a new offense is committed.

8 (2) In those cases in which jurisdiction of the court or any agency is extended beyond the youth's
9 18th birthday, the ~~above~~ records and files ~~shall~~ must be physically sealed upon termination of the extended
10 jurisdiction.

11 (3) Upon the physical sealing of the records pertaining to a youth pursuant to this section, any
12 agency or department that has in its possession copies of the records ~~so~~ that are sealed shall also seal or
13 destroy ~~such~~ the copies of records. Anyone violating the provisions of this subsection ~~shall be~~ is subject
14 to contempt of court.

15 (4) ~~Nothing herein contained shall~~ This section does not prohibit the destruction of ~~such~~ records
16 with the consent of the youth court judge or county attorney after 10 years from the date of sealing.

17 (5) The requirements for sealed records in this section ~~shall~~ may not apply to youth traffic records
18 or to records directly related to an offense to which access must be allowed under 41-5-601."

19
20 ~~**Section 31.** Section 41-5-703, MCA, is amended to read:~~

21 ~~**"41-5-703. Powers and duties of probation officers.** (1) A probation officer shall:~~

22 ~~(a) perform the duties set out in 41-5-401;~~

23 ~~(b) make predisposition studies and submit reports and recommendations to the court;~~

24 ~~(c) supervise, assist, and counsel youth placed on probation or under his the officer's supervision;~~

25 ~~The probation officer shall ensure that a youth adjudicated as delinquent or in need of supervision and not~~
26 ~~placed in a detention center or facility complies with the orders of the court;~~

27 ~~(d) perform any other functions designated by the court.~~

28 ~~(2) A probation officer shall have no power to may make arrests or to and perform any other law~~
29 ~~enforcement functions function in carrying out his the officer's duties, except that a probation officer may~~
30 ~~take including taking into custody any a youth who violates either his probation or a lawful order of the~~

1 court."

2

3 **Section 10.** Section 41-5-802, MCA, is amended to read:

4 **"41-5-802. Shelter care facilities.** (1) Counties, cities, or nonprofit corporations may provide by
5 purchase, lease, or otherwise, a shelter care facility.

6 (2) A shelter care facility ~~must be physically unrestricting and~~ may be used to provide shelter care
7 AN APPROPRIATELY PHYSICALLY RESTRICTING SETTING for youth alleged or adjudicated delinquent, in
8 need of supervision, or in need of care.

9 (3) A shelter care facility must be ~~separate and apart~~ physically separated from any facility housing
10 adults accused or convicted of criminal offenses.

11 (4) State appropriations and federal funds may be received by the counties, cities, or nonprofit
12 corporations for establishment, maintenance, or operation of a shelter care facility.

13 (5) A shelter care facility must be furnished in a comfortable manner ~~and be as nearly as possible~~
14 like a family home.

15 (6) A shelter care facility may be operated in conjunction with a youth detention facility."

16

17 ~~**Section 33.** Section 41-5-810, MCA, is amended to read:~~

18 ~~**"41-5-810. County responsibility to provide youth detention services.** (1) Each county shall
19 provide services for the detention of youth in facilities separate from adult jails and space must be found
20 for a youth in need of detention. A youth may not be released from detention because of space problems.
21 An arresting officer shall place the youth in a detention center.~~

22 ~~(2) In order to fulfill its responsibility under subsection (1), a county may:~~

23 ~~(a) establish, operate, and maintain a holdover, a short term detention center, or a youth detention
24 facility at county expense;~~

25 ~~(b) provide shelter care facilities as authorized in 41-5-802;~~

26 ~~(c) contract with another county for the use of an available shelter care facility, holdover,
27 short term detention center, or youth detention facility;~~

28 ~~(d) establish and operate a network of holdovers in cooperation with other counties;~~

29 ~~(e) establish a regional detention facility; or~~

30 ~~(f) enter into an agreement with a private party under which the private party will own, operate,~~

1 ~~or lease a shelter care facility or youth detention facility for use by the county. The agreement may be~~
 2 ~~made in substantially the same manner as provided for in 7-32-2232 and 7-32-2233.~~

3 ~~(3) Each county, or regional, municipal, or state detention facility of any type, detention center of~~
 4 ~~any type, shelter care facility, or holdover must be licensed approved by the department in accordance with~~
 5 ~~rules adopted under 41-5-809 board of county commissioners of the county in which it is located."~~

6
 7 **Section 11.** Section 41-5-811, MCA, is amended to read:

8 **"41-5-811. Regional detention facilities.** (1) Two or more counties may, by contract, establish
 9 and maintain a regional detention facility.

10 (2) For the purpose of establishing and maintaining a regional detention facility, a county may:

11 (a) issue general obligation bonds for the acquisition, purchase, construction, renovation, and
 12 maintenance of a regional detention facility;

13 (b) levy and appropriate taxes, as permitted by law, to pay its share of the cost of equipping,
 14 operating, and maintaining the facility; and

15 (c) exercise all powers, under the limitations prescribed by law, necessary and convenient to carry
 16 out the purposes of 41-5-810 and this section.

17 (3) Contracts authorized under subsection (1) must be made pursuant to the Interlocal Cooperation
 18 Act, Title 7, chapter 11, part 1.

19 (4) Contracts between counties participating in a regional detention facility ~~must be for a term of~~
 20 ~~not less than 10 years. In addition, the contracts~~ must:

21 (a) specify the responsibilities of each county participating in the agreement;

22 (b) designate responsibility for operation of the regional detention facility;

23 (c) specify the amount of funding to be contributed by each county toward payment of the cost
 24 of establishing, operating, and maintaining the regional detention facility, including the necessary
 25 expenditures for the transportation of youth to and from the facility;

26 (d) include the applicable per diem charge for the detention of youths in the facility, as well as the
 27 basis for any adjustment in the charge; and

28 (e) specify the number of beds to be reserved for the use of each county participating in the
 29 regional detention facility."

30

~~Section 35. Section 41-5-812, MCA, is amended to read:~~

~~"41-5-812. Creation of regions—requirements—limitation on number of regions. (1) Counties that wish to establish a regional detention facility shall form a youth detention region.~~

~~(2) Each youth detention region must:~~

~~(a) be composed of contiguous counties participating in the regional detention facility; and~~

~~(b) include geographical areas of the state that contain a substantial percentage of the total youth population in need of detention services, as determined by the board of crime control.~~

~~(3) There may be no more than five youth detention regions established in the state at any one time."~~

~~Section 36. Section 41-5-1001, MCA, is amended to read:~~

~~"41-5-1001. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:~~

~~(1) "Attendant care" means the direct supervision of youth by a trained attendant in a physically unrestricting setting.~~

~~(2) "Board" means the board of crime control provided for in 2-15-2006.~~

~~(3) "County" means a county, city county consolidated government, or a youth detention region created pursuant to 41-5-812.~~

~~(4) "Home detention" means the use of a youth's home for the purpose of ensuring the continued custody of the youth pending adjudication or final disposition of his the youth's case.~~

~~(5) "Plan" means a county plan for providing youth detention services as required in 41-5-1003.~~

~~(6) "Secure detention" means the detention of youth in a physically restricting facility designed to prevent a youth from departing at will.~~

~~(7) "Youth detention service" means service for the detention of youth in facilities separate from adult jails. The term includes the services described in 41-5-1002."~~

~~Section 37. Section 41-5-1004, MCA, is amended to read:~~

~~"41-5-1004. Distribution of grants—limitation of funding—restrictions on use. (1) The board shall award grants on an equitable basis, giving preference to services that will be used on a regional basis.~~

~~(2) The board shall award grants to eligible counties:~~

1 ~~(a) in a block grant in an amount not to exceed 50% of the approved, estimated cost of secure~~
2 ~~detention; or~~

3 ~~(b) on a matching basis in an amount not to exceed:~~

4 ~~(i) 75% of the approved cost of providing holdovers, attendant care, and other alternatives to~~
5 ~~secure detention, except for shelter care. Shelter care must be paid as provided by law.~~

6 ~~(ii) 50% of the approved cost of programs for the transportation of youth to appropriate detention~~
7 ~~or shelter care facilities, including regional detention facilities.~~

8 ~~(3) Grants under 41-5-1002 may not be used to pay for the cost of youth evaluations. The cost~~
9 ~~of evaluations must be paid as provided for in 41-5-523."~~

10
11 ~~Section 38. Section 52-5-129, MCA, is amended to read:~~

12 ~~"52-5-129. Hearing on alleged violation of aftercare agreement — right to appeal outcome. (1)~~

13 ~~When it is alleged by an aftercare counselor that a youth has violated the terms of his an aftercare~~
14 ~~agreement, the youth must be granted a hearing at the site of the alleged violation or in the county in which~~
15 ~~the youth is residing or is found within 10 days after notice has been served on the youth or the youth is~~
16 ~~detained, whichever is earlier. The purpose of the hearing is to determine whether the youth committed~~
17 ~~the violation and, if so, whether the violation is of such a nature that he the youth should be returned to~~
18 ~~the youth correctional facility from which he the youth was released or a different plan for treatment should~~
19 ~~be pursued by the department of family services.~~

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

21 ~~(3) With regard to this hearing, the youth must be given:~~

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

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

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

28 ~~(d) opportunity to have the referee subpoena witnesses;~~

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

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

1 ~~(g) a record of the hearing; and~~

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

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

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

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

18 ~~(7) Pending the hearing on a violation and pending the department's decision, a youth may not be~~
19 ~~detained except when his detention or care is required to protect the person or property of the youth or of~~
20 ~~others or he when the youth may abscond or be removed from the community. The department shall~~
21 ~~determine the place and manner of detention and is responsible for the cost of the detention. Procedures~~
22 ~~for taking into custody and detention of a youth charged with violation of his an aftercare agreement are~~
23 ~~as provided in 41-5-303, 41-5-306, 41-5-311, and 41-5-314.~~

24 ~~(8) If the decision is made to return the youth to the youth correctional facility from which he the~~
25 ~~youth was released and the youth appeals that decision, he the youth shall await the outcome of the appeal~~
26 ~~at the facility."~~

27

28 ~~**Section 39.** Section 53-21-162, MCA, is amended to read:~~

29 ~~**"53-21-162. Establishment of patient treatment plan — patient's rights.** (1) Each patient admitted~~
30 ~~as an inpatient to a mental health facility must have a comprehensive physical and mental examination and~~

- 1 ~~review of behavioral status within 48 hours after admission to the mental health facility.~~
- 2 ~~(2) Each patient must have an individualized treatment plan. This plan must be developed by~~
 3 ~~appropriate professional persons, including a psychiatrist, and must be implemented no later than 10 days~~
 4 ~~after the patient's admission. Each individualized treatment plan must contain:~~
- 5 ~~(a) a statement of the nature of the specific problems and specific needs of the patient;~~
 6 ~~(b) a statement of the least restrictive treatment conditions necessary to achieve the purposes of~~
 7 ~~hospitalization;~~
- 8 ~~(c) a description of treatment goals, with a projected timetable for their attainment;~~
 9 ~~(d) a statement and rationale for the plan of treatment for achieving these goals;~~
 10 ~~(e) a specification of staff responsibility for attaining each treatment goal;~~
 11 ~~(f) criteria for release to less restrictive treatment conditions; and~~
 12 ~~(g) a notation of any therapeutic tasks and labor to be performed by the patient.~~
- 13 ~~(3) Overall development, implementation, and supervision of the treatment plan must be assigned~~
 14 ~~to an appropriate professional person.~~
- 15 ~~(4) The inpatient mental health facility shall periodically reevaluate the patient and revise the~~
 16 ~~individualized treatment plan based on changes in the patient's condition. At a minimum, the treatment plan~~
 17 ~~must be reviewed:~~
- 18 ~~(a) at the time of any transfer within the facility;~~
 19 ~~(b) at the time of discharge;~~
 20 ~~(c) upon any major change in the patient's condition;~~
 21 ~~(d) at the conclusion of the initial estimated length of stay and subsequent estimated lengths of~~
 22 ~~stay;~~
- 23 ~~(e) no less than every 90 days; and~~
 24 ~~(f) at each of the times specified in subsections (4)(a) through (4)(e), by a treatment team that~~
 25 ~~includes at least one professional person who is not primarily responsible for the patient's treatment plan.~~
- 26 ~~(5) A patient has the right:~~
- 27 ~~(a) to ongoing participation, in a manner appropriate to the patient's capabilities, in the planning~~
 28 ~~of mental health services to be provided and in the revision of the plan; and~~
- 29 ~~(b) to a reasonable explanation of the following, in terms and language appropriate to the patient's~~
 30 ~~condition and ability to understand:~~

